

UKRAINE OPTIONS PAPER

Inclusion and Transparency in the Ukrainian Peace Process

Tiina Pajuste is Professor of International Law and Security at Tallinn University. She has held previous research positions at the Erik Castrén Institute of International Law and Human Rights (University of Helsinki) and the Lauterpacht Centre for International Law (University of Cambridge), where she was part of the Legal Tools for Peace-making Project. The views expressed in this paper are the author's alone.

1. Introduction

A. Definition and Relevance of Inclusion and Transparency

This paper provides an overview of the international legal background to inclusion and transparency in peace processes, and the relevance for peace negotiations on the Ukraine conflict. It will highlight some aspects and options in relation to inclusion that should be addressed in the peace process.

The [UN Guidance for Effective Mediation](#) defines ‘inclusivity’ as ‘the extent and manner in which the views and needs of conflict parties and other stakeholders are represented and integrated into the process and outcome of a mediation effort’. It emphasises that an ‘inclusive process is more likely to identify and address the root causes of conflict and ensure that the needs of the affected sectors of the population are addressed. Inclusivity also increases the legitimacy and national ownership of the peace agreement and its implementation. In addition, it reduces the likelihood of excluded actors undermining the process’ (para. 29). Scholars have noted multiple benefits: e.g. an increased perception of influence amongst a population, which in turn helps build legitimacy ([Saul 2014](#), 43); a positive impact on the durability of peace ([Kastner 2015](#), 143; [Beardsley 2011](#), 162) and on national ownership ([Chesterman 2007](#); [Narten 2009](#)).

Numerous international policy documents highlight the importance of inclusion in peace negotiations and peacebuilding processes. These include the parallel resolutions on the Review of the UN Peacebuilding Architecture passed in the [UN Security Council](#) and [General Assembly](#), and the 2016 [Stockholm Declaration](#), issued by the International Dialogue for Peacebuilding and Statebuilding, which commits to improving systems to ensure inclusion and accountability and rebuilding trust between states and citizens. Inclusion is also relevant in the [2030 Agenda and the Sustainable Development Goals](#) (particularly Goal 16), the [sustaining peace and prevention agenda](#), the work on [UNSC Resolution 1325](#) on Women, Peace and Security and [UNSC Resolution 2250](#) on Youth, Peace and Security, as well as the study by the World Bank and the UN on [Pathways for Peace](#). Although these instruments conclude that inclusion is necessary for prevention of violence, peacebuilding and sustainable political systems, they do not offer much practical guidance for peace processes. It is more advantageous to look at previous practice to see how inclusion has been operationalised (see section 2).

A concept connected to inclusion is transparency. Inclusive processes tend to be more transparent; as a bare minimum, inclusion ensures that participants have access to information related to the peace process. And transparency ensures that people and entities excluded from the process are aware of the developments taking place. A lack of transparency can hinder the acceptance of any resulting peace agreement. Information about the process and choices made within it are vital for people to understand and accept the choices that have been made.

B. Role of Inclusion in the Ukrainian Peace Process

At the time of writing, there are no ongoing formal negotiations between Ukraine and Russia. Peace negotiations were initiated soon after the Russian invasion on 24 February 2022, but came to a halt in April 2022. The first track of negotiations was led by David Arakhamia (leader of the parliamentary faction, Servant of the People party, with which the president is affiliated) on the Ukrainian side and Vladimir Medinsky (one of Putin's aides, a former minister of culture) on the Russian side. The Ukrainian negotiating team included Justice Minister Denys Maluska, adviser to the presidential office Mykhailo Podolyak, Defense Minister Oleksii Reznikov, Deputy Foreign Affairs Minister Mykola Tochitsky, and three MPs, Andriy Kostin, Dmytro Lubinets, and Rustem Umerov. Two additional experts were added in April 2022: international lawyer Alexander Malinovsky and a veteran diplomat Alexander Chaly. The Russian delegation was composed of Deputy Foreign Minister Andrei Rudenko, Russian ambassador to Belarus Boris Gryzlov, Leonid Slutsky, head of the State Duma International Committee, and Deputy Defense Minister Alexander Fomin. Another track of negotiations took place at the foreign affairs ministerial level. Ukrainian foreign affairs minister, Dmytro Kuleba, and his Russian counterpart, Sergei Lavrov, met twice in Turkey in March 2022 (see [Kusa and Minakoy 2022](#)).

