

THE UN CONSTITUTIONAL

A Newsletter on United Nations
Constitutional Support



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FOREWORD

“The UN Constitutional” team is pleased to publish the third issue of its newsletter featuring articles by constitutional experts, reports from the field, and a digest of recent constitutions-related publications. This issue includes two exclusive interviews - with a senator and a civil society activist - presenting their unique perspectives on constitution-making. The featured thematic article deals with constitutional reform in relation to peacebuilding and the social contract.

“The UN Constitutional” is a manifestation of the collective desire of 6 UN entities to raise awareness of constitutional issues and themes, share information, and strengthen the provision of constitutional assistance.

The UN Constitutional Team:

- UN Dep. of Political Affairs (DPA)
- UN Dep. of Peacekeeping Operations (DPKO)
- Office of the High Commissioner for Human Rights (OHCHR)
- UN Development Programme (UNDP)
- UN Children's Fund (UNICEF)
- UN Women

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Interview with the Honorable Tito Rutaremara Senator of the Republic of Rwanda

Questions by UN Women



Q. The Rwandan Constitution has been in place for over a decade. What do you think were some of the key interventions by the Government of Rwanda that resulted in the Constitution's overwhelming acceptance by the population?

A. When we were creating the Constitution, we wanted all Rwandans to participate. That is why the whole process took 3.5 years, to provide enough time to talk to the people and get ideas from them.

We spent six months sensitizing the population on what a constitution is, what voting means, what democracy means. We created booklets in Kinyarwanda (the local language), and went from village to village

Hon. Tito Rutaremara

Honorable Tito Rutaremara is a Rwandan Senator and former Chief Ombudsman and Secretary General of the Rwandese Patriotic Front (RPF), whose forces brought an end to the 1994 genocide in Rwanda. Thereafter, he took a leading role in bringing stability and structure to Rwanda as an active Member of Parliament. Hon. Rutaremara also served as the Chairperson of the Constitutional Commission, which was assigned with initiating consultations and preparing the draft Constitution that was ultimately voted in a referendum in 2003.

across the country. We even simulated Senates so that the population could see how a system would work in practice.

An additional six months were spent on specific ideas in the constitution. What are these and what do they mean? For four months where we sought the population's input on

issues such as the kind of regime they wanted – Parliamentary or Presidential.

We didn't only visit villages, but also schools, ministries and departments and even went abroad to consult with the Diaspora. The important thing was to find out what they, the Rwandans, viewed as important.

The people could provide feedback in groups or individually. They could write it down, call or email. Back then not everybody had a telephone and it was important that we went to all the villages to collect the answers. We then collected them into a big database where we weighted it. The answers would be given different points depending on if they came from a group or an individual.

We presented the findings to the population and they were again given the opportunity to tell us if they were of a different understanding and why. Based on all these ideas we drafted the Constitution in English, Kinyarwanda and French and circulated it to the entire population for another round of feedback.

We also shared the draft for discussion with various experts, both in Rwanda and abroad, such as academicians from the US, Great Britain, Belgium and South Africa.

I think the main point is that the population was always involved, throughout the entire process. We spent years consulting and talking with them.

Q. What was the role that Civil Society and development partners, such as former UNIFEM, and others played in this process?

A. UNIFEM played a big role. We needed to sensitize women and get their opinion and we therefore approached UNIFEM to help us. We realized that women were not present during the sensitization, because their time is not used the same way.

Men prefer to go for meetings in the evening, but at that time women are busy cooking and looking after the children. We therefore arranged special meetings for women. We also arranged special meetings for

religious groups, for example, to discuss polygamy and monogamy with the Muslim community. We had separate debates for just women, but also brought women to debates with men, and encouraged them to express their opinions.

UNIFEM assisted us in organizing the debates, with financial support as well as publications and at times attending the meetings to talk to the women.

Q. What in your point of view makes a constitution gender responsive?

A. The first step is to encourage women to participate in the debates and discuss their problems with men, so that these problems can be included in the Constitution. Second, gender equality should be put guaranteed through the fundamental principles. These principles are there to be followed and not to be changed. We need to always look at the rights to make sure that the women are represented.

It is important to see how women participate in political parties. In the Constitution, all political parties need to make sure that 30% of their members are women. Then there is the work of the executives, where the government needs to be a minimum of 30% women. This makes our constitution gender sensitive.

