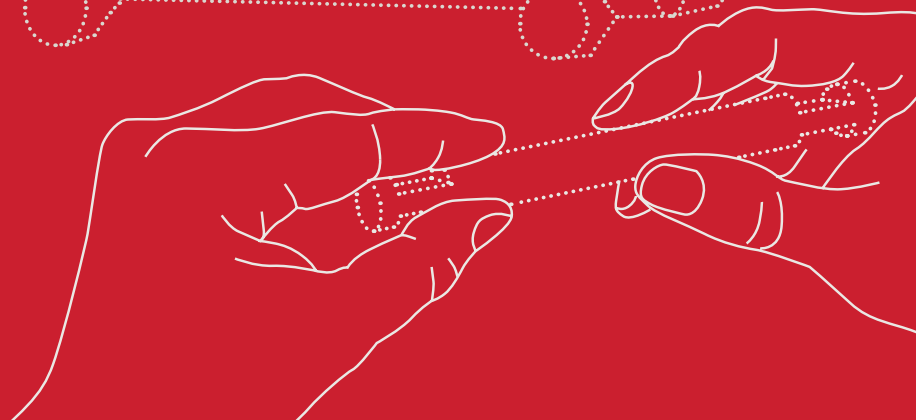
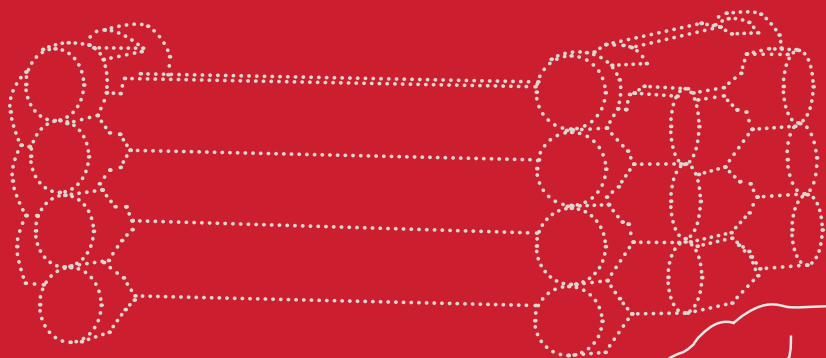


# ON NEGOTIATING PEACE: A COMPILATION OF STRATEGIC FRAMEWORKS

BASED ON THE PERSPECTIVES  
OF RESISTANCE AND LIBERATION MOVEMENTS



## PUBLISHED BY

Berghof Foundation Operations gGmbH  
ISBN: 978-3-941514-53-9

© Berghof Foundation Operations gGmbH  
Lindenstrasse 34  
10969 Berlin  
Germany  
[www.berghof-foundation.org](http://www.berghof-foundation.org)

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## Disclaimer

The contents of this publication are presented as they were discussed at the workshops. The stated points of view do not reflect those of Berghof Foundation or its staff members. All texts in this compilation were revised and re-edited for this publication and may slightly differ from their original versions, without prejudice to content and their authors.

Acknowledgement: This publication was made possible by the generous support and funding from the Federal Department of Foreign Affairs of Switzerland (FDFA).

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## Foreword

The strategic frameworks were developed as part of Berghof Foundation's project "Negotiation Support for Resistance and Liberation Movements" (RLMs) (from roughly 2006 onwards). It offers negotiation training and process support to a number of RLMs around the world. The main objectives of the project are to improve the political conditions for ending violent conflicts by enhancing the negotiation capacities of actors who have fewer opportunities to learn and practice their negotiation skills and have minimal exposure to international negotiation practice and theory. By enhancing their understanding and skills in negotiations, the project aspires to contribute to meaningful and sustainable negotiation processes.

Negotiation processes break down for a number of reasons, but one main reason is that RLMs find it difficult to manoeuvre in a terrain overshadowed by the asymmetric nature of many contemporary conflicts. Often multiple negotiations take place simultaneously – within the parties, with their and other constituencies – and in a dynamic and fluid reality, influenced by various factors and determinants (see *Negotiation Process Flowchart on pages 8-9*). In addition, the negotiation process has its own philosophy and spirit, its own rules, procedures, tactics and techniques different from those in the battlefield. Consequently, the natural inclination of many movements is to either withdraw from the negotiation table, not to enter into a negotiation process at all or, in the face of lack of progress, to abandon the table altogether.

With this project, we wanted to create a space for RLMs to share and reflect on their own negotiation experiences, as well as learn from their peers' experiences (both good and bad) and how they dealt with the challenges in their negotiations. International mediators and thematic experts are invited to these spaces from time to time to inspire the discussions and provide input on specific topics. The strategic frameworks are not comprehensive and exhaustive academic or workshop reports but are rather designed to serve as a hands-on strategy-building guide for the RLMs and other negotiators and mediators, who are often overwhelmed with the sheer number of tasks and the complexity of negotiation processes.

As a result, the strategic frameworks provide a structured and comprehensive overview of different themes related to political negotiations. They are based on the input and the discussion among all meeting participants and supplemented by additional desk research and literature review. The aim of these frameworks is not to provide a blueprint solution, but to present some options, ideas and lessons learned from different international contexts. These frameworks have certainly been useful for the RLMs we engaged with when preparing for their own negotiation process. While recognising that every context is different and unique, and that each process support is unique, we hope that this rich resource, resulting from many years of work, will serve as an inspiration for other groups considering entering the uncharted territory of political negotiations.

I would like to thank, first all, the RLMs who were part of these workshops for their openness, trust and the unwavering commitment to negotiations as a first response to resolving violent conflicts despite the many challenges. I am very grateful to the many Berghof RLM project managers: Joana Amaral (currently in post), Karin Göldner-Ebenthal, Katrin Planta, Vanessa Prinz and Nico Schernbeck, and members of senior staff Véronique Dudouet, Uli Jäger and Oliver Wils, who were instrumental in putting together the strategic frameworks after the workshops. This publication would not have been possible without the extraordinary help of Rebeca Taboada García, Junior Project Manager (currently in post).

**Luxshi Vimalarajah**

Senior Advisor

Mediation and Negotiation Support

# Negotiation Process Flowchart

Informal  
exploratory talks,  
without T-1 mandate

Mandated  
discreet talks

Mandate talks in  
the public domain

NON-LINEAR/PROTRACTED

Source triangle: John Paul Lederach, 1995



LOBBY GROUPS



Sceptics/  
opponents

A  
supporters

Party A

Party D

DEMONSTRATIONS

Working  
groups  
and

Advisers

Experts

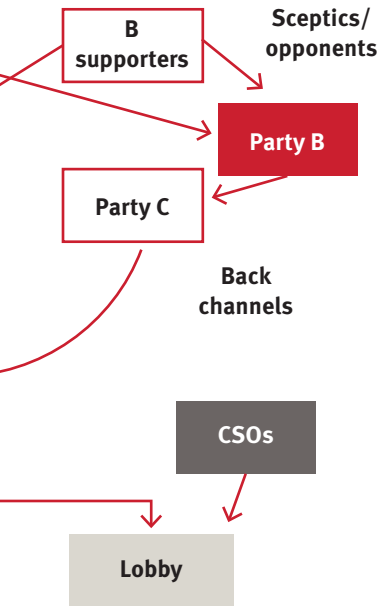
Constituency

MEDIA

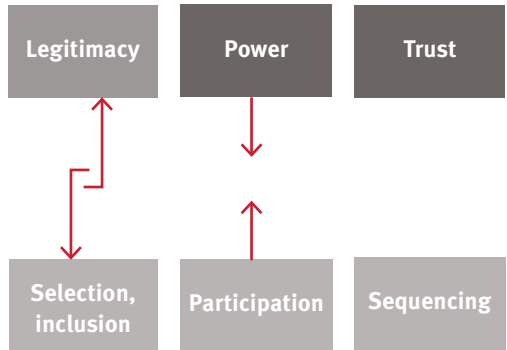




CRISIS, COLLAPSE, INTERRUPTION



COURT CASES, ARRESTS



JUDICIARY

## About this Publication

On the 15th anniversary of the Resistance and Liberation Movements Project along the 50<sup>th</sup> Anniversary of Berghof Foundation, we have integrated our existing strategic frameworks into a single document intended to ask questions pertinent to discussions on negotiating peace. While each individual strategic framework was initially intended to address a specific issue, the aim of this compilation is to provide a single point of reference which brings together the reflections for further use. The participatory approach of these frameworks provides valuable, academically-informed insights to anyone who wants to learn about the perspective of RLMs on negotiations.

Rather than following the chronological order in which the strategic frameworks were released, they have been compiled thematically into three sections ordered according to the sequencing of a negotiation process. Ideally, these topics should be addressed at any given point in the preparation stages of a negotiation. However, it is never too late to do so either.

Each chapter (or strategic framework) of this volume includes, whether in the footnotes or in the bibliographies, extensive references, resources, and further readings, as well as other resources that can be found online. We encourage the reader to consult the additional materials and to approach each chapter with the understanding that it is by no means an exhaustive study, but rather the result of targeted thematic discussions, disparate but related. Therefore, each chapter needs to be cited individually as each was developed separately.

The first section focuses on the safeguards and delimitations required to launch a negotiation process. It therefore includes the strategic frameworks on *Security Agreements Before, During and After Negotiations* and *Designing Effective Communication Strategies*. The second section addresses three topics that are crucial when negotiations are ongoing: *Learning Lessons from Failed Negotiations*, *Broadening and Deepening Participation in Peace Negotiations*, and *Negotiating Transitional Justice*. While these are reflections on hindsight, the third section is forward-looking in its deliberations. The chapters on *Managing Political Transformation and Political Transition Processes* and *Implementation of Accords and the Role of*



*International Third Parties* pose questions about the implications of transitions for RLMs and strategies to ensure implementation safeguards. The final section serves as an epilogue where the author reflects on the ongoing challenges faced by RLMs, for instance during the Covid-19 pandemic in the midst of an appeal for a global ceasefire. This epilogue is not a strategic framework, but rather a map of topics for future exploration that could become more strategic frameworks.

Instead of a concluding statement, the final section includes space for notes, which is intended for the reader to use at their discretion. The intention behind these notes is to make this volume a work in progress, an everchanging exercise of learning, unlearning and adding where needed. Therefore, the RLM Project team looks forward to hearing from the reader on how and where this publication is being used and what has been found useful at any given point.

**Rebeca Taboada García**

Junior Project Manager

Negotiation Support for Resistance and Liberation Movements

# Preparation and Strategy

- a Security agreements  
before, during and after negotiations
- b Designing effective communication  
strategies

# 1a Security arrangements before, during and after negotiations

## Why security arrangements?

### What are security arrangements?

- ≡ Security arrangements comprise the processes, infrastructure and assets a state, organizations or citizens of a country/ countries might establish to protect themselves while trying to stop violence within a specific territory.
- ≡ These arrangements may have particular relevance to citizens living in politically and socially volatile or remote areas. Additionally they tend to vary in form, mechanisms and content according to the “nature of the conflict”.

### What are security arrangements good for?

- ≡ Security arrangements in general cannot resolve the fundamental issues driving the conflict or transform the political economy. They can, however, buy time and space, either for good or ill.
- ≡ Neither are security arrangements simply “technical arrangements”. While some parts might be technical, they are ultimately political and must be integrated into a broader peacebuilding strategy.
- ≡ Do not expect too much from security arrangements!

### What can a strategic framework contribute?

- ≡ Be cautious of templates: There is no “one size fits all”! Each case is different, each context needs its own strategy and this determines the specific components.

- ≡ It is important to view both the whole and its specific components.
- ≡ The linkages and transitions between components are critical.

However, there are recurring strategic aspects with regard to security arrangements which should be considered in negotiations. Thus, despite the uniqueness of each case, referring to a strategic framework may be helpful.

### To cite

Prinz, Vanessa, Luxshi Vimalarajah and Katrin Planta (2013). Security Arrangements Before, During and After Negotiations. A Strategic Framework. Berlin: Berghof Foundation.

## Which safety measures (currently) exist for negotiators, combatants and the groups' constituencies?<sup>2</sup>

RLMs entering negotiations and later implementing demobilisation schemes face a number of security challenges. For them, it is crucial to devise safety guarantees during negotiations and early post-war transitions, including:

### Before: Pre-Negotiation Phase

- ≡ Regrouping combatants in safe areas ahead of peace talks. This measure can also serve the purpose of keeping troops united and disciplined during fragile post-agreement transitions, thus maintaining group cohesion and the stability of existing RLM-internal security structures. In Colombia, for example, the combatants of the April 19 Movement (M-19) proactively took the initiative to converge from across the country into a single assembly area surrounded by a demilitarised zone where negotiations with the government took place.
- ≡ Rules of engagement that include safety guarantees for negotiators and group members. One such example is the “Joint Agreement of Safety and Immunity Guarantees” between the National Democratic Front of the Philippines and the government (1995), which provides for “free and unhindered passage in all areas in the Philippines, and in travelling to and from the Philippines in connection with the performance of their duties in the negotiations”, as well as immunity for “all duly accredited persons [...] from surveillance, harassment, search, arrest, detention, prosecution and interrogation or any other similar punitive actions” in relation to “all acts and utterances made in the course of and pursuant to the purposes of the peace negotiations”. As part of the scope of such an agreement, identity cards might be issued that identify negotiators and those enjoying immunity from punitive actions.

### During: Negotiation and Transitional Phase

- ≡ Individual or collective protection schemes might include amnesty provisions, de-proscription from terrorist blacklists and other measures to legalise ex-combatants' status, human rights vetting and accountability systems within the security apparatus (see below). Individual protection schemes may include relocation to safer regions less affected by violence or the deployment of bodyguards and armoured vehicles.
- ≡ Some groups decided to employ precautionary tactics during negotiations, e.g. under stating weapon and troop numbers. In El Salvador, the Farabundo Martí National

Liberation Front (FMNL) kept hidden weapon caches. In Aceh, the Free Aceh Movement (GAM) not only understated troop numbers, the movement also refrained from providing names of combatants in order to protect them. The deployment of peacekeeping or monitoring teams might also enhance security for combatants, e.g. through their physical presence in cantonments.

- ≡ The principle of “nothing is agreed until everything is agreed” means that all components of a peace deal are included in a single comprehensive accord. This allows security arrangements (e.g. arms management) to be embedded into broader structural reform schemes. This approach was, for example, adopted by GAM and the Indonesian government.
- ≡ Power imbalances between statutory and non-statutory armies can be redressed ahead of, or during, peace talks by bringing in local allies/experts and learning from international experience, thus evening out material power asymmetries through skilful negotiators and advisors; through holding negotiations in a neutral foreign venue; and through separate negotiation venues on security matters with the most concerned leaders only. Other forms of evening out material or structural resource asymmetries include better preparation for the talks, technical and logistical backup from the diaspora, external sources of support, as well as the groups’ strength of commitment and proactive initiatives.
- ≡ Ceasefire mechanisms that regulate the movement of armed forces can provide enhanced safety for RLM’s constituencies.

## After: Implementation Phase

- ≡ Self-decommissioning. In Colombia, for instance, M-19 decided to melt its weapons in front of an international commission rather than hand them over to the state, while in Nepal, the People’s Liberation Army (PLA) maintained full control over its weapons by giving its combatants the responsibility of keeping the keys of the containers where they were stored (while UN troops exercised 24-hour control), until they were handed over to a national technical committee and later, in the scope of army integration, to the government.
- ≡ Transitional Justice (TJ) mechanisms, including:
  - (Conditional) amnesty measures to facilitate the return and reintegration of both displaced civilians and ex-combatants (for instance in Colombia, Aceh or El Salvador). Judicial amnesties can be made conditional when combined with truth-seeking efforts (former combatants need not only be bound by these, they can also be active implementers of and participants in local justice initiatives) such as in South Africa, where applicants to the Truth and Reconciliation Commission’s Amnesty Committee had to make a full disclosure of their armed actions.
  - Human rights vetting within state security organs as a major method of ensuring integrity and legitimacy of the security system and ensuring public confidence. All forces should take part equally in those processes, overseen by independent commissions, and those responsible for war crimes or human rights violations should be barred from positions within the military or the police. In El Salvador, for instance, high-ranking army officers

were removed after an Ad-Hoc Commission proved their participation in serious acts of violence during the war.

- Reintegration schemes solely benefitting ex-combatants at the expense of other population groups affected by the conflict might be perceived as unfair. Balanced inclusive programmes that provide financial and technical assistance to both combatants and war victims are a more favourable solution. In Aceh, for instance, “economic facilitation” was provided to both ex-combatants and civilian victims of the conflict.
- International interveners should be cautious of quick-fix TJ mechanisms. Setting longer-term timeframes might strengthen the likelihood of TJ processes being respected and implemented.

## How can security transitions be structured, and how can these structures be strategically linked to each other?<sup>4</sup>

3 phases: (1) ceasefire process, (2) transitional security management, and (3) final status of forces. An overall strategy must enable the integration of all three phases, whereby each phase establishes the foundations and framework for the next phase. It is thus essential to focus on each phase in detail and achieve defined objectives in a planned sequence (with regard to the overall process).

### Before: Pre-Negotiation Phase

**Which essential issues are to be considered with regard to ceasefires (phase one of the security transition process)?**

- ≡ Different types of ceasefire exist with different levels of formality and verification. They include battlefield truces, declarations of intent or principles (including unilateral ceasefires), various forms of restriction on hostilities (including humanitarian ceasefires), and cessations of hostilities. While battlefield truces are short-term, unverified breaks in hostilities, and cessations of hostilities are a temporary, unverified version of a truce, ceasefires are formal agreements that establish a verifiable halt in hostilities which disengage forces and aim to create conditions for formal negotiations.
- ≡ Basic requirements of a ceasefire include guiding principles and a statement of wider aspirations. It must be formulated using clear definitions, language and logic. Both the parties and the organisational framework need to be defined, including the role of third parties. It needs to contain a detailed operational framework, as well as mapping and disclosure of the order of battle (ORBAT), and a list of prospective commitments.



- ≡ Conceptual frameworks need to be appropriate to the specific context and objectives. They may include prohibitions and control mechanisms, mutual threat reduction, security guarantees by third parties, and joint security management systems.
- ≡ Different areas of demilitarization should be defined under prohibition and control mechanisms, including demilitarised zones, zones of exclusion and zones of limitation, areas and lines of control, buffer zones and humanitarian zones. The role of third parties needs to be clearly defined. Prohibition and control mechanisms should further address issues of disengagement and redeployment, the assembly and cantonment of military forces, restrictions on the deployment and use of heavy weapons systems, restrictions on troop movement, resupply and training (advance warning and verification). Additionally, joint verification mechanisms, joint patrols and other confidence-building measures can be outlined.
- ≡ A ceasefire should be designed to achieve objectives (short, medium, long term). It needs to be based on a clear conceptual framework. Its form should follow its function! Crucially, ceasefires must be designed to survive violation and to re-establish compliance.
- ≡ Every party outside the ceasefire is an adversary; every party to a ceasefire is a partner for peace!

## During: Negotiation and Transitional Phase

### **Which essential issues are to be considered with regard to interim joint security management (phase two of the security transition process)?**

- ≡ Interim joint security management needs to address the four core issues of joint ceasefire management, implementation and monitoring; interim joint command and responsibility for security; preparations for the final status of forces (and integrated security forces); and confidence building.
- ≡ Ceasefire management and implementation can be assured by a number of bodies and instruments, including a (joint) ceasefire commission that is mandated to implement the ceasefire. A precondition for this implementation is agreed, planned and phased compliance. Monitoring can be managed by a ceasefire verification and monitoring organisation, and upheld by ceasefire and security guarantees. Third parties can play a specific role in this process.
- ≡ Bodies tasked with transitional security management may include joint security/military commissions which may have overall responsibility for transitional security measures and the general maintenance of security. Other instruments integral to transitional security management are forms of transitional command/governance, an interim legislative security framework, and an interim reform programme. The role of third parties therein needs to be addressed.
- ≡ Preparations for the final status to be addressed as part of the interim joint security management include preparations for DDR, preparations for final status negotiations, an agreement on a final status agenda and negotiations procedures, and the development of an initial security sector strategy framework.

## After: Implementation Phase

### **Which essential issues are to be considered with regard to the final status of forces (phase three of the security transition process)?**

- ≡ Crucial issues to be addressed with regard to the final status of forces in negotiations include the restructuring of security governance institutions and the legislative framework, the restructuring of security command and management systems, the integration of forces, substantive DDR planning (DDR commission), the development of a security sector transformation strategy (initial SSR planning), and other related (political, economic, social) reforms.
- ≡ Negotiating the final status of forces should also address questions of implementation and guarantees. Both can be addressed through establishing an agreed implementation schedule with clear responsibilities, supervisory bodies and/or international guarantees, non-compliance mechanisms, and clearly defined programme implementation and respective funding.
- ≡ Security Sector Reform (SSR) should address all dimensions of human security and thus needs to be a multi-sectoral approach that also incorporates the wider civil society. Its key considerations are an effective delivery of security and an overview of related processes and issues, including modernisation and professionalisation of the forces, police reform (towards a national security strategy), security governance and legislative reform. With regard to the negotiation of SSR, it is critical to establish real and inclusive national ownership and capacities and thus build a dialogue and consensus process. Marginalised communities and sectors (including women and gender issues) have to be addressed, as well as strategic perspectives. The negotiation focus should be on institutional transformation to implement reforms and build new capacities to enable new actors to enter the process, further establishing a framework for a longer-term transformation process which may then ensure sustainability. Parties may wish to learn from international experience and ask for expert advice on SSR. In South Africa, for instance, the only form of foreign peacebuilding support all parties welcomed was technical advice on international standards with regard to the ranking processes in the framework of military integration.

# What roles do the different actors inside the process play with regard to security arrangements in negotiations? How can they be managed and/or supported?

## Negotiating parties, third parties

### How should the composition of negotiating parties be?<sup>5</sup>

- ≡ Intra-party unity should be maintained in order to prevent internal contestation of the outcomes or the formation of dissident, rejectionist factions who might later challenge the peace process. It can be best ensured by maintaining constant dialogue and consultation between the negotiation team and the rest of the movement, between and during negotiation rounds, e.g. through briefings and caucus meetings.
- ≡ In order to enable all conflict stakeholders to become part of the solution, the negotiation process should be as inclusive as possible. Thus, the widest possible spectrum of stakeholders should be invited to the negotiating table. This also serves to increase the sense of ownership, thereby promoting long-term stability. However, not all relevant parties need to be involved at once, in order to allow for flexibility in situations that might require incremental and step-by-step negotiation strategies. In Burundi for instance, the Arusha peace accord (2000) was not signed by the main armed opposition forces. However, the agreement was a major incentive for them to sign ceasefire agreements with the government.
- ≡ Downsides of having a highly inclusive process might be that marginal groups that are given parity at the negotiating table might have only small constituencies, thus making the process both undemocratic and inefficient, thereby slowing it down.

Peace processes generally operate simultaneously on multiple, complementary levels. Parallel dialogue tracks might precede or accompany direct (or mediated) official negotiations between top party leaders, including informal talks and political platforms to formulate, prepare and bring issues to the actual negotiating table where the official teams would eventually have to deal with them. During periods of breakdown in the official negotiations, these informal channels help to maintain a continuous line of direct communication and contribute to the confidence-building process between parties. In the Guatemalan case, informal talks (facilitated for instance by the Community Sant' Egidio) and political platforms with the church, popular organisations and academics helped maintain communication and confidence-building despite various interruptions in the official negotiations by military and popular offensives.

### What role can third parties have with regard to security arrangements?

- ≡ The principle of ownership of the peace process by the primary parties should be maintained and can be enforced by declining international involvement as much as possible, allowing the primary parties to set their own timeframes and prioritising joint decision-making.<sup>6</sup> Where third-party facilitation is (explicitly) required, there is a need for international oversight in good faith, keeping in mind that larger neighbours may prefer to look after their own interests.
- ≡ Having said that, third parties can function as guarantors of the process, providing security guarantees or safe and neutral negotiation venues. International humanitarian and peacebuilding organisations can act as observers to reduce tension and guarantee a certain amount of security to ex-combatants (e.g. through their presence at cantonment sites) and constituencies alike.

