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Challenges and Opportunities of Inclusivity in Peace Processes

John Packer
packer@un.org and john.packer@uottawa.ca

John Packer is currently a Constitutions and Process Design Expert with the UN's Standby Team of Mediation Experts attached to the Mediation Support Unit within the UN Department of Political Affairs. He was recently appointed a Professor of Law and Director of the Human Rights Research and Education Centre at the University of Ottawa – a bilingual and bi-juridical School and a multidisciplinary Centre. He was formerly the Senior Legal Adviser and then first Director in the Office of the OSCE High Commissioner on National Minorities, previously having worked for the UN's High Commissioner for Human Rights, the ILO and the UNHCR. In 2004, together with the late Max van der Stoel, he co-founded the Initiative on Quiet Diplomacy to encourage institutional capacity building for effective preventive diplomacy within regional and other inter-governmental organisations. He has advised on transitional processes, diversity management, constitutional and legal reform, the protection of human rights including minorities, and various peace processes throughout the world. He is currently advising the UN Secretary-General's Special Adviser for Yemen as well as assisting the UN in a number of other situations.

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Civil Society Dialogue Network

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1.   Introduction

It is increasingly accepted that successful peace processes – wherever situated on the "conflict cycle", continuum or phases (before, during or after violence)[1] – are inclusive in their composition of participants and, thus, in terms of the range of issues addressed. Indeed, the notion of inclusion as a socio-political value aims to facilitate transitions from imposed to voluntary regimes based on the will of the people, i.e. that those subject to rules are involved in setting them and responsible to respect them. Whether preventing civil wars, State failure and chaos, or (re)building sustainable peace, inclusivity has both normative and instrumental value in meeting the diversity of needs, interests and aspirations within any population or society. Inclusive processes help to end or prevent violence on the basis of better governance arrangements which enjoy greater legitimacy and address more effectively a range of issues thereby generating voluntary compliance on the basis of mutual respect and shared interests. This is essential for stability on which sustainable development depends.

In seeking inclusive processes, a variety of questions arise of both normative and practical nature. In the first place, what is the fundamental rationale for inclusion – what is one seeking to achieve? Second, how does one achieve it? In these regards, it is useful to consider the stages of peace processes and the forms of inclusion. Principles and standards, especially of international human rights law, are relevant both in general and in varying contexts. Experience shows that some practices are more or less effective, and so examples inform what may or may not work in a given situation. There are also costs and risks associated with choices of inclusion (such as who, how and with which weight should groups be included) which should be noted and addressed in designing and implementing a peace process.

In essence, an inclusive peace process is one which creates the political space and opportunities for authentic voices to present and advocate on behalf of (i.e. to represent) genuinely held views which reflect the real needs, interests and aspirations of affected parties and/or communities. An inclusive process widens the space for participation usually through the participation of accountable representatives. It affords all interested and affected groups "a say" in defining and considering problems, as well as deciding upon solutions (i.e. at points of decision-making). It seeks and values their consent. How this is reconciled with real power and varying capacities to effect outcomes is at the heart of effective processes which draw upon inclusion to gain or underscore legitimacy and to achieve substantively good decisions which are respected because they are "owned" by those who have contributed to and made the decisions and they have a greater likelihood to "work" in practice. Ultimately, and notwithstanding complexity, inclusive peace processes improve the chances for success.

This paper will respond to the above and other questions and issues, and examine the challenges and opportunities of inclusion with reference to existing norms and standards of contemporary international relations and law. Examples from practice will be cited. In doing so, it is intended that practitioners will be better informed and able to design and implement effective processes of conflict prevention, resolution or peacebuilding, not least in the context of political transitions.

2.   Living Together; the Democratic Paradigm

The composition of populations constituting the almost 200 States of the world is, as a matter of fact, diverse. Simply, not everyone shares fully the same needs, interests or aspirations.

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[1] For an explanation with graphic depiction, see, e.g.: http://react.usip.org/pub/m3/p4.html

Populations often comprise a variety of ethno-cultural, religious, linguistic and other characteristics and identities.[2] No country is "pure". Political differences (whether informed by ideologies or relative positions) vary even more. Perspectives and priorities can differ substantially.[3] In contexts of limited space, resources and opportunities – i.e. everywhere in the world – such differences often generate conflict as their proponents compete. As such, it is a universal challenge for the polity of any State to find ways of living together, peacefully and productively. Methods of managing diversity and solving disputes are central to meeting this challenge. For countries which comprise a great deal of diversity, such ways and methods are essential to their success as peaceful and productive States and as stable members of the international community.