Q. What were the main challenges you faced in having the Constitution be gender responsive?

A. It took us long time to mobilize the population. We started mobilizing women in rural areas, and then brought them to mobilize the men. We arranged discussions between men and women.

Q. If you look at the situation in Rwanda today, what challenges do you feel remain in implementing the Constitution?

A. Of course we still have challenges. A significant challenge is that the culture favours men. An important issue is the lack of education for women. We really need to educate women and this takes time. Our population is poor but women are poorer because of the culture and their situation. Women are held back by the traditional role of women as caregivers and housekeepers; they simply do not have the time, making it hard to empower them financially. We need to educate men to support their wives, to gender sensitize men in order to change ruling mentalities.

Q. What do you believe are Rwanda's main achievements thanks to the Constitution?

A. Education is now open to all. More girls attend secondary school now, but women are still largely absent from universities. Having reached the goal of minimum of 30% women in parliament is also an achievement. But we still have a problem with women's representation in private sector/enterprises. The men hold a strong position, making it harder for women to enter. This is a problem for each and every department within the private sector. To empower women is to empower her family; the money that she makes is invested in the whole family.

We would like to thank the Honorable Senator for taking the time to meet with us. We greatly appreciate it.

Interview with Valnora Edwin Civil society activist in Sierra Leone

Questions by “The UN Constitutional”

The UN Constitutional interviewed Ms. Edwin to explore ways in which Sierra Leonean civil society was engaging in the constitution making process and any impacts it has been able to have.



Valnora Edwin

Valnora Edwin is a Sierra Leonean civil society activist who currently serves as the Executive Director for the Campaign for Good Governance (CGG). CGG's mission is: "To increase citizen participation in governance, through advocacy, capacity building and civic education in order to build a more informed civil populace and a democratic State." Ms Edwin is a member of the Constitutional Review Committee of Sierra Leone, and continues to promote constitutional participation through the Campaign for Good Governance.

Q. How is Sierra Leone civil society engaging with the constitutional process?

A. Sierra Leone's Civil Society Organizations (CSOs) are well-represented in the Constitutional Review Committee (CRC). Outside the CRC, they CSOs are actively engaged in diverse ways, but primarily through civic education, although there are challenges such as limited resources for such activities. CSOs are supporting consultations and advocacy around specific issues, including gender equality, citizenship, strengthening the separation of powers and limiting the powers of the executive. For example, CGG makes all of its relevant reports available to the Constitutional Review Committee and they have been well received by members. CSOs have also made extensive use of the media as a means to capture those who could not attend forums and a wider audience.

Q. What has been your own role in supporting the current constitution-making process in Sierra Leone?

A. I represent my organization in the Constitutional Review Committee, following my previous participation in an earlier Constitutional Review Commission in 2007. The added value has been that our daily engagement as an institution has been mostly around the specific provisions of the Consti-

tution and therefore, we get a more hands on understanding of the challenges at the operational level. I have also served as facilitator in consultations held across the country organized by the Campaign for Good Governance and other groups. We have been doing this since December 2013.

Q. In what ways has civil society organized itself in order to be more effective?

A. CSOs have formed networks and are trying to coordinate their activities as much as possible. For example, The Campaign for Good Governance is a network of CSOs and with support from UNDP, one of our network members, Citizen for Constitutional Change, holds monthly forums where all CSOs and CRC members interact.

Q. What has been the involvement of marginalized groups, for example, women, the disabled and young people, in engaging in the constitution-making processes? What has been done to reach out to these groups during this process?

A. There are a number of organizations, including CGG, which are already working with these vulnerable groups, with support from UNDP and the international community. The composition of the Constitutional Re-

view Committee it-self recognized the need for representation of these groups. The CRC includes women (though smaller in number than population would suggest) and people with disabilities, as well as youth groups. Some specific consultations have already been undertaken with these groups and CGG is planning to run more, subject to funding and the constraints of the Ebola epidemic.

Q. Have you worked with the UN as it assisted civil society in participating in the constitution-making process, and if so, what have you done with them?

A. I worked with UNIPSIL prior to its closure to hold a consultation with women from all across the country. We also received support from UN Women to have consultations with women from all political parties in three regions of the country. We are currently working with UNDP to engage tribal heads in the western area to be informed about the process. We will also engage the village heads in the Western area and ward committee members in other parts of the country when the public health emergency issues have been addressed.