## Civil society and the media

### How can the wider population/ civil society be included in negotiations?

- ≡ In parallel to maintaining intra-party unity, it is important to keep civil society and communities on board through constant dialogue and consultation, otherwise the outcome might be perceived as an “elite deal”.
- ≡ There are different options for involving civil society in negotiations:
  - Civil society representatives and organisations can be directly present at the negotiating table;
  - They can be involved through parallel civil society forums with a consultative mandate;
  - Through effective communication channels with the facilitator and/or all or some of the parties to the negotiation.
  - Furthermore, negotiations among civil society actors can help to maintain a line of communication among the parties when track one negotiations are stalled or have broken down.<sup>7</sup>
- ≡ With specific regard to security provisions, both national and international civil society organisations can fulfil an important protection function, both for ex-combatants and the wider population, especially when combined with monitoring and advocacy that can attract media and international attention.<sup>8</sup>

### What role can the media play with regard to security arrangements?

- ≡ Consulting the broader public and keeping the media informed might help to build a national consensus in favour of the peace agreements (although the most sensitive decisions of a negotiation process might have to be taken behind closed doors).<sup>9</sup>
- ≡ Media events can be used at the beginning of negotiations to build confidence, facilitate negotiations or break diplomatic deadlocks to create a climate conducive to

negotiation.<sup>10</sup> They can create confidence and goodwill among the parties to the conflict and their constituencies.

- ≡ A lack of information about ongoing negotiation processes among fighting forces or the wider population can create insecurity. Media messaging and a sound information policy through a joint media strategy of the parties to the peace process can create security for the wider population during a ceasefire.

## Outside parties, “spoilers”

**How to deal with parties that are not parties to the negotiations. How to manage both state and non-state groups that might jeopardise the negotiation process.**

- ≡ As has been highlighted earlier, it makes sense to have negotiation processes that are as inclusive as possible, thus keeping the number of parties outside the negotiations to a minimum.
- ≡ Likewise, peace processes should be designed in a way that prevents “spoiling” as far as possible, by being non-zero-sum, consensual, locally owned and internationally and regionally supported. The peace process should not be imposed upon an unwilling or disengaged public; it should accommodate the legitimate concerns of all parties, address not only immediate security goals but also human rights and the rule of law; allow for balanced power relationships among the parties at the negotiating table, and should be negotiated by protagonists seen as credible and legitimate by their constituencies.<sup>11</sup>
- ≡ Bearing in mind that the role of “spoilers” is extremely diverse and will vary from conflict to conflict, three broad approaches to managing spoilers can be identified. Depending on whether “spoilers” are outside or inside the peace process (the latter being for example parties that sign but consciously fail to implement agreements), guarantors to peace processes can implement a range of strategies to manage groups threatening to jeopardise negotiations:
  - One approach to managing “spoilers” is to create an inclusive framework for security transition programmes that also offers incentives to groups not party to the negotiations to enter the programmes, thus making them partners to the process.<sup>12</sup>
  - A second approach focuses on socialisation, i.e. changing the behaviour of spoilers to adhere to a set of established norms (e.g. commitment to the rules of democratic competition and adherence to the protection of human rights).
  - Thirdly, guarantors can revert to coercion, punishing spoiler behaviour or reducing the capacity of the spoiler to destroy the peace process.<sup>13</sup>

**How to deal with governments that are unwilling to negotiate.<sup>14</sup>**

- ≡ On the governmental side, entering negotiations with opposition forces requires recognition that the status quo is not sustainable and that a peace agreement will necessarily entail some structural reforms to accommodate some of the insurgents’ demands.

- In those cases where the government is unwilling to turn to negotiations, internal and external pressure needs to be raised over a certain threshold that “alters the power balance”, obliging the government to engage with RLMs. Internal pressure can be built through alliances with civil society actors and diaspora organisations, the business community and other political forces, such as conventional oppositional parties. In Nepal, for instance, the alliance between the Maoists and seven mainstream political parties was a decisive move in pushing for negotiations. Other strategies include acting on “multiple fighting fronts” and supporting societal activism by political parties, trade unions and human rights groups in parallel to armed struggles. Pressure from the outside can be built up by the regional/ international environment which RLMs can contribute to by mobilising international public opinion and foreign governments against repressive state policies. RLM leaders in exile might be especially well-suited to reach out to the international community. GAM’s leadership in Sweden for instance was able to campaign to internationalise the conflict in Aceh without worrying about their safety and security.

## How can RLMs approach security arrangements in negotiations?<sup>15</sup>

- There is no universally applicable template, each case is different and thus has to be approached differently. However, there is a specific layout that is often used with some minor variations.
- This so-called “Standard Check-List” consists of eight steps distributed over the pre-negotiation, negotiation, and implementation phases of a negotiation process. These eight steps are:
  1. preparing to engage,
  2. assessing the fighting forces,
  3. determining a mediation approach and strategy, and
  4. laying the groundwork for security arrangement negotiations, all four of which take place in the pre-negotiation phase;
  5. conducting and managing negotiations,
  6. linking security arrangements to other parts of the peace process, and
  7. putting security arrangements in the peace agreement are core activities relating to security arrangements in the negotiation phase; while
  8. facilitating implementation is the core activity in the implementation phase. In this phase, the preparation taken in the preparatory stage during the pre-negotiation phase is of crucial importance.

## Before: Pre-Negotiation Phase

- ≡ When preparing to engage in security arrangements, RLMs should bear in mind that security arrangements are “combatant-focused agreements”, and are only one security instrument, complementary to others, that can only meet limited expectations. All security arrangements need to have achievable parameters; definitions of security arrangements should be seen as a guide only. A further consideration is that security arrangements might have potentially destabilising consequences.
- ≡ Assessing the fighting forces can constitute the second step in preparing for security arrangements. From a mediator’s perspective, it involves gaining an understanding of the strategic objectives of the conflict parties, identifying and including key armed groups, analysing characteristics of the fighting forces, mapping the evolution of the fighting forces, assessing their reliance on external support, and understanding weapons ownership and other cultural cues. However, some or all of these issues might also be relevant for RLMs preparing for negotiations.
- ≡ The same is true for the third step: determining a mediation approach and strategy. While primarily seen from a mediator’s point of view, the questions are also valid for RLMs. Tasks and crucial aspects of this step include the adoption of an approach of “nothing is agreed until everything is agreed”, finding credible and appropriate interlocutors, identifying methods of contacting the fighting forces, facilitating safe passage and movement for negotiators (security of the negotiators), considering women’s roles, adopting a problem-solving approach, minimising asymmetry between the parties, upholding international law (regarding amnesty regulations and de-proscription), and commencing preliminary discussions.
- ≡ Laying the groundwork for security arrangements in negotiations constitutes the last step of the “Standard Check-List” during the pre-negotiation phase. The goal of this phase is to link cessation of hostilities/ceasefire agreements to other transitional security arrangements, and to include key armed groups in the framework agreements. Meanwhile, it remains important to avoid preconditions for talks.

## During: Negotiation and Transitional Phase

- ≡ Conducting and managing the negotiations involves negotiating key security arrangement details, anticipating and managing the negotiation techniques of fighting forces, and explaining security arrangement commitments to the troops.
- ≡ Security arrangements need to be linked to other aspects of the peace process, most notably social and political arrangements, economic reintegration, and security sector reform.
- ≡ Finally, security arrangements should be put in the peace agreement, crafting a clear vision, approach, and desired outcome for the security arrangements, detailing who and what are covered by the security arrangements, and establishing realistic timelines.

Furthermore, the institutional structures needed to plan and implement the security arrangements should be outlined in the document.

## After: Implementation Phase

In order to facilitate the implementation of security arrangements, it may be helpful to:

- Include implementers in the negotiation phase,
- Develop a mediation and facilitation strategy to support implementation,
- Address implementation of key political provisions before starting to implement security arrangements,
- Anticipate and resolve problems specific to the security arrangements, and
- Build local capacity for mediation and conflict resolution.

**How to approach provisions for special groups in negotiations, specifically political prisoners and “people on the run”?<sup>16</sup>**

## Amnesties

**How can amnesties serve to enhance accountability in transitional justice?<sup>17</sup>**

- Amnesties recognise that crimes have been committed but prevent penal sanctions being pursued for these crimes. In contrast to former forms of tabula-rasa amnesties and a reliance solely on formal trials (which tends to create an “impunity gap” among low-profile offenders due to a lack of resources), new amnesty laws are increasingly conditional upon enhancing offenders’ accountability and exist as a complement to the promotion of mechanisms of truth-finding, justice and reparation for victims.

Different forms and functions of amnesties can be identified:

- Truth commissions empowered to grant amnesties to individual offenders who fully disclosed their past political offences (as was the case in South Africa) incentivise testimony and remove the risk of self-incrimination. Amnesties can be linked to other truth recovery processes, e.g. civil proceedings or commissions of inquiry.



- Amnesties can also support the enforcement element of accountability, e.g. when the possibility of prosecution is written into the text of the amnesty. Amnesties can be limited to exclude certain categories of offenders (e.g. military or political leaders) or crimes (e.g. severe human rights violations). Furthermore, amnesties can be linked to offenders fulfilling certain conditions, such as disclosing the truth or refraining from violence. If offenders breach the preconditions of such conditional amnesties, they remain liable for prosecution.
  - Amnesties can further complement non-judicial enforcement mechanisms. Publicly disclosing past crimes can have public, personal and professional repercussions for past offenders.
  - Amnesties can enforce accountability by encouraging compliance with vetting programmes that remove specific individuals from public office, particularly from the police or armed forces.
- ≡ Amnesties can be implemented by domestic courts, advisory bodies that report to the executive, or specific amnesty provisions (which can be government bodies or operate independently). These bodies may be mandated to grant or recommend amnesty, and possibly also have additional functions, such as monitoring the reintegration of amnesty beneficiaries. All decision-makers in this process need to be held accountable for their decisions.
  - ≡ An Amnesty Law Database is available on the Political Settlements Research Programme website at <https://www.politicalsettlements.org/portfolio/amnesties/>
  - ≡ Case study of jurisdictions on South Africa, Uganda, Uruguay, Argentina and Bosnia-Herzegovina can be found on the website of the Institute of Criminology and Criminal Justice of the Queen's University Belfast.<sup>19</sup>

## Political Prisoners

### How to solve the issue of political prisoners?

- ≡ Both the question of the release of political prisoners, and reintegration measures for released prisoners are an essential and integral part of the peace process.<sup>20</sup>
- ≡ In the scope of negotiating the release of political prisoners, the following issues may be of importance:
  - The question of prisoner releases should be dealt with pragmatically; it should not be linked to other issues, such as decommissioning.
  - A clear timeframe is required: the Good Friday Agreement in Northern Ireland foresaw a release of all qualifying prisoners within two years after the accord was signed.

- ≡ In order to facilitate prisoner releases, a commission may be established – as was done in Northern Ireland – and mandated to release “qualifying” prisoners. In Northern Ireland qualifying prisoners had to apply individually and were released on licence.
- ≡ Key issues to take into consideration with regard to prisoner releases and negotiation may include:
  - The question of encouraging organisations outside the peace process (prisoner releases as a positive incentive);
  - The notion of using prisoner releases as a lever to secure concessions from RLMs, particularly decommissioning (prisoner releases as a conditional incentive);
  - Issues of prisoner releases and victims, taking into account the diversity of victims organisations’ views towards prisoner releases and the victims’ potentially increased need for additional resources such as counselling, compensation and other support to cope with the trauma of early releases;
  - The reintegration of RLM prisoners. In Northern Ireland, reintegration followed a self-help model in which the former prisoners would take responsibility for the management and delivery of services, thus highlighting their agency and sovereignty and avoiding the “criminal” label commonly associated with clients of professional probation agencies. Their projects included counselling, micro economic projects, “dealing with the past”, engagement with victims, and campaigning for the rights of ex-combatants.

## People on the run

### How to deal with the issue of “people on the run”?<sup>21</sup>

Case study Northern Ireland:

- ≡ In 2005, the British government, after having given respective commitments in the Weston Park negotiations in 2001, published legislation regarding persons suspected of paramilitary offences who had not been tried or convicted by virtue of the fact that they were “on the run”. It included provisions for people who might be charged in the future or who had been charged and convicted but subsequently escaped from prison. The rationale behind the legislation was that, had they been in the jurisdiction, they would have benefited from early prisoner release. To rectify this “anomaly”, the legislation would have enabled the award of exemption from prosecution certificates for politically-related offences committed pre-Agreement in Northern Ireland, also to individuals guilty of “offences committed in the course of efforts to combat terrorism”.
- ≡ The legislation was severely criticised by the parties (including Sinn Fein), victim and human rights groups alike, and eventually abandoned. Criticism included:
  - The notion of impunity for both republican suspects and those in the security forces guilty of collusion and other illegal acts;

- That loyalists who had never decommissioned any weapons could benefit;
- The lack of international involvement in the proposed tribunal which would issue the exemptions;
- The failure to involve relatives or impose an obligation to provide information to relatives;
- The granting of potential anonymity for offenders applying for certification;
- The potentially excessive powers granted to the Executive in appointment, control of evidence, and control of information dissemination.

≡ Lessons that can be drawn from this example include:

- Appropriate timing with regards to the political context and maximising the potential political consensus is of crucial importance in such a controversial policy initiative;
- The support of those most directly affected on the ground, i.e. community, victims and human rights groups, should be sought. Efforts at the macro level to ensure political consensus should be matched by concurrent efforts in the community sector designed to optimise their ownership and involvement.
- Security forces were only included relatively late in the Northern Irish legislation. However, truth-recovery initiatives that seek to encourage members of RLMs and security forces to come forward are likely to have more chance of success if they are applied equally to both state and non-state actors from the outset.

## Which stumbling blocks exist in the process? How can they be avoided?

### Before: Pre-Negotiation Phase

#### How to avoid premature decommissioning.<sup>22</sup>

- ≡ Premature demands by state actors for decommissioning deprive RLMs of their main “bargaining chip” and can lead to a breakdown of negotiations. Negotiations on arms management and their implementation should thus be carefully timed with reciprocal measures to redress the conflict’s root causes. It may be useful to
  - Insist on having no preconditions to negotiations;
  - Embed arms management in broader structural reform schemes in peace accords; and
  - Adopt an approach of “tit-for-tat” or parallel implementation.
- ≡ Careful sequencing with regard to different types of ceasefires (unilateral, humanitarian, cessation of hostilities), as well as appropriate timing of arms management and security sector transformations (joint technical committees, interim security bodies) also avoid premature concessions.<sup>23</sup>

## During: Negotiation and Transitional Phase

### What are the common problems when dealing with security arrangements in negotiations?<sup>24</sup>

- ≡ In some cases, security arrangements are treated as a purely technical aspect of the mediation process<sup>25</sup>. Furthermore, in rushing from the ceasefire to the final post-conflict settlements, the transitional phase tends to be neglected in many peace processes.
- ≡ The whole process may lack a security arrangements strategy or might suffer from a lack of strategic integration between security, political, economic and social negotiation processes. This should be avoided by integrating political, economic and social negotiations into security negotiations.
- ≡ Security arrangements are essentially about (re)assigning the right to the monopoly of the use of force. This requires armed parties to accept that they will lose their own offensive and defensive capabilities. The challenge of a sustainable peace is to ensure the establishment of a secure environment and a legitimate authority which makes this concession safe.

### How to avoid the “security trap” in negotiations.

Negotiators can avoid getting stuck on security issues through:

- ≡ Confidence-building measures with negotiation counterparts regarding both the framework of negotiations (e.g. terms of reference that include safety guarantees for negotiators and group members<sup>26</sup>), and various security-related measures with regard to negotiated issues, among them joint verification mechanisms, joint patrols and other joint security management systems<sup>27</sup>;
- ≡ as well as through capacity-building (training) for negotiators.

### How to avoid fragmentation of negotiating parties.<sup>28</sup>

- ≡ The measure of regrouping combatants in safe areas ahead of and/or during peace talks can serve the purpose of keeping troops united and disciplined during fragile post-agreement transitions, thus maintaining group cohesion and the stability of existing RLM-internal security structures. This was the case in Nepal, where Maoist rebel troops were stationed in self-built cantonments until a final accord was agreed regarding their military integration/socio-economic rehabilitation.

### How to avoid neglect of the transitional phase.<sup>29</sup>

- ≡ Sound interim joint security management avoids creating a “security vacuum” in the fragile post-agreement transitional phase. Measures include joint ceasefire management, implementation and monitoring measures, as well as an interim joint command of the process.

## After: Implementation Phase

### How to avoid poor implementation of an agreed ceasefire agreement.

#### How can parties ensure compliance with agreements?<sup>30</sup>

In order to ensure compliance and proper implementation of agreed ceasefires, negotiation parties can conduct specific implementation negotiations during which a number of safeguarding mechanisms can be agreed upon, including:

- ≡ Defining a code of conduct and creating a ToR Liaison Office;
- ≡ Disciplinary actions for militaries found guilty of disregarding the agreement;
- ≡ The (limited) mandate of a 3rd party monitoring body to the ceasefires; Prohibition and control mechanisms (joint verification, assembly & cantonment, etc.), and
- ≡ Monitoring institutions, among them
  - ad hoc/local monitoring teams and
  - international monitoring teams.

An independent body with enough capacity to impose sanctions against agreement violations or non-compliance should monitor the implementation. It should be made accountable to local monitoring mechanisms and have democratic foundations (jointly agreed by the parties).<sup>31</sup> In Burundi, the Implementation Monitoring Commission served as a guarantor. Even though it had no power to constrain disputing parties, its composition (six Burundis and one person each from the United Nations, the African Union, and the Regional Peace Initiative) gave the commission a high degree of authority. In El Salvador, the UN's role progressively evolved from being a witness of good will, to a mediator, and finally to being a guarantor of the parties' compliance with the peace accords.

## When can security arrangements best be accommodated in negotiations?

### Security Sector Transformations

#### How to ensure appropriate timing of security sector transformations/development.<sup>32</sup>

Repressive and undemocratic security forces (army, police, and intelligence services) need to be replaced by a legitimate security sector that can provide security to all citizens. This process, however, is often delayed by a lack of resources or political will or fears of security vacuums. Negotiators can anticipate such delays by devising transitional mechanisms, such as:

- Joint technical committees to pursue post-war technical negotiations. In South Africa and Nepal, for instance, the establishment of joint technical committees not only served the purpose of providing technical details but was also seen as a symbolic first act of military integration. Interim security bodies can serve as “stabilisation measures”. In Kosovo, for instance, the Kosovo Liberation Army – instead of being directly dismantled – was first transformed into a civilian protection force, the “Kosovo Protection Corps”, which served as interim security body until the new Kosovo army was set up. In other cases, interim stabilisation can be achieved through the establishment of mixed security bodies comprising statutory and rebel troops in equal proportions. Following the 2005 peace agreement in Sudan, for example, a select number of the SPLA and national army were recruited into so-called Joint Integrated Units and deployed across the country to fill post-war security vacuums.

### Arms Management

#### How to ensure appropriate timing of arms management.<sup>33</sup>

Premature demands by state actors for decommissioning deprive RLMs of their main “bargaining chip” and can lead to negotiation breakdowns. The timing of arms management negotiations and their implementation should be carefully managed, with reciprocal measures to redress the conflict’s root causes:

- Arms-management should not be a precondition to negotiations;
- In peace accords, arms management needs to be embedded in broader structural reform schemes;
- Arms-management may not be one-sided: tit-for-tat or parallel implementation.

## Final Status of Forces

### When should security arrangements regarding the final status of forces be negotiated?

- ≡ Both mediators and negotiators should pay careful attention to the timing of security negotiations, judging what should be given priority and when. Bearing in mind that the timing needs to be specifically tailored to each and every process<sup>34</sup>, three broad approaches can be identified with regard to the timing of security negotiations (for the final status of forces):

  - Embodying extensive codification of security reforms into a peace agreement, negotiated in a context of distrust, under great pressure and short deadlines and driven mainly by external actors (as was the case in Bosnia and with the Dayton Peace Agreement);
  - Incorporating security negotiations into multi-stage, multi-year, multi-site negotiations between governments, rebels and CSOs, resulting in a series of separate peace agreements with extensive recommendations on security issues (such as in Guatemala); and
  - Delegating security issues (on the final status of forces) to later and more detailed negotiations by specialist commissions after having held initial locally-driven peace negotiations that strongly focused on confidence building among the parties (e.g. in South Africa).
- ≡ A key lesson emerging from these experiences is that negotiations need to be designed to foster trust and mutual confidence. In cases where trust has not been built during the transitional phase, provisions regarding post-conflict security arrangements will not (or only under external pressure) be implemented. The focus of security guarantees in peace agreements should thus not be on defining every imaginable provision but on putting in place a framework for confidence-building that enables parties to reach consensus over contested issues later on.<sup>35</sup>

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## 1b Designing effective communication strategies

### Why are effective communication strategies important?

Communication is one of the most crucial and cross-cutting elements in negotiations. It is linked to the inherent dilemma of finding the right balance between transparency and confidentiality, between building trust and protecting one's interests and members. Reflecting on different communication formats (information dissemination, public relations, lobbying and advocacy, propaganda), target audiences (own constituency, civil society, media and negotiation counterparts as well as the international community), structures and objectives, discussions throughout the meeting made a point for the benefits and opportunities provided by effective communication strategies.

They can:

- ≡ Help reduce the asymmetry at the negotiating table;
- ≡ Increase visibility and credibility;
- ≡ Help reach out and connect to stakeholders;
- ≡ Help achieve a better footprint and consequently more international/financial support.

However, to effectively use communication as a tool in political negotiation processes, RLMs must overcome a number of challenges. This framework paper raises particularly difficult and relevant questions with regard to:

- ≡ Internal communication: how to overcome challenges related to distance, shifts in strategy, different subgroups (prisoners, diaspora, political or military wings)? How to convince sceptical audiences and transmit credible messages across internal ranks?
- ≡ External communication: how to manage communication with different actors in the international community? How to adapt communication strategies to different actors? How to build up process support through communication initiatives?

- ≡ Managing communication challenges at and beyond the negotiating table: how to deal with negative (or insufficient) press coverage? How to strike the right balance between the needs for confidentiality and transparency? How to manage public expectations through adequate information dissemination?

By reflecting on these questions, we hope to contribute to more effective negotiation and conflict transformation processes.

### To cite

Planta, Katrin (2015). *Designing Effective Communication Strategies. A Strategic Framework*. Berlin: Berghof Foundation.

## BASIC PRINCIPLES FOR EFFECTIVE COMMUNICATION

### Five Cs for effective communication

1. **Credible** – do not undermine your credibility. Facts, statistics and other data presented should be correct. Never twist the truth or tell lies.
2. **Comprehensive** – cover all aspects of the conflict. Have at least one document that provides background details and a comprehensive picture of the conflict.
3. **Consistent** – the core messages and information disseminated should be consistent, although the "packaging" might differ depending on the audience.
4. **Continuous** – frequent and continuous outreach is important.
5. **Collaborative** – while respecting the independence of the media and other societal stakeholders, operate in a collaborative manner, establishing professional relationships and permanent contacts that will result in respect and empathy.

### No propaganda

- ≡ Propaganda is **not** part of the five Cs framework of effective communication.
- ≡ Movements should invest in proper communication campaigns based on credibility and ...
- ≡ ... expose propaganda issued by the "other side".

## DESIGNING COMMUNICATION STRUCTURES AND STRATEGIES

### Five steps for setting-up a communication structure and team

1. Take stock and define your objectives: how effective is the current communication strategy? Is there sufficient well-qualified staff? What are the existing media relationships? What are the strategy's strengths and shortcomings? While stock-taking exercises such as these can be conducted internally, external support (if possible with respect to security issues) might provide a more objective and professional assessment.
2. Devise both internal and external communication strategies that include appropriate risk analysis (leakage, negative media coverage, management of expectations).
3. Create a physical (recommended) or virtual press, media and information office where equipment and training can be made available to the media team.
4. Set-up a manageable communication team consisting of a charismatic spokesperson, a deputy spokesperson (responsible for liaison with the political leadership), media experts to monitor and analyse domestic and international media, personnel responsible for drafting

press releases and writing statements and speeches. Support by IT experts is needed in order to keep the website and the social media up-to-date; the content should be produced by the rest of the team. Finally, one person should be assigned the task of organising press conferences etc. targeting international and domestic press.

5. Regularly revise and adapt your communication structures to the negotiation process (defining mandate, responsibilities, and coordination mechanisms).

### Mapping and approaching different audiences and communication channels

- ≡ Audiences can range from the media to institutional counterparts, including other governments, international and regional organisations, or other networks. An analysis of audiences should distinguish friendly from hostile audiences, public opinion from institutional actors, and national from international actors. While the facts communicated should always remain the same, the communication format must be adapted to each of these different audiences.
- ≡ Try to create external support at various levels while being aware of the different tasks (and limitations) third party arbitrators can fulfil. A mapping exercise can help clarify who can best serve as observers, facilitators, mediators, guarantors of the process, or “groups of friends” supporting the process.
- ≡ Make use of third parties to convey your key message.
- ≡ Analyse the media regularly: be aware of how you are portrayed in different media/by different actors.

### Developing relevant media material

- ≡ Once negotiations start, there will be high levels of demand for additional information and you will have to respond to it quickly.
- ≡ Keep your website topical and prepare coherent and up-dated information on the most important topics and principles, including fact sheets, briefing notes with video/audio content, press releases/statements (adapted to key audiences) and the biographies/mappings of your political and other key leaders. Mapping the leaders of the “other side” will strengthen your conflict analysis.