It goes without saying that general international law protects the basic sovereignty of every State (no matter its size or natural endowments) not least to "freely determine their political status and freely pursue their economic, social and cultural development".[4] General international law also guarantees the non-interference of one State in the domestic affairs of another[5], even where interests may exist; such interests may only legitimately be pursued through the conduct of friendly relations and international cooperation based on consent[6]. Importantly, general international law also compels States to respect – domestically and in their international relations – human rights, above all as a contribution to international peace and security.[7] A number of inter-governmental organisations take this a step further by conditioning membership on a commitment to democratic government under the rule of law or promoting it as a principal objective[8] (notwithstanding considerable disparities in forms and degrees of implementation).

At the domestic level, differences within the polity may attach to any element of social organisation including the formation of the polity or State itself. Moreover, both in terms of facts and positions, differing needs, interests and aspirations evolve: material facts and attitudes change. As a consequence, arrangements must be capable of evolving to remain relevant and appropriate, and so systems of governance must be responsive and adaptable.

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[2] See, e.g., the *World Directory of Minorities and Indigenous Peoples* published by Minority Rights Group International (available on-line at: http://www.minorityrights.org/directory) and, with specific concern for the nexus between minorities and violent conflicts, see the "Minorities At Risk" project and dataset collected through the University of Maryland (available on-line at: http://www.cidcm.umd.edu/mar/).

[3] This is well established in terms of gender, which is one reason to increase the participation of women in peace processes as promoted not least pursuant to UN Security Council resolution 1325 (2000). For more on this, see: UN Women, *Women's Participation in Peace Negotiations* (New York: UN Women, 2010); and A. Potter Prentice, "Including women & gender perspectives in peacemaking: challenges and options for Mediators", in *Managing peace processes. A handbook for AU practitioners* (African Union, 2013), Volume 3, Chapter 3, pp. 65-90. For practical suggestions of how to increase and improve women's participation in peace processes, see: "SCR 1325 and Women's Participation: Operational Guidelines for Conflict Resolution and Peace Processes" (Initiative on Quiet Diplomacy, 2010), found at:
http://www.iqdiplomacy.org/images/stories/handbook/pdf/scr1325_iqd.pdf

[4] To quote from common Article 1 of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

[5] As expressed in Article 2 (notably paras. 4 and 7) of the Charter of the United Nations.

[6] As expressed in Article 1 (notably paras. 2 and 3) of the Charter of the United Nations.

[7] As expressed, *inter alia*, in Articles 1(3) and 55(c) of the Charter of the United Nations.

[8] See, e.g., the charters or basic agreements of inter-governmental organisations such as the Council of Europe, the Organisation for Security and Cooperation in Europe, the European Union, the North Atlantic Treaty Organisation, the Organisation of American States (whose slogan is "Democracy for peace, security and development"), the Organisation of the Islamic Conference, and the Association of Southeast Asian States, as well as the African Union (notably since adoption of the 2007 African Charter on Democracy, Elections and Governance) and the League of Arab States (at least for parties to the 2004 Arab Charter on Human Rights pursuant to the bundle of rights accorded to citizens under Article 24).

Within the State, one basic division of social organisation is to separate the public from the private spheres of life – to distinguish between spaces where norms and practices should be common (and likely compelled) as opposed to spaces where norms and practices may be particular and open to free choice whether by individuals or groups. This is a basic way to live together notwithstanding a number of differences, by accommodating to the maximum extent possible the range of differences either within private spaces and choices or through reconciliation of differences (e.g. the use of two or more languages) in public spaces. Of course, some matters of policy in the public sphere do not by their nature admit to accommodation of diversity (e.g. regulation of highway traffic) and so must be fully determined and fully compel compliance: everyone must know the rules and everyone must comply with them despite their views or preferences.

One important function of the State is to create, maintain and protect public and private spaces where all responsible elements of society are free to shape and pursue – to invest in – their own material and spiritual development to the maximum extent compatible with others. This requires the development of institutions and arrangements of effective and efficient governance that are responsive to varying needs and interests. This implies spaces and places where the range of views can be expressed and differences negotiated freely as the citizenry seeks the widest possible consensus. Such virtuous processes construct stable societies, follow the rule of law, and are thereby capable of addressing and resolving conflicts without resort to violence. The hallmarks of such a successful State are its productivity, resiliency and ultimately the happiness of its people in all their diversity.

Of course, determinations of "public" versus "private" life may themselves be subject to differences of view. And decisions about conduct or practices within especially the public sphere are often hotly debated. This is especially true when matters affect economic well-being, social or cultural maintenance and development, status and prestige, or the opportunities as well as the obligations relating to these. Needs, interests and aspirations relating to identity and well-being are not easily surrendered. Indeed, people will fight over them. It is also a clear lesson of history that human beings will resist impositions, notably those which deprive or repress vital needs and interests, especially arbitrarily – typically achieved by force. In such cases, sheer physical power prevails. But this is costly in human and material terms.