Q. In what ways do you think the UN or international community could help CSOs who are engaging in the constitution-making process to be more effective?

A. The UN and other development partners can support organization such as CGG, that have already been engaging in the process, to work with other CSO groups based on thematic areas and geographical spread in order to develop a single CSO document that could be presented to the CRC. It could also be used as an advocacy document, with the same issues presented from all parts of the country during consultations.



Valnora Edwin presenting a paper on women and governance. Credit: @StateHouseSL

CSOs in Action

The Sierra Leone Women's Forum has been advocating to the Constitutional Review Commission on a range of constitutional issues that they want the review to address. According to Maude Peacock, the Forum's President, "Women continue to experience heightened violence, poverty, lack of access to, and control of, resources including land, low literacy levels and under representation in political and public life." Accordingly, the Women's Forum has proposed the following actions:

- ◆ Section 27 (4) (d) and (e) should be expunged from the Constitution. These clauses provide exemption to the non-discrimination clauses of the Constitution, which allow for discrimination in relation "adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law"; or "the application in the case of members of a particular race or tribe or customary law";
- ◆ Land rights for women should be guaranteed by the Constitution;
- ◆ The 30% quota for women in parliament should be made a constitutional provision;
- ◆ Social protection should be extended to the elderly and victims of sexual violence;
- ◆ Educational support for girls of all ages should be guaranteed by the Constitution;
- ◆ No discrimination in the workplace or in communal life for women making use of the Islamic Hijab.



Constitutional Reform, Peacebuilding and the Social Contract

By Charmaine Rodrigues

Celebration in Benghazi, Libya, at the conclusion of voting during the country's first nationwide elections in nearly half a century. Credit: Iason Athanasiadis / UNSMIL

In his briefing to the Security Council in September 2013, Libyan SRSg Tarek Mitri stated: “The constitutional drafting process presents an opportunity for the Libyan people to forge a new social contract that will govern the new Libya, making imperative therefore that it be transparent, consultative and inclusive.” Political theorists have long recognized that the national constitution of a country is the framing legal document that captures the basis of the social contract between the state and the people it is supposed to serve.

Historically, national constitutions were designed to enshrine the basic agreement between the governed and their government, setting out the parameters of what the state can and cannot do. Originally arising as a pact between the monarch and the aristocracy to constrain the monarch's absolute powers, the European Enlightenment ushered in a new era of constitutionalism that prioritised constitutions as vehicles for enshrining a new social contract between the state and broader society, as witnessed in the French and American constitutions of the 18th century.

While the historical roots of constitutionalism are firmly entrenched in social contract theory, within the international development community of the 20th century there

has been a tendency to view constitutional review processes as “technical” exercises focused on the legal redrafting of constitutional articles. Arguably, this has stemmed in large part from the fact that development assistance became a tool of policy-makers in the 1970s and 1980s alongside decolonization processes that saw many countries decolonized through constitutions written by foreigners, given to them by their former colonial powers and/or endorsed at conferences in foreign capital cities rather than through popularly elected parliaments or public referenda. This reinforced the notion of constitutions as legal drafting exercises rather than a nation-building opportunity to develop a common vision for the country and led the development community to focus its efforts more

on operational and technical institutional reform programs.

In fact, a constitutional reform exercise presents development practitioners with a unique opportunity to support national counterparts to engage in a fundamental exercise of national reflection and revisioning. Constitutional reform processes provide a rare entry-point to support deeper and more overarching political and institutional governance reforms. In post-conflict contexts, this becomes even more significant. The unique role that a constitution plays in setting out the design of the government, the division of powers between branches and levels of the government, the checks and balances over state institutions, fundamental rights, and protections for minority communities means that they tend to operate as quasi-peace agreements. In such contexts, constitutions perform the unique and critical role of enshrining in law the political settlement agreed by post-conflict powerbrokers and ideally, owned by the broader local populace.