## DEALING WITH COMMUNICATION CHALLENGES

### COMMUNICATION CHALLENGES IN NEGOTIATIONS ...

#### Internal communication challenges

- ≡ Lack of internal cohesion or coordination – the difficulty of speaking with “one voice” – within the different departments of a single movement (e.g. between the negotiation team, communication team, political department, international department) or among different actors in a coalition is a frequent problem which leads to incoherent communication.
- ≡ Other problems are related to distance and lack of possibilities to communicate/convey messages, including language barriers as well as the lack of both capacities and skills, and financial and technical resources.

#### How to find the right balance between confidentiality and transparency

- ≡ The degree of discretion and, if necessary, secrecy must be analysed on a case-by- case basis and will influence the communication strategy. Excess publicity can be detrimental to the negotiations and directly affect actors’ flexibility and foster aggressive negotiation positions. On the other hand, a lack of media coverage can prevent public awareness and thus, support to the process.
- ≡ Against this background, how do you find the right balance between confidentiality and transparency? How do you deal with mismanagement of the exchange of information between those engaged in the negotiation, such as leakages?

#### How to deal with hardliner statements

- ≡ Managing positional negotiators: how to deal with hardliner statements both from the other and one’s own side?
- ≡ Dealing with hardliners can be particularly challenging when negotiation delegations are large or represent different wings of one movement. Negotiators might tend to speak to these different voices of their own movement (e.g. satisfying hardliners through public speeches) rather than engaging in a dialogue with the “other side”.



## ... AND HOW TO RESPOND TO THEM

- » Define clear mandates and responsibilities; identify one charismatic spokesperson in charge of communicating key messages.
  - » Develop clear written statements conveying your key principles and messages that can be distributed by different departments of the movement and its coalition partners. Use (alternative) mass media to clearly communicate demands and objectives. Advocating the cause not only locally but also regionally and internationally can help diffuse preconceptions and propaganda.
  - » Invest in educating your own members about the peace process and its benefits and challenges.
- 
- » It might be advisable to opt for a two-phased approach if trust is low at the beginning of a process. In this situation, delegations can start with discreet talks respecting the need for confidentiality and slow trust-building followed by a more open, transparent and inclusive phase. It is a strategic decision to decide what information should be shared and this must be carefully assessed. If tensions are high, information can be exchanged through the press or through mediators.
  - » At the table, information dissemination policies are essential to the quality of the negotiation as well as being powerful trust-building tools. The risk of leakages can be reduced by keeping negotiation delegations to a controllable size (or divide them into thematic commissions), issuing joint communiqués with a clear message, ensuring unity with regard to key positions within the movement, and/or establishing clear (and binding) ground rules (e.g. such as Chatham House rules, agreements on how to deal with press inquiries etc.).
- 
- » In such a situation, it can be particularly helpful to set-up informal negotiation spaces that counter the negative effect of public hardliner statements. Discussions in break-out rooms, coffee breaks, private spaces, or joint social activities provide safe spaces where discreet offers can be made without losing face. In that sense, they are a very helpful complement to official talks even though they cannot replace them. Returning to the official negotiating table once having reached a private agreement increases the legitimacy and transparency of the process.
  - » In addition, the right choice of facilitators/chairperson(s) for the process can be a powerful instrument to help trust-building. They must possess sound soft skills, be able to contribute to the trust-building process through active listening, be approachable by all parties, and create clear communication.

## DEALING WITH COMMUNICATION CHALLENGES

### COMMUNICATION CHALLENGES IN NEGOTIATIONS ...

How to avoid communication break-down

- ≡ How to react in the absence or break-down of official communication channels?

How to deal with a difficult media environment

- ≡ Polarisation of public opinion and little “objective” media coverage within the country are a common consequence of violent conflict.
- ≡ Counterbalancing this situation is very difficult because negotiation processes are often characterised by a structural asymmetry whereby governments generally have more resources and access to (inter) national media, often control (or even close down) media outlets resulting in further biased (or no) media coverage and no or weak direct access to media for RLMs.
- ≡ In addition, keeping media interested in one’s cause and conflict can be a real challenge, especially if progress is slow and no “big events” are happening to attract media attention. In such a situation, how do you deal with disinterested (and at times unprofessional) media, how do you maintain media coverage?

Security and safety issues

- ≡ Security/safety issues for negotiation delegates and their communication (interception of conversations/phone calls etc.) but also security concerns for journalists or social activists and therefore restrictions in the potential use of certain media (e.g. social media) are a serious challenge.

## ... AND HOW TO RESPOND TO THEM

- » Establish and maintain different communication paths with your constituency and your counterpart. Include informal/back-channel contacts that can be used as safety-nets to maintain communication in case the official channel breaks down.
- » Establish a parallel set of (alternative) media. Traditional mainstream media (newspapers, TV, radio) and the “terrorist” label are countered best by social media including credible websites, blogs and Twitter accounts. Of course, this is only feasible if the security risk for those behind these sites is manageable. Keep up-to-date with new technologies and make use of them. Use diverse channels including cultural activities and festivities in a creative manner to convey key messages (film and food festivals, music, theatre etc.)
- » Also think about how diaspora members of your movement can be helpful in disseminating alternative discourses on the conflict, at least abroad, and collaborate with grass-roots organisations as well as international experts (e.g. on the issues of rule of law, human rights, fundamental freedoms) to position your agenda points. However, the communication policy of the diaspora organisations has to be carefully managed so that they do not contribute to exacerbation of the conflict or increase polarisation.
- » Identify priority contacts (e.g. press agencies, key media and academic experts, think tanks and opponents) and establish robust personal/professional relationships with them. Keep these relationships alive by offering these networks something in terms of public diplomacy, e.g. fora, discussion events, seminars, and campaigning events related to your key principles. Combine pro-active (attracting media attention for certain topics) and re-active (countering hostile media coverage) communication.
- » Conduct regular media monitoring (collecting, analysing and reporting on media coverage of your own case) to be aware of the deficits and blind spots in the media’s coverage. React accordingly.
- » Despite the difficult situation: do not fall into the “propaganda trap” but make use of your “moral upper hand” (“fighting for the people”) and communicate accordingly.
- » As every conflict is unique, there are no universal recommendations for this but each movement has to find its own creative ways to adapt communication strategies to restrictions imposed by the clandestine/illegal nature of the movements. There are now however, a number of international initiatives seeking to improve security for human rights defenders and social activists which can be used to at least partly protect movements’ social bases.

## 11 LESSONS-LEARNED / BEST PRACTICE EXAMPLES

1. **Do not fall into the “propaganda trap” but make use of your “moral upper hand” when it comes to your political programme (“fighting for the people”) and communicate accordingly.**
2. **Establish a professional communication department within your technical secretariat for the negotiations to channel external communication effectively.**
3. **Diversify your communication channels, including radio, TV, newspapers, webpages, and social media.**
4. **Establish a multi-level targeted communication strategy addressing both local/national and international audiences.**
5. **Explore the opportunities of social media as an alternative communication channel.**
6. **Generate additional media coverage and support through diaspora groups or international groups of friends.**
7. **Do not think about communication as an isolated action but combine and reinforce your communication/media work with other activities (e.g. public diplomacy, cultural events etc.).**
8. **Conduct regular/routine briefings for diplomats to orientate outsiders’ perspective of the peace process.**
9. **Let others reinforce your message: getting independent media to report on your movement in a positive/objective way can strongly enhance your credibility. Make sure “neutral” third parties/journalists/observers have access to reliable information on your movement.**
10. **Invest in your communication team and make use of the media training offered by many international organisations/foundations.**
11. **Be coherent in your message and your actions: act in accordance with your statements to demonstrate that they are not “empty words”.**



# Broadening the Scope

- a Learning lessons  
from failed negotiations
- b Broadening and deepening  
participation in peace negotiations
- c Negotiating transitional justice





## 2a Learning lessons from failed negotiations

### Why learn from failure?

The literature (Hauge Storholt 2001: 331) suggests that negotiation success can be “measured in terms of the ability to arrive at an agreement that is not only signed by all parties, but that can be effectively implemented as well.” Starting from here, negotiation failure can be understood as the termination of talks before a peace deal is signed as well as the failure to implement a signed peace deal. But why learn from failure when there are also successful negotiation processes to look at and learn from? Together with meeting delegates, we thought it worthwhile and useful to look closely at what can go wrong during peace negotiations in order to be better prepared for the many challenges linked to these complex processes. Our focus on failed negotiations was driven by a desire to identify a set of frequent negotiation stumbling blocks and to brainstorm constructive ways to overcome them. With that in mind, our approach to negotiation failure takes the following into consideration:

- ≡ Mistakes have been made in every successful negotiation process. This means we can learn from failures in successful negotiations as well as from negotiations that were eventually terminated.
- ≡ Many peace agreements are the result of a series of negotiations processes. A terminated negotiation is therefore not necessarily a dead-end, but rather one step in the larger process of reaching an agreement.
- ≡ In most cases, negotiations do not stop because of one major failure or mistake but rather negotiation break-down is the result of a series of stumbling blocks parties were not able to resolve.

### To cite

Planta, Katrin, Luxshi Vimalarajah and Jonathan Harlander (2014). Learning Lessons from Failed Negotiations. A Strategic Framework. Berlin: Berghof Foundation.

## PROCESS DESIGN

### NEGOTIATION CHALLENGES ...

#### Timings and venue for the negotiations

- ≡ **Timeframe:** time required is often underestimated, particularly as negotiations take place in volatile political contexts.
- ≡ **Location symbolism:** the place where negotiations are carried out can create a sense of hierarchy between the parties, one party being the “host” of the event or having disproportionately better access to/security provision at the site. Seemingly small details at the negotiating table (food, seating arrangements etc.) can also negatively affect the course of the process.
- ≡ **Security guarantees:** who hosts the negotiations is also an important question with regard to security. In 2001, GAM (Aceh) negotiators were arrested in a hotel provided by the NGO HD Centre.

#### Setting the agenda

- ≡ Agenda items: broad and comprehensive vs. narrow and manageable?
- ≡ Inability to agree on a common agenda.

## ... AND HOW TO RESPOND TO THEM

- » Real life examples demonstrate a wide variety of negotiation timeframes which makes it difficult to make general statements. However, two elements should be considered. On the one hand, negotiations should not be rushed. Firstly, because the objective is to address the root causes, not just to obtain a short term ceasefire. Secondly, because too much time pressure might be counterproductive when it comes to relationship-building between negotiation parties. On the other hand, a realistic understanding of the ability to sustain negotiations in terms of managing frustration, keeping internal sceptics on board, and financially sustaining the process, will help to define a provisional timeline.
  - » Ideally, negotiations should be carried out in a neutral location which provides security for all participants. All parties must feel comfortable with the venue. Important logistical details (who is responsible for guaranteeing safe travel to the site, visa issues etc.) must be resolved beforehand.
  - » The host of the negotiations or negotiation parties should be able to guarantee security.
- 
- » Agenda items and their order should be decided jointly; flexibility and compromise on both sides can help the negotiation start on the right foot. Not all issues should necessarily be dealt with during the negotiations and prioritisation can be valuable to avoid an interminable process.
  - » Start with “easier” topics first to build up trust during the process. Tackling the “tricky” issues towards the end (e.g. during the Camp David negotiations in 2000 the most important issues were only discussed at the end) and using the principle that “nothing is agreed upon until everything is agreed upon”, are frequently-used approaches to facilitate the agenda-setting process. The latter principle was introduced during the peace negotiations between the Government of Indonesia and the Free Aceh Movement by mediator Martti Ahtisaari and has since been used in other conflict contexts such as in Israel-Palestine negotiations or in Colombia in the negotiation process between the government and the Revolutionary Armed Forces of Colombia (FARC).
  - » If agenda-setting proves to be too challenging, start with common principles or ground rules for engagement (e.g. in the case of Northern Ireland, all involved in negotiations, including the Irish and British governments and the political parties in Northern Ireland, confirmed their commitment to six ground rules for participation in talks on the future of the region: the so-called Mitchel Principles (named after United States Senator George Mitchel).

## PROCESS DESIGN

### NEGOTIATION CHALLENGES ...

#### Participation/ inclusivity

- ≡ How inclusive should peace negotiations be? While inclusivity and broad civil society participation is said to strengthen both the legitimacy and sustainability of peace agreements, adding more actors to a process can make it slower and more complicated.

#### Communica- tion

- ≡ Lack of a clear communication strategy;
- ≡ Absence or break-down of official communication channels;
- ≡ Lack of presence in media/information policy towards general public, propaganda and manipulation;
- ≡ Mismanagement of information exchange with negotiation counterparts.

## ... AND HOW TO RESPOND TO THEM

- » Agree civil society inclusion model (ranging from direct participation as a negotiating party or through national dialogue formats, to more indirect forms of participation such as public hearings, opinion polls or mass action beyond the negotiating table) that suits the process and is in line with local traditions and culture.
  - » Build up mass action beyond the negotiating table and parallel to the negotiation process with civil society advocating in favour of the peace process through non-violent means such as hunger strikes, sit-ins, demonstrations, legal actions.
- 
- » Devise both internal and external communication strategies that include appropriate risk analysis (leakage, negative media coverage, management of expectations). Identify a spokesperson responsible for managing communication.
  - » The degree of discretion and, if necessary, secrecy must be analysed on a case-by-case basis and will influence the communication strategy. Bear in mind that excess publicity can be detrimental to the negotiations and directly affect the flexibility of actors and foster aggressive negotiation positions. On the other hand, a lack of media coverage can prevent public awareness.
  - » Establish and maintain different tracks of communication with your constituency and your counterpart including informal/back-channel contacts that can be used as safety nets to maintain communication in case the official channel breaks down.
  - » Use (alternative) mass media to clearly communicate demands and objectives. Advocating the cause, not only locally but also regionally and internationally, can diffuse preconceptions and propaganda.
  - » Information-dissemination policies are essential to the quality of the negotiation and powerful trust-building tools. Information can be exchanged through the press or mediators if tensions are running high. Deciding which information to share is a strategic decision and should be carefully assessed.

## NEGOTIATING PARTIES

### Negotiation capacities

#### Negotiation team<sup>2</sup>:

- ≡ Choice of negotiators:  
“Hidden agendas”: financial and/or political interests of individuals might disrupt the negotiation process; negotiators with very strong personalities might refuse agreements based on their own interests or approaches rather than on the proposals themselves<sup>3</sup>.
- ≡ Discordance within the team with regard to negotiation content, process or negotiation *per se*, e.g. due to divergent personal assessment or change of delegation staff.
- ≡ Lack of support structures for the negotiation team.

#### Preparation:

- ≡ Lack of preparation, improvisation.

#### Negotiation strategy:

- ≡ Weak political strategy,
- ≡ Aggressive negotiation strategy and short-term tactical moves such as “bluffing” (i.e. misleading intentions); misrepresentation of information (i.e. misleading arguments); competitive bargaining (i.e. high demands, low concessions)<sup>4</sup>.
- ≡ Lack of (time for) reflection/learning processes.

- » Carefully select negotiators in terms of their personal assets (experience and knowledge, tact and empathy, status, legitimacy, authority and decision-making power); make sure all important factions/regions/sectors within the movement feel represented at the table; use opportunities for (negotiation) training beforehand and during negotiations and exchange (including peer-to-peer exchange); establish your own or collaborate with training institutions.
  - » Consider using confidential (in)formal negotiation checklists that help make sure those issues, negotiable items, goals and strategy are clear for every member of the delegation.
  - » Make sure that the negotiation team is supported by a knowledgeable and trusted team of advisors who provide assistance on demand. Logistical and security issues should be arranged by a negotiation secretariat so that negotiators can fully focus on the negotiation itself.
- » Prepare for negotiations using different tools such as conflict mapping, actors mapping and internal strategy building sessions. As negotiation processes are never linear and cannot be fully controlled, remain flexible and periodically revise and if necessary adapt your strategy.
  - » Complete specific negotiation training and exchange information with experts and peers.
  - » Be aware of what your BATNA (Best Alternative To a Negotiated Agreement) would be.
- » Avoid coming to the table with an unclear strategy: establish clear definitions of needs and goals, set up clear criteria for non-negotiable needs, short-term and long-term negotiation goals and design; conduct detailed analysis with regard to own weaknesses/strengths.
  - » Make an effort to understand the counterpart's perspective; identify and work on compromise solutions; adopt a collaborative strategy, remain flexible, do not become obsessed with the details, do not lose sight of the overall goal/bigger picture.
  - » Take a step back and reflect on the negotiation process and the underlying assumptions and theories that inform your current strategy. Sometimes, it is necessary to not only change your strategy but the actual assumptions your strategy is based on to formulate a completely new answer to a problem.

## NEGOTIATING PARTIES

### Parallel organisational development

- ≡ Preponderance of military over political aspects.
- ≡ Maintain cohesion within the movement and manage internal discord due to power struggles between e.g. military and civilian leaders/entities; local and diaspora elites.

### Relational and psychological factors

- ≡ Imbalance of power / asymmetric relations due to divergent (international) status and thus inconsistent leverage but also due to unequal access to resources such as training and information.
- ≡ Deep mutual mistrust due to a lack of or delayed implementation of previous or current agreements, lies, or betrayal, leading to a low credibility of commitments and feelings of insecurity and uncertainty.
- ≡ Insecurity about or lack of belief in the implementation power of the counterpart, especially when a strong (and highly independent) military sector might not feel bound to agreements negotiated by civilians.
- ≡ (Perceived) lack of political will; obstacle, lack of goodwill.



- » Build up not only military but also political (ideology), economic (self-reliance), and organisational strength by involving progressive journalists, academics and human rights activists, establishing a program for change that mobilises broad domestic support and does not depend on individual personalities or establishing alliances. Maintain the moral high ground: it is generally not advisable to regard military success as the strongest asset. It is better to highlight the moral strength or the (liberation) vision and your own commitment to certain values. There is an assumption here that there is no replication of the (deviant) behaviour of the state.
- » Keep strong internal consensus around the decision to continue negotiating e.g. by integrating different wings or sections of the movement into the negotiation process, by maintaining internal consultations and communication channels between those engaged in negotiations and the broader constituency, and by proposing appropriately timed post-negotiation scenarios for the movement in order to avoid fragmentation (for instance, transformation into a political party, social movement, post-militancy opportunities for rank-and file members of a movement).
- » Try to counterbalance the asymmetry at the negotiating table by seeking support from countries that promote your status as negotiation partner. For instance, the governments of Mexico and France recognised the Farabundo Martí National Liberation Front (FMLN) as a "representative political force" in El Salvador in 1981 and lobbied the El Salvadorian government to engage in a negotiation process with them.
- » Take trust-building measures to move the process forward (e.g. ceasefire, unilateral steps). Keeping the same negotiators through the whole process, even in event of failure, can be valuable as the personal relationship between negotiators might bring trust to the negotiating table.
- » Involve third parties to mediate and monitor the respect between parties in order to counterbalance any lack of confidence. Devise an effective communication strategy to keep the (inter)national audience informed about the progress or collapse of the negotiations and make sure that implementation is monitored by an actor with the technical capacity and strength to encourage the groups to respect the agreements.
- » Do not rely on goodwill, but focus on engaging people. Try to engage your counterparts by changing the balance of power or by eliciting their own interest. Create strong support for the process so that it becomes more difficult for your counterparts to pull out. In the absence of any progress, start to develop a strategy of unilateral steps. For instance, in the case of the Basque Country a strategy of unilateral steps was adopted in the absence of any steps forward by the Spanish or French state. The aim was gradually to move the country to self-rule. This strategy included the mobilisation of civil society, the strengthening of political party work and the setup of and collaboration with an international support group in favour of a peace process.

## THIRD PARTY INVOLVEMENT

### Third party involvement/mediator

- ≡ Lack of third party support.
- ≡ Wrong facilitator/mediator.
- ≡ Lack of strong process guarantees.

## CONTEXT

### Internal environment

- ≡ Continuation of hostilities/ counterinsurgency and discrimination: ongoing military offensives and/or societal violence against negotiation parties and their constituency.
- ≡ Influence of political dynamics (e.g. elections, dynamics within the party system, new policies).

### External environment

- ≡ Isolation, no (or only weak) support from the international community.
- ≡ Foreign economic/political and security interests of international/regional players (international organisations, states, criminal actors and INGOs) can bring international actors to support the state or provide military/logistical support.

- » Try to create external support at various levels while being aware of the different tasks (and limitations) third party arbitrators can fulfil. A mapping exercise can help clarify who can best serve as observers, facilitators, mediators, guarantors of the process, or “groups of friends” supporting the process.
  - » Choose the “right” mediator in terms of mediation style (muscular/directive mediation vs. soft/non-directive mediation), personality (enough authority in terms of professional status, experience, cultural sensitivity, age, sometimes gender), and acceptance by all parties to the negotiations. Regarding the last point, mediators can be chosen on the basis of their trustworthiness and accepted fairness or on the basis of their impartiality. While the latter has long been considered to be the best option, new research and practice have demonstrated the potential of insider-mediators with close links to the negotiation parties.
  - » While individual actors or NGOs are often fundamental to help kick-start negotiation processes, states or international organisations have considerably more leverage (and financial means to sustain a process) in the long-run, including monitoring the implementation phase. Establish credible procedures and clear responsibilities to ensure effective implementation.
- 
- » Address the culture of violence and paramilitary violence. Use non-violent means and take unilateral steps to involve the civil society by taking legal actions, promoting multiculturalism and interfaith dialogue.
  - » Use elections strategically. Rather than boycotting elections, it might be helpful to vote for a more progressive party/candidate to work with in the future. Use the political agenda to stimulate the negotiations. Contact other political forces to increase your leverage, unless it jeopardises the negotiations.
- 
- » Use international pressure to isolate the state: engage with impartial third parties; expose the state through education and advocacy using mass media.
  - » Understanding the interests and dynamics of global and regional players is fundamental to developing a strategy for positively influencing the international environment and generating support. Mapping exercises can help identify potential allies, as well as entry points for lobbying, and design actor-specific liaison and out-reach strategies (e.g. having diaspora groups lobbying abroad, securing strong allies such as the United States (US), and establishing strong relationships with neighbouring states).

## CONTEXT

External environment

- ≡ Development of new international/regional laws and paradigms which states can use and/or are bound to (war on terrorism, transitional justice laws, blacklisting)

Potential spoilers

If actors with a significant degree of leverage (e.g. the military, business sector, other armed groups and political opposition parties) feel excluded, there is a strong risk conflict may reoccur as these actors might not be bound by the terms of the agreement. Hence, it is important to find strategies to include potential opponents, or at the very least to try to contain spoiling behaviour by:

- ≡ Internal spoilers
- ≡ State-related spoilers
- ≡ Interest groups

- » Garner peer-to-peer or expert advice on relevant laws and norms and investigate the experiences of other movements to find out how new developments can affect (or serve) your purpose.
- » Use internal advocacy and dialogue tools to convince your own constituency; demonstrate the legitimacy of your negotiation approach by competing and succeeding in the electoral arena.
- » Use competing interests among the international community to put pressure on the state; forge alliances with other like-minded forces to avoid a “divide-and-rule-strategy” by the state.
- » Be aware of the interests of social sectors opposed to the peace process; try to find common ground to engage with them.
- » With regards to other armed opposition movements, it might be helpful to bring them on board.

- 1 Storholt, Kristine (2001). Lessons Learned from the 1990–1997 Peace Process in the North of Mali. *International Negotiation*, 6 (3): 331–356.
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- 3 With regard to the damaging effect of “high-self focus” behaviour, see Cho, Yeri., Jennifer R. Overbeck & Peter J. Carnevale (2010). Status Conflict in Negotiation. *Research on Managing Groups and Teams* 14, University of Southern California.
- 4 Elahee, Mohammad Niamat (1999). The Role of Trust in International Business Negotiations: A Culturally Determined Perspective. Available online: <https://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.314.569>.

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## 2b Broadening and deepening participation in peace negotiations

### Deepening and broadening participation in peace negotiation?

Empirical evidence suggests that the inclusive design of peace negotiations enhances the sustainability of agreements, thereby preventing a relapse into violence in the long-run. International peacebuilding organisations are therefore increasingly turning away from “elite-pacts” and instead focus on designing “inclusive settlements”. This trend has also been reflected by the 2012 UN Secretary General report “Peacebuilding in the aftermath of conflict”. Highlighting the advantages of inclusive processes, the report states that “[w]hile inclusive political settlements may take longer to negotiate, they are more sustainable. An inclusive process builds confidence among participating parties that their core objectives can be achieved through negotiation rather than violence, it is also more likely to address the root causes of conflict and increases the legitimacy and ownership of a political settlement.”<sup>1</sup>

### Why, when and how?

While a number of advantages have been ascribed to inclusive processes, including better negotiation results, greater buy-in from different sectors of the population, as well as a more sustainable peace, participatory approaches to peace negotiations also pose a number of challenges. Questions that need to be carefully addressed in each individual context include for instance:

- ≡ How to balance diversity vs. complexity?
- ≡ How to select the “right” participants for inclusive processes?
- ≡ How to manage time-consuming multi-actor negotiations successfully under time pressure?
- ≡ What are the limitations and trade-offs of inclusivity?  
Are there circumstances in which the principle of inclusivity is not desirable?