As an alternative to force or might, democratic governance has evolved as a means to reach decisions according with "the will of the people". This is determined through a system of counting according to "the majority rule" whereby decisions are taken by means of the secret vote of the citizenry with the expressed preference of the majority prevailing and in respect of which the (losing) minority/ies also comply. This is an inclusive process, based on shared citizenship. However, such counting is not necessarily commensurate with substantively good decisions, and often the majority rule is invoked to govern over a swath of matters without necessity, i.e. regarding matters for which a broad diversity could well be accommodated (e.g. educational curricula, sport and culture, aspects of economic development, etc.). In such cases, the losing minority/ies may feel wronged and resist.

A prior issue is that of who exactly are the citizens … and which rights exactly do they enjoy? In the early development of democracy, there was a general practice of exclusion. Only certain privileged persons were to be counted (notably white, property-owning men), with their decisions then imposed upon everyone else. Of course, this served the limited interests of those privileged persons and otherwise generated poorly informed decisions with resentment and resistance on the part of the excluded. Force was needed to ensure compliance. The nature of governance, even if in some ways "democratic", was authoritarian in character. It created conflict including violent rebellion.

In order to overcome these problems, which result in various kinds of violent conflicts and wars, the idea of equal citizenship[9] emerged on the basis of the recognition of the inherent and equal value and dignity of every human being (with procedural rights and responsibilities generally afforded to adults). This was a substantially more inclusive – indeed, "universally" inclusive – process which was bolstered by the principle of non-discrimination. Nonetheless, the process of counting still rendered amongst groups of theoretically equal human beings unequal outcomes since more numerous groups simply out-voted their counterparts and competitors. In fact, the weight of differing voices was compounded by numbers of adherents: deeply associated communities could be perpetually in the majority or in a minority. The majority could dictate. Of course, non-democratic societies are largely defined by disregard of the will of the people; they neither seek nor respect consent and they typically rely on imposition through force.

For this reason, equal rights of citizenship (once known as "the right to have rights") gave way to the idea of "human rights" which not only counted members of a polity, but afforded inalienable protections and entitlements to "everyone" on the mere basis of being human. The effect is to limit the majority rule by providing a shield against abuses of all kinds (i.e. to protect minimum aspects of human dignity) and to empower every human being with a minimum set of entitlements to their own individual and social development including for individuals in community with others associating in respect of shared needs, interests and aspirations. This latter set of rights is enjoyed more specifically by persons belonging to ethnic or national, linguistic or religious minorities and by indigenous peoples with respect to a limited set of specified matters essential for the maintenance or development of their identity (see *infra*).

In sum, human development has evolved ways for diverse societies to live together peacefully and productively – and despite differences – on the basis of inclusive, participatory and deliberative governance, respecting human rights under the rule of law. This democratic paradigm is a basic pillar of internationally promoted and guaranteed peace and stability within States and, thereby, amongst States.

3.   The Normative Framework

With a view to achieving such peaceful and developing societies, it is important to understand more fully the range and sources of applicable norms and standards. Arguably, there exists a globally applicable quasi-constitutional order (as described somewhat above) of relations amongst States conditioning conduct within States. Central to this is the principle of equality both between States (i.e. "sovereign equality"[10]) and between human beings within States who are asserted to be "born free and equal in dignity and rights"[11]. This last normative assertion (i.e. of inherent natural equality) is coupled with the principle of non-discrimination[12]

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[9] On the concept and content of "equal citizenship", see: A. Phillips, "Dealing With Difference: A Politics of Ideas or a Politics of Presence?", *Constellations*, Volume 1, Issue 1 (1994), pp. 88–91 [NB the whole of Issue 1 contains valuable articles on this and related concepts]; and, more broadly, EF Isin and PK Wood (eds.), *Citizenship and Identity* (Sage, 1999).

[10] See Article 2(1) of the Charter of the United Nations.

[11] See Article 1 of the Universal Declaration of Human Rights.

[12] Indeed, in important respects it is coupled with the higher standard of "without distinction"; see and compare the wordings of Articles 1(3) and 55(c) of the Charter of the United Nations, Articles 2 and 7 of the Universal Declaration of Human Rights, and the initial provisions of most every human rights instrument in the world. For the relationship between discrimination and conflict, see L. Hollo, *Discrimination and Conflict Prevention*, Initiative on Quiet Diplomacy (2nd edition, 2011), found at:

following the compelling logic that equal human beings should not be arbitrarily subjected to different treatment or opportunities.