In recent years, the push amongst development practitioners for an increased emphasis on good governance interventions, and the more recent G7+ advocacy for a focus on

supporting “legitimate and inclusive politics,” have seen a renewed interest in constitutional reform as an opportunity to enshrine a new social contract for a post-conflict or transitioning state. Over the last decade, the UN has been more systematically engaged in providing constitutional assistance to Member States in post-conflict countries, but the results have been mixed. A review of recent experience highlights the following lessons learned for consideration by practitioners in the field:

- ◆ **Prioritise a transparent and inclusive process:**

While security, financial and timing constraints may require a constitutional settlement to be reached speedily, nonetheless, at a very minimum it is essential that any post-conflict constitutional process be open and participatory. In post-conflict contexts, trust in national leaders is often severely limited, which makes confidence-building measures even more important as rumours can be severely destabilising of the peace. Even where proactive public consultations may be difficult, at the least, efforts should be made to ensure information is shared on the process, the timing, the decision-making points and proposed content issues. Ideally, the public should also be provided the opportunity to contribute their own views on constitutional content, to build their buy-in for the eventual outcome. While universal agreement is not a practical objective, nonetheless, the opportunity to participate can be a key trust-building mechanism and can mitigate feelings of exclusion which can undermine a fragile peace;

- ◆ **Beware quick wins through elite bargains:**

There has often been a tendency to support the negotiation of peace agreements between a small coterie of elites – usually men, often ex-combatants and often unelected leaders. These peace agreements have also often included constitutional agreements regarding horizontal power-sharing (i.e. the balance of powers between the Executive and legislative branches) and vertical power-sharing (i.e. the balance of powers between the national and sub-national levels of government). While practical exigencies often require a quick bargain to broker a ceasefire and an initial peace, experience suggests that consideration should be given to enshrining such peace agreements in “interim” constitutional agreements at best, to enable the broader population a subsequent opportunity in peace time to determine their own constitutional destiny. For example, in the Autonomous Region of Bougainville in Papua New Guinea, the Bougainville Constitution was agreed as part of the peace process between the PNG Government and the rebels in

2004/5, but in 2015, the people of Bougainville will go to a referendum to determine the final form of their legal relationship with PNG;

- ◆ **Allow sufficient time to develop a broad-based national vision across society:**

In many post-conflict or transitioning countries, the initial optimism following the cessation of the conflict or the toppling of a dictator has given way to a hasty scramble to rewrite the national constitution in order to pave the way for elections of a new government. It is a lesson learned that it is important to allow sufficient time to reflect on what has come before and engage in an inclusive national conversation over what should come next. South African provides one of the best examples of using a series of dialogues to set the groundwork for constitutional drafting, with over three years of painstaking negotiations between the ruling party, the ANC and other political stakeholders used to develop a joint vision for the democratic transition and related constitutional



Tunisia. Short video on UNDPs activities aimed at facilitating the participation of Tunisian citizens in the drafting process through open consultation and dialogue from December 2012 to February 2013.

process. Two Conventions for a Democratic South Africa (CODESA) were held in December 1991 and May 1992 to bring multiple political stakeholders together to forge a consensus. After the breakdown of CODESA II, these were replaced by the April 1993 Multiparty Negotiating Forum, which agreed on a way forward and paved the way for building a broader coalition in support of the agreed roadmap. The gradual building up of trust and consensus over many years led to the final agreement to an Interim Constitution in November 1993, which set out the agreed national vision for the way forward. More recently, in Bolivia, a constitutional process that extended from 2006 to 2009 was characterised by repeated dialogue efforts in order to attempt to build

consensus amongst highly polarized political constituencies. Following an abortive referendum attempt in early 2008, a formal dialogue process was attempted, with little success. In 2009, the parties came together again, complementing local level initiatives to build trust and a common sense of purpose across the nation. The constitution was passed by referendum in 2009, with surveys showing that 92% of the public supported dialogue as a means of working towards peace. In Tunisia, deliberate effort was put into dialogue and mediation efforts, both at national and sub-national levels. A new National Constituent Assembly was elected in October 2011, but the

constitution drafting process took more than two years to produce a constitution by the often-divided NCA. Despite two assassinations and a number of stalled efforts, the NCA and key political powerbrokers placed a high premium on consensus-building and dialogue.

This was complemented through local level activities spearheading by the NCA (and supported by the UN/UNDP), which focused on building more broad-based understanding and support for the constitutional process.

The Author

Charmaine Rodrigues is a specialist on constitutional assistance and political dialogue in the UNDP Bureau for Policy and Programme Support (BPPS).