This list of participants reveals that there were no women amongst the negotiators, nor representatives of any civil society groups. Nor is there evidence of consultative processes to gather input from wider society either side. Information currently available does not show that mechanisms of inclusion were addressed in the draft peace agreement proposals (see [15-point plan](#)). Accordingly, thus far the peace process has not placed inclusion at the forefront. This is often the case in early stages of peace negotiations, as trust between the parties is limited and priority is given to achieving a ceasefire and easing the humanitarian situation. As the talks have stalled, and Ukraine is sceptical of negotiations with Russia (see [here](#)), no progress in relation to the inclusionary aspects of the peace negotiations can currently be foreseen. This paper proposes different options that could be utilised moving forward in the negotiations and later stages of the peace process.

2. Legal Background to Inclusion

A. Relevant Legal Rules

Although there is no direct legal regulation of inclusion in peace processes, legal rules regarding participation and representation can provide guidance. The rules most relevant to inclusion are the right to self-determination, the right to vote and take part in public affairs, and the prohibition of discrimination. As a fundamental rule of international law proclaimed in the UN Charter, human rights agreements and international customary law, self-determination gives peoples the right to 'freely determine their political status and freely pursue their economic, social and cultural development' ([ICCPR](#), Art. 1; [ICESCR](#), Art 1). The internal

aspect of self-determination ‘implies meaningful participation in the process of government’ ([Hannum 1996](#), 30). Some scholars have relied on self-determination to argue that in the post-conflict situation there is a need to ensure inclusion in all aspects of governance and the reconstruction process (Saul 2014, 38; [Demir 2017](#), 35-6).

The right to vote and take part in public affairs can be interpreted as encompassing the right to partake in peace processes. The [HRC General Comment on Article 25](#) defines (at para. 5) the conduct of public affairs as:

[A] broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.

As peace negotiations and processes determine how ‘public affairs’ will be run in the aftermath of conflict, the right to participate can be utilised in this context. However, the potential impact of the aforementioned rights in relation to peace processes is diminished by the derogation clause in Article 4 of the ICCPR, which allows states to ‘take measures derogating from their obligations’ when there is a ‘public emergency which threatens the life of the nation’. The second paragraph lists the rights from which no derogation is allowed – the right to take part in conducting public affairs and the right to self-determination are not included. Accordingly, states can derogate.

Such derogations cannot be discriminatory in relation to race, colour, sex, language, religion or social origin. Therefore, limitations on the right to take part in the conduct of public affairs that are just based on gender (e.g. only excluding women’s groups and doing so solely on the basis of gender, without an additional justification) or any other bases mentioned before would not be allowed. In [General Comment No. 29](#), HRC has also stated that the ‘international protection of the rights of persons belonging to minorities includes elements that must be respected in all circumstances’ (para. 13). Therefore, limitations that exclude minority groups (solely based on characteristics that makes them a minority in that context) would not be lawful. Outside the context of derogation, the general rule of non-discrimination needs to be applied in activities taking place in the peace process more broadly.

Certain groups such as minorities, youth, refugees, disabled persons and women also have group-specific legal instruments containing rights that are relevant to inclusion. The inclusion of women has received the most international attention since [UNSC Resolution 1325](#) on Women, Peace and Security (and [subsequent resolutions](#)) was adopted in October 2000. Resolution 1325 urges member states ‘to ensure increased representation of women at all decision-making levels in national, regional and international institutions’ and to adopt measures that ‘involve women in all of the implementation mechanisms of the peace agreements’ (paras. 1, 8). In 2013, the Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) issued [General Recommendation No. 30](#) on women in conflict prevention, conflict and post-conflict situations, which reaffirmed that ‘protecting women’s human rights at all times, advancing substantive gender equality before, during and after conflict and ensuring that women’s diverse experiences are fully integrated into all peacebuilding, peace-making, and reconstruction processes are important objectives of the Convention’ (para. 2). Accordingly, the provisions of CEDAW should be interpreted in a manner which supports the inclusion of women in peace processes.