By reflecting on these and other questions in this paper, we hope to contribute to more effective negotiation and conflict transformation processes.

### To cite

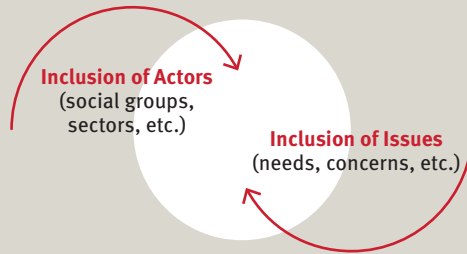
Planta, Katrin (2015). *Broadening and Deepening Participation in Peace Negotiations. A Strategic Framework*. Berlin: Berghof Foundation.

## KEY ASPECTS OF INCLUSIVITY

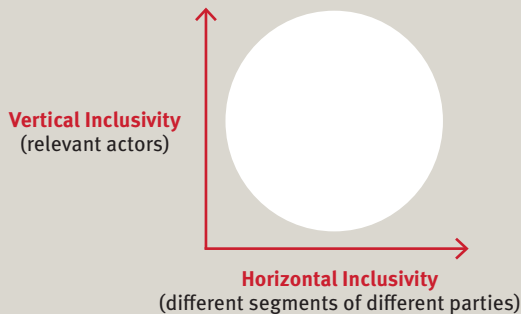
Inclusivity “refers to the extent and manner in which the views and needs of parties to conflict and other stakeholders are represented, heard and integrated into a peace process.” (UN Secretary General Report 2012, “Peacebuilding in the aftermath of conflict”). The **right to participate** is enshrined in various UN norms, including the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Security Council Resolution 1325 etc.<sup>2</sup>

There are multiple dimensions of inclusivity:

- » There are two broad aspects to inclusion: **inclusion of actors** (social groups and sectors, etc.) and the **inclusion of issues** (needs and concerns of the actors).

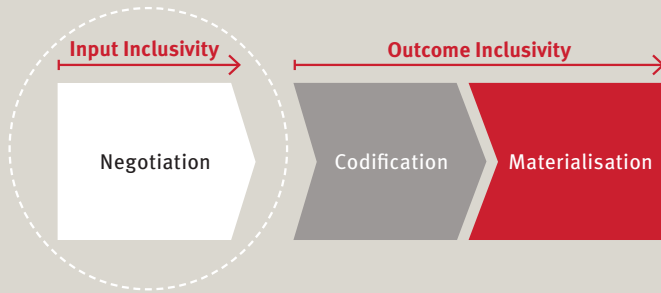


- » With regard to actor inclusivity, a distinction can be made between **horizontal** inclusivity (relevant actors are represented at the table) and **vertical** inclusivity (the different parties at the table are themselves composed of different segments of their constituency);



- » With regard to the timing, a distinction can be made between **input inclusivity** (inclusive design of the negotiation process) and **outcome inclusivity** (inclusive implementation of agreement);

Conceptualizing inclusivity: Definitions and dimensions



In this paper, we focus on process or ‘**input inclusivity**’ which can be measured by assessing the level of participation of (previously) marginalised actors in policy-making platforms (through e.g. informal, consultative, or executive roles). Participation is understood here as a sub-component of inclusivity which describes what, how, and to what extent actors engage – and are allowed and invited to engage – in a decision-making process (see Dudouet and Lundström 2016).

To ensure inclusivity in negotiations, three dimensions are to be considered: an inclusive **process design, structures** that facilitate participation and **capacity building** for those that are to participate. Together, these three dimensions should not only guarantee **participation in numbers, but ensure quality participation**.

Inclusivity and participatory process design is not a magic wand nor is “inclusivity” good per se. Negotiators must **guard against excessive expectations** of what inclusivity can deliver and carefully balance challenges and opportunities against the specific context and political power balance. Inclusivity needs to be **carefully structured and designed** for negotiators to benefit from its potentials (see below).

There are also some (**desirable**) **limits** to inclusivity. Spaces of political decision-making are rarely inclusive in absolute terms. Hence, a decision must be made regarding what type of actors needs to be present to make a space “**inclusive enough**”. According to the negotiation phase and its objective, inclusive formats often need to be complemented by non-inclusive mediation or dialogue spaces. In addition, **inclusivity does not necessarily mean that all actors are present at the negotiating table** but that the process is designed in such a way, that their views and concerns are represented and taken into account.

Three considerations to start with

However, research suggests that “too much inclusivity” is not much of a problem. Rather, when difficulties emerge it is most often in relation to poor calculations of timing or the selection of an inappropriate format of inclusivity for a particular context. The following pages therefore provide a **range of options for inclusive process design that negotiators must adapt to their own context**. The options provided below are meant to help conflict stakeholders be in the driving seat of inclusive process design and shape participation from the start.

- ≡ Inclusivity can best be understood as a dynamic and evolving process which **can vary over time to respond to the needs of each negotiation phase**.
- ≡ The degree and formats of inclusivity will partly depend on whether negotiations are still in a preliminary phase, full development or the implementation phase:



Inclusivity according to phases of negotiation

Explorative talks ahead of official peace negotiations most often need to happen under strict confidentiality as trust in the process is still extremely low. As a result, they are often less inclusive. However, this phase can be used to negotiate an inclusive negotiation process, define a methodology for such a process and prepare actors for their participation (e.g. through training, by providing expert advice etc.).

In the negotiation phase, questions related to inclusivity will include the composition of delegates to the talks (horizontal and vertical representation), options for direct or indirect public participation, and the building-up of inclusive negotiation support structures.

In this phase, it is important to set-up inclusive mechanisms and institutions that can accompany and monitor the implementation of agreements. For instance, in 2010 in Mindanao, parties agreed that various local NGOs would participate in the Civilian Protection Component of the International Monitoring Team. Another option is to encourage civil society organisations to provide independent monitoring reports on the progress of the agreement’s implementation.

## RATIONALE AND CHALLENGES FOR INCLUSIVE PEACE NEGOTIATIONS

Opportunities...

Inclusivity often seems to be promoted for its normative value. In reality however, the design of (at least selectively) inclusive processes often **responds to the needs of realpolitik**, e.g. the need to include hardliners or increase public buy-in to save the negotiation processes from breaking down. Hence, there are also “hard arguments” that can be used to lobby for inclusivity.

### ≡ **Increasing legitimacy and public support**

Increasing public understanding for the process along with “politics of recognition” (symbolic dimension) can instigate increased support and legitimacy for the peace process. This is particularly important in situations where no “mutual hurting stalemate” forces conflict stakeholders and the public to consider negotiations.

### ≡ **Bringing peace processes through difficult moments and avoiding spoilers**

Civil society and other groups can serve as monitors for the negotiation process and exercise pressure on the negotiation parties to reach common ground. In addition, an inclusive process also facilitates access and integrates difficult to reach constituencies. While inclusivity is often assumed to be negotiated between the mediator and/or the conflict parties, third actors have their own strategies to have their voices heard and their needs addressed. Integrating these actors into the process can prevent them from damaging the negotiations from “outside”.

### ≡ **Empowerment**

The inclusion of marginalised actors in post-war political settlements might offer a window of opportunity for them to voice, address and advocate their own social and political agendas and needs.

### ≡ **Better negotiation results**

Diverse knowledge and expertise, including local conflict analysis and specific mediation, or topical expertise from international NGOs, can help negotiation teams find better and more innovative negotiation options. Participation therefore not only helps to create an institutional memory of a peace process but also leads to more informed deliberations.

### ≡ **Enhancing stability and the resilience of agreements**

Inclusive processes are better designed to a) address the root causes of conflict, b) provide legitimacy c) enhance ownership and buy-in of important groups and the public and d) ease monitoring of agreement implementation.

### ≡ **Establishing a more democratic culture**

Finally, inclusive processes also enhance accountability, debate and dialogue as a reaction to conflict in the long-run – even if negotiations finally fail.

## EXAMPLE – GUATEMALA



The **Guatemala** peace process is often highlighted as a very successful case in terms of civil society participation. Building on the previous experience of the Guatemalan “Grand National Dialogue” (1989), the Civil Society Assembly was formed in 1994 to support and feed proposals into the negotiations between the government and the Guatemalan National Revolutionary Unit (*Unidad Revolucionaria Nacional Guatemalteca*, URNG). The Assembly was composed of representatives from ten social sectors, including, for the first time, women and indigenous organisations in addition to political parties, religious leaders, media, students, human rights experts among others (actor

inclusivity) and addressed a broad range of underlying structural problems instead of focusing only on demilitarisation and ending the conflict (topic inclusivity). However, the comprehensive agreement failed in the implementation phase. Not only did civil society participation decrease once the agreement was signed, the lack of participation of the agro-business elite led to the undermining of socio-economic and agrarian reform and land distribution. The Guatemalan example highlights that inclusive processes face a number of challenges that we will explore in more depth on the following page.

## RATIONALE AND CHALLENGES FOR INCLUSIVE PEACE NEGOTIATIONS

... and dilemmas from the perspective of RLMs

### ≡ Convincing the “other side” or the mediator

RLMs are often in favour of inclusive processes but need to convince the government or the mediator. In these instances, it is good to know that inclusivity often responds to the needs of realpolitik, e.g. the need to include hardliners or increase public buy-in to save the negotiation processes from breaking-down. Hence, there are also “hard arguments” that can be used to lobby for inclusivity. It might also be helpful to lobby the international community.

### ≡ Legitimacy vs. effectiveness?

» Complexity in design, management, and conduct may rise with a greater number of participants. However, “simple” negotiations with “main” conflict stakeholders do in turn presume compliance on the part of the excluded groups, which is a dangerous presumption. The creation of thematic (sub)working groups can be a viable option to reduce the complexity in numbers.

... and dilemmas from the perspective of RLMs

- » The search for overall thematically inclusive “comprehensive agreements” can lead to a dispersion of the limited political capital and material resources available to implementation. A decision must therefore be made on whether certain topics can be dealt with in a different format, parallel to or after the peace negotiations.
- » Time constraints: the negotiation process needs to make progress fast in order to build and not to lose support in the early phase. Manageable decision-making systems can help to avoid blocking the whole process.

### ≡ **Issues of representativeness**

How to ensure representativeness and how (and by whom?) to select the “right” – legitimate and capable – participants? How to establish transparent selection criteria or quotas? How to include non-like-minded actors, thereby substantially broadening the spectrum of support? Finally, how to manage the risk of endangering the legitimacy of the process by including certain groups (and not others) vs. their capacity to spoil the whole process if they feel excluded?

### ≡ **The danger of “rhetorical” inclusivity**

Power matters: inclusive processes challenge established power structures. Powerful elites might be inclined to shape processes that seem participatory, but where they retain all the power to influence the outcome. As participation on equal terms is additionally impeded by structural, institutional, cultural and capacity imbalance, as well as political manipulation, a disparity between “passive participation” and actual decision-making power is to be expected and countermeasures need to be taken (e.g. training, early participation in establishing selection criteria for participation etc.)

### ≡ **Internal cohesion or inclusivity as threat?**

Inclusivity can also be perceived as a threat, political candidates with inclusive mind-sets are often side-lined in a polarised political environment. Therefore, it is also important to advocate for inclusiveness within one’s own movement and to constantly work on the internal cohesion in terms of the inclusive approach.

### ≡ **International norms and legal frameworks regarding “talking to terrorists” and security risks**

Participation can be both a right and a risk: people feel exposed, and if a process fails this can have negative consequences, especially if conflict is still on-going. One way to protect people is to uphold common goals that are shared by both the government and the RLM

## PROCESS DESIGN

... and dilemmas from the perspective of RLMs

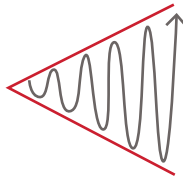
in order to protect the participants (e.g. the grassroots) from being regarded as “biased” and “partial” when they speak out. Another way is to validate grassroots proposals through independent/“neutral” actors (e.g. opinion polls or recommendations compiled by third parties that are not regarded as biased etc.). Additionally, it is crucial to develop channels of legal communication between the insurgency and the population and provide safety measures for the negotiation team members and close advisers themselves.

### ≡ Translating process into outcome inclusivity

In Guatemala, a highly inclusive format of parallel civil society discussions that fed binding inputs into the negotiation process still failed to produce an effective implementation of the agreement. The Guatemalan example demonstrates how important it is to broaden inclusivity beyond like-minded organisations. This lowers the risk of spoiling in the implementation phase and secures participatory mechanisms that continue to involve civil society once the agreement is signed.

## FOUR FORMATS FOR “INCLUSIVE ENOUGH” PROCESS DESIGN<sup>3</sup>

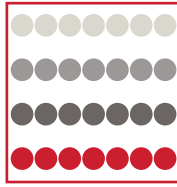
Incremental inclusivity



If the conditions for inclusive process design are not in place at the beginning of a fragile negotiation process, incremental inclusivity can be one way forward. In this format, concise peace or ceasefire deals are first negotiated between the main opposing parties: these are limited to setting general parameters and delimiting the agenda for transformation and are then followed by inclusive arenas to deliberate on the details of structural reforms. For example, the South Africa CODESA negotiations brought together the main conflict actors. As these negotiations failed, the National Party and The African National Congress decided to reach a bilateral consensus first before taking once again their ideas into a broader space through which the main societal groups could reach consensus. Another example for such a “step by step” approach is the negotiation process in Myanmar where an initial nationwide ceasefire accord (NCA) has progressed into a more inclusive political dialogue process.

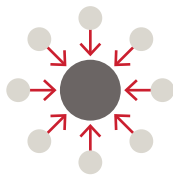


### Thematic multi-arena inclusivity



Another option is thematic multi-arena inclusivity. This model consists of parallel arenas for decision-making that are dedicated to particular themes or concerns. For instance, ceasefire negotiations in the midst of violent conflict will by definition include armed groups and result in a series of simultaneous discussions among multiple actors. In this instance, it would be possible to conduct security talks with the military actors on both sides; facilitate political discussions with (armed and unarmed) political actors; coordinate socio-economic discussions with relevant sectors; facilitate transitional justice talks with direct participation from victims' representatives; in addition to making space for broader issues, such as forums on agrarian reform with the participation of peasant associations, etc.

### Parallel consultation forums with built-in binding mechanisms



One of the most common forms of civil society participation in peace processes and political transitions consists of setting up parallel channels for influencing decision-making proceedings from the outside, such as consultation forums, public surveys or citizens' petitions. The main recommendations coming out of these studies point to the importance of guaranteeing the official and binding character of such arenas, so that their outcomes can be more effectively fed into Track I negotiations or dialogue formats. Such forums were set up in several of our country case studies, but they all lacked binding feedback loops and monitoring mechanisms to ensure that issues and concerns raised by the participants would not be 'lost' during the negotiations and appear to fail on their codified outcomes.

### Informal deadlock-breaking mechanisms with inclusive formal arenas



While the previous model was concerned with designing inclusive avenues for influencing non-participatory arenas, this model aims to elicit effective decision-making within inclusive deliberation bodies such as Constituent Assemblies or National Dialogue conferences. The idea is to enhance trust-building within polarised negotiation and decision-making settings by supporting informal dialogue platforms as deadlock-breaking mechanisms. However, observers have also argued that such informal forums precisely reinforce the secretive and exclusionary nature of bargaining in elite politics by establishing various channels that bypass official structures, thereby distracting legislators from reaching consensus within the formal committees and plenary sessions. Instead, formal proceedings are 'hijacked' by informal spaces dominated by realpolitik and the old rules of the game, thereby blocking progress in the main arenas, as happened in Nepal.

## WAYS FORWARD: DESIGNING INCLUSIVE PROCESSES

### Principles and options for broadening and deepening public participation

- ≡ Research on participatory community development has suggested a so-called “**ladder of participation**” that ranges from simple information, to consultation, to deciding, and finally, acting together. As far as public participation in peace work is concerned, there are different options for including civil society. These options can be understood as **degrees of inclusivity** (the seven degrees as shown to the right are taken from Paffenholz, 2016).
- ≡ Which of these models (or which combination thereof) is suitable must be decided based on the individual **conflict context** and will also depend on the **relative strength and organisational set-up of civil society**. It has been argued that civil society will most likely be included when 1) civil society is well developed and actively promotes its participation, 2) the mediator is sensitised to inclusivity and 3) the conflict parties are aware of the need to involve civil society and deem inclusion to be in their own interest.
- ≡ In any case, it should be borne in mind when opting for one of these models that public (or civil society) participation should not be equated with the participation of those “in favour of peace”. **Civil society organisations often have divergent views of the peace process**. It is therefore important to acknowledge their heterogeneity and think about how to include constituencies that still need to be convinced of the negotiation process. Focusing on **common principles** might be one first step in creating peace alliances beyond political divisions.
- ≡ In that sense, it is important to **value the resources that different stakeholders bring to the process**. Encourage grassroots participation in the process by involving existing peoples’ organisations (instead of creating new ones), and organise and mobilise the “masses” because these are the people with the most at stake and the most numerous. The broader the mass participation, the easier it is to draw in personalities from the upper classes, eventually including politicians from “the other side” whose endorsement and support can be highly beneficial, not only in terms of moral and political support, but also in terms of resources that often cannot be brought in by the grassroots.

## Seven degrees of inclusivity according to Paffenholz et al (2016)

1. **Direct representation** at the negotiation table within conflict stakeholders' delegation or as a proper delegation (indirect representation in turn refers to representativeness of topics, not people). Here, the main challenge will be linked to creating proper selection criteria for participation. Participants can be selected by the main negotiation parties, by the mediator, or alternatively by a self-selection process with formal procedures. Possible selection criteria are for instance the content of the negotiations (expertise), the relevance of the actor for the implementation process (inclusion of potential spoilers, directly affected population groups, etc.). At times, it is also advisable to include people in their personal capacity because their support to the process is of particular symbolic value ("eminent personalities").
2. **Observer status** for select groups provides observers the possibility to serve as a guarantors of the process, exercise pressure and provide advice to the negotiation parties, or simply help to stir selected group buy-in. The risk is however, possible frustration with a seemingly "powerless" voice that can be side-lined by negotiators and mediators.
3. **Consultative formats** range from official consultations that run parallel to, and feed into, the official negotiation table, to less formal consultations with elites or the broader public. With informal consultation formats especially, it is imperative to create transfer mechanisms that carry results from side consultations back to the main negotiations. In addition, it must be decided whether the character of consultations will be binding or not. To this aim, the creation of expert civil society working groups has proven a useful consultative mechanism, of which RLMs can make use of.
4. **The creation of (hybrid) inclusive support structures** that directly support the negotiation team and/or support the peace process and the implementation of agreements more broadly. For example, hybrid negotiation structures or technical advisory teams that incorporate civil society's views directly (e.g. Burma: TAT); peace secretariats that incorporate civil society staff and expertise; expert committees or historic commissions that can bring together respected personalities from different sectors of society to feed thematic input into the negotiation rounds (e.g. as in the Kurdish peace process); post-agreement implementation commissions such as constitution review commissions, or monitoring missions; and hybrid international contact groups (e.g. Philippines) that bring in expertise and support from a wide range of international, state and non-state actors.
5. **High-level problem-solving initiatives** that take place during the pre-negotiation, phase or parallel to official negotiations, and can influence the official process by providing feedback and advice.
6. **Public participation** through public hearings, opinion polls, signature campaigns and public decision making mechanisms, such as referendums, for example.
7. **Mass action** (campaigns, street action, protest, petitions, etc.)

## WAYS FORWARD: DESIGNING INCLUSIVE PROCESSES

### Selection criteria for inclusive participation

A number of important questions must be considered when designing processes and selecting criteria for participation: How to select the “right” (relevant, qualified, legitimate) participants? How to establish fair and transparent selection criteria and procedures? How to ensure that participation is broadened beyond the allies of the main conflict parties?

Three **guiding principles** can serve as orientation:

- ≡ Content of the negotiation (who is knowledgeable about the topic? Who is most concerned/affect by the topic?)
- ≡ Implementation stakeholders (who will be the crucial actors for ensuring implementation? Are potential spoilers sufficiently involved in the negotiations?)
- ≡ Commitment to a transformative agenda (who will be in the driving seat for socio-political reforms in the future?)
- ≡ Besides these guiding principles, **selection criteria** for participants are often established in terms of categories that need to be represented at the table. Across cases, social categories from which participants are often selected include: “youth”, “women”, “ethnic groups”, “professionals/experts”, “influential/ eminent persons”, “party representatives”, “diaspora representatives”, “refugee representatives” etc.
- ≡ Participants can become part of the process by a number of **procedural mechanisms**: through invitation, nomination, election, advertisement of positions or some form of self-selection procedures within the group.

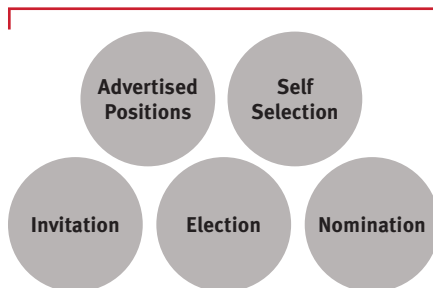
### 3 GUIDING PRINCIPLES



### SELECTION CRITERIA



### SELECTION PROCEDURES



## INCLUSIVITY AND GENDER

### Lessons learnt for an inclusive process design

**More than any other form of inclusivity, the participation of women seems only to take place when normative pressure is applied. That means that an extra effort is needed to ensure women are part of the decision-making process. When striving for a better gender balance in a negotiation process:**

- ≡ Put quality over quantity: it is not only about the actual numerical presence of women, but about their capacity to influence the decision-making process.
- ≡ Strengthen early involvement of women in (pre-) negotiations.
- ≡ Do not regard women as “monolithic” block: there are diverse female constituencies which represent different needs and demands, all of which need to be included.
- ≡ Enhance women’s capacities to effectively participate in negotiating processes through training in process design, thematic expertise and negotiation skills.
- ≡ Strengthen the gender-awareness of mediators, facilitators, mediation teams and conflict parties.

**Lyytikäinen (2009, p.13) suggests the following indicators to measure gender-sensitive negotiation design:**

- ≡ Number and proportion of women present at peace negotiations as official negotiators;
- ≡ Number and proportion of women present at peace negotiations as observers;
- ≡ Number and proportion of women present at peace negotiations as representative of the warring parties;
- ≡ Provisions in peace agreement or draft constitution that promote women’s equal participation in post-conflict political institutions;
- ≡ Propositions of staff on international missions that have been trained in gender-sensitivity and gender analysis;
- ≡ Resources provided for women’s organisations and Civil Society organisations engaged in Track II diplomacy.

## 10 KEY LESSONS TO TAKE AWAY

- » **Be at the forefront of inclusive process design;**
- » **Inclusivity is not (only) about numbers but about quality participation;**
- » **Inclusivity does not happen per se: it needs to be carefully designed, continuously ensured and properly communicated;**
- » **Inclusive processes come with both opportunities and challenges: be aware of trade-offs and limitations;**
- » **Use both normative and pragmatic arguments to lobby for an inclusive design;**
- » **Broaden participation beyond the like-minded;**
- » **Ensure internal cohesion and inclusiveness (bringing internal sceptics on board, building on internal expertise, raising internal understanding and commitment to the process);**
- » **Remember and ensure the different dimensions (vertical/horizontal; actors/topics; input/output) of inclusivity;**
- » **Make use of and adapt existing models for inclusivity to your own context and needs;**
- » **Set-up structures that ensure an inclusive approach to both the negotiation and the implementation phase.**

- 1 [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/67/499](http://www.un.org/ga/search/view_doc.asp?symbol=A/67/499).
- 2 For a full list of the various instruments of the UN, see Barnes, Catherine (2002). Democratising Peacemaking Processes: Strategies and Dilemmas for Public Participation. In *Owning the Process. Public Participation in Peacemaking*. Accord: An International Review of Peace Initiatives. Conciliation Resources.
- 3 These four formats for “inclusive enough” process design are based on a presentation by Dr. Véronique Dudouet that was shared with the participants during the meeting.