FIELD & HQ UPDATES

What is the United Nations doing in constitutional assistance? This section offers an overview of the latest developments, challenges and lessons in this key area of support sourced directly from our field missions, country offices and other UN entities.

LIBYA

UNDP Country Office & UN Mission (UNSMIL)

Libyan filmmakers support constitution building

While the political and security crisis that has gripped Libya since July has raised serious questions about its future and has understandably dominated the public's attention, its constitutional process has continued to push forward.

Since its first session on 21 April, the Constitutional Drafting Assembly have elected its leadership, adopted rules of procedure, and established thematic working committees on political systems, multi-level government, the judiciary, rights and freedoms, army and police, financial systems and natural resources, local governance, and independent constitutional bodies. The assembly has sent delegations to various parts of Libya to engage with the public and inform them of its work, and has sent groups abroad for study tours and workshops.

The Constitutional Declaration requires that the CDA adopt a draft of the constitutional text for public referendum within 120 days of its first meeting; that deadline passed on 19 August. Some CDA members have reportedly asserted that they are not bound by this deadline, but the legal basis for this assertion is unclear. The CDA has announced plans to release a draft text by 24 December, and a referendum by March 2015.

UNSMIL has engaged with the CDA to provide support and assistance from its inception. UNSMIL's DSRSG attended the CDA's initial session, delivering a digital library of reference materials and research papers prepared in cooperation with UNDP, and a proposed framework for coordinated international support.

UNSMIL has provided the CDA with analytical papers on several substantive and organizational issues at



Libya. Practical filming exercises as part of a training held in Tunis for Libyan journalists and filmmakers reporting on constitution-making. Credit: UNDP Libya.

their request, and has organized a number of trainings for civil society, media, and legal professionals.

Among other activities in support to the constitution-making process, UNDP continues working with BBC Media Action and Albany Associates on a multi-media outreach campaign. The project encompasses trainings of Libyan journalist and filmmakers, reporting on the constitution-making process through various media products and channels. The project seeks to build media capacity to facilitate an open dialogue between the CDA and the Libyan population. It will also assist the CDA in building its

capacities in communication and outreach. Under its programme 'Saloan ALibyeen', the multi-media campaign project, UNDP organised in Tunis a training for young filmmakers from across Libya. The training covered technical skills, an introduction to the constitution, the role of women in the constitution and the constitution-making process, as well as a presentation of a Tunisian example on civil society engagement in constitution-making. BBC directors, producers and editors will support and mentor the work of the Libyan filmmakers in the months to come. The trainees will produce a series of

short documentaries presenting selected issues on the future Libyan constitution. The mini-documentaries will look at such questions as the role of women in political life, federalism in Libya, and Libyan identity. The aim of these features is to provide background on the issues and to pose an open question in a way that stimulates thoughtful dialogue.

The evacuation of the UN from Libya in July 2014 has reduced the UN's ability to provide direct support to the CDA. Despite not being on the ground, UNSMIL and UNDP are working with the CDA on ways to provide remote assistance.

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NEPAL

UN Country Team

UN's support to democratic and inclusive constitution drafting process in Nepal

Writing a new democratic constitution, drafted by an elected Constituent Assembly (CA), was the cornerstone of the 2006 peace agreement. The first CA (elected in 2008) could not complete the new charter due to differences over the delineation on federal states, which included sensitive issues of identity politics and communal tensions. A second CA was successfully elected through peaceful elections, which were supported by the UNCT, in November 2013. The second CA has committed to complete the new constitution by early 2015. It has made some progress, notably by reaching agreements on a number of crucial issues and deciding to build on other



Nepal. Hon. Laxman Lal Karna speaking in the Samakon Dabali workshop on citizenship organized by Sancharika Samuha. Credit: UNDP Nepal.

political achievements made since the peace process began in 2006. Consultations with a wide range of stakeholders and negotiations on proposed compromises are currently ongoing. The constitution writing process has entered a crucial phase. According to the CA calendar, the parties need to settle all contentious issues and submit a report to the CA plenary during September and finalize the first draft by mid-October. However, the parties have yet to resolve the most contentious issues relating to forms of governance, electoral system and the model of federalism Nepal should adopt.