For purposes of peace processes, therefore, the **normative basis** for inclusion follows from the logic of equality such that inherently (i.e. essentially) equal human beings possess equally valid (but not always the same) needs, interests and aspirations, and should therefore enjoy equal say with regard to the organisation of society in dealing with these in terms of establishing rules, systems and arrangements. They should also, as equally valuable human beings, enjoy equal life chances to pursue and fulfil their talents and tastes. In other words, the general will with regard to governance is a composite of individual wills (each equally valid), while each individual will should be respected and accommodated vis-à-vis its own effects and responsibilities. This implies an inherent right to individual autonomy in terms of will as well as conduct, where that individual's will and conduct does not prejudice another individual's will or conduct. The same would apply for groups or communities (as indeed it does amongst States).

The underlying principle is freedom: "All human beings are born *free* and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."[13] On this basis, constraints on freedom are impermissible unless they enjoy consent or serve a public interest (including to create and to protect such freedom). The challenge resides exactly in constructing and maintaining a system of socio-political organisation and governance which not only protects the equal freedom and dignity of human beings (and equal citizens of a polity), but facilitates it. Voluntarism (or consent) is at the heart of such a system. To the extent possible, freedom should be maximised (so everyone may freely pursue their needs, interests and aspirations, alone or in community with others).

The purpose of governance is, therefore, to serve the real and legitimate needs, interests and aspirations of the citizenry, both individually and as a whole, which they alone are free to determine. Accordingly, Article 21 of the Universal Declaration of Human Rights prescribes as follows:

<u>Article 21</u>

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
(2) Everyone has the right of equal access to public service in his country.
(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Subsequent international human rights instruments essentially repeat or re-state these standards.[14] Their effective implementation provides the fundamental legitimacy to lawful authority characterised by the monopoly of the use of force for the limited purposes of needed governance. The basic principle of participation has been formulated powerfully in the slogan

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http://www.iqdiplomacy.org/images/stories/handbook/pdf/discrimination_iqd2_02.pdf

[13] See (with emphasis added) Article 1 of the Universal Declaration of Human Rights.
[14] See, notably: Article 25 of the International Covenant on Civil and Political Rights; Article 23 of the American Convention on Human Rights; and Article 3 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 24 of the Arab Charter of Human Rights is similar in content. Rather more limited in nature, but nonetheless substantive, see also: Article 13 of the African Charter of Human and Peoples' Rights; and Article 23(b) of the (OIC's) Cairo Declaration on Human Rights in Islam.

"Nothing about us without us!" In essence, it requires that affected persons or groups participate, i.e. are present and meaningfully engaged, in considerations and decisions about matters relating to their needs, interests or aspirations. This is typically achieved through recognised representatives pursuant to periodic elections.

The basic right to participate in governance is inextricably bound with a bundle of other rights and freedoms which in dynamic inter-play are at the heart of democracy. Important amongst these are the freedoms of thought, expression, association and assembly, the rights to personal integrity, due process of law, health and education which, combined, facilitate active and meaningful participation in public life – in politics – where the rights to stand for elected office and to vote procedurally manifest (at that moment) "the will of the people". Thereafter, the usual challenges remain for government formation, parliamentary procedure and effective governance. In the absence of a clear majority, negotiations typically lead to coalitions which conjoin different parties to cooperate around shared interests or compromises. This is a normal form of inclusive government. Ruling majorities must nonetheless contend with the problem of convincing minorities to comply, while ruling minorities (i.e. pluralities, which possess less legitimacy than majorities) face an even greater challenge.

This brings us back to the challenge of diverse and conflicting needs, interests and aspirations, especially those which are not reconcilable with others. Decisions simply need to be taken, and compliance may need to be compelled. But how to decide and compel? To this end, inclusive processes reflect more fully the concept of equality and add more legitimacy. Closely related to the principle of participation is the principle of subsidiarity which prescribes, in terms of socio-political and economic organisation, that a matter ought to be addressed at the level of governance and by those closest to the affected persons and capable of doing so most effectively.[15] It presumes that such decisions will, thereby, be most appropriately formulated and generate the greatest degree of voluntary compliance, and so they will also be the most efficient. A closely related principle is that of decentralisation of power which also holds that power is best exercised closest to the citizens especially, in geographic terms, over locally significant matters.[16] These principles, like the broader concept of inclusivity, are tremendously important for persons belonging to minorities (whether territorially concentrated or not) who would, otherwise, be easily excluded or simply out-voted (and thus subjected to dictation) by larger or more powerful groups, often operating at higher levels of governance. As such, international standards for the protection of minorities stipulate exactly such rights (*human* rights) to "effective participation" and, essentially, to subsidiarity (if not so called) with regard to "cultural, social and economic life and in public affairs, in particular those affecting them"[17]. Indeed, this concept is increasingly being expressed as a "right to

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[15] For a clear example of the principle of subsidiarity as a fundamental tenet of governance, the European Union has incorporated the principle within its basic treaty; see: Consolidated Version of the Treaty of the European Union which stipulates in Article 5(3) the principle of subsidiarity as follows:

> "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.
> "The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol."