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## 2c Negotiating transitional justice

### Enquiring implementation processes: why, when and how?

Accountability, redress for victims and fostering reconciliation – these three demands represent the foundations of transitional justice in peace processes. Starting in the 1990s, the realisation that ignoring mass atrocities, war crimes and severe human rights violations may endanger the sustainability of peace agreements has shaped peace negotiations from El Salvador and Sierra Leone to Aceh, Indonesia. Since then, experts, scholars and practitioners have devoted increasing attention to transitional justice and the role of victims in peace negotiations, including the crucial questions of when, how and at what stage to integrate the search for justice and reconciliation into the process. The nexus between transitional justice and peace negotiations is marked by a core dilemma: ending the culture of impunity by strengthening the inclusion of the needs, interests and concerns of victims into peace processes is seen as a prerequisite to restoring trust in war-torn societies and promoting sustainable peace and reconciliation. At the same time, ending violence regularly implies negotiating with those who are responsible for gross human rights violations and who sit in positions of significant power. Finding a constructive and meaningful approach to the complex questions of transitional justice in a given context has thus become a key condition for tangible negotiation outcomes that reflect the need for both peace and justice.

Addressing and mitigating the challenges of negotiating transitional justice while at the same time allowing for the meaningful inclusion of the perspectives, needs and interests of the victims of a conflict remains of paramount importance to effective and viable peace processes in the long-run.

Questions that need to be carefully addressed in this context are, for instance:

- ≡ What are the main caveats for negotiating justice in post-war arenas?
- ≡ At which stage of a negotiation process should questions related to transitional justice be tackled?

- ≡ How do questions of transitional justice affect other thematic areas in negotiations between the conflict parties?
- ≡ What are the specific challenges for RLMs dealing with transitional justice in peace negotiations?
- ≡ What is the role of victims in peace negotiations?
- ≡ What specific tools of justice are needed in a given context and how do they affect the implementation of agreements?

By reflecting on and discussing these and other questions, we hope to provide our readers with insights into how critical issues pertaining to transitional justice and the role of victims can be critically addressed and thus to contribute to more effective conflict transformation processes.

### To cite

Schernbeck, Nico and Luxshi Vimalarajah, (2017).  
Negotiating Transitional Justice. A Strategic Framework. Berlin:  
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## TRANSITIONAL JUSTICE: KEY ASPECTS

### Transitional justice What is it?

- ≡ Since the 1990s, the concept and application of transitional justice in countries emerging from long periods of conflict and repression has gained increasing popularity. Reflecting the growing awareness that mass atrocities, war crimes and severe human rights violations cannot be ignored and that they endanger the durability of peace, transitional justice has become an integral part of settling peace agreements.
- ≡ Transitional justice refers to the **different ways in which countries and their societies address and deal with massive human rights violations** in transitional arenas.
- ≡ As an approach to addressing impunity after conflicts, transitional justice marks an attempt to offer the most meaningful justice possible in a given political situation when regular justice systems are unable or unwilling to provide adequate responses.
- ≡ **Accountability, redress for victims and long-term reconciliation** represent the key principles and normative foundation of transitional justice in peace processes. According to the United Nations' definition, transitional justice in peace processes describes, "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large scale past abuses, in order to **ensure accountability, serve justice and achieve reconciliation.**"<sup>1</sup>

### Justice in the processes of transition

- ≡ Unlike distributive or restorative justice, transitional justice is not a specific form of justice but refers to a **broad array of judicial and non-judicial measures** through which countries address impunity, gross human rights violations and the underlying root causes of the conflict. Rule of law reforms also play a key role where regular justice systems are no longer intact or independent, or they simply lack the capacities needed to function.
- ≡ Transitional justice occurs in two constellations:
  1. As a matter of **post-conflict justice** in the context of armed conflict; or
  2. In the aftermath of far-reaching political transitions as a way of dealing with past abuses committed by dictatorships or authoritarian regimes **in the political transition** towards democracy.

The political conditions, social and cultural traditions, as well as the legacy of past crimes are only some of the contextual factors that shape the outlines of potential principles and application of transitional justice. Knowing the context is key to successfully negotiating the

aims of transitional justice and implementing respective provisions. With the redress and acknowledgment of violations and prevention of future atrocities at the core of transitional justice in peace processes, the following elements are some of the most common denominators for transitional justice in practice:<sup>2</sup>

- ≡ Establishing or reforming **accountable social and political institutions** (courts, police, ministries, or the army) in the post-war arena to restore the society's confidence.
- ≡ Allowing the most affected and/or vulnerable parts of society, in particular women and marginalised groups, to **access and participate in the pursuit of justice**.
- ≡ Institutionalising the quest for justice, trust and reconciliation by **restoring the rule of law** in conflict-affected societies.
- ≡ Facilitating durable peace processes with peace dividends for the entire society by **addressing the underlying causes** of injustice and **fostering reconciliation**.

Justice in  
processes of  
transition



## TRANSITIONAL JUSTICE IN PEACE PROCESSES: KEY ASPECTS

### The four pillars of transitional justice

From the negotiation of a political settlement to its implementation, transitional justice refers to a comprehensive approach towards providing the most meaningful justice possible in the given political conditions. Depending on these conditions, as well as on the nature of crimes committed, transitional justice should attempt to confront impunity, seek effective redress for victims and prevent future atrocities. Consequently, transitional justice encompasses different tools that build on four main pillars, which are closely related to the peace process:

### 1. Criminal and legal prosecutions

- » Calls for judicial prosecution of those considered responsible for gross human rights violations or war crimes often represent one of the core demands of conflict actors.
- » While softer means of prosecution may entail commissions of enquiry with a mandate to investigate crimes and recommend a framework for prosecution (see “truth-seeking” below), criminal prosecution can also involve special tribunals, prosecutors or public courts and hearings.
- » International means of prosecution, such as by the International Criminal Court (ICC), can accompany the processes but, as the ICC does not operate under the influence of negotiating parties or mediators, may subtend some of the parties’ agreements.

### 2. Truth-seeking

- » Truth-seeking mechanisms represent a more victim-centred, non-judicial approach that looks at the broad patterns of past crimes in order to investigate what kinds of repressions, human rights violations and crimes have occurred, and how.
- » Truth seeking via commissions or other bodies can provide a much-needed safe space for victims and survivors to speak out, report and make their perspectives on the conflict heard.
- » Truth commissions often entail documentation and investigation of specific cases and situations in past conflicts in order to identify the key drivers of events, as well as the actions/practices that fuelled crimes and the violation of human rights.

- » At the end of a truth-seeking process, commissions often provide reports with recommendations on how to implement measures of reconciliation, reparation or institutional reform, including, for example, the vetting of political positions.

### 3. Reparations

- » Reparations can be understood as a means to acknowledge the legal obligation of a state or group, to repair the consequences of violations by financial or ideational means, including socio-economic programmes or commemoration initiatives.
- » Programmes for victim reparation often need to mitigate the difficulties of balancing compensation or reparation for victims as, in the majority of cases, the number of victims exceeds the material means for compensation in post-war contexts.
- » Therefore, symbolic reparations or community-based reparations such as public apologies, war crime memorials, renaming public spaces, and rebuilding the most affected communities can be meaningful ways to foster reconciliation and navigate this balance by endorsing justice by way of recognition.

### 4. Institutional reforms

- » The promise of preventing the occurrence of future violations of rights is one of the cornerstones of transitional justice efforts. To this end, post-war countries are often required to undergo processes of institutional and constitutional reform.
- » The main targets of reform measures are the police, the judiciary, and civil and military intelligence institutions and, as a first step, often entail the vetting of members of the government, armed forces, military and police who may have been involved in human rights abuses.
- » Programmes of Disarmament, Demobilisation and Reintegration (DDR) or Security Sector Reform (SSR) represent some of the most frequently used tools of institutional reform that are also closely linked to broader justice reforms.



## TRANSITIONAL JUSTICE IN PEACE PROCESSES: CHALLENGES AND POTENTIALS

The need for a comprehensive and holistic approach

Transitional justice is not a panacea for peace and requires a holistic and balanced approach to peace processes that combines and links the four pillars of prosecution, truth-seeking, reparation and institutional reform. If not carefully designed, tailored to the context and agreed upon by all relevant actors, transitional justice may in fact put the delicate balance present in post-war societies at risk. As conflicts are complex, context-dependent and multi-faceted, there is no definitive model for navigating the parties' demands, interests and concerns around transitional justice. In order to make negotiations on transitional justice meaningful and effective, negotiating parties need to develop an informed understanding of the key challenges and trade-offs linked to transitional justice provisions in a post-war context; understanding the ways these challenges might affect a holistic approach to negotiations is crucial.

- » Justice systems in post-war arenas are often very weak or heavily politicised which is why **impartial prosecution represents an enormous challenge for public institutions**. Some actors may even promote victors' justice or revanchist prosecution. To strengthen the capacity of legal institutions, criminal prosecutions need to be linked to effective judicial (and institutional) reforms, complementary (or alternative) means of justice, and internal as well as external support structures.
- » On the other hand, it is important to embed **truth-seeking** efforts in a legal and normative framework of judicial initiatives such as compensation for victims or institutional reform. Without these, there is a real risk of truth-seeking measures being perceived as talking shops or fig leaves for a peace process that fails to address more substantive questions of justice.<sup>3</sup>
- » **Reparation programmes need to be closely linked to other tools and programmes of justice** if they are not to be (mis)perceived as one-off pay-outs for victims.
- » Finally, institutional reforms need to build on a solid foundation of participatory measures and tools, such as truth-seeking and public hearings, in order to make them effective and inclusive in addressing the genuine needs, interests and concerns of victims.



In confronting impunity, seeking fair and effective redress, and preventing recurrence of violence, transitional justice should not follow the logic of routine application of normative standards; instead, transitional justice should be tailored with a careful and conscious appreciation of the context in which it will operate. As part of a holistic approach, it is important to examine if, where, and how transitional justice interacts and overlaps with other initiatives in a peace process, including DDR, SSR and the broader transformative agenda.

### EXAMPLE: SOUTH AFRICA



Questions relating to transitional justice played a key role both before and after the multi-party negotiations in **South Africa** (1990–1993). During the talks between the African National Congress (ANC) and the apartheid government in Pretoria, issues relating to the legal prosecution of former perpetrators, truth seeking and reconciliation, reparation for affected communities, as well as broader issues around the transformation of justice, political and social institutions were among the main points of contention. With the release of Nelson Mandela, seen as one of the main trust-building steps in the talks, negotiations between the two main conflict parties led to an agreement that the Truth and Reconciliation Commission (TRC) – mandated in 1995 – would take up these questions. Based on its final report, the TRC authorized a highly contested “amnesty for truth” law, which has partly been interpreted as a buy-in for former National Party leaders to the political transition. Although the peace process in South Africa is often viewed as a success story, the road to justice has largely excluded victims. Even decades later, the most important forms of prosecution and reparations have not been implemented.

## EXAMPLE: LIBERIA



The civil wars in **Liberia** between 1989 and 2003, remain some of the deadliest conflicts on the African continent, with over 200,000 conflict-related deaths. The Comprehensive Peace Agreements (CPA), agreed upon by the main parties in Accra in 2003, paved the way for a roadmap to peaceful political transition, including initiatives to promote meaningful justice, which are seen as key contributions to the country's relatively fast transformation after over 15 years of civil war. Based on the CPA, two main components of transitional justice, truth seeking and security sector reform, have been codified and implemented. The Truth and Reconciliation Commission (TRC) conducted far-reaching investigations, collecting tens of thousands of statements and

testimonies, distilled in a final report in 2009. While the transitional justice process in Liberia has constantly suffered from insufficient means of implementation, both truth seeking and security sector reform have produced tangible dividends for the peace process: the Liberian army was completely demobilized and reformed, and the police and other national security agencies vetted and retrained.

## NEGOTIATING TRANSITIONAL JUSTICE: KEY CONSIDERATIONS

The need for a comprehensive and holistic approach

During peace negotiations, questions of justice and accountability for past crimes can be a central point of contention for parties. They may only want to engage in negotiations if they receive guarantees (or amnesties) that allow them to secure positions of power in the post-war status quo. A core dilemma is that **justice and negotiations do not necessarily go together** and follow distinct logics of interaction:<sup>4</sup>

- » In contrast to negotiations, which entail independent and dynamic processes for finding compromises mutually agreed upon by the parties, justice is something that actors feel entitled to, often referring to absolute legal claims; this, by default, limits the space for compromises.
- » While any meaningful system of transitional justice needs to broaden direct or indirect participation to include marginalised voices and their respective interests, peace negotiations are traditionally limited to an exclusive arena accessible only to the main conflict parties. Negotiating justice thus needs to bridge the gap between being effective and inclusive in order to produce tangible agreements that reflect the needs of broader society.



- » Experiences from post-conflict arenas in Uganda, South Sudan and Mali have highlighted that limited participation by the most affected actors (and the inclusion of their perspectives) in the negotiating arena remains the key challenge to making transitional justice truly inclusive and effective. This in turn, **negatively affects the long-term implementation of peace accords.**
- » Addressing transitional justice in peace negotiations has increasingly proven to be important for the durability of peace processes as it provides opportunities for long-term reconciliation in post-war societies.

## NEGOTIATING TRANSITIONAL JUSTICE: KEY CONSIDERATIONS

The need for a comprehensive and holistic approach

The majority of recent peace agreements require provisions for the role of transitional justice. However, many peace processes still fail to include meaningful and context-sensitive ways to ensure that justice and accountability are addressed in the post-war arena, thus limiting the durability of the peace process and any tangible peace dividends for society as a whole.

Empirical evidence from years of qualitative and quantitative research shows that:

- » In conflicts where claims of injustice are key conflict issues for broader societal groups, peace processes that do not provide the space for addressing these justice issues generally limit the opportunities for restoring the rule of law, which remains a key component of post-war stability.<sup>5</sup>
- » Within the framework of political, social and economic exclusion, lack of access to justice systems remains one of the core drivers of conflict mobilisation, particularly in protracted conflicts with repeated cycles of violence.
- » Not addressing the justice system that is perceived as being dysfunctional, politicised or arbitrary, increases the risk of further disenfranchisement and polarisation of broader segments in society. This is particularly true for states transitioning toward democracy.

### What about amnesties?<sup>6</sup>

- » According to international law, serious international crimes such as crimes against humanity, war crimes, and genocide cannot be the subject of amnesties in the post-war context.
- » The Rome Statute of the ICC rejects the application of amnesties for serious international crimes and requires its signatories and the United Nations not to support parties and processes that agree to such provisions.
- » Beyond the legal dimension, empirical evidence suggests that negotiations that are able to balance spaces for retributive (criminal prosecution) and non-retributive forms of justice are associated with more durable peace dividends than those having an exclusive focus on amnesties. The latter tends to destabilise the balance in arenas of transition.

## NEGOTIATING TRANSITIONAL JUSTICE: RLM PERSPECTIVES

### Crucial questions for RLMs

Reconciling enabling and constraining factors during negotiations while at the same time approaching sensitive questions of transitional justice can be a crucial challenge for RLMs. Many RLMs draw their membership from highly diverse and heterogeneous constituencies, bringing together the combatants from the armed wings of the movement as well as political/human rights activists. Therefore, it is not unlikely that the understanding that members have about whether and how transitional justice should be dealt with, may diverge significantly. For negotiators from RLMs, the following considerations may support an informed approach to tackling some of the main challenges:

#### Advocating for and initiating reforms

- » Measures such as an independent process of internal investigation of crimes can strengthen the capacity of RLMs to meaningfully mitigate the challenges of future truth-seeking and investigation processes against their own group.
- » By initiating internal processes, non-state actors may later be in a stronger position to present themselves as credible advocates for justice and reconciliation in the peace process, paving the way for international support.
- » At the same time, meaningful engagement in internal truth-seeking and reconciliatory dialogue represents a cornerstone for the transformation of RLMs into non-violent political actors, allowing them to reconcile interests of their constituencies, including human rights movements.

#### Preparation and capacity building

- » Lead negotiators need to prepare the relevant group stakeholders within their movements for engaging in the demanding long-term process of dealing with the legacy of armed conflicts vis-à-vis both their own and their adversaries' role in severe human rights violations.
- » RLMs' core constituencies may have diverging interests, the movements need to develop an understanding and a strategy of how and when to deal with conflicting positions related to transitional justice in negotiations.

## NEGOTIATING TRANSITIONAL JUSTICE: RLM PERSPECTIVES

### Crucial questions for RLMs

- » The effective negotiation of transitional justice builds on a foundation of shared internal definitions and expectations as well as a mutual understanding of justice and the related key objectives of the peace process based on a thorough assessment of core demands from grassroots members, communal leaders and leadership.
- » Public consultations or informal dialogue with other parties can be useful for mapping the demands for accountability which may arise from different groups throughout the peace process and can inform a strategic approach.
- » The preparatory stage should also focus on clarifying which resources (human, ideational or financial) may be needed to prepare for and process negotiations on transitional justice and whether, and to what extent, external support will be required.

### Navigate the international framework of transitional justice

- » The international framework conditions (enabling factors as well as possible limitations) need to be known, shared and communicated among RLM key stakeholders as a basis for viable internal decision-making.
- » It is crucial to raise awareness that crimes against humanity, war crimes, genocide or gross violations of human rights cannot be subject to amnesties and that any amnesties granted would have no effect in countries where universal jurisdiction is used to prosecute these crimes or before international courts such as the ICC.
- » Beyond the legal implications, the question of amnesties needs to be put in context for the RLM negotiators. A focus on amnesty provisions during the negotiation process may lead to a severe loss of credibility for negotiating actors (governments or RLMs) in the process of political transformation and may close the door to external support.

### Integrated approach of negotiating justice

- » While the skills and capacities of negotiating teams are an important consideration, a meaningful approach to transitional justice in peace negotiations requires permanent information management and coordination with internal key stakeholders.

- » Continuous dialogue with key interest groups, such as informal elites and armed constituencies, needs to address possible limitations and concerns about transitional justice before sensitive issues (criminal prosecution, vetting, truth-seeking) are exposed to the outside world.
- » Mitigating and anticipating these moments of contention well in advance can prevent friction that may arise within the movement due to unclear expectation management. In fact, in a best-case scenario, the foreshadowing of issues may support RLMs in broadening the consensus and engaging meaningfully with affected communities.
- » Support from external parties and former conflict actors who have undergone these transitions, from internal preparation to negotiating issues of justice can help to inform strategy-making and awareness-raising among constituencies.

## FROM NEGOTIATING TO IMPLEMENTING JUSTICE

The transition from negotiating to implementing transitional justice is characterised by a variety of challenges. Wherever negotiation processes fail to spell out a clear understanding of how, when and based on what resources the transitional justice measures in a peace agreement should materialise, the risk of incomplete (or manipulated) implementation arises. The consequences of this may be detrimental to the long-term viability of peace processes and may jeopardise the remaining foundations of trust and reconciliation between parties and societal groups; these factors therefore need to be taken into account when codifying transitional justice.

### **Frequent challenges for implementing justice provisions in peace processes:**

- » Vague wording in the codification of justice provisions, such as truth-seeking or reparation programmes where parties fail to define the responsibilities, timelines, affected groups or communities.
- » The inability (or lack of willingness) of parties to provide tangible perspectives for post-war justice due to a lack of implementation milestones, verification or evaluation mechanisms and a similar lack of security guarantees for affected/targeted groups.

### Implement- ation challenges

## FROM NEGOTIATING TO IMPLEMENTING JUSTICE

### Implementation challenges

- » Failure to adequately address power asymmetries between negotiating parties that are linked to a respective capacity gap (particularly for non-state actors) in navigating the justice arena and responding to accountability.
- » Key challenges related to the reconversion of armed actors, such as the possibility of intra-party splits, are neither anticipated nor taken into account in the negotiation process.
- » Justice measures are not fully negotiated, neglect local context realities, and serve as a standard procedure to fulfil the minimum criteria for international recognition of a peace agreement.
- » Key questions relating to truth-telling, memory and dealing with the past are not based on a common understanding of conflict parties, or do not correspond to the perspectives of broader social groups.
- » Poor management of expectations can create serious challenges to the long-term implementation of justice and reconciliation measures, if the foreseen mechanisms in the peace accords do not correspond to the financial, institutional and human resource situation of the post-war arena.

## RECONVERSION AND TRANSITIONAL JUSTICE: CHALLENGES FOR RLMS



The Chapultepec Accords, settled in 1992 between the El Salvadoran military government and the Farabundo Martí National Liberation Front (FMLN), paved the way for a comprehensive roadmap for peace in El Salvador. The core elements of the accord included the reduction of the El Salvadoran armed forces, the dissolution of the National Guard and the National Police as well as a complete demobilisation of the FMLN. The process was closely linked to measures of transitional justice including the vetting of former combatants in their transition to political positions using the reports of the

Truth Commission that was led by UN-appointed international commissioners. While the report of the truth commission *From Madness to Hope* confirmed that the vast majority of war crimes could be attributed to the El Salvadoran armed forces and FMLN cadres were only accountable for around 5% of incidents, the results led to immense friction within the movement. Eventually, the possibility that former FMLN combatants who were accused of human rights violations would be prevented from running for public office led to internal splits between the movement's main



factions, disenfranchisement of the FMLN human rights wing, and an unfavourable stance vis-à-vis the commission's report. The party's inability to deal with and anticipate these internal frictions, is seen as a crucial factor behind the split in the movement and limited the general implementation of transitional justice measures. For some former leaders of the FMLN's armed struggle, the reported human right violations were seen and interpreted as the "price for peace";<sup>7</sup> moreover, they viewed the FMLN's human rights banner as a growing liability for the leadership of different armed groups within the FMLN. The case illustrates that a shared understanding, joint objectives and a resilient roadmap of how to mitigate sensitive questions on transitional justice is a precondition for sustaining the cohesion of armed movements during the process of reconversion. The structure of the FMLN, consisting of five sub-groups, as well as the question of how to deal with crimes committed by their own movement were hardly taken into account throughout the peace process.

## UNDERSTANDING CHALLENGES OF IMPLEMENTING TRANSITIONAL JUSTICE

For negotiating parties, RLM and government actors alike, navigating the field of transitional justice in an effective and sensitive way, requires adopting an **incremental approach to process design** taking into account the potential challenges of implementation. Through this step-by-step approach, the more contentious questions related to accountability, institutional reform and redress for victims may first be distilled as part of an internal working consensus and cross-checked with influential societal groups before being exposed during official negotiations.

Throughout this incremental approach to negotiating justice, the following key considerations need to be taken into account:

- » Parties need to establish, develop and exchange their views on a joint understanding of justice as a principled and applicable concept, which goes beyond the friction between amnesties and prosecution.
- » Establishing an early focus on institutional reforms can create a tangible perspective (and anchor point) for the upcoming negotiation process and the tenuous situations that the negotiating teams might face before approaching questions of prosecution.
- » Timing is key: if accountability issues are tabled too early in the process, without the parties having built sufficient trust, the space for negotiating sensitive issues around accountability can be limited.

Negotiating justice:  
An incremental approach

## UNDERSTANDING CHALLENGES OF IMPLEMENTING TRANSITIONAL JUSTICE

Negotiating justice:  
An incremental approach

- » A sequenced approach in dealing with questions of accountability (especially with regard to amnesty and vetting provisions) can be helpful for building on positive momentum in subsequent stages of the process.
- » Clear guiding principles, goals and strategic milestones are important conditions for effectively negotiating justice and defining a sufficiently detailed commitment by parties to ensure later implementation of agreed-upon measures.
- » While details, a timeline, and specific deadlines for action are important, it is crucial to leave constructive space for public participation in co-shaping areas such as truth-seeking or reparation as part of transitional justice and to incrementally increase the inclusivity of transitional justice in the peace processes.

### Internal Process: Incremental approach to developing a joint understanding of justice



### Negotiation Process: Trust building, consultations and establishing consensus

**Foundation**  
Trust building and informal dialogue with key parties to the conflict

**Consultation**  
Informal dialogue and consultations with societal stakeholders and 3rd parties to establish support frameworks

**Negotiation**  
Negotiating and establishing a shared understanding and working consensus for a transitional justice roadmap

## PARTICIPATION OF VICTIMS IN SHAPING TRANSITIONAL JUSTICE

### A victim-centred approach to transitional justice

The long-term effectiveness and viability of transitional justice mechanisms depends significantly on their ability to provide inclusive pathways for the meaningful participation of affected societal groups. During the past decades, practitioners and experts have advocated for a more victim-centred approach at all stages of the peace process. According to the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, “none of the proclaimed goals of [transitional justice] can happen effectively with victims as the key without their meaningful participation”.<sup>8</sup> Consequently, victim participation combines characteristics of both an approach aimed at providing meaningful justice in transitional contexts and the substantive principles behind it. Comparative insights into experiences from previous peace processes that included provisions on transitional justice such as in Colombia (2016), Sierra Leone (1999), Liberia (2003) and Uganda (2008), allow important to differentiations to be made between direct and indirect ways of including victims.