The UNCT is providing assistance by facilitating dialogue and consensus-building initiatives with a wide range of key stakeholders (including top political actors, government official, key policy makers, members of the civil society and influential interlocutors), sharing of national and international lessons learned and best practices, organizing sensitization, orientation and civic education programmes for a range of stakeholders, supporting advocacy efforts, and providing technical and political support. These efforts focus on a number of issues including state restructuring (i.e. federalism), forms of governance, the judiciary, electoral systems, representation, inclusion and fundamental rights. Considerable awareness raising and advocacy efforts have been undertaken in relation to the issue of citizenship and the equal and independent rights of women and men to transmit Nepali citizenship to their children, an issue that has also been raised by civil society. The UNCT is also reaching out to local representatives of UN Member States to provide political and diplomatic support to the constitution writing process.

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SIERRA LEONE

UNDP Country Office & UNWomen

Sierra Leone Constitutional Review Committee continues working despite Ebola emergency

The Ebola Virus Disease (EVD) is ravaging the socio-economic and political landscape of the Republic of Sierra Leone. The outbreak in May 2014 abruptly disrupted national processes, including the constitutional review already underway. In a bid to contain the epidemic, President Ernest Bai Koroma has invoked a State of Public Emergency, limiting public gatherings.

Despite limited mobility and constraints, the Constitutional Review Commission (CRC) decided to continue its consultation with stakeholders, made possible with support from UNDP and UN Women. To date, CRC sub-committees have consulted more than 100 government bodies

and institutions to solicit opinions on the draft constitution and the recommendations outlined in the 2008 Peter Tucker Report on the Constitution. The CRC has engaged with a range of major stakeholders; to date, 35 position papers have been submitted by political parties, CSOs, lobby groups and major public institutions such as the judiciary, Election Commission, Public Service Commission, Independent Media Commission, National Federation of Farmers of Sierra Leone, and other trade associations, professional organizations and government entities. The CRC had planned to submit its final recommendations, after nationwide consultation, to the government of Sierra Leone. However, due to recent Ebola outbreak the government restricted all large scale public meetings and gathering which has seriously affected the CRCs public consultation plan.

UN Women and UNDP have been particularly active in supporting the CRC and CSOs to broaden the process to ensure it reflects citizens' aspirations, including in relation to gender equality and women's issues. Already, there has been a strong call to the CRC to create reserved parliamentary seats and include women's quotas in the revised constitution.



Kenya. Hon. Dr B. Lahai, country's first female minority leader of Parliament, explaining about the Constitution to women farmers.

Sierra Leonean women have also persistently called for the repeal of the claw back provisions of the constitution, which exclude matters of “adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law” (Article 27 (1)-(3)) and matters related to customary law (Article 27(4)(d)) from the range of considerations in matters of discrimination. Many gender equality decisions made by the Sierra Leone courts have relied on this constitutional clause to limit the country’s ability to promote women’s rights.

In June, UNDP organized a two-day conference that helped organize women into district liaison focal persons who could stimulate women’s participation in the review process across the country. UN Women has also mobilized and facilitated the engagement of women from across all sectors of society to ensure that their voices are heard.

Under the slogan “Leh we talk” (let us talk), UN Women organized two rounds of consultations, capturing the voices of over 6,000 women located in the remotest parts of the country. These consultations were used to educate primarily rural women on the constitutional review process, the gender equality dimensions of the existing 1991 Constitution and to document their views on changes that they would like to see in a new Constitution. Moving forward, the views and aspirations of the women will be collated into a historic Women’s Charter to be handed over to the CRC and H.E President Ernest Bai Koroma.

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Somalia. The Prime Minister of the Federal Government of Somalia and the Puntland President during the signing ceremony of the agreement touching upon constitutional issues between the Federal government of Somalia and Puntland. Credit: UNSOM.

SOMALIA UNDP Country Office & UN mission (UNSOM)

Somalia constitutional support (II)

In recent months, substantial progress has been made in moving forward with a number of political, legal and institutional milestones in Somalia’s constitutional review process. In particular, considerable progress has been made in establishing Interim Regional Administrations, which are intended to act as precursors to the Federal Member States envisaged as part of the long-term establishment of a federal republic. The Special Representative of the UN Secretary-General (SRSG) for Somalia, Nicholas Kay, has been instrumental in mobilizing the international community to support state formation in the central regions of Somalia. The United Nations Assistance Mission in Somalia (UNSOM) and the UN Development Programme (UNDP) have also provided technical assistance and logistical support to

newly established administrations. Nascent discussions between the Federal Government and Puntland have also started, though progress has been slow.