B. Requirements of Inclusion

Despite widespread acceptance of the need for inclusion, there is limited agreement on what specifically inclusion involves. No legal rules provide specific requirements for inclusion in peace processes. Although UN policy documents often directly address inclusion, the wording tends to be broad. UN Guidance for Effective Mediation notes that ‘an inclusive process does not imply that all stakeholders participate directly in the formal negotiations, but facilitates interaction between the conflict parties and other stakeholders and creates mechanisms to include all perspectives in the process’ (para. 29).

Inclusivity can be seen as an overarching aim to be attained during the process as a whole. As long as the final result is that the people have had a meaningful say in the process, the particular stage or track in which popular involvement is accomplished is not significant. This can be done by diverse means across different stages and tracks ([Pajuste 2021](#), 309). Limiting participation at one stage (e.g. ceasefire negotiations) may not be detrimental, if balanced out in other processes or tracks. This is acknowledged in the [UN DPA Guidance on Gender and Inclusive Mediation Strategies](#), which states (at 20):

Inclusive process design creates multiple entry points and diverse mechanisms for participation. It involves systematic outreach to integrate the perspectives of conflict parties and of other stakeholders, particularly women, and to create new constituencies for peace. The urgency of reaching an initial ceasefire agreement, however, may in some instances result in a more limited participation in the early stages of a process. Balancing the humanitarian imperative to stop the killing with the demands of conflict parties and normative commitments is a complex task.

The [Stockholm Forum on Security and Development](#) has argued that because peace negotiations tend to be limited to a select group, it is essential that other phases of peace processes engage with all segments of society and that details of the agreement are broadly and transparently communicated. Information about planned inclusion activities should be freely available so different stakeholders know at what stage they can provide input into the process. If possible, inclusion methods should be used in the early stages of a peace process, so different voices can impact the process and help in making better decisions that are more likely to be accepted by broader society. Early inclusion strengthens legitimacy and ownership of the resulting peace agreement.

In general, there are two main ways in which inclusion is implemented – providing for participation in selection of actors who exercise authority in the peace process and/or creating mechanisms for input to be communicated to the actors exercising such authority (directly or indirectly) (Saul 2014, 2). Which people and groups should be included? In principle, all actors representing genuinely held views about differing legitimate needs, opinions and objectives should be included somehow and to some degree. Such groups include civil society, political parties, minority groups, women, traditional actors, communities and the general public ([Paffenholz and Ross 2015](#), 30; [Jessop et al. 2008](#), 107). It is better to err on the side of including more actors, especially if this can be done in a manner that does not slow down the peace process. In the current case, it is important to also include the separatist forces in the Donbas region of Ukraine, as excluded groups tend to not abide by the results of a peace process that they could not participate in.

3. Options for Inclusion

This section outlines some options utilised in prior peace agreements, which could be adapted to the circumstances of the current Russia-Ukraine conflict.

A. Direct or Representative Participation

The most straightforward option for inclusion is, of course, direct or indirect participation. Many peace agreements explicitly provide options for participation to different actors in varied mechanisms or processes.

An example of a provision that foresees participation in the peace negotiations stages can be found in the [2003 Liberia Agreement on Ceasefire and Cessation of Hostilities](#), which mandates (in para. 8) that ‘the signing of this agreement shall be followed immediately by the engagement of the GOL, LURD and MODEL with all other Liberian political parties and stakeholders in dialogue, to seek, within a period of thirty (30) days, a comprehensive peace agreement’[emphasis added].

A more general and all-encompassing provision is contained in the [2014 Agreement to Resolve the Crisis in South Sudan](#):

Agree to ensure the inclusion of all South Sudanese stakeholders in the peace process, and the negotiation of a transitional government of national unity, in order to ensure broad ownership of the agreed outcomes; stakeholders include: the two direct negotiators (the GRSS and the SPLM/A in opposition), and others such as the SPLM leaders (former detainees), political parties, civil society, and faith-based leaders.

Agree that these other stakeholders shall participate, in negotiations on transitional governance, the permanent constitution, and any other items that concern the political future of the country and reconciliation of South Sudanese communities [emphasis added].

Another general provision emphasising the importance of inclusion can be found in the [2019 Central African Republic Political Agreement for Peace and Reconciliation](#):

I. Principles for a lasting settlement of the conflict

Article 1: The Parties reiterate their commitments to the following principles:

[...]