The EU's Edinburgh European Council of December 1992 issued a declaration on the principle of subsidiarity – the Protocol to which Article 5(3) refers – that laid down the rules for its application; the full text of the Protocol is found at: http://eur-lex.europa.eu/en/treaties/dat/12007L/htm/C2007306EN.01015001.htm

[16] This has been clearly expressed in the Council of Europe's European Charter of Local Self-Government.

[17] To quote from Article 15 of the Council of Europe's Framework Convention for the Protection of National Minorities. The guarantee of "effective participation" for persons belonging to minorities is also stipulated in Article 2(2) and(3) of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and

autonomy" with regard to certain matters of essential importance for identity or as a form of "internal self-determination" by which communities may govern themselves over key issues or places while remaining in the larger State where majority needs, interests and aspirations – and the general will – otherwise predominate.

How such rights can be implemented and fulfilled in practice requires consideration of options and some elaboration in normative terms. Much of this work has been done by the High Commissioner on National Minorities (HCNM) of the Organisation for Security and Cooperation in Europe (OSCE).[18] Notably, in 1999 the HCNM brought before OSCE participating States the *Lund Recommendations on the Effective Participation of National Minorities in Public Life* which set out 24 provisions on ways to give effect to such participation in a range of areas of life including: general principles; participation in decision-making ranging from elections through arrangements at all levels of governance to advisory and consultative bodies; self-governance (or autonomy) arrangements, both territorial and non-territorial; and guarantees of constitutional and legal safeguards as well as remedies in cases of breach.[19] More recently, in 2008, the Council of Europe's Advisory Committee established under the 1994 Framework Convention for the Protection of National Minorities published its *Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*[20] which, in addition to forms of participation in social, cultural and economic life, set out a wide variety of standards and practices for participation in public life as follows[21]:

- in the legislative process
- in political parties
- in design of electoral systems at national, regional and local levels
- in design of administrative and constituency boundaries
- in parliament through reserved seats
- in regard to parliamentary practices
- in terms of veto rights (over 'vital interests')
- with regard to citizenship requirements
- with regard to language proficiency requirements
- in specialised governmental bodies

Linguistic Minorities, and in paragraph 35 of the Copenhagen Document on the Human Dimension of the Organisation for Security and Cooperation in Europe; for indigenous peoples, a similar standard is stipulated in Article 23 of the UN Declaration on the Rights of Indigenous Peoples (declaring a "right to be actively involved in […] programmes affecting them") while Article 4 stipulates a "right to autonomy or self-government in matters relating to their internal and local affairs" and yet other provisions secure rights to control of a number of policy areas or to be consulted about them.

[18] On this institution dedicated solely to the prevention of violent conflicts affecting relations between OSCE participating States, see: http://www.osce.org/hcnm

[19] For the full text of the Lund Recommendations and its Explanatory Note citing all relevant international norms and standards, see: http://www.osce.org/hcnm/32240 The Lund Recommendations are available in 21 languages.

[20] See Council of Europe document ACFC/31DOC(2008)001, found at:
http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_CommentaryParticipation_en.pdf See also Advisory Committee Member Professor Francesco Palermo's brief paper entitled "The Dual Meaning of Participation: The Advisory Committee's Commentary on Participation" delivered to the Council of Europe's conference on *Enhancing the Impact of the Framework Convention*, 9-10 October 2008, Palais de l'Europe, Strasbourg, found at:
http://www.coe.int/t/dghl/monitoring/minorities/6_resources/PDF_IAConf_Contribution_FPalermo_Wshop3_en_12nov08.pdf

[21] For a comprehensive treatment of the scope and content (as well as some challenges) of the right to effective participation of minorities in public life, see: A. Verstichel, *Participation, Representation and Identity; The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits* (Intersentia, 2009).

- in consultative mechanisms (their establishment, membership, roles and functioning)[22]
- in public administration, in the judiciary and in the executive
- through sub-national forms of government
- through autonomy arrangements
- vis-à-vis availability of financial resources for minority-related activities
- in terms of the media (from representations through programming to ownership)
- and in terms of their monitoring the Convention itself.

The Sami Parliament in Finland

The Sami Parliament (or *Sámediggi*) was originally established in 1973 followed by Act 974/1995 of the Finnish Parliament – "the Act on the Sami Parliament". Among other things, the Act recognises the existence, character, rights and powers of the Sami and their Parliament with a view to "look after the Sámi language and culture, as well as to take care of matters relating to their status as an indigenous people" (Chapter 2, Section 5(1) on General Powers). In addition to its own powers, the Sami Parliament is empowered by an "Obligation to Negotiate" (Chapter 2, Section 9) on the part of Finnish authorities vis-à-vis the Sami Parliament in respect of a number of specified domains including community planning, use of land, mining, aspects of education, health care and social policy, and "other matters affecting the Sami language and culture or the status of the Sami as an indigenous people". The effect of this power – to compel a negotiation on specified important matters – is to cause the Finnish authorities to suspend their normal processes in exercise of their lawful powers and engage in a genuine exchange with the Sami Parliament in (re)consideration of the identified matter and prospective act, whether policy, law, programme or practice.