Progress has also been made in terms of setting up key constitutional review institutions. After months of negotiations, the Executive branch nominated 5 members to the new Independent Constitutional Review and Implementation Commission (ICRIC), which was to be set up in accordance with ICRIC legislation passed by the Federal Parliament. The Commissioners were endorsed by Parliament in June 2014; UNSOM and UNDP are now working with the Government and Parliament to develop a technical support package for the ICRIC.

Under the Provisional Constitution, the ICRIC is to take its directions from the Parliamentary Constitutional Review and Implementation Oversight Committee, which is mandated to lead the technical review of the existing constitution. In July 2014, a Strategic Retreat was convened to

discuss the different roles and responsibilities of the Oversight Committee, the ICRIC and the Ministry of Justice and Constitutional Affairs (MOJCA), with technical inputs provided by UNSOM and UNDP.

Additional constitutional implementation legislation has also been passed in recent months. The Judicial Services Commission Act was enacted, with technical inputs provided by the Joint UN Rule of Law Team). More broadly the UN is also providing advice on the constitutional aspects of security sector reform. Draft legislation to establish a Boundaries and Federation Commission was tabled in Parliament but is still under consideration and likely to be revised before being retabled in the November session of Parliament.

An Ad Hoc Electoral Legislation Committee was established within Parliament, which produced a draft Bill to implement the constitutional requirement to establish a new National Independent Elections Commission. This draft Bill has now been passed to the executive for finalization before being tabled in the current Fifth Session of Parliament. Following a Needs Assessment Mission undertaken by the Electoral Assistance Division and UNDP, a UN Elections Advisor has provided technical advice on establishing an NIEC, as a first step towards the referendum and national elections scheduled for 2016. UNSOM and UNDP are also working with the MOJCA and Parliament to identify public outreach priorities in support of the constitutional review process. This work will likely first focus on general information-sharing and awareness-raising activities, with support for public consultations likely once the technical review process starts in earnest in 2015.

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YEMEN

Office of the Special Adviser to the Secretary-General on Yemen

Yemen constitutional support

Since its formation in March 2014, the Yemeni Constitution Drafting Committee (CDC) has been working to incorporate the National Dialogue Outcomes agreed in January 2014 into a first draft of a constitution, against a backdrop of intermittent armed conflict and political change. On 21 September, following intensive mediation by Special Adviser Jamal Benomar to end clashes between Ansar Allah (Huthi forces) and the 1st Armored Division commanded by Ali Mohsen, Yemen's political parties signed the Peace and National Partnership Agreement.

The Agreement reaffirms the National Dialogue Outcomes, including: the formation of an inclusive, technocratic government; adoption of a government program for implementation of the National Dialogue Outcomes, including economic reform and measures to eradicate corruption; restoring state control over security and the disarmament of armed groups; and the formation of oversight committees for implementing issues of Saada and the Question of the South.

On 13 October, the President of Yemen, Abd-Rabbu Mansur Hadi, named a new Prime Minister, Khaled Bahah, and charged him with forming an inclusive, technocratic government. Negotiations are ongoing amongst the political forces over the distribution of ministerial posts. Meanwhile, the Huthis have increased their military presence in Sanaa and advanced further to areas south and west of the capital, reaching Hudaida, a port city situated on the Red Sea.

Against this backdrop of uncertainty and instability, the CDC has continued to draft the National Dialogue Outcomes into a consti-



Yemen. Mehdi Al-Mashat signing the Military and Security Situation Annex of the Peace and National Partnership Agreement 26 Sept. 2014, in the presence of Jamal Benomar. Source: Jamal Benomar Facebook page.

FIELD & COUNTRY UPDATES

tution. This has required the CDC to also take decisions on core issues not sufficiently covered in the Outcomes, namely the structure and division of authorities within the new federal state of Yemen composed of six regions.

One of the most complicated issues the CDC has faced to date is over the tiers of government to be recognized in the constitution (federal, regional, governorate and local) and the allocation of responsibilities among them.