(c) Recognition of cultural and religious diversity and appreciation for the contributions of all components of the society of the Central African Republic by promoting the inclusion, particularly of minorities, women and youth, in the management of the State and in the task of national reconstruction [emphasis added].

This provision is an example of women and vulnerable groups being explicitly mentioned, in order to emphasise the relevance of their inclusion and to ensure that their exclusion would be difficult later in the peace process. Another option is to phrase a more concrete obligation, as was done in [2011 Agreement Implementing Governance Transition in Yemen](#), which mandated that “[w]omen will be represented in all delegations” (in relation to the establishment of a Council for National Dialogue, responsible for the development of the transitional roadmap).

The [1994 Burundi Agreement Embodying a Convention on Governance](#) incorporates a provision dealing with one concrete stage or method in the peace process (in title 5, art. 52). It stipulates which actors will have the right to take part in a national debate:

Within 30 days following the formation of the Government, the President of the Republic shall appoint a national technical commission to prepare for the holding of a national debate on all the basic problems facing the country.

The aforementioned debate shall be held within six months. The international community shall be invited to make material and technical contributions. The registered political parties, civil society and the constituent parts of the nation shall take part in the preparations for the debate and in the debate itself [emphasis added].

B. Popular Consultation

An option regularly utilised in peace processes is popular consultation. There are various methods for sourcing input from the broader society and this can be done in different stages of the peace process. In earlier stages, public opinion can be solicited on different options for the ongoing process and a common approach in later stages has been the holding of referenda on the resulting peace agreement.

For example, the [1999 Agreement between the Republic of Indonesia and the Portuguese](#) foresaw a ‘popular consultation on the basis of a direct, secret and universal ballot’ regarding the constitutional framework providing for special autonomy for East Timor and requested the UN Secretary-General to establish a UN mission to enable it to take place (Arts. 1-2). Similarly, in the [2005 Sudan Comprehensive Peace Agreement](#), the parties agreed that:

3.1 Popular consultation is a democratic right and mechanism to ascertain the views of the people of Southern Kordofan/Nuba Mountains and Blue Nile States on the comprehensive agreement reached by the Government of Sudan and the Sudan People’s Liberation Movement [emphasis added].

The [2016 Colombian Final Agreement](#) contains a list of options for ‘public endorsement’:

6.6 Accord on public endorsement

The new Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace shall be subject to public endorsement in accordance with item 6 of the Agenda of the General Agreement. That public endorsement may be given through citizen participation systems such as plebiscites, legislative initiatives, consultation, open cabildo and other means, or through directly elected public bodies whose members have a mandate to represent the citizenry, such as the Congress, departmental assemblies and municipal councils. The Government and FARC-EP shall agree on the public endorsement mechanism, which will operate as dictated by the relevant standards or rulings [emphasis added].

An example of how the referendum question can be worded is found in the [1998 Good Friday Agreement](#):

Section 11. ‘Validation and Implementation

[...]

2. Each Government will organise a referendum on 22 May 1998. Subject to Parliamentary approval, a consultative referendum in Northern Ireland, organised under the terms of the Northern Ireland (Entry to Negotiations, etc.) Act 1996, will address the question: "Do you support the agreement reached in the multi-party talks on Northern Ireland and set out in Command Paper 3883?".

The Good Friday Agreement also contains an example of possible wording for emphasising the right of women or vulnerable groups to participate in all aspects of public life in the post-conflict phase of the peace process. In the agreement the parties affirmed ‘their commitment to

the mutual respect, the civil rights and the religious liberties of everyone in the community’ and emphasised ‘the right of women to full and equal political participation’.

If the drafting process for a peace agreement was not inclusive, it is important to engage the public in at least that final stage of approving the agreement reached, to increase the likelihood of general acceptance and implementation.

C. Participation in Electoral Processes

Elections are often utilised in post-conflict situations to legitimise new governance arrangements. Elections can provide access to power for groups that have previously been excluded and form part of the power-sharing arrangements between rival forces. In the context of Ukraine, elections could be devised to ensure the separatist forces in Donbas a voice in Ukrainian governance bodies, and thus alleviate the perceived need for violence.

