

GUIDANCE NOTE OF THE SECRETARY-GENERAL

on United Nations Constitutional
Assistance

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SUMMARY

Constitution making is a central aspect of conflict prevention, peacebuilding and promoting human rights, the rule of law and sustainable human development. For the United Nations (UN), constitution making is a broad concept that covers the process of drafting or amending a constitution, the substance of constitutional text, and the subsequent implementation of a constitution. Both the process and substance are critical elements of constitution making.

This Note sets out the guiding principles and framework for UN support to constitutional processes derived from lessons learned from UN constitutional assistance experiences. While each process is distinctive, the Note outlines frequently encountered elements and phases of constitutional processes and identifies some principles, resources and expertise that can promote effective constitutional assistance and implementation.

The UN is committed to supporting Member States strengthen legitimate and stable constitutional orders. It recognizes that constitution making is a sovereign process, more likely to be successful when nationally owned and led, inclusive, participatory and transparent, based on applicable international norms, standards and good practices, and tailored to the specific country context.

A. Guiding Principles and Strategies

1. Foster peacebuilding and sustainable human development
2. Ensure national ownership and reflect local context
3. Promote international norms and standards
4. Support inclusivity, participation and transparency
5. Mobilize and convene a wide range of expertise
6. Promote effective implementation

B. Constitutional Processes – Phases and Elements

Constitutional processes take many forms but generally fall into three broad phases: (i) setting the agenda; (ii) consultations, negotiations and adoption; and (iii) implementation. When constitution making is part of conflict prevention or resolution efforts, some of these elements could take place within a peace process.

C. Forms of Assistance

UN assistance to any element of a constitutional reform process will usually originate from a request from a national government or a mandate from a UN legislative body.

UN assistance will always need to be calibrated to specific contexts but could include political good offices, rule of law, gender and human rights advice, legal and technical capacity building, the provision of comparative good practice, and financial and administrative support. Constitution making engages many facets of expertise within the UN system and requires a coordinated approach.

INTRODUCTION

A constitution is a state's foundational legal instrument establishing rights, institutions and processes that guide how the state functions and power and resources are shared. As such, constitution making is a central aspect of state building, conflict prevention and resolution, peacebuilding and the promotion of human rights, the rule of law and sustainable human development. UN engagement in, and assistance to, constitution making is increasingly a core component of its peace, state-building and sustainable human development strategies. In this respect, the UN recognizes that constitution making may present an exceptional opportunity for a state to create a common vision of its future. It also appreciates that constitution making (including the revision of a constitution) may present risks, especially when it requires changes in the distribution of power and resources or raises issues related to rights or identity.

Constitution making occurs in many different contexts – during times of stability, periods of intense conflict, or as part of peace processes and other political transitions. The UN is available to provide assistance in all contexts.

The UN is committed to providing constitutional assistance in a manner that respects national sovereignty, promotes democratic values and international norms for which the UN stands, is sensitive to the context of the country concerned and ensures national leadership and ownership. UN constitutional assistance is as focused on the process of making or revising a constitution as it is the content of the constitution, as the likelihood of forging a durable social compact is enhanced if citizens and groups feel they were genuinely included in the reform process.

The UN has a broad understanding of constitution making that encompasses not only the drafting or amending of a constitution in formally established processes, but also, for example, decisions about constitutional issues that may occur relatively early in a peace process or when transitional arrangements for exercising public power and basic principles for governance are agreed. It also includes implementation activities in the period following constitutional adoption; for example, establishing and setting up constitutionally mandated institutions or the promulgation of constitutionally mandated laws.

This Guidance Note sets out the principles and good practices that underpin the UN's engagement in constitution making.

A. GUIDING PRINCIPLES AND STRATEGIES

UN constitutional assistance is guided by the following principles and strategies that reflect the UN's core values and mandate to provide support to Member States.

1. Foster peacebuilding and sustainable human development

Conflict is frequently linked to disputes about the exercise of state power, the allocation of resources and identity – matters to which the constitution is inextricably linked. In these circumstances, engaging with constitutional matters can be part of a conflict prevention, resolution or peacebuilding strategy.