- » The **direct participation of victims** in peace negotiations represents the most inclusive way of addressing the concerns and needs of victims during a peace process. Direct participation can take various forms and fulfil different objectives, ranging from full empowerment and collaboration during peace talks to victims providing regular or incidental input during certain rounds of the negotiation process.
- » **Indirect victim participation** in peace talks is, by definition, less focussed on the direct integration of victims’ voices into the negotiations and therefore limits the space and possible outcomes to shape negotiation outcomes through direct exchange between interests, concerns and needs that are likely to be divergent. Nonetheless, indirect forms such as collaboration, observation or consultation may still provide meaningful input.

**No “one size fits all” approach.** Each context requires a different approach to allow for meaningful and yet conflict-sensitive participation that ensures buy-in from the broader society. While it is important to find the most direct way of broadening participation, some contexts remain highly polarised and may require indirect forms of victim participation to avoid complications for the broader peace process.

## PARTICIPATION OF VICTIMS IN SHAPING TRANSITIONAL JUSTICE

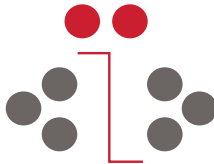
A victim-centred approach to transitional justice



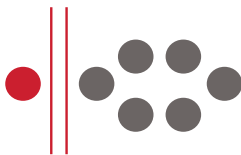
In the peace process between the government of **Colombia and the FARC**, victims participated as **special envoys** during the official negotiations. The method embodied the idea of endorsing the direct representation of victims' voices and concerns as a distinct group with an interest in the codification of the peace accord. The key challenges of this method were related to the selection procedure.



Direct victim participation can also be **part of negotiating team** setup as in the case of the **Accra talks in the Liberian process**. As part of this method, negotiating parties themselves nominate victim representatives as part of their delegation. While this option makes it difficult for independent organizations to inform the negotiations, victims from both negotiating teams can act as crucial bridge builders.



In the case of **Sierra Leone**, victims were included indirectly as **observers and advisors** during the peace negotiations (2003). Partly relying on the strong role of civil society and religious actors in facilitating the peace talks, grassroots victim organizations approached the delegations in a targeted way to inform their positioning and indirectly inform the negotiation dynamics as quasi-monitors.



In contrast to the aforementioned options, victim participation hardly played any role in informing the decision-making and negotiations during the **Juba talks (2008) on the Ugandan peace process**. While being excluded from any possible advisory or observer role, victims were only consulted through the needs- and fact-finding missions, which were eventually distilled in a report submitted to the delegations.

## 10 KEY TAKE AWAYS

1. **A holistic approach to negotiating a multi-dimensional problem**  
Negotiating a path to meaningful justice needs to take into account trade-off relationships between legal instruments that make provision for prosecution, truth-seeking, reparation and institutional reforms and link them to other portfolios of the negotiation process, including DDR, SSR and power-sharing arrangements.
2. **No “one size fits all” approach**  
Every provision must be carefully tailored to the context and reflect the nature of the conflict and the crimes committed. Reforming institutions, fostering reconciliation, restoring the rule of law and creating access to justice can only succeed if parties carefully mitigate the challenges of their environment based on a shared understanding. Exchanging experiences and ideas with peers and former conflict actors is an important means of achieving this.
3. **“Go slow to go far”**  
Careful preparation is a *sine qua non* for negotiating transitional justice effectively. Before exposing unresolved positions in the arena of formal talks, parties need to engage in internal preparation and exchange to solidify the strategic objectives for the process that are to be shared with those constituencies that will be relevant for later implementation.
4. **Raise awareness and build trust**  
Raising awareness of the potential and challenges of post-war justice among and between main parties is an integral part of any preparation process. For RLMs, negotiating justice is intrinsically linked to questions of political transformation which require resilient internal information management and decision-making on topics such as vetting processes or the trade-offs linked to amnesties.
5. **Meaningful justice requires meaningful participation**  
Transitional justice is an integral part of transforming post-war societies, fostering reconciliation and rebuilding trust. To fulfil this promise and avoid incomplete materialisation of peace accords, meaningful, yet conflict-sensitive, participation of victims is key to making post-war justice inclusive and effective.
6. **Sequencing and timing**  
Negotiating justice also requires a solid foundation of trust between parties. Issues related to criminal accountability should ideally be dealt with after parties have achieved significant milestones, including exchange of prisoners, enabling humanitarian access and/or agreeing on a statement of intent on

## 10 KEY TAKE AWAYS

justice-related questions. Coordinating these negotiation steps with external support for measures of political transformation or reparation can create momentum when tackling the more sensitive issues later on.

### **7. Managing expectations:**

Creating a tangible and realistic perspective on what forms of retribution, legal accountability and institutional access can be expected, and at what stage, is important. Implementation milestones should be defined ahead of time, taking into account the available resources and constraints.

### **8. Making use of justice traditions:**

Each society has different means, ways and resources of dealing with past crimes and injustices. Under full respect of international law, traditional mechanisms of truth-telling, dispute settlement and symbolic retribution can play a key role in promoting post-war justice and their benefits should be thoroughly examined.

### **9. Engaging in an international framework:**

Conflict parties will be required to adapt to an international framework of norms and laws of transitional justice. Knowing the limitations and potentials of this framework is a key factor for successful transformation.

### **10. Reconversion and justice:**

For RLMS, the success of political transformation, becoming a credible advocate for their movement in the peace process, and broadening the political electorate in post-war arenas is intrinsically linked to the ability to genuinely deal with the crimes committed by its members.

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- 4 Based on a panel contribution of Mark Freeman on October 27 2018 at the Berghof Foundation.
- 5 See Lynn Wagner and Daniel Druckman (2017). Drivers of Durable Peace: The Role of Justice in Negotiating Civil War Termination. *Group Decision and Negotiation*, 26(1): 45-67.
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# Aiming at Sustainable Processes

- a Managing political transformation and security transition processes
- b Paving the way for the effective and inclusive implementation of peace accords



## 3a Managing political transformation and security transition processes

### Security transition and political transformation: When, why and how?

The dynamic transitions of RLMs between armed struggle and non-violent political action are driven primarily by their decisions to shift and reconsider their overarching goals, ideology, strategies, tactics and the realities on the ground. There are many different pathways for political transition and security transformation, and each option has to be specifically tailored to each case and circumstance. Managing the transformation processes presents a number of challenges that require serious introspection and cohesion within the movement. To provide insights into the transformation and transition processes, this strategic framework seeks to answer the following questions:

- ≡ What is political transformation and security transition?
- ≡ What are the main challenges faced by RLMs for security transition and political transformation?
- ≡ How can RLMs best manage these transition processes?

### To cite

Dudouet, Véronique, Luxshi Vimalarajah and Karin Göldner-Enbethal (2019). *Managing Political Transformation and Security Transition Processes. A Strategic Framework*. Berlin: Berghof Foundation.

## SECURITY TRANSITION AND POLITICAL TRANSFORMATION: KEY DIMENSIONS

Security transition and political transformation are not linear processes in which an RLM moves “from...to...” but rather describe the complex interplay between violent and non-violent strategies. At times, both violent and non-violent strategies are used in pursuit of political goals. ‘Transformation’ and ‘transition’ (terms we use interchangeably here) describe the process that leads to a prioritisation of the non-violent strategies until they become the only method of political engagement.

### Political transformation

Political transformation describes a process that enables an RLM to engage effectively and sustainably in the political arena – a process that research has indicated to be one of the essential factors for sustainable peacebuilding. If RLMs have the opportunity to express themselves and have an impact on political governance in a post-war setting, this reduces the likelihood that their members will return to violence. The prerequisite for a successful transformation is the opening up of political space for RLMs to enter the electoral arena – for example, through electoral reforms or power-sharing provisions – as part of a peace process and its subsequent implementation. But political transformation is more diverse than the conversion from “bullets to ballots”: it also includes various forms of political and social engagement through social movements or ex-combatant associations, etc. Political transformation can be a component of negotiated agreements, but can also take place as a unilateral strategy before, during or after peace processes. It requires a willingness to build up civilian capacities and structures. Transition into a political party or social movement can ensure RLMs continue to exist after a peace agreement and is essential for the long-term acquisition and consolidation of political power.

### Security transition

Security transition is a correlate to political transformation: by “taking arms out of the equation” in RLMs’ strategies, it enables them to move forward politically. Security transitions encompass reciprocal measures by RLMs (conventionally called DDR – Disarmament, Demobilisation and Reintegration) and by the state (SSR – Security Sector Reform). Together, SSR and DDR can function as mutually supportive processes of state-building, whereby the state consolidates its legitimate power by (re-)establishing a monopoly over the use of force and restructuring its security sector, while RLMs reduce their military power but acquire democratic political leverage. [For a more detailed analysis of DDR and SSR from the perspective of RLMs, see the Strategic Framework on Security Arrangements Before, During and After Negotiations].

≡ DDR: The decommissioning of weapons, demobilisation or dismantling of combatant structures, and socio-economic rehabilitation and reintegration of fighters is a complex and sensitive process for RLMs because it targets their main source of power and leverage at peace negotiations. Security transitions also include additional confidence-building measures, such as ceasefire agreements and release of political prisoners. The choice of terminology can be a contentious matter, as RLMs at times reject, for example, the ‘reintegration’ label, arguing that their fighters never ‘left’ the social sphere; alternative terms and approaches have thus been introduced in various peace accords to address the parties’ sensitivities and the specific context. The concept of DDR follows a humanitarian logic, is usually designed as a short-term process, and is often well funded when implemented in the context of an international (e.g. UN) mission.

≡ SSR: Security sector reform could be described as “DDR for states”. SSR is a highly political process as it affects core competencies of the state. It encompasses the restructuring of the security apparatus, e.g. by downsizing, democratising and depoliticising the military, police and intelligence services, incorporating RLM ex-combatants, and providing responsive security governance under civilian oversight. SSR typically follows a development logic and is understood as a long-term, sovereign process led by national authorities; it therefore receives little international funding or support, often limited to technical (e.g. “train and equip”) assistance.

## CHALLENGES FOR POLITICAL AND SECURITY TRANSFORMATION

### ≡ Discrepancies between state and RLM priorities

One challenge relating to the transformation of RLMs in a peace process is the mismatch between their own logic, understanding and priorities, and those of (incumbent) state actors.

State	Mismatch	
<ul style="list-style-type: none"> <li>» Negative peace (absence of violence) through ceasefires and DDR is sufficient as a direct peace dividend because it directly increases stabilisation and citizens' security</li> </ul>	Peace dividends	
<ul style="list-style-type: none"> <li>» Prefer the peace negotiations to result in incremental change within the existing constitution and state structure</li> </ul>	Depth of change as a result of negotiations	
<ul style="list-style-type: none"> <li>» Need to be re-elected</li> <li>» Elections can bring leadership change entailing a loss of knowledge of the peace process, lack of willingness to negotiate, or lack of commitment to implement agreed reforms</li> </ul>	Internal political priorities	
<p>→ DDR first, negotiate structural change later</p>	Timing	

### ≡ Embedded asymmetry

The timing of security transition is often understood as a sequenced process whereby DDR usually comes before SSR. This embedded asymmetry promotes the perception of a biased, statecentred and unbalanced peace process, determining “winners and losers” (Van Dyck 2016). The imbalance pertains to two central challenges:





## RLM

- » Positive peace (by addressing direct and structural violence) needs to be attainable through peace negotiations, the root causes of the conflict therefore need to be addressed to show a peace dividend to its constituency
- » Prefer peace negotiations to result in a transformation of the existing constitutional framework and state structure
- » Need to build socio-political capacities to 'survive the peace' and exert power beyond demobilisation and decommissioning
- » Need to show political success to maintain coherence and internal legitimacy

### → Negotiate structural change first, DDR comes later

- » **Loss of power source:** The RLM faces the risk of becoming de-capacitated by the DDR process before achieving its goals if the political transition is delayed or blocked (e.g. elite resistance, electoral setbacks) and the RLM finds itself with neither military capacity (hard power) nor political power (soft power).
- » **SSR might never be completed:** Implementation of the state's security reform can be a slow process if there is a lack of political will or if the RLM cannot muster enough political leverage or international support to enforce compliance by the government. Incomplete SSR can betray the promise of the peace agreement as the state does not increase its legitimacy to represent and protect all civilians equally.

## CHALLENGES FOR POLITICAL AND SECURITY TRANSFORMATION – CONTINUED

### ■ **Changing the perception of security transition as a technical endeavour**

International agencies tend to perceive security transitions as purely technical processes; in reality, however, they have highly political ramifications for the peace negotiation as a whole, but especially for the RLM, as it needs to manage its own reconversion while maintaining coherence and internal legitimacy. There is a lack of recognition and knowledge of RLMs' perspectives and perceptions of these dilemmas during transition.

### ■ **Steering the process**

RLM leadership is essential during political and security transition processes to maintain internal coherence. Organisational structures, hierarchies and decision-making mechanisms need to be adapted to the new realities of the political terrain (e.g. as a political party) while maintaining efficient leadership. Knowledge, planning and preparation for the challenges ahead, and strategies to steer transformation processes, are essential.

### ■ **Keeping the momentum and spoiler management**

Keeping the momentum during transition and managing (potential) internal or external spoilers can be challenging when the pace of change slows down and the process becomes stuck or when diverse constituencies have to be integrated and their different needs addressed – from former fighters and underground militants to civilian allies (e.g. social activists), emerging politicians, new supporters and broader audiences.

### ■ **Legal impediments**

At times, efforts to set up civilian structures are disrupted by legal impediments (bans, proscription) and criminalisation efforts by the government. This can challenge the political transformation process as RLMs need sufficient space and time to develop civilian structures and interact with society. Safety provisions and institutional guarantees for political participation should be covered in the peace negotiations; however, ensuring the government keeps its promises can be difficult.

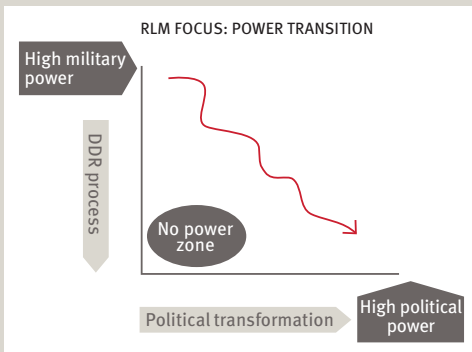
### ■ **Adopting and cultivating a new political culture**

Another challenge specific to RLMs is the need to build and maintain a new internal culture that reflects the needs of a democratic political party. The new rules and norms of decision-making must promote open discussions and participatory processes as necessary steps for internal consensus-building and for the political efficacy of the governance system. This can require new forms of communication, changes in leadership styles, leadership renewal, and new approaches to asserting power and compliance throughout the hierarchy.

## IMPLICATIONS FOR THE NEGOTIATION AGENDA: OPTIONS FOR DESIGNING A MORE BALANCED SECURITY AND POLITICAL TRANSITION PROCESS

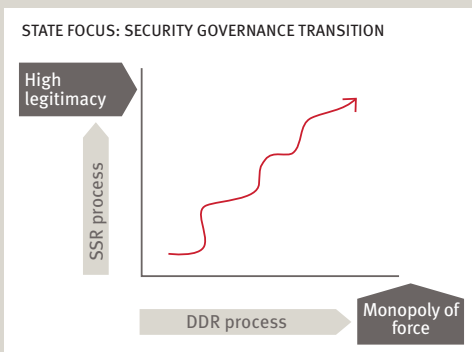
A holistic approach to RLMs' transformation during peace processes is based on the premise that political and security transitions are, intrinsically, mutually dependent and therefore need to be designed and implemented in a parallel and reciprocal fashion.

### Combining security and political transformation: transforming the sources of power and legitimacy



of power to another while continuing to pursue their historical goals non-violently in the democratic political sphere (“same path, new shoes”). This approach helps RLMs avoid the risk of finding themselves in a “no power zone” of having lost their military leverage while lacking the necessary space and scope to develop political capital.

From the perspective of an RLM, a combined political and security transformation entails a process of building up, developing or consolidating the political capacities of the organisation as a party or social movement at the same time as dismantling its security apparatus. This combined process aims to shift the locus or centre of gravity of power from military force (weapons) to political engagement. This transition of power enables RLMs to take advantage of the peace process to convert one form

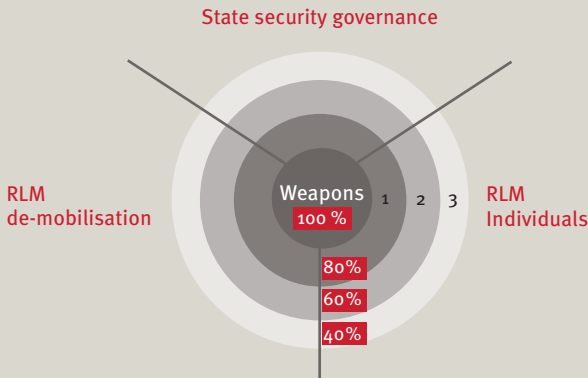


With regard to the state, a holistic approach combining DDR and SSR can also be visualised as a tit-for-tat process: peace agreements enable post-war governments, including their security apparatus, to be perceived as legitimate and democratic by the population (through SSR and structural reforms) while asserting their monopoly over the coercive use of force, hence presenting themselves as the sole security provider for all citizens (through DDR).

## IMPLICATIONS FOR THE NEGOTIATION AGENDA: OPTIONS FOR DESIGNING A MORE BALANCED SECURITY AND POLITICAL TRANSITION PROCESS

### Linking processes through concurrent implementation

#### STATE AND RLM: RECIPROCAL – INTERRELATED – CONCURRENT



When linking political and security transitions, benchmarks can help build credible commitment by both sides and balance the timing and sequencing of DDR, SSR and political reconversion. A diagram designed by Mark Knight (2018) visualises the parallel implementation of four interrelated and concurrent components of security and political transition: weapons (decommissioning), individuals (reincorporation

of fighters into society), organisation (RLM demobilisation and party formation) and state security (SSR). This model underlines a transactional approach to post-war transition whereby RLMs progressively relinquish their military capacity in parallel to acquiring political capacity and receiving assurances that the state is adopting and implementing a new, legitimate and inclusive national security strategy.

### EXAMPLE: IRELAND



In **Northern Ireland**, the Irish Republican Army (IRA) realised that it was caught in a military stalemate and there was no possible military solution to the political conflict. The IRA conducted intensive negotiations with its own base during the peace process, and negotiated with the British government through the nationalist political party Sinn Féin. Within the framework of the peace process, and its formalisation in the 1997 Good Friday Agreement, the IRA accepted a power-sharing model and Sinn Féin as the

exclusive body representing the nationalist cause. The IRA itself was directly engaged only in the decommissioning process. The trust-building *quid pro quo* process was supported by an Independent International Commission on Decommissioning (IICD), which functioned as the recipient of the IRA's weapons. Two (formerly) high-ranking church officials were invited to accompany and witness the process of destruction of IRA weapons. The security transition was implemented reciprocally and in parallel to other commitments defined in the Good Friday Agreement, such as police reform, while Sinn Féin consolidated its political capacity by taking part in local and national elections and Northern Irish power-sharing institutions.

### ≡ Unilateral options

A unilateral strategy might be applied when deemed beneficial in the absence of negotiated settlements. Unilateral moves can strengthen the position of RLMs and bring them closer to their political goals as they can build trust, increase support among their own people and within the international community, and promote greater understanding for their cause. Unilateral action can be useful when governments are not ready or willing to engage in peace negotiations, but unilateral steps can also be undertaken as part of a peace process. Ceasefires are often declared unilaterally to encourage progress and build trust in RLMs' capacity to commit their members to non-violent behaviour. However, as outlined in the example of the Basque Country below, a more comprehensive DDR process can also be handled unilaterally.

In most cases, the international community has a crucial role to play in supporting, legitimising, securing and monitoring disarmament processes. But decommissioning (by putting arms out of operational use) is most effective when it is a voluntary process, with the armed organisation and the community being in the driving seat (in terms of implementation and oversight, respectively). When RLMs engage in a process of self-led decommissioning, transparency and public communication of the shift in strategy can help to demonstrate their genuine decision to pursue non-violent politics, sending a powerful and dignifying message that puts the RLM in a strong position and avoids the impression of surrendering.

## EXAMPLE: BASQUE COUNTRY



Starting in 2011, the **Basque** independence movement progressively came to the realisation that, in the absence of any political will for a negotiated settlement on the part of the Spanish government, it needed to create an alternative pathway to peace. The Basque public was strongly opposed to violence, and so the leaders of the Basque armed group Euskadi Ta Askatasuna (ETA) realised that armed struggle was not sustainable and that a transition to a non-violent strategy would better serve their agenda in their pursuit

of an independent Basque state. Accordingly, ETA first announced a unilateral and permanent ceasefire in 2011, followed by a declaration of cessation of armed activity. An unofficial International Contact Group (ICG) of respected international figures promoted the establishment of an International Verification Commission (IVC) to monitor the ceasefire and later also the decommissioning and disarmament of ETA. Despite resistance by the Spanish government, the IVC proceeded and eventually completed the inventory and sealing of ETA's arsenals. The Spanish government blocked any further disarmament of the sealed weapons, insisting on an official "surrender" by ETA. Yet ETA managed to maintain coherence and in 2014 announced the dismantling of its logistics and operational structures.

Meanwhile, civil society organised around a common platform, the Social Forum, which promoted ETA's disarmament along with the resolution of all 'consequences of the conflict' (e.g. transitional justice and human rights) and included a wide range of Basque social actors in the discussion of options to continue the stalled process of disarmament. By 2016, that network formalised into the Permanent Social Forum and a group of individuals – the Artisans of Peace – set out to break the Spanish government's blockade. The proposed solution was to transfer the responsibility for the destruction of the ETA's weapons to Basque civil society in collaboration with the IVC. ETA agreed on condition that the process could not be perceived as a surrender. The Permanent Social Forum and the Artisans of Peace managed to create a wide support base for ETA's disarmament among local civil society and local and regional institutions in the (French and Spanish) Basque Country, such as regional governments and city mayors. This legitimised the proceedings and in April 2017, on a public "Day of Disarmament", the Artisans of Peace handed over information on the inventory and locations of weapons caches, which it had received from ETA, to the representatives of the IVC and two international witnesses. The IVC then transmitted the information to the French authorities who collected and destroyed the caches (located on French territory). ETA's disarmament had become a dialogue process between ETA and civil society, which avoided the impression that France had negotiated with ETA or that ETA had surrendered to Spain, as no Spanish police authority was involved. Through the active participation of Basque civil society representatives, ETA allowed the very society in whose name it had (allegedly) taken up arms to become the main agents of the decommissioning process (Basque Permanent Peace Forum 2017).

## FACTORS CONDUCTIVE TO EFFECTIVE POLITICAL TRANSFORMATION

There are many known factors that support a successful transformation of RLMs, including the leadership's level of internal legitimacy and the structural coherence of a group, both of which reduce the danger of splintering during the difficult transition "from bullets to ballots". Other supporting factors can be promoted actively by RLMs by setting out strategies to deal with future challenges and building capacity and knowledge to mitigate their impact. Through proactive anticipation of transition pathways, multiple strategies are thought through and can be applied and/or combined according to the evolving process. A "principled pragmatic" approach can ensure that RLMs remain true to their core principles while adapting tactical choices by constantly asking themselves what course of action best serves the overarching goals at each step of the transition, given the overall political environment.

### Internal factors

- » Political agenda and prior political experience
- » Internal cohesion and discipline
- » Social legitimacy among the wider society/ constituency

### Peace process factors

- » Levelling the (technical/ political) playing field at the negotiating table
- » Peace agreement provisions: guarantees of participation and institutional reforms
- » Innovative scenarios to bypass institutional blockages

### International factors

- » Diplomatic support
- » Technical support (capacity-building)
- » Guarantees and monitoring of security/ political transition

### ≡ Maintaining internal cohesion throughout the transition

Internal cohesion is challenging to manage and preserve throughout the transition process but is highly relevant for success. To forge a consensual commitment to a peaceful transition, the RLM leadership needs to formulate a clear strategy on how to move forward – not a strategy based on a tactical compromise between the polarised positions of "pragmatists" and "hardliners", but a distinct pathway which everyone can commit to. Communication and explanation of the new strategy among members are then essential. Internal consultations help to initiate and promote discussion and can alleviate fears or insecurities by opening the space to address them throughout the internal hierarchy and with the broader support base. The new strategy can function as a vision that the leadership can promote internally to mobilise support for change and counterbalance conservative tendencies that resist change. Leaders play a central role in promoting compliance with the new strategy: they need to be capable, bold

and committed and have sufficient authority to align all members behind their positions. The continuity of leadership throughout the political and security transition helps the accumulation of knowledge and experience; this was the case in the Northern Irish peace process, where the historical leaders of Sinn Fein remained involved in the negotiation, implementation and consolidation stages of the new political strategy. Efforts to maintain cohesion can also help cultivate a new political culture, such as a practicing democratisation by opening up decision-making and establishing participatory norms and practices.