Peace agreements have contained provisions reaffirming the right of opposition groups or former paramilitary organisations to engage in political activity and participate in elections. The [2016 Afghanistan Peace Agreement](#) contains the following provision (Chapter 2, Part I, Art. 7):

The Government of the Islamic Republic of Afghanistan is committed to announce officially that it recognizes Hizb-e Islami of Afghanistan’s right to political activity in all political and social spheres in accordance with the Afghan constitution and fully cooperate in realizing this, and that Hizb-e Islami of Afghanistan can participate and nominate candidates in the presidential, parliamentary and provincial, district, and municipal elections [emphasis added].

The [2016 Columbian Final Agreement](#) emphasised political participation as a democratic opportunity for peacebuilding and foresaw the following measures:

2.3 Effective measures to promote greater participation in national, regional and local politics in all sectors, including the most vulnerable population groups, under conditions of equality and with security guarantees.

...

2.3.1.1 Measures to promote access to the political system

In the end-of-conflict situation and with the aim of consolidating peace, obstacles will be removed and institutional changes implemented to enable political parties and movements to acquire and retain legal status and, in particular, to facilitate the transition of social organizations and movements with a political role towards their establishment as political parties or movements. The following measures will be taken to that end:

...

- Design of a system for the gradual acquisition of rights by political parties and movements, in accordance with their electoral performance at the municipal, departmental and national levels. The new regime will retain the requirements relating to votes in elections to the Senate and/or House of Representatives by the existing ordinary electoral districts, to acquire full financing rights, media access and registration of candidates for popularly elected posts and corporations [emphasis added].

Sometimes parties to a peace agreement find it necessary to reaffirm their commitment to comply with the agreement in the context of elections. For example, the [2004 Sudan Protocol](#) stated that ‘Whoever runs in any election must respect, abide by, and enforce the Peace Agreement’ (Part I, para. 1.8.6).

If the conflict results in a large number of refugees or internally displaced persons, as in the case of Ukraine, it can be useful to reiterate that they too have rights to participate in elections. The [1991 Agreement on a Comprehensive Political Settlement of the Cambodia Conflict](#) contains the following provisions (in Annex 3):

3. All Cambodians, including those who at the time of signature of this Agreement are Cambodian refugees and displaced persons, will have the same rights, freedoms and opportunities to take part in the electoral process.

4. Every person who has reached the age of eighteen at the time of application to register, or who turns eighteen during the registration period, and who either was born in Cambodia or is the child of a person born in Cambodia, will be eligible to vote in the election [emphasis added].

An indirect way to achieve representation of women or vulnerable groups in the legislature is to provide for gender (or other) quotas in the electoral lists of the political parties. In the [2011 Agreement among Lesotho Political Parties regarding the Electoral Law Bill](#) (paras 12-13), the parties agreed to include a gender quota on the party lists. The [2000 Arusha Agreement](#) revised the existing electoral system for the National Assembly and, among other changes, prescribed that electoral lists would be ‘multi-ethnic in character and reflect gender representation’. It clarified by adding that ‘[f]or each three names in sequence on a list, only two may belong to the same ethnic group, and for each five names at least one shall be a woman’ (Protocol II, Article 20, para 8).

It should be noted that election timelines should not be rushed in post-conflict situations. If elections are held too soon, and political parties or movements lack the opportunity to campaign and raise awareness, the elections may just replicate existing divisions before and during the conflict. Populism can even worsen such divisions (Kastner 2015, 141). Such elections would not serve their objective as a mechanism of inclusion. However, if electoral processes are devised and utilised in a manner sensitive to the specific post-conflict circumstances, they can be a valuable tool to improve inclusion.

D. National Dialogue Processes

Although national dialogue is especially relevant in intra-state conflicts, it can successfully be utilised in the context of interstate conflicts as well, in order to maximise input by different societal groups. Post-conflict arrangements for areas like Crimea and the Donbas area should be the focus if a national dialogue process is utilised in Ukraine.

Often peace agreements specify which groups will be involved in the national dialogue process. For example, the [2011 Agreement Implementing Governance Transition in Yemen](#) states (paras. 8-9):

To achieve these objectives, we will establish immediately a Council for National Dialogue (Roundtable) as a mechanism to resolve these issues through dialogue. This body will be responsible for the development of the transitional roadmap and monitoring its implementation.