The Sustaining Peace Resolutions of 2016 ([A/RES/70/262](#) and [S/RES/ 2282](#)) emphasize the need for a comprehensive approach that includes recognizing the primacy of the political, addressing the root causes of conflict, strengthening the rule of law and good governance, and

building a common and inclusive vision of society. These matters have clear constitutional resonance.

Constitutions and constitution-making processes are also central to the 2030 Agenda, realization of the Sustainable Development Goals (SDGs), and the “Decade of Action’s” prioritisation of solutions that catalyse simultaneous progress on multiple SDGs. Constitutions frame the approach of states to social and economic development and poverty reduction (SDGs 1-4, 7-11), gender equality and women’s empowerment (SDG 5), reducing inequality (SDG 10), environmental protection (SDGs 6, 12-15) and fostering peaceful, just and inclusive societies (SDG 16). While the needs and circumstances of each country will vary, constitution making gives states and their citizens the opportunity to examine the approaches, visions, models and tools most likely to reach consensus on how to address these inter-locking challenges and to foster shared values and how public power is to be exercised.

The objective of UN assistance is to promote state building, conflict prevention and resolution, and peacebuilding, as well as to strengthen the rule of law, human rights, good governance and inclusion. In considering whether and how to provide assistance to constitution making, it is important for the UN to first assess the national and regional socio-political and economic context, as well as the practical and symbolic ramifications of its involvement. Not all constitutional reform processes are initiated to promote peace and inclusive sustainable development or to advance the values to which the UN is committed. In such instances the UN will carefully consider whether its involvement is appropriate.

When UN assistance to constitution making is deemed appropriate, it is most effective as an integral part of an overall conflict prevention, conflict resolution, peacebuilding and sustainable human development strategy.

2. Ensure national ownership and reflect local context

Constitution making is a sovereign process that, to be successful, should be nationally owned and led. National ownership requires the engagement of national authorities, a broad range of political actors, ethnic, religious and minority groups, civil society, including women’s groups, and the general public.

The options and advice provided must be carefully tailored to the local context, recognizing there is no “one size fits all” constitutional model or process.

3. Promote international norms and standards

The promotion and protection of human rights is a key purpose of the UN, as reflected in the Charter. The UN also has a Charter mandate to promote respect for and observance of international norms and standards, both in human rights and in the broader economic and social fields that have been endorsed by Member States in its legislative bodies or conferences. As a result, the UN should consider appropriate steps to share its observations and engage with state authorities and other national actors when there are opportunities to strengthen constitutional commitments to human rights and other international economic and social norms and standards. When relevant, it should encourage national actors to engage into dialogue on these substantive issues and clarify for them the country’s obligations under international law.

International norms and standards that are usually particularly pertinent in constitution making include those relating to the rule of law, elections, transitional justice and human rights. Human

rights protections that recognize a person's inherent dignity, individual autonomy and respect for human diversity, as well as the principles of equality and non-discrimination - including express reference to equality between men and women - should be embedded in constitutions. The status of children as bearers of human rights should also be constitutionally affirmed. In countries emerging from conflict, international human rights that may be especially relevant are those relating to accountability and discrimination against women, children, minorities, indigenous peoples, persons with disabilities, refugees and stateless and displaced persons.

4. Support inclusivity, participation and transparency

Inclusive, participatory and transparent constitution making strengthens the legitimacy of a revised or new constitution. For the purposes of this Note, "inclusion" refers to key political and social groups participating directly both in decision-making concerning the design of the constitution-making process and in drafting the constitution; "participation" refers to broader public engagement in these processes.

A genuinely inclusive, participatory and transparent constitution-making process can be a transformational exercise. It can provide an opportunity for people to engage in a healthy debate on the nature of the state and state power, including core principles of constitutionalism and democracy, experience democratic governance practices and learn about relevant international principles, practices, and standards. This, in turn, can raise expectations of transparent and accountable government and lay the basis for future popular engagement in public affairs - furthering the 2030 Agenda commitment to "leave no one behind". Finally, inclusive, transparent and participatory processes are also more likely to build consensus around the constitution itself.