It is important to note that international human rights standards do not afford rights of effective participation, subsidiarity or autonomy to any kind of group or minority, but rather only to ethnic or national, religious, linguistic or cultural minorities. Moreover, the protections are most powerful with regard to limited and specific matters which affect the maintenance or development of identity (notably comprising language, culture and religion) although the principle of "effective participation" noted above is not so restrained. Mere "political" minorities are not so protected or entitled under international law; their participation is apparently not considered so essential for their human dignity. Nonetheless, principles of democracy and of good and effective governance militate in favour of the same norm. While this may not be justified on the basis of protecting essential identity as an inalienable component of human dignity, arguably there are other needs and interests as well as aspirations (if "only material") which groups hold dear to them and are willing to fight to secure. These often wholly legitimate demands and pursuits may not meet minimum standards for the protection of human rights, but the idea of good governance implies that they merit full consideration as well as accommodation and facilitation to the maximum extent compatible with the legitimate demands of others and to the extent feasible. In normative terms, such governance is a matter of fairness and of fulfilment of the aspirations of the *whole* population, in all its diversity, to the extent responsible management of collective resources would allow.

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[22] Forms and rationale for advisory and consultative bodies are set out in the Lund Recommendations (see above at note 19), at recommendations 12 and 13 and in the annexed explanatory note. For some description of the role and functions of such advisory and consultative bodies, see: F de Varennes, "Towards Effective Participation of Minorities: A Brief Examination of Advisory and Consultative Bodies and Dialogue Mechanisms", in *Towards Good Governance and Social Integration; Proceedings and Developments from the Conference "Governance and Participation: Integrating Diversity"* (OSCE HCNM, 1999, republished in 2007), pp. 53-69. With regard to minorities, examples of such bodies include: the President of Estonia's Roundtable on National Minorities; the President of Latvia's Council of National Minorities; Councils of National Minorities in Bosnia and Herzegovina and in Georgia; various offices of Commissioners, or functions of different kinds of Ombudspersons, etc.

But there are also instrumental reasons to seek to satisfy such demands, as there are to seek to fulfil all human rights including with respect to overall governance.

4.   Instrumentality

The principle and specific standards of inclusivity have **instrumental value** insofar as they produce, through application, **useful effects or outcomes**. These can be understood by reviewing a number of recurrent challenges and opportunities – or questions – which arise in practice. In contributing to the prevention or resolution of conflict and to peacebuilding, the utility of inclusive processes is considered herebelow in no particular order.

Beyond respecting rights, what else does inclusion do?
First of all, there is important value in the symbolism afforded by inclusive processes which confer status and opportunities. Such "politics of recognition"[23] (which may affirm the "right to exist"[24]) may well be enough to satisfy some groups. In addition, it widens the sources of information, hopefully meaning better information derived from the larger pool. Further, it creates moral obligations through the sense of ownership and shared responsibility in the outcomes (especially if groups have a stake in them).

Isn't inclusion complicated?
Yes, to some degree in design, management, conduct etc. But the apparent simplicity of exclusive processes (which may be smaller and quicker) is illusory insofar as they presume broad compliance on the part of excluded groups. In our ever more complex and inter-dependent world, the fact is that small disgruntled and determined groups (such as "the Real IRA" in the case of Northern Ireland or the Túpac Amaru Revolutionary Movement [or MRTA, using its Spanish-language abbreviation] in Peru) are capable of substantially disturbing if not disrupting peace. It seems there is, therefore, value in managing outliers and possible spoilers by bringing them "inside the tent" rather than leaving them outside, even if this requires a bigger tent and more time for debate and to reach decisions.

It is also true that problem- and solution-matrixes for accommodating diversity, both arithmetic and geometric, are by their nature a bit more complex in terms of numbers and range of positions, to be matched with possibilities and resources including time and space. There is also the challenge of feasibility. But, at the same time, inclusive processes offer opportunities to settle differences through harmonisation, reconciliation or other negotiated outcomes which result in better governance satisfying more of the citizenry. Those are substantial gains which yield tremendous positive effects over time. Inclusive processes are, therefore, a good investment.