9. Participation

- a. The process will be as inclusive as possible. It will include representatives from the Joint People's Congress and its allies, the Joint Membership Parties and partners, the Youth Movements, the Southern Movement, the Houthi and other political parties and forces.
- b. Women will be represented in all delegations.
- c. To allow the process to function effectively, there will be an agreed maximum of representatives per group [emphasis added].

To avoid the necessity of further negotiations on which specific entities can participate and in what numbers, such information can be specified in the agreement. This was done in the [1997 Cairo Declaration on Somalia](#), which declared:

That the National Reconciliation Conference will be constituted of four hundred and sixty-five (465) delegates, who shall be allocated as follows:

- (a) One hundred and sixty (160) delegates shall be allocated to the two sides participating in the Cairo Somali Meeting (80 delegates each);
- (b) Ninety (90) delegates to specific northern Somali communities;
- (c) Fifty-eight (58) delegates of the three Somali social groups not included in paragraphs (a) and (b) above;
- (d) Twenty-three (23) delegates, 10 delegates, and 8 delegates for each of the three Somali social groups not included in paragraphs (a), (b) and (c) above.

That the delegates for the Conference shall be selected from all segments of Somali society. Such selection should be on a careful consideration of community balance; and

That invitations to attend the National Reconciliation Conference shall be extended to Governments, regional and international organizations as well as local and international mass media for the purpose of observing the deliberations and decisions of the Conference.

An example of an even larger national dialogue process can be found in the [2006 Abuja Agreement](#) (Chapter IV, Art. 31):

494. Representation at the DDDC shall be decided by the Preparatory Committee according to the following guidelines:

- (a) The DDDC should consist of approximately 800 to 1000 delegates in addition to observers.
- (b) 60% of delegates shall be selected on the basis of community and tribal representation. All tribes in Darfur shall be represented. This representation shall include recognized tribal leaders, representatives chosen by all localities including refugees and internally displaced persons. Special mechanisms shall be established to ensure that small tribes and non-Darfurians resident in Darfur are represented.
- (c) 40% of delegates shall be selected to represent other stakeholders, including political parties, civil society organizations, religious leaders, business leaders, members of the diaspora, trade unions and professionals.
- (d) Adequate and effective representation of women and youth shall be ensured.

(e) Observers shall be drawn from other parts of Sudan, AU Mediation and Facilitators, League of Arab States and Organisation of the Islamic Conference, CENSAD, IGAD, UN and international community.

Explicitly mentioning women, vulnerable groups or entities that have been excluded previously can be a way to ensure better implementation of inclusion in the process.

Even the most inclusive processes will inevitable not be accessible to every single group or entity, which increases the importance of transparency and the availability of information regarding ongoing processes. This is true in relation to national dialogue and the peace process in general.

Disseminating information is a vital aspect of inclusive peacebuilding. It ensures that the general public is aware of decisions, of the identity of the decisions-makers, and considerations informing those decisions. This in turn makes such decision more likely to be accepted by the general public. Technology and social media (in addition to traditional media) can be utilised for communication regarding decision-making, resource allocation and eventually peace agreement implementation. Special efforts should be made to ensure such information reaches marginalised groups, including those who may not understand the official languages used, are illiterate or are living in rural areas with limited access to information.

4. Conclusion

There are a number of options for inclusion that can be adapted for a potential Ukraine-Russia peace agreement. Inclusion should be approached as an overarching aim, where different elements and mechanisms utilised in different stages of the peace process contribute to ensuring that interest groups and the general public have an opportunity to engage with the process and their rights and needs are taken into consideration. No matter what level of inclusion is selected for a certain stage of the peace process, inclusion methods cannot be unjustifiably discriminatory. Exclusions on the basis of gender, beliefs, race etc. are not allowed unless they pursue legitimate aims, are based on reasonable and objective criteria, and are proportionate to the achievement of those aims. It is important to involve women and other underrepresented groups as that can lead to improvements in relation to their empowerment and advancement. Inclusion, paired with transparency, will ultimately increase the legitimacy and effectiveness of any Ukraine-Russia peace process.