Ensuring constitutional processes are participatory should be a main goal of UN constitutional assistance. To contribute to a participatory process, UN assistance should be mindful of some of the practical challenges sometimes associated with public education and consultation campaigns. These can include raising expectations that may be difficult to meet about how public inputs will be used in the drafting process; additional risks for polarisation over contested constitutional matters; and the potential time and cost associated with conducting participation campaigns. These challenges can be avoided or mitigated by setting clear, realistic and practical goals and ensuring transparency and access to information on the modalities for participation.

Truly participatory constitution making embraces all sectors of society, particularly women, youth, linguistic, religious, and ethnic groups, sexual and gender minorities and persons with disabilities. In promoting the inclusion and participation of groups that are politically, socially or economically marginalized in public life, taking into account the multiple layers of exclusion in society are important. All people belong to more than one group and have multiple identities. Special measures can be considered to ensure that all groups are empowered to effectively participate. The UN should also provide support in a manner that promotes a constitution that is gender sensitive and inclusive in its language, its institutions and its processes and that speaks to all the people in the country.

5. Mobilize and convene a wide range of expertise

Constitutional assistance often involves mobilizing and convening a wide range of expertise, from both within and outside the UN system and within and outside the country, to provide access to and understanding of international and comparative good practice. Depending on the context, specialist support on transitional political arrangements, designing constitution-

making processes, engaging the public and managing public consultation, constitutional design and management of constitution-making bodies, among other things, may assist a constitution-making process. While it is important that national actors play the main coordination role, the UN is often in a strong position to encourage partnerships with national and international actors, regional and sub-regional organizations, and other expert networks to address the needs identified by national actors.

6. Promote effective implementation

The adoption of a new or revised constitution is not an end in itself, but a milestone in a longer process of building peace and sustainable human development. Experience has shown that in many cases, once a constitution is agreed, implementation is often assumed, without specific strategies being developed or resources assigned for this critical phase of work. Upon request, the UN should assist in the effective implementation of a newly adopted constitution, provided that it is consistent with the norms and values of the organization.

If new constitutional arrangements are not properly implemented, the achievements of the constitution-making process are less likely to be realized. Unfulfilled expectations may lead to public disillusionment and may undermine good governance and development, possibly leading to the recurrence of conflict. Constitutional implementation may benefit from on-going engagement with national actors by the UN and other regional or international actors to facilitate the resolution of outstanding disagreements, support outreach and education on the new constitution, assist in the preparation of enabling legislation and contribute to capacity building and institutional development.

B. CONSTITUTION-MAKING PROCESSES – PHASES AND ELEMENTS

Constitution making is not a one-off event or a linear process. It has a range of different elements, varying greatly according to the context. Usually, however, three broad phases can be identified:

- *Setting the agenda*, which may include peace talks, establishing transitional constitutional arrangements and designing the constitutional reform process.
- *Holding consultations on, negotiating, drafting, and adopting* a constitution (or constitutional amendments).
- *Implementing* the new or revised constitution, including establishing institutions, enacting constitutionally mandated laws and building a culture of constitutionalism.

Setting the agenda may include:

- Negotiation among key constituencies on the constitution-making process, which may include one or more dialogues to help establish support for the process and identify shared, founding values and principles.
- Agreement on how constitution making is to proceed, including determining what body or bodies will be used for the process and how they will be constituted to achieve effective representation; how decisions will be reached; how the constitution or constitutional amendments will be adopted; what the timeline will be; and how disputes will be resolved. The process and institutions chosen are usually influenced by the current national context and the political and legal traditions of the country. A central question in determining how the constitution will be adopted is often whether the provisions of the existing constitution should apply or whether there should be a total break with the past constitutional order.

- In a post-conflict context or in a democratic political transition, there may already be agreement emerging from prior political negotiations on core principles that are to underpin any future constitutional reform process and on possible transitional arrangements for exercising public power. Such arrangements may be embedded in a peace agreement, set out in a separate document (for example a constitutional declaration, interim constitution) or formalised in a constitutional amendment.