In insecure situations, don't inclusive processes take precious time?
Yes, sometimes inclusive processes are painstakingly slow in pace as the number and range of voices are heard and the diversity of needs, interests and aspirations considered. It is no secret that democracy takes time and requires appropriate spaces, places and other resources. By contrast, the relative simplicity of dictatorship and authoritarianism can appear attractive, especially for the powerful… The differences in the quality of decisions and in outcomes are

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[23] On the notion and importance of this idea, see its principal proponent: Charles Taylor, "The Politics of Recognition" (original essay of 1992), in A Gutman (ed.), *Multiculturalism: Examining the Politics of Recognition* (Princeton University Press, 1994), available on-line at:
http://elplandehiram.org/documentos/JoustingNYC/Politics_of_Recognition.pdf
[24] See Article 1 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

to be compared. Appropriate processes must be designed to take account of the circumstances including constraints of time.

Are all groups equal?
While their members are each equal human beings, groups differ by numbers of members, material wealth, location and real power. They are not all equal, in democratic and material terms.   There are standards which can accord or effect closer "equality" through some procedural and political techniques, such as weighting shares of seats or votes in certain fora (such as upper houses of parliament or in decision-making or consultative bodies comprising reserved seats[25]). Real power can hardly be ever fully countered (although it can be to some degree through taxation or redistributive politics), and needs to be recognised or else there will be reactions and difficulties in generating compliance on the part of the wealthy and powerful to the detriment of all not least the small and weak who are in fact most vulnerable and thus have a great interest in keeping the wealthy and powerful on board. How groups are to be accorded different weights in peace processes is a matter of design following careful situational analysis.

Does every group merit inclusion?
In the first place, prospectively included groups must be interested in and at least minimally capable of engaging in peaceful political processes… and so committed to realisable aims of some sort of governance. It is difficult to imagine inclusion of nihilists. But armed groups or political movements with militias are certainly capable to be included and, indeed, it is highly desirable to find ways to do so. At different stages of conflict, the form of inclusion may vary. E.g., in negotiating a cease-fire in the midst of violent conflict, by definition armed groups will be included. In addressing challenges where territory may be under the control of different armed groups, this too seems inescapable if one seeks to move from violent to peaceful politics. Of course, in such contexts also international humanitarian law applies, while general international law does not equate contacts or engagement with recognition carrying legal consequences (such as legitimizing claims or conferring lawful authority).[26] So, in principle, every peaceful group (and some others) representing genuinely held views about differing legitimate needs, interests and aspirations merits to be included somehow and to some degree, including armed groups. How this is to be achieved is a matter of design with a number of options available which can evolve by stages of peace processes.

Why should we care about numerically small or weak groups?
Aside from respecting their equal rights (and noting, importantly, that the principles of mutual respect and rule of law have their own instrumental values!), we should care because: everyone learns (sometimes the smaller and weaker have generally valuable observations and insights); there may be issues about the humanity of the powerful (recalling Mahatma Gandhi's oft-cited observation that "A nation's greatness is measured by how it treats its weakest members"); it establishes practices which re-assure everyone… because, depending upon changes, we may all find ourselves in some context in the position of a minority; in social-psychological terms, the dynamics of including and respecting the small and the weak can have moderating effects on the conduct of the strong, notably constraining unbridled tendencies to abuse power; and it may require creation of more balanced systems which dilute otherwise bi-lateral competitions into wider community systems. In sum, inclusion even or especially of small and weak groups has a number of valuable consequences.

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[25] See, e.g., the reserved seats in the Romanian Parliament for representatives of officially recognised "national minorities".
[26] An example of such a case is the Geneva International Discussions on Security and Stability in Transcaucasia established after the August 2008 armed conflict in Georgia which include the *de facto* authorities from Abkhazia and South Ossetia.

Can the interests of geographically dispersed groups be accommodated?
Yes. There are various ways to accomplish this, including through grants of autonomy to cultural communities wherever they may be located. Developments in the availability and uses of technology are making such arrangements increasingly feasible. It is important not to dismiss the fact that dispersed communities still have interests and, indeed, may have additional needs because of the very challenges posed by geography. And, of course, some dispersed groups may nonetheless be powerful (e.g. in economic terms).

When in a process should interested or affected groups be included?
In principle, as early as possible… so their voices and ideas can help shape a process, enrich the deliberations, and contribute to better decisions. Also, the earlier one can create opportunities for natural talents to emerge from individual leaders irrespective of group affiliation, the better for all; it has been observed that great leaders not infrequently come from small or weak groups that demand developed skills to advance their interests. Moreover, earlier engagements contribute to strengthen legitimacy, ownership and responsibility as well as improve compliance and, thereby, the chances for success of outcomes.