## EXAMPLE: BASQUE COUNTRY



The **Basque** independence movement, Abertzale Left, encountered several key moments of internal debate and consensus-building during its political transformation and security transition. After the collapse of the 2006-2007 peace negotiations, the movement was disoriented and divided. Internal cohesion was threatened by diverging interpretations of why the negotiations had failed and which strategy it should pursue: for some, the continuation of non-violent strategies was considered the only way forward, while others argued in favour of maintaining the full spectrum of armed and unarmed capacities to maximise leverage. A third group promoted armed escalation in order to strengthen the negotiating position in future. The division spanned the entire Abertzale Left, from the armed group ETA to the banned political party Batasuna and civil society organisations such as trade unions.

In that situation, the leadership around Arnaldo Otegi, the imprisoned leader of Batasuna, developed a new strategy to build a larger social alliance and engagement with international actors by promoting political engagement and military demobilisation. Upon his release from prison in 2016, Arnaldo Otegi continued the path of internal consultations with more than 300 Batasuna cadres and 1,000 grassroots social movement members. The final step of extensive internal consultation to confirm and consolidate the peaceful political strategy was centred on the decision to dismantle the armed organisation ETA. Internal debates took more than a year due to the efforts made to consult exiled and imprisoned ETA members as well as active members and those 'on the run'. The intention was that every member had to be part of the decision to dissolve the organisation in order to maximise the commitment to the solution. By the end of the process, a total of 3,000 members had participated and 1,000 cadres had voted in favour of formal demobilisation. As a result, ETA announced its complete dismantling in May 2018, combined with a statement of apology to all the civilian victims of past violence (Airtza Azurtza 2019).



### Third-party roles

Various third parties can be involved in supporting transformation processes: international agencies, civil society actors and local community leaders such as religious or traditional figures. Their role can range from providing political and diplomatic support, to technical assistance and capacity-building, and/or serving as guarantors or monitors.

Technical assistance and capacity-building can mitigate security challenges, such as trained experts managing weapons collection as part of disarmament programmes, as occurred in Aceh through an EU-led Aceh Monitoring Mission (AMM). Apart from large-scale international monitoring missions, various other models have also been applied, from independent commissions made up of foreign experts and eminent persons (see Box 1 on the Northern Irish peace process), to mixed bodies comprising representatives of international organisations, the main conflict parties and civil society. Civil society organisations (including the media) have a crucial advocacy role to play in delegitimising the use of force/arms, for example, by mobilising campaigns demonstrating public support for a full and timely decommissioning process. Direct engagement in verification and monitoring can also come from religious or civil society figures using their moral authority and/or representative power to lend credibility to the process and assert community ownership over the transition. Their involvement during the decommissioning process can avoid creating the impression that the RLM is “surrendering” its weapons to the (former) enemy (see Box 2 on the Basque example).

## EXAMPLE: COLOMBIA



The 2012–2016 Havana peace process between the Colombian government and the Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP) embodies most factors highlighted in Table 1.

First, internal cohesion and discipline were maintained thanks to the participation of commanders and combatants from the seven blocks of the national FARC-EP structure, and several summits to debate and agree on the new political strategy. For example, a Central High Command Plenary held in 2015 focused on internal arrangements for an eventual political transition and opened an internal debate about gender and feminism, leading to the first female commander being elected to the Central High Command. Discussions across all fronts and cells culminated in the 10th Conference of FARC-EP in September 2016, when members voted on the final agreement. The political transition was formalised at the first Congress of the new party in August 2017 where it adopted a series of measures for political action without weapons, voted on a new name (Common Alternative Revolutionary Force – FARC), a party logo and statutes,

and elected a new political direction. This was the first time that clandestine militants had participated in a national-level discussion on the strategic direction of their movement.

Secondly, the peace accord provided a conducive institutional framework to support and safeguard the political participation of FARC members. The Final Agreement stipulates rights and guarantees for the engagement of the political opposition, including a comprehensive security system to protect politicians and electoral reform provisions. It also includes dedicated measures to support FARC's political transformation by guaranteeing funding and media coverage for its election campaigns and new political entities (political party and think tank) and securing its political representation during two Congress periods (from 2018 to 2026) through five guaranteed seats in the Senate and the Chamber of Representatives.

Finally, FARC received significant international support for its political transformation and security transition. The United Nations Verification Mission in Colombia monitored the progress of both parties with respect to the commitments they had made in the peace accord, including the 2018 election where FARC participated for the first time. In particular, the UN mission oversaw the decommissioning process and its various steps (registration, identification, verification of possession, collection, storage, removal and final disposal) and supported the cantonment and demobilisation of FARC-EP troops in 23 "transitory normalisation zones".

However, after fifty years of underground militancy and armed struggle, the movement lacked prior political experience. This partly explained some of the challenges it faced in building a credible political party and transforming its public image, which would have also needed a well-planned and professional media strategy. The new party also faced the challenge of integrating not only ex-combatants but also clandestine militants from social movements, and broadening its appeal to new members. In the 2018 general election, its candidates received less than 1% of the votes across the country. The design of the peace process also had some inherent weaknesses, such as the failure to integrate a *quid pro quo* approach: the bilateral ceasefire and laying down of weapons were disconnected from a binding timeline for the government's fulfilment of its commitments. In fact, the government failed to comply with the agreed measures on political reintegration, delayed funding for the FARC party and did not implement the promised preventive protection measures. The most tragic outcomes of the demobilisation process were the selected killings of ex-combatants and leaders of social movements in rural Colombia, while most areas liberated by FARC were taken over by paramilitary and narco-trafficking groups.

## 10 KEY TAKE AWAYS

- 1. Security transition and political transformation are interdependent and mutually reinforcing processes and must be planned and implemented concurrently.**
- 2. There is an inherent mismatch between the interests and needs of the government and those of the RLM.**
- 3. The transformation of RLMs during peace processes entails the conversion of security/military capacity (hard power) into non-violent political engagement (soft power) in pursuit of their historical objectives.**
- 4. When peace processes are stalled and state actors refuse to engage in negotiations, RLMs can take unilateral steps to shift their strategy of struggle, move forward and transform themselves politically, in dialogue with their members, social base and broader society.**
- 5. Maintaining internal cohesion and discipline during political and security transitions requires committed, bold and capable leaders who are willing to engage in inclusive internal consultations to align all members behind their strategic shifts towards non violent politics.**
- 6. Local civil society can play an active role in the promotion, formulation, support and monitoring of arms decommissioning processes, alongside, or instead of, international (e.g. UN) missions.**

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## 3b Paving the way for the effective and inclusive implementation of peace accords

### Enquiring implementation processes Why, when and how?

Why do some peace agreements fail and others succeed? Understanding this intriguing question has driven leading practitioners, academics and experts throughout the field of peace research and conflict transformation for decades. While the peace negotiation stage and questions around how to design negotiation processes feature prominently in technical literature and handbooks, the issue of implementing peace accords has been given significantly less attention – despite the fact that more than 35% of all peace agreements between 1975 and 2011 were never implemented. The implementation of accords remains a protracted undertaking and more often than not, the devil lies in the detail. There are many reasons why peace accords are not implemented. Many fail because of insufficient guarantees and a lack of detailed implementation roadmaps, others fail to materialise because governments or RLMs lack the operational capacity, the capability, or simply the will to adhere to agreed principles.

Addressing the challenges of implementation during and after the negotiation stage remains of paramount importance to government officials as well as RLMs. Questions that need to be carefully addressed in this context include:

- ≡ What are the factors that challenge or impede the process of implementation?
- ≡ How to design negotiation processes to allow for tangible peace dividends in the long-run?
- ≡ Under what conditions can political agreements begin to materialise?
- ≡ What are the technical challenges, potentials and trade-offs of a comprehensive implementation roadmap?

- ≡ What role can or should international third parties play in facilitating implementation?

By reflecting on and discussing these and other questions, we hope to provide our readers with insights on how to proactively address issues related to the implementation of accords and thereby contribute to more effective conflict transformation processes.

### To cite

Schernbeck, Nico, Luxshi Vimalarajah and Véronique Dudouet (2017). *Paving the Way for the Effective and Inclusive Implementation of Peace Accords. A Strategic Framework*. Berlin: Berghof Foundation.

## INCLUSIVE AND EFFECTIVE IMPLEMENTATION: KEY ASPECTS

Implementa-  
tion  
What is it?

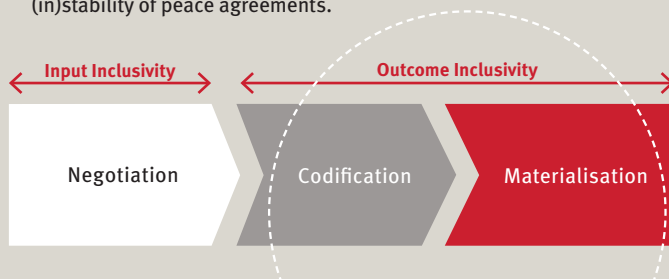
- ≡ The implementation of peace agreements refers to a stage of a peace process, where conflict parties have signed an accord and the **materialisation of post-war political settlements** takes place. Following pre-negotiations and formal negotiations, the different needs and interests of conflict parties' have already shaped the outlines, provisions and substance of the peace agreement. Based on these either enabling or limiting conditions, measures, steps and initiatives are carried out to translate the provisions of an agreement into tangible peace dividends.
- ≡ The implementation of peace agreements is a complex and multi-dimensional undertaking that involves a variety of societal actors and resources on different tracks over a varying period of time. While often separated for analytical purposes, the negotiation and implementation stages of a peace process are highly intertwined.

### From negotiation to materialisation arenas in peace processes:

- ≡ Empirical findings highlight the **strong link between political settlements, their materialisation and potential relapse into violence** with recurrent civil wars being the most dominant form of armed conflict (up to 50% of all peace agreements break down within a period of 5 years).<sup>2</sup>
- ≡ Inclusivity (or a lack thereof) is the key to understanding the **nexus between the input and outcome dimensions of a peace process**. Shortcomings in negotiations, such as not including stakeholders or critical issues, can seriously challenge effective implementation in the long-run.

Implementa-  
tion  
An inter-  
related  
undertaking

- ≡ This paper will focus on the dimension of outcome inclusivity and highlight ways to overcome implementation challenges by putting forward a holistic understanding of inclusive and effective implementation and highlighting factors that affect the long-term (in)stability of peace agreements.





There are different understandings that characterise the implementation of peace agreements and underpin the approach to long-term peace and stability:<sup>3</sup>

- » The **constitutive approach** to implementation refers to that of comprehensive and all-encompassing peace agreements where precise wording, feasibility and a detailed implementation schedule with clearly delineated responsibilities are decisive for the success of the peace process.



The **Guatemalan Peace Accords** (1996) are a good example for a constitutive approach as they provided a precise, detailed and comprehensive roadmap of steps to be taken by the conflict parties. The accords' provisions on the design of state institutions, national reconciliation as well as demobilization and integration of the Guatemalan National Revolutionary Unity (UNRG) were landmark contributions to peace in Guatemala.

- » **Instrumental approaches** follow the understanding that the agreement itself is only one step in a much longer process, emphasising the paramount need to maintain momentum and consensus-building through gradual accommodation between the peace agreement and the realities on the ground.



The **Burundi Peace Agreement** (2000) best exemplifies the instrumental approach. In the absence of crucial belligerent groups, a detailed and meaningful implementation roadmap was impossible to achieve. To move the process forward, exert pressure on non-signatories and eventually foster the conditions for an ongoing dialogue, the agreement was concluded in spite of eye-striking deficiencies.

- » **Trade-offs.** While the constitutive approach promotes a more detailed understanding of the peace process through comprehensive implementation roadmaps, its materialisation is often not feasible due to limited consensus and ongoing armed violence on the ground. The instrumental approach to implementing peace agreements can help to create the initial push for peace processes by taking into account prevailing challenges and initiating a step-by-step approach towards ongoing dialogue.

## INCLUSIVE AND EFFECTIVE IMPLEMENTATION: KEY ASPECTS

What defines inclusive implementation ?

### ≡ The dimensions of inclusivity in peace processes<sup>4</sup>

- » The role of inclusivity in peace processes is dynamic, multi-dimensional and evolves over time, linking the negotiations of a peace settlement to its materialisation in post-war political arenas. The key question for effective and inclusive implementation remains **who** should be included in designing and carrying out peace processes, **at what stage** and **to what end**.
- » In the nexus of inclusive and effective implementation, two broad aspects of inclusion are crucial: the **inclusion of actors** (social groups and sectors) and the **inclusion of issues**, namely the interests, needs and concerns of the relevant stakeholders in a peace process.
- » With regard to actor inclusivity, a distinction can be made between **horizontal inclusivity** (relevant actors are represented at the table) and vertical inclusivity (parties themselves represent different segments of their constituency). In contrast to **input inclusivity** (inclusive design of negotiation processes), **output inclusivity** refers to the materialisation and inclusive implementation of a peace agreement.
- » As most implementation processes take several years to unfold, the framework conditions as well as the needs and concerns of actors tend to change significantly. Implementation roadmaps need to plan for and cope with this time variance in order to be effective and inclusive in the long-run.

### ≡ From inclusive negotiations to effective implementation

- » Notwithstanding the distinct features of input and outcome inclusivity, key conditions for peace roadmaps, and the *rules of the game* for inclusive (or exclusive) implementation frameworks are established *ex ante* throughout the negotiations phase.
- » As the needs and concerns of parties may vary over time, negotiation processes need to be designed in such a way that they extend beyond the signing of the accord and deliver tangible peace dividends in the long-run.
- » Anticipating implementation challenges and contentions that may arise throughout the course of the peace process (e.g. increasing power disparities, practical challenges in disarmament, demobilisation or reintegration) need to form the bedrock of peace negotiation design.

- » Coping with the dynamic change of parties and their needs over time thus requires formal or informal platforms for ongoing dialogue between actors that extend beyond the end of official negotiations.

### From inclusive implementation to inclusive politics

- » Experiences from numerous peace processes over the past decades have shown that the long-term viability and success of post-settlement policies in the nexus of demobilisation, disarmament and reintegration, as well as state/security sector reform, are extremely closely linked to their degree of inclusivity.
- » Horizontal inclusion of non-state armed groups (NSAGs) such as RLMs in designing, monitoring and carrying out implementation is a prerequisite for the longevity of peace processes. Providing inclusive space for the implementation of peace agreements is a key to guaranteeing that RLMs voluntarily relinquish their capacity to engage in armed rebellion while state authorities allow for a reform of the status quo of governance and the use of force.
- » At the same time, vertical inclusion has become a precondition for the public acceptance of many peace processes and post-war policies. Experiences from processes such as in the aftermath of the Nepali Comprehensive Peace Agreement (2006) have shown that top-down approaches may result in a lack of the national/local connection in post-war political arenas.
- » Narrowing the vertical gap between authorities/post-war elites and local constituencies is crucial to improving the chances for resilient and lasting implementation of peace agreements and provides a space for long-term political transformation within the various sectors of peace/state-building.

### Effective vs. less effective materialisation of peace accords<sup>5</sup>



## RATIONALE AND CHALLENGES OF INCLUSIVE IMPLEMENTATION

### Conditions for effective implementation

Numerous factors influence or even challenge the implementability of peace agreements, among them:

- » **Contextual factors**, such as the genuine nature of the conflict (resources, ethnicity or political power), provisions foreseen in the peace accords (design and functioning of institutional mechanisms) as well as the degree of inclusivity within the various arenas of implementation;
- » **Actor-related features**, such as the internal cohesion of conflict parties, their political will and capacity to implement peace agreements as well as their political and social legitimacy;
- » Also, the degree of **support of international third parties** as guarantors of peace as well as political and institutional capacity-building actors has become an increasingly important variable when it comes to promoting effective implementation of peace agreements.

To pave the way for effective and inclusive implementation alongside these dimensions, the most crucial conditions for, and challenges of, materialisation of post-war settlements need to be thoroughly addressed, including:

#### ≡ **The capacity to implement agreed reforms**

- » Once agreement is reached, the former warring parties enter a new sphere of peace processes where they are held accountable to actual policy performance. Bridging the gap between high expectations by actors involved in and/or affected by these policies and the realities on the ground is crucial to avoiding frustration as well as anticipating and managing public discontent.
- » Post-conflict societies are often confronted with a lack of material and financial resources. In such an environment, the realistic assessment of intended results and limited financial capacity is extremely important when dealing with major hindrances to both state reform and the materialisation of inclusive governance.
- » Apart from questions of financial resources, the capacity of post-war elites to implement inclusive settlements also depends on their technical capacity to run, or take part in, state institutions.

Most war veterans, especially within RLMs, are confronted with the challenge of coping with new needs and issues that go beyond their traditional sphere of engagement in armed struggles.

### ≡ Political will

- » The political will of post-war elites can determine the effective materialisation of inclusive post-war governance. Experiences in Colombia and Nepal show that shifting priorities and policy objectives of new powerholders may affect inclusive policy programmes and the will to transform post-war societies.
- » The political will of power holders is highly dependent on the degree of inter- and intraparty consensus on envisaged reforms. While decisions taken consensually within the new political settlement are more likely to effectively materialise, decisions taken amidst inter- or intraparty polarisation might fail at the implementation stage.
- » The materialisation of inclusive governance items is often subjected to interference from traditional elites and other informal actors. Socio-economic elites that exert control over institutions and channels of authority may counter political reforms if their interests and needs are not being taken into consideration by the new post-war elites.

### ≡ Institutional or procedural mechanisms

- » Inclusive materialisation is also linked to the presence or absence of institutional or procedural mechanisms that are able to prevent obstacles and winner-takes-all monopolies in post-war political arenas. Furthermore, these mechanisms can help to establish a platform for continued dialogue among political and social stakeholders on crucial issues.
- » The longevity of post-war settlements often requires binding implementation mechanisms that integrate peace accords into a legal framework. In El Salvador, the Forum for Economic and Social Consultation (FES) was able to provide such a space by addressing questions related to land ownership and socio-economic structural adjustments.
- » Confidence-building remains crucial throughout all stages of a peace process. Mechanisms which aim at encouraging political pluralism and inter-elite cooperation help to mitigate and overcome risks that derive from interparty polarisation or monopolistic power.

## RATIONALE AND CHALLENGES OF INCLUSIVE IMPLEMENTATION

### Potentials & opportunities

Inclusive implementation and broadening participation in post-war settlements is neither a good thing per se, nor is it a purely altruistic endeavour. First and foremost, it represents a condition for anticipating and responding to imminent challenges, fostering (inter- and intraparty) political consensus and broadening the base of public support for peace processes.

#### ≡ **Broadening public support and increasing legitimacy**

Ensuring the inclusion of civil society as agents of peace throughout critical stages of a peace process can foster public support, increase the level of trust and instigate a strong connection between post-war national elites and their local constituencies. A strong mandate of rights and responsibilities for civil society actors can thus create public buy-in to strengthen the overall resilience and acceptance of peace processes. Implementation mechanisms that allow local actors to become the bedrock of a peace process increase the resilience of agreements as civil society assumes a monitoring role.

#### ≡ **Better and context-specific negotiation outcomes**

Inclusive implementation starts with the beginning of (pre)negotiations when the rules of the game are set and topics of interest are being identified. The exclusion of critical civil society actors during the negotiations of the Mali Peace Accord (2015) resulted in a situation where issues that were crucial to local populations, such as the role of criminal economies, eventually compromised the overall peace process. A holistic vision of long-term peacebuilding facilitates the necessary link between the negotiation and implementation stages and ensures the proactive inclusion of crucial issues.

#### ≡ **Strengthening long-term perspectives for peace through a culture of dialogue**

Post-conflict societies are often characterised by a deep level of mistrust. While a high degree of inclusivity in implementation mechanisms might not automatically lead to social cohesion, it provides an important launchpad for establishing a culture of dialogue to cope with the heterogeneity of needs and concerns on the ground. Measures, such as the inclusion of long-term inclusive clauses (prospect of electoral reforms) in peace agreements and civil ownership can increase the level of trust between former conflict parties and alienated segments of society.

### ≡ **Overcoming unforeseen challenges and preventing spoilers**

Broadening the scope of actors that are engaged in implementation processes can decrease the willingness of external actors to act as spoilers. Beyond the broad inclusion of civil society, inter-elite consensus can help to transform critical actors (i.e. socio-economic elites) from potential spoilers into stakeholders of the peace process. As local actors are not homogenous, the more their needs are already integrated into a peace process, the greater the likelihood of the mobilisation of the measures and resources required to overcome unforeseen implementation challenges.

### ≡ **Promoting long-term political transformation**

Shaping the future of post-war political arenas is a complex endeavour that needs to take into account heterogeneous needs and concerns. Inclusivity throughout peace processes can foster on-going dialogue and thereby strengthen the viability of recently established political institutions and security arrangements. Inclusive implementation roadmaps that open the space for long-term political transformation can enable the transformation of RLMs into political parties and increase the ownership of their local constituencies to engage in non-violent and democratic competition.

## EXAMPLE: GUATEMALA



The peace process in **Guatemala** is often highlighted as an example of inclusive participation by civil society throughout the entire peace process. The terms of implementation and democratisation had been debated over the course of six years between the government and the Guatemalan National Revolutionary Unit (*Unidad Revolucionaria Nacional Guatemalteca*, UNRG) – supported by the Civil Society Assembly, formed in 1994 with representatives from crucial sectors of everyday social life in Guatemala. After the negotiations, the Commission de Acompañamiento became one of the main instruments for inclusivity in the implementation phase of the Guatemalan peace process. Comprising representatives from the government, UNRG, Congress and civil society it was in charge of keeping the implementation schedule and the coordination with the thematic commissions on track. Despite criticism with regard to a lack of vertical inclusivity (civil society elite-driven), the commission provided an important space for continuous and constructive dialogue throughout the implementation process and strengthened the resilience of the Guatemalan peace process.

## APPLYING THE INCLUSIVE APPROACH

While RLMs are often in favour of an inclusive peace processes, they face particular challenges. In contrast to governments, most RLMs have limited access to the financial, material and ideational resources (knowledge and networks) that are required to endure and compete in post-war political arenas. Finding a context-specific approach and self-awareness in terms of capabilities and opportunities can help to gradually overcome these challenges.

### ≡ How to start with inclusive implementation

- » Inclusive implementation processes represent a comprehensive set of interconnected actions and responses to needs and concerns. Creating an opening in an environment of mistrust and continuous violence calls for a continuous and, ideally, open-ended process of confidence-building measures (CBMs).
- » Step-by-step approach: progressive increases in the transparency of communication and exchange (also via “symbolic recognition”) are crucial. First CBMs, such as the release of prisoners, de-listing of RLMs or civil society proxies, and de-militarisation of territories, can be initial stepping stones.
- » In Colombia, the 19th of April movement (M-19) concentrated its troops in one area of the country. While not giving up the bargaining chip in terms of correlation of forces, the initiative promoted de-militarisation through unilateral confidence-building
- » In numerous post-conflict countries, forums for continuous dialogue, such as joint monitoring bodies or peace commissions were preceded by on-going informal meetings. Opening informal channels for exchange and subsequently promoting their institutionalisation can diversify the peace process through different forums and tracks (including aligned civil society actors) and increase interparty consensus.

### ≡ How to enable and enhance conflict parties’ implementation capabilities

- » Coping with the lack of capacity to implement time and resource intensive peace agreements is challenging for RLMs and often requires operational support from third parties (local and/or international).

Crucial questions for RLMs



- » Identifying potential custodians for peace and creating opportunities for a buy-in of local (i.e. business-elites) and/or international third parties can bridge this capability gap.
- » Establishing a network of co-sponsors with access to material and ideational resources (negotiation & communication expertise, process knowledge, establishing technical secretariats) is particularly important for RLMs preparing as early as possible for a life after armed struggle and ensure a smooth transformation.

### ≡ **How to strengthen compliance of the parties throughout crucial stages**

- » To guarantee ownership, trust and compliance, implementation bodies (e.g. joint monitoring committees) must have parity and equality as their guiding principles.
- » Other specific (material or ideational) incentives for compliance can help to create tangible perspectives in a peace process and influence rational reasoning of parties. RLMs can encourage compliance through social pressure (information campaigns, town meetings and social media campaigns) accompanied by civil society.
- » Generating compliance also means avoiding internal fragmentation and proactively dealing with the issue of spoilers by having an inclusive forum for internal exchange. The promotion of a democratic culture of (internal) dialogue can facilitate expectation management and at the same time raise awareness on the possible consequences of non-compliance (targeted messages).