Another key challenge facing the CDC is how to address the historical marginalization and discrimination towards the south, and how to protect the region's vital interests in the future. In deciding on the latter, the CDC has had to balance the interests of a heavily populated north composed of four regions, with a relatively lightly populated south but with extensive land forming its two regions.

The population disparity between the north and south and the demarcation

of regions has made allocating powers, responsibilities and voting procedures between the two envisioned chambers of parliament highly contested among political parties and the CDC. Likewise, the other special measures for judicial and executive arrangements that have federal implications will also likely be subject to much debate.

In addition, the CDC has been drafting text on foundational principles, rights and freedoms, legislative and executive authority, judicial structures (including establishment of a constitution court), natural resources, public finance and administration.

The Yemeni Trust Fund has been supporting the process through sourcing of experts from more than 12 countries on a range of topics, including federalism, finance, rights and freedoms, gender equality, water and natural resources, and security and defense. The DPA-Mediation Support Unit's Standby team has also been instrumental to the CDC constitution process, including

helping the CDC to reach consensus on topics by providing both process and substantive advice. The UN (OHCHR, OHCR, UNDP, UNFPA, UNICEF and UN WOMEN) has also provided expert review on draft text on the issues of rights and freedoms, elections, and gender, along with international NGOs such as IDEA and IFES and through bilateral donor support.

The CDC is aiming to complete the first draft of the constitution by the end of November 2014, followed by a two month public consultation process. These consultations will build on the ongoing awareness campaign being led by the National Dialogue Secretariat to educate the public on the National Dialogue Outcomes and the constitution drafting process. The next public consultations will entail a range of activities to ensure outreach throughout Yemen, including holding town hall type meetings and receiving written comments.

Briefing prepared by:

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READER'S DIGEST

This section highlights a selection of papers on constitution-making offering insights into current debates. It includes articles from academia, policy- or practitioner-oriented organizations, and material produced by UN entities.

VIDEO PRIMERS



International IDEA presents a series of animated videos to complement its constitution-building primers (click on title to watch):

What is a Constitution?

How are Constitutions Made?

Why do Constitutions Matter?

VIDEO INTERVIEWS

I-Connect offers a series of interviews with constitutional experts, discussing:



Colombian Constitutional Law

Feat. Carlos Bernal



The New Egyptian Constitution

Feat. Mohamed Arafa



Developments in Irish Constitutional Law

Feat Eoin Carolan



Developments in Spanish Constitutional Law

Feat. Benito Alaez Corral



Trends in Modern Authoritarianism

Feat. Ozan Varol



Constitution Building: A Global Review (2013) *By International IDEA*

This report reviews a series of constitutional reform and constitution-making processes from 2013, organized around selected themes and trends in constitution-making. The report does not attempt to present a comprehensive collection of every process; rather it provides a record of selected constitution-building events and acts as a resource for future constitution-building processes.



Series: IDEA Constitution Building Primers *By International IDEA*

This series of constitution-making primers is intended to assist in-country constitution-making processes. Arranged thematically around the practical choices faced by constitution-makers, the primers aim to explain complex issues in a quick and easy way. Current primers include (click on title for link):

- ◆ *What is a Constitution?*
- ◆ *Bicameralism*
- ◆ *Constitutional Amendment Procedures*
- ◆ *Constitutional Monarchies in Parliamentary Democracies*
- ◆ *Direct Democracy*
- ◆ *Judicial Appointments*

- ◆ *Judicial Tenure, Removal, Immunity and Accountability*
- ◆ *Non-Executive Presidents in Parliamentary Democracies*
- ◆ *Religion-State Relations*
- ◆ *Social and Economic Rights*



Series: Meeting the Challenges of Emerging Constitutional Democracy

By Center for Constitutional Transitions at NYU

This new CTT series focuses on specific challenges that confront constitution-makers in new democracies. The five substantive papers in the series are (click on title for link):

- ◆ *Democracy Without Political Parties: Constitutional Options*
- ◆ *Semi-Presidential Government in the Post-Authoritarian Context*
- ◆ *Minority Rights in Culturally Diverse Societies*
- ◆ *Dealing with the Creation of Constituent Units in Federal and Politically Devolved Regimes: A Brief Guide for Practitioners*
- ◆ *Creation of Constituent Units in Federal Systems*



Political Party Finance Regulation: Constitutional reform