What should be avoided?
Too many vetoes… or too many "vital interests". Instead, it is better in process design to emphasise shared interests rather than differences, to prize compromise and in effect to require alliances for decisions to be taken. Vetoes create the possibilities for impasses, or "hostage-taking" in terms of groups holding back processes from proceeding or concluding. This said, there really do exist "vital interests" for which, if need be, suspensive vetoes may be preferable which have the effect of stopping for some time a decision-making process which might be ignoring, or failing fully to consider, the legitimate concerns or rights of, and affects upon, key parties. Such suspensive vetoes buy time and may prescribe additional procedures for such matters to be more carefully considered and for better decisions to result. Autonomy arrangements function to reduce areas of conflict and in effect remove the need for vetoes.

In addition to the many considerations above, one important instrumental effect of participatory processes which include groups or communities in consocial arrangements is to recognise and deal with the facts that, on the one hand, some needs or interests can only be met through communities (e.g. radio and television broadcasting or similar major telecommunications, or provision of cultural facilities like museums or theatres), and, on the other hand, some human beings do not act on the basis of individual autonomy but depend instead on socio-cultural belonging (including hierarchies). Indeed, community identity and relations tend to predominate or intensify in conditions of insecurity and conflict[27] when close affiliations and alliances provide physical protection and are the basis of satisfaction of basic human needs including survival. Whether considered extraordinary or abnormal conditions, such situations tend to prize belonging where community leaders often enjoy considerable power to deliver (if not compel) the compliance of members. In other words, community leaders do enjoy popular legitimacy and can act accordingly. In situations of violent conflict, processes which include such leaders may be more efficient and effective than the conduct of elections which may accentuate differences and insecurities in electoral competition and generate or perpetuate conflict without necessarily resulting in a better outcome in terms of subsequent governance arrangements. This is especially so in deeply divided societies.

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[27] Important lessons are to be learned from experiences such as in Bosnia and Herzegovina and Iraq where flaws in process design resulted in reification, reinforcement and entrenchment of such tendencies ultimately perpetuating or arguably giving additional impetus to the conflicts.

The Comprehensive National Dialogue Conference in Yemen

Pursuant to the Gulf Cooperation Council Initiative agreement and its Implementation Mechanism, both agreed on 23 November 2011 to bring the country back from the brink of civil war, a Comprehensive National Dialogue Conference (NDC) was included as a key element of the 27-month political transition. The NDC is a highly inclusive process with almost a dozen distinct "constituencies" and a number of individuals representing other distinct social and political factors and communities combining for a total of 565 Delegates. Included amongst these are political parties and movements, social factors and communities, leading personalities, and representatives of independent women, youth and civil society. They have been meeting since 18 March 2013 to address a wide range of challenges facing the country (divided into nine subjects and Working Groups) with the aim of reaching a broad consensus on a new vision and social contract for the country and informing a Constitution Drafting Commission to translate that vision into a new constitution. By design, the NDC must reach its decisions by "consensus" (i.e. no more than 10% of Delegates being against) or, if need be in a second round of decision-making, by a qualified majority of 75% voting in favour. The composition of the constituencies combined with the decision-making rules means that decisions can only be taken with the cooperation and concurrence of a number of groups – together amounting to at least 75% of all Delegates – and that no single group can, acting alone, ultimately block a decision. Not surprisingly, the NDC has taken considerable time and has run well over the initially prescribed period. The dialogue has been absorbing, exhausting and remarkable, resulting in some surprising decisions and bringing to national attention new leaders who have built important relations and honed their skills through the process. The Conference plenaries are broadcast live on national television and the conference reports, including daily summaries, are available on a dedicated website in Arabic and English; see: www.ndc.ye. The NDC enjoys the support of the international community expressed through resolutions and statements of the UN Security Council (notably resolutions 2014 (2011) and 2051 (2012)) and a number of politically and materially supportive States, IGOs and NGOs.

5.   Key Reflections

1. Inclusion has both normative and instrumental values for peace processes.
2. There are a number of international norms and standards which require forms and degrees of inclusion of different groups in peace processes.
3. There are many utilities to be gained from inclusive processes, although such processes add elements of complexity and include risks which need to be addressed.
4. All countries are diverse in the composition of their populations, and so it should be expected that conflicts will exist, arise and evolve.
5. Inclusive arrangements for governance which create spaces, places and opportunities for authentic voices in decision-making, and which maximise control over each group's needs, interests and aspirations, are important for sustainable peace and development.
6. There are many examples of successful experiences and practices of inclusion in peace processes at all stages of the conflict cycle/continuum as well as in times of peace.
7. The more arrangements and opportunities to accommodate the variety and range of existing and evolving needs, interests and aspirations, the more likely the society is to be peaceful.
8. Ultimately, inclusive processes are better processes – facilitating more informed deliberations, broader and deeper concurrence, resulting in more implementable and sustainable agreements. This allows situations to transition from violence through "negative" peace (i.e. absence of war) to "positive" peace (i.e. self-generating, resilient societies and sustainable development).