Holding consultations on, negotiating, drafting and adopting a new/amended constitution usually involves:

- Establishing constitution-making bodies, such as a constitutional commission, constituent assembly or parliamentary constitutional committee, or a combination thereof.
- Establishing or strengthening a secretariat or other body to support the constitution-making bodies, particularly with research, record keeping and public information, education and consultation programmes.
- Conducting public information and education programmes on the constitutional reform process and the proposals under consideration for the constitution.
- Holding public consultation processes to gather views of civil society and the public at large, including women's groups, and recording and collating such views.
- Deliberating on, drafting and agreeing to the draft constitution.
- Informing the public on the proposed draft constitution.
- Adopting the constitution, which is likely to include endorsement by a formal body established for the purpose of drafting or revising the constitution or an existing legislature; it may involve a public referendum and it will usually involve proclamation of the new constitution by the head of state.

Implementation may involve the following:

- Developing a strategy for implementing the constitution, including priorities, timelines, and special bodies to guide and/or monitor implementation.
- Establishing and supporting new bodies required by the constitution such as constitutional courts, preparing consequential and enabling or organic laws and amending existing laws.
- Educating the public, politicians and public officials, among others, on the newly adopted constitution or constitutional amendments and managing expectations.

C. FORMS OF ASSISTANCE

UN assistance to any element of a constitutional reform process will normally take place based on a Security Council or other UN legislative mandate or in response to a request from a national government.

The UN can provide assistance at various stages of a constitution-making process, which can range from limited advice on a particular issue to long-term support. This requires engagement with national actors to tailor assistance to the context and needs, and coordination with other international stakeholders that may be supporting the process.

Assistance may include:

Political and Strategic Support

- Support in creating an environment conducive to constitution making, including necessary security, political and legal arrangements.

- Support in negotiating constitutional aspects of peace agreements, transitional arrangements and the subsequent transition to more permanent constitutional arrangements.
- Support in negotiating the design, structure and timeframe for the constitution-making process, including decision-making procedures.
- Assistance in designing the selection process for the constitution-making body or bodies, including assistance in building an inclusive process with representation of women, marginalised groups and minorities.
- Political facilitation and provision of good offices on contentious issues.

Technical Advice on Constitutions and Constitutional Reform Processes

- Advice on drafting transitional constitutional arrangements governing a period before longer-term constitutional arrangements are agreed.
- Advice on drafting the law or decree establishing the constitutional reform body or bodies and other laws, including procedural rules, necessary for the process.
- Provision of constitutional design options, including comparative examples of constitutional good practice.
- Advice on international norms and standards, including on human rights, rule of law and gender and the requirements of international human rights and other economic and social treaties to which the state concerned may be party.

Capacity Building and Institution Development and Support

- Assistance in developing processes that are inclusive in every respect, including in the way in which constitutional debates are conducted and proposals are developed and assistance in designing and implementing public information, civic education and public consultation campaigns.
- Assistance in establishing bodies and structures to promote an efficient and effective process, including forming secretariats, caucuses and committees within constitutional reform bodies.
- Equipping members of constitutional reform bodies with technical and negotiation skills, including drafting skills.
- Supporting efforts by civil society to engage in and contribute to the constitutional reform process, including organisations representing women and marginalised groups. Providing logistical, financial, material and administrative support.
- Providing assistance to national authorities for the coordination of donor programmes.
- Facilitating arrangements for adoption, including a referendum, if required.
- Assistance in constitutional implementation, including establishing and strengthening constitutionally mandated institutions, preparing constitutionally mandated laws, and supporting public education campaigns on the new constitution.

UN System Arrangements

The range of potential forms of constitutional assistance draws on many facets of expertise from within and outside the UN system, and therefore requires a coordinated approach and strong communication among all UN entities involved in constitutional assistance.

Accordingly, UN departments and offices, funds and programmes have created an inter-agency Constitutions Working Group, which serves as a forum for system-wide coordinated constitutional assistance. Working Group members track constitutional assistance efforts within their agencies and departments, document the experiences of their respective department or agency to build institutional capacity, record lessons learned and provide

constitutional advice to their colleagues. Additional guidance on constitution making and constitutional assistance produced by UN departments, agencies, funds and programmes can be found at: <https://peacemaker.un.org/constitutions-project>.

Working Group members can provide constitutional advice to UN staff, missions and country teams and other partners, drawing on their expertise and lessons learned from previous assistance. UN departments, offices, funds and programmes as well as Special Representatives and Envoys of the Secretary-General and Resident Coordinators are encouraged to make use of this resource.