### ≡ **How to broaden public support for the implementation**

- » Civil society support can be a crucial factor to promote an ownership-based safety net and thereby steer the pace of the peace process.
- » Including civil society requires a clear communication strategy and constant exchange with local constituencies to integrate their particular interests, needs and concerns. If vertical inclusivity is guaranteed, the increased legitimacy of RLMs may bolster their mandate in the implementation process.
- » In the Basque country, RLMs agents followed the strategy of unilateral concessions (self-demobilisation, arms withdrawal and dissolution) for years in order to publicly display their willingness to support the peace process. This way of operating increased the pressure on governments to answer calls from civil society to propose a peace process.
- » Public support strategies can take various forms – from simple campaigns to raising awareness (workshops, dialogue platforms, space for consultations) to more comprehensive and all-encompassing projects, such as National Dialogues.

## APPLYING THE INCLUSIVE APPROACH

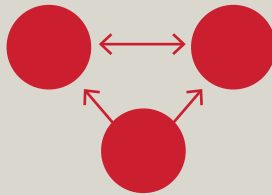
Crucial questions for RLMs

- » A referendum or plebiscite can be an important tool to validate the peace efforts of parties and broaden public support. However, the failed peace plebiscite in Colombia (2016) has shown that this approach can backfire and requires a long and intensive exchange with civil society to generate a common understanding of what is at stake.

## THE ROLE OF INTERNATIONAL 3<sup>RD</sup> PARTIES

Process facilitator & mediator

- » The successful implementation of peace accords lies in the hands of domestic actors. However, international third parties can play different and yet crucial roles in support of peace processes and in meeting the conditions for effective and inclusive implementation.



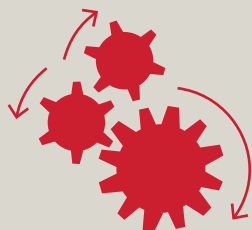
- » While relative bargaining power and relationship-building with (military) forces often characterise the outlines of negotiations, the implementation of peace accords requires a space for collaboration, where armed opponents can transform into agents of change. Third parties can help to facilitate this transition from negotiations to the implementation stage and act as neutral, internationally recognised, mediators in times of crisis.
- » Knowledgeable third parties are often the only actors capable of countering the obstacle of distrust and bringing parties from principled positions back to interest-based bargaining, during and beyond the stage of negotiations. In El Salvador, Spain's role in offering advice and facilitating joint understanding between the conflict parties was crucial to paving the way towards the implementation of the peace accord and the National Commission for the Consolidation of Peace.

### Guarantor state & monitor



- » Implementation guarantees in the military, political and territorial sectors are often key elements of sustainable war-to-peace transitions. These guarantees play an important role in enhancing the political will and ability of armed groups to transform into peaceful post-war actors.
- » International third parties can play an effective role in bolstering this reassurance by functioning as **guarantors and/or referees** throughout the various steps of implementation.
- » Third parties like the UN can also play an important role in monitoring or containing relationship-building between forces while the peace process passes through the contentious phases of implementation (especially Security Sector Reforms and stages of DDR).
- » External actors, through UN or regional peacekeeping missions and oversight mechanisms, have played crucial roles in this area, especially by providing a security overview of combatant demobilisation and monitoring the implementation of democratisation measures that enable a broadening of political participation.

### Financial & technical assistance



- » Implementation is a costly endeavour and often exceeds the capacities of domestic players in post-conflict societies. International donors and NGOs can contribute to the implementation of peaceful transition in post-war political arenas through financial aid and technical support.
- » Support for post-war stakeholders can take different forms. Third parties often possess the expertise required to promote **institutional capacity-building**, such as support for electoral reforms, equipping and strengthening existing institutions, designing institutional consultation mechanisms and necessary agencies (i.e. for reintegration or disarmament).

## THE ROLE OF INTERNATIONAL 3<sup>RD</sup> PARTIES

### Financial & technical assistance

- » Through **actor-targeted support** (training, consultation, capacity-building workshops), international third parties, including international NGOs, can strengthen the capacities of state and non-state actors to develop the skillset required to implement peace agreements and on-going dialogue/negotiations.
- » Support for **security transition** processes entails both institutional as well as actor-targeted capacity-building in one of the most sensitive areas. By offering technical assistance and knowledge resources, third parties can help to put forward inclusive and effective SSR that take the requirements of the post-war political arena into account.

### Rationale of including 3rd parties

Over the last several years, international third parties have gained an increasingly important role in many peace processes. Many conditions for effective and inclusive implementation of peace agreements, such as parties' political will and capacity to implement, as well as the overall context in which a peace process unfolds, have been inextricably linked with the presence (or absence) of the international community. The support of international third parties is particularly relevant for non-state actors, such as RLMS:

- » The engagement of international third parties can help RLMS to request international recognition of the development and implementation of a peace agreement, create a commitment to third party facilitation and thus increase the opportunity to express genuine needs and concerns.
- » By acting as a custodian of a peace process, international support can help to contain the relationship-building between state and non-state actors throughout the implementation stage of a peace process and avoid parties trying to dominate each other in terms of military resources. In El Salvador, the inclusion of regional powers (Venezuela, Mexico, and Colombia) into a group of friends helped to improve the overall resilience of the implementation roadmap.
- » The comparative knowledge and material assets third parties can contribute are often required to allow for the peaceful inclusion of NSAGs into post-war decision-making. Third party support can be of particular importance for RLMS in order to generate statecraft and governance capabilities (strengthening political department, organising training) and thereby improve their ability to compete in political arenas.

## Rationale of including 3rd parties

In order to bring international third parties on board, RLMs are often confronted with the need to develop a problem-specific approach. Strategies to make use of international third parties can take different forms and include:

- » Conducting a thorough **analysis to identify all relevant stakeholders**, key multipliers (respected elders, church, key civil society influencers, etc.) and mobilising civil society (via the media) to broaden the base of legitimacy can help to stimulate trust-building and pave the way for a gradual involvement of international third parties;
- » The **use of good offices** and institutional assistance to reach out to third parties to assist with the requirements of a peace agreement and advocate the need for capacity-building and workshops (negotiation support, technical assistance, conflict analysis etc.);
- » Working towards an institutionalisation of bodies/instruments for **strategic international networking** (i.e. international department or civil society contact points) in order to reach out to international stakeholders and have a reliable external communication structure;
- » Support a proactive role for international third parties as observers, custodians and/or monitors of implementation by making use of their institutional knowledge and instruments while advocating for the **non-duplication of roles and responsibilities**;
- » Include (international) third parties as advisors and consultants to facilitate trust-building between the conflict parties and international stakeholders in order to stimulate their gradual integration into the implementation roadmap.

## Experiences &amp; trade-offs

**Potentials and opportunities** when including international third parties:

- » Gaining access to technical and financial support, expertise and networks;
- » Making use of institutional knowledge and drawing on the power of knowledgeable international actors;
- » Levelling the playing field and creating a solid base of expectations when third parties assume a responsibility as guardians or monitors of a peace process;

## THE ROLE OF INTERNATIONAL 3<sup>RD</sup> PARTIES

### Experiences & trade-offs

- » Ensuring a platform for coordination of international and local efforts throughout the stages of the peace process.

#### **Challenges** in dealing with international third parties:

- » Third parties and international agencies are often reluctant to engage with key non-state stakeholders such as local/traditional/informal elites, as well as opposition parties or RLMs;
- » Third party mediators often fail to follow up after an agreement is signed (lack of responsibility);
- » They often pursue very genuine interests that may contradict those of one or more parties in the peace process (e.g. strategic continuation of the conflict);
- » Overreliance on and overestimation of third parties and their capabilities can deprive peace efforts of local ownership and hamper the process;
- » The inability of third parties to properly handle the social and cultural terrain may compromise their good intentions.

## 10 KEY TAKE AWAYS

1. **Be proactive in analysing and anticipating implementation challenges during the (pre-)negotiations of a settlement.**
2. **Implementation is the continuation of negotiation. Set up structures (intra- and interparty) to allow for an inclusive and dialogue-based approach to implementation.**
3. **Promote a democratic culture of dialogue to foster intra-party cohesion, avoid internal fragmentation and broaden your legitimacy.**
4. **Engage in thorough confidence-building, expectation management and do not overestimate your capabilities.**
5. **Broaden public participation throughout all stages of an implementation road-map (including planning, monitoring, and evaluation).**
6. **Include organised civil societies as stakeholders in the implementation process to bolster its resilience – make them the watchdogs of the peace process.**
7. **Analyse and map key influencers on the ground and make use of information and social media campaigns to raise public awareness.**
8. **Develop strategies and capacities to reach out to international stakeholders (good offices, international networking, civil society proxies).**
9. **Put your weight behind a clear definition of the roles and responsibilities of international third parties (mediator, referee and/or financier) and advocate for the need for joint monitoring.**
10. **Get early support from local and international structures to overcome the challenges of political transformation that will arise during implementation.**

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# Epilogue

- a The covid-19 humanitarian ceasefires and ongoing challenges for RLMs in peace negotiations

## 4a The covid-19 humanitarian ceasefires and ongoing challenges for RLMs in peace negotiations

The Covid-19 pandemic had a significant impact on peace processes around the globe. The changes and reconfigurations it brought exacerbated conflicts and prompted us to reflect on the direct and indirect implications it had on asymmetric conflict, specifically on peace negotiations between governments and Resistance and Liberation Movements. This epilogue is based on the discussions held during a Policy Roundtable titled ‘Resistance and Liberation Movements (RLMs) Facing Covid-19 & Asymmetric Negotiations’ held online on 1st of October 2020. The event brought together the members of the RLM Network, policy makers and like-minded NGO representatives to discuss the implications of the compound impact of Covid-19 on asymmetric conflicts and negotiations. It provides insights into some of the most acute legal, security, political and strategic challenges RLMs have faced in their attempts to engage in dialogue and negotiations for humanitarian ceasefires and broader political settlements. The following three key questions are addressed:

- ≡ Can humanitarian ceasefires become political ceasefires and pave the way for political negotiations?
- ≡ Can the security, safety and legal risks faced by RLM negotiators be mitigated, both during their participation in peace negotiations and in the event of a negotiation breakdown?
- ≡ How can we ensure that peace agreements and jointly agreed protocols are implemented, and what legal remedies are available to parties in the event of abrogation?

While in no way exhaustive, we hope that exploring these questions is useful both for reflection and for enhancing our engagement in peace processes.

## To cite

Amaral, Joana (2022) The Covid-19 Humanitarian Ceasefires and Ongoing Challenges for RLMs in Peace Negotiations. In *On Negotiating Peace: A Compilation of Strategic Frameworks Based on the Perspectives of Resistance and Liberation Movements*. Berlin: Berghof Foundation.

## THE UN SECRETARY GENERAL COVID-19 HUMANITARIAN CEASEFIRE CALL: REACTIONS AND IMPACT

On the 23rd March 2020, UN Secretary-General António Guterres issued an appeal for a global humanitarian ceasefire, while the UN High Commissioner for Human Rights Michelle Bachelet called on governments to release political prisoners and others detained for expressing critical or dissenting views. On the 1st July 2020, the UN Security Council passed a resolution (UNSCR 2532) calling “upon all parties to armed conflicts to engage immediately in a durable humanitarian pause for at least 90 consecutive days”. RLMs around the world responded to these calls by issuing unilateral ceasefires and the release of political prisoners.

### The impact of the call

Like previous pandemics (Ebola, HIV), the response to the Covid-19 pandemic worldwide did not lead to the cessation of violence in protracted armed conflicts. Few ceasefires were declared and, with a few exceptions (e.g. Cameroon), they have generally not led to comprehensive negotiations.<sup>1</sup> The international community was weak in acting in a coordinated manner to support and enforce the call and the unilateral ceasefires issued generally lacked a well-defined scope or form of monitoring and oversight. This led to exchanges of accusations of ceasefire breaches and increasing tensions, for example, in Libya, Ukraine and Yemen, and to unilateral ceasefires in the Philippines and Colombia not being extended beyond the 90 days requested in the call.<sup>2</sup>

The UN demonstrated a limited capability to respond to the **lack of implementation** of the call. The Security Council was slow to develop a concerted response, particularly due to the fact that the management of the pandemic varied significantly in each of the P5 countries and some used the need for a concerted response as an opportunity to extract concessions and advance national agendas.<sup>3</sup>

### RLMs' response

RLMs around the world generally responded to the UN Secretary General's call by declaring unilateral ceasefires. On 5th May 2020, some members of the RLM network issued the “Urgent appeal for the implementation of the UN calls for global ceasefire and the release of political prisoners”. In this document, they called on the governments in their countries to reciprocate unilateral ceasefires and/or work towards bilateral ceasefires; to immediately release all political prisoners; to stop the securitisation and militarisation of the humanitarian need generated by the pandemic; engage in meaningful negotiations on the root causes of conflicts; urgently provide COVID-19 pandemic assistance and humanitarian aid to local civil society organisations through UN institutions; and to protect human rights activists, defenders and members of social justice movements through legal, political and diplomatic means.

## HUMANITARIAN CEASEFIRES: PAVING THE WAY FOR POLITICAL NEGOTIATIONS?

While the Covid-19 humanitarian ceasefire call provided momentum for a few negotiations, overall the humanitarian ceasefires did not lead to comprehensive peace negotiations.<sup>4</sup> In addition, some negotiations stalled due to the restrictions on travel and contact imposed worldwide as a response to the pandemic and as governments disinvested from peace negotiations to shift their focus to dealing with the pandemic. In several cases, **unilateral ceasefires issued by RLMs were not reciprocated by governments** who continued, and at times strengthened, their military actions on the ground.

### Main challenges

Many of the unilateral ceasefires issued by RLMs were accompanied by a call for negotiations to begin, or to continue. Unfortunately, humanitarian ceasefires have not historically led to political or permanent ceasefires, nor have they been a stepping-stone to peace negotiations, and the Covid-19 ceasefires were no different. For example, the ceasefire failed to have any impact in Syria where the political space for meaningful negotiations remained extremely limited. While the Kurdish-led Syrian Democratic Forces (SDF) called for a ceasefire to allow all warring parties to combat COVID-19, the Syrian government continued to block humanitarian aid and, together with Russia, to attack hospitals and clinics. The Islamic State, Al Qaeda and Al-Shabab have similarly exploited the pandemic to make gains on the ground<sup>5</sup>.

Due to the Covid-19 restrictions, some negotiations have taken place virtually, and while this may help reduce some existing challenges, the use of virtual platforms presents a whole new set of risks in terms of security and privacy. **The use of virtual spaces can severely handicap facilitators' and mediators' efforts** to create the safe-space needed for trust-building, with and between the parties. Additionally, when negotiations take place online and not in a location that can be curated by mediators, conflict parties remain in their echo-chambers which can hamper the process of challenging own narratives. The lack of 'corridor' and 'coffee-break' diplomacy means that these important spaces of tension reduction and informal exchange are absent from the negotiation environment.<sup>6</sup>

### Tools and remedies

Although the most important purpose of humanitarian ceasefires is to allow humanitarian assistance to reach the areas where it is most needed, they also have the potential to work as a confidence and trust-building measure that can benefit the onset of peace negotiations. Humanitarian ceasefires can also be beneficial to the longer-term peacemaking process when their implementation requires or leads

Tools and remedies

to cooperation on the ground and gives the conflict parties and the population a “taste” of what is possible. The call for a ceasefire by the international community can in itself equally serve as the tipping point for parties in mutually hurting stalemates to declare a ceasefire, especially a unilateral ceasefire, without losing face or appearing defeated.

Humanitarian ceasefires, and **the Covid ceasefires in particular, have had the most significant impact on peace negotiations where a peace process was already in place.**<sup>8</sup> For example, the unilateral humanitarian ceasefires declared by the Government of National Accord (GNA) and the Libyan National Army (LNA) in March 2020 followed a peace conference held in Berlin earlier that year. A permanent bilateral ceasefire was reached in October and paved the way for the Libyan Political Dialogue Forum to be convened under UN auspices. Due to Covid-19 restrictions, the dialogue process has taken place in a **hybrid format**. The dialogue started in November 2020 with two rounds of virtual talks with lower stakes that were then followed by in-person negotiations in Tunis.<sup>9</sup>

## THE SECURITY, SAFETY AND LEGAL CHALLENGES FACED BY RLM NEGOTIATORS

Ensuring their representatives are not **putting themselves in danger by engaging in negotiations** is a long-standing challenge for RLMs, and one that has been exacerbated by the Covid-19 pandemic. Negotiators and/or their advisors face significant security, safety and legal challenges at the different stages of asymmetric negotiations, including in the aftermath of failed attempts, which can leave them exposed and vulnerable.

Main challenges

RLM negotiators and their advisors have faced kidnapping, rendition, arbitrary arrests and detentions, as well as killings and extra-judicial execution of members of their delegations and people close to them. The safety and security of negotiators becomes particularly critical after the collapse of a negotiation or an inconclusive process, since the safety guaranties that are typically agreed for the process may be regarded as no longer being in place and, therefore, no longer needing to be respected. When third parties, host governments or mediators stand by and fail to take action, the problem is exacerbated.

In addition, although the UN Human Rights Office declared that political prisoners should be among the first released in the pandemic response, the conditions under which **political prisoners** are kept around the world instead deteriorated. In many instances, these political prisoners are individuals arrested for their representation of RLMs in a negotiation



process, which is held as proof of their membership of an illegal organisation. In many conflict settings, the pandemic has served as a pretext for the disregard and violation of their human rights.

To tackle these issues, there is a need for a better understanding of both the legal, political, strategic or tactical measures that exist to mitigate the risks for negotiators, as well as of the role that third-party actors (e.g. host countries for talks, mediators etc.) can have in providing support to prevent or mitigate these challenges. Overall, a more robust response is required from third parties to ensure that negotiators' human rights are protected, as well as a stronger reaction to their violation. Some examples are **granting immunity and guarantees for safe return and setting up specialised commissions, international observers and host governments that guarantee the safety of the delegations.**

For example, in the South African peace process, the African National Congress (ANC) – a proscribed group at the time - was granted observer status by the UN and the African Union. Another example comes from the Philippines where, in 1995, a Joint Agreement on Safety and Immunity Guarantees (JASIG) was agreed between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines (NDFP). The JASIG provided safety and immunity guarantees for negotiators, consultants, staffers, security and other personnel participating in the peace negotiations. Accredited persons were guaranteed immunity from surveillance, harassment, search, arrest, detention, prosecution and interrogation or any other similar punitive actions due to any involvement or participation in the peace negotiations. The document is binding and remains in effect to this day and until it is terminated by either party. Importantly, it categorically provides for the immunities to remain in effect even after its termination.

## CHALLENGES RELATED TO (THE LACK OF) ENFORCEABILITY OF PEACE AGREEMENTS AND JOINTLY AGREED PROTOCOLS.

Agreement implementation stalled in several peace processes due to Covid-19 restrictions. In some cases, the pandemic served as a pretext to renege on previously agreed ceasefires, negotiation protocols, framework and comprehensive agreements. This has highlighted and exacerbated existing challenges related to the fact that these agreements often require the good will of the parties to come to, or remain, in force. Many questions remain on how to tackle this longstanding issue, such as how to make agreements more robust to ensure their implementation, what role is there for the international community in ensuring their enforceability, on who this responsibility falls, what mechanisms are available and what could the implications be for parties who renege.

### Main challenges

The **lack of implementation or respect for previously agreed protocols, framework and comprehensive agreements** has been particularly problematic for RLMS. In many contexts, the pandemic shifted governments' attention away from peace processes and served as a pretext to renege or stall in some cases. Since RLMS face considerable risks in engaging in peace negotiations in the first place, lack of implementation or the collapse of these agreements can leave them especially vulnerable.

In April 2017 the Colombian National Liberation Army (ELN) signed a 'Breakdown and Return' negotiation protocol with the government of former President Santos, co-signed by the guarantor countries, Cuba, Venezuela, Chile, Norway and Ecuador, that provided for the safe return of the ELN delegation to Colombia should the negotiations break down. Elected in 2018, the government of Iván Duque refused to negotiate with the insurgency or to comply with the protocol's provisions on the safe return of the delegation, declaring not be bound by agreements signed the previous government. In addition, the government continued to stall on the implementation of the 2016 peace agreement reached by its predecessor with the Revolutionary Armed Forces of Colombia (FARC).

### Tools and remedies

While the signing of negotiation protocols by guarantor states and international organisations is particularly crucial to RLMS when negotiations collapse, there are currently no legal international provisions or tools available to hold parties accountable for implementing the agreements they have signed. In an attempt to address this vacuum, the Institute for Integrated Transitions is undergoing a global effort to develop an international treaty on peace negotiations which would in essence

## Tools and remedies

constitute an **international law of peace negotiation**<sup>14</sup>. The existence of an internationally recognised and organised framework for peace negotiations has the potential to ease parties into entering negotiations, make their process more resilient and consequential, and promote the stability of the agreements reached.

Until such a law is internationally enforced, agreement implementation continues to rely on the good will of the parties, or **external/domestic pressure** to comply. Whether external pressure is effective, however, depends on the political architecture of a given conflict context. Mediators are particularly limited in this capacity, but can be assisted by international contact groups. Domestic pressure, nonetheless, remains the cornerstone of the respect and implementation of agreements, particularly comprehensive agreements, highlighting the need for inclusive peace processes that generate ownership and leadership accountability.

## KEY POINTS AND RECOMMENDATIONS

1. The focus and goal of humanitarian ceasefires will always, and should always, be limited but that does not mean that they cannot have a longer-term impact. The implementation of limited ceasefires can create opportunities for cooperation that can be beneficial for the peacemaking process. Therefore, the **timing and sequencing of humanitarian and political objectives** is important.
2. While holding negotiations in a virtual space is extremely challenging, it is important that **windows of opportunity for negotiation, particularly after ceasefires are declared, can be explored and seized.**
3. The international community can play an important role in helping to **create the political space for RLMs and governments to engage in negotiations**, and be ready and willing to provide impartial mediation and/or mediation assistance.
4. RLMs incur significant risks (security, political and legal) when they engage in peace negotiations. The international community, third parties and mediators need to **support RLM negotiators and help protect their safety, security and other fundamental human rights.**
5. The international community can **put pressure on governments and the regional powers** involved in conflict settings to engage in negotiated solutions and to respect ceasefires protocols, and comprehensive peace agreements.
6. There are currently no legal international provisions or tools available to hold parties accountable for implementing the agreements they have signed. Mediators are particularly limited in this capacity but can be assisted by **international contact groups.**
7. Nonetheless, **domestic pressure is key** for parties to reach and adhere to humanitarian ceasefires, protocols and peace agreements. **Inclusive negotiations** that bring in civil society actors can potentiate this effect and the positive influence of their engagement on agreement durability.

- 1 Thompson, Jess (2020) Searching for COVID-19 Ceasefires: Conflict Zone Impacts, Needs, and Opportunities. USIP Special Report, September. Available at: <https://www.usip.org/publications/2020/09/searching-covid-19-ceasefires-conflict-zone-impacts-needs-and-opportunities>;
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- 3 Long, Amanda and Tyler Beckelman (2020) Four Lessons for Ceasefires in the Age of Covid. USIP Analysis and Commentary, 1st October. <https://www.usip.org/publications/2020/10/four-lessons-cease-fires-age-covid>;
- 4 Jess Thomson (2020);
- 5 Ibid;
- 6 Based on contributions to the panel 'Creating a "Safe Space" for dialogue and diplomacy, and dealing with challenges in a digital environment' held online on the 9th of December at the PeaceCon 2020 Conference. <https://events.bizzabo.com/PeaceCon2020/agenda/session/420260>;
- 7 From "Peace Talks: Ceasefires in a Time of Covid-19" webinar held by Political Settlements on 9th October 2020. <https://www.politicalsettlements.org/event/peace-talks-ceasefires-in-a-time-of-covid-19/>;
- 8 Ibid;
- 9 Based on the contribution by Francesca Jannotti Pecci, Senior Political Affairs Officer United Nations Support Mission in Libya, to the panel 'Creating a "Safe Space" for dialogue and diplomacy, and dealing with challenges in a digital environment' held online on 9th December 2020 at the PeaceCon 2020 Conference. <https://pcdn.global/opportunity-board/call-for-proposals-peacecon-2020/>;
- 10 UN News (2020) Political prisoners should be among first released in pandemic response, says UN rights chief, 3rd April. <https://news.un.org/en/story/2020/04/1061002>;
- 11 Freeman, Mark (2020) Institute for Integrated Transitions Launches Global Effort to Develop International Treaty on Peace Negotiations, Institute for Integrated Transitions, 11th November. <https://www.ift-transitions.org/issue-areas/peace-treaty-initiative/press-releases/institute-for-integrated-transitions-launches-global-effort-to-develop-international-treaty-on-peace-negotiations>.

## NOTES

A grid of 20 rows and 15 columns of small dots, intended for taking notes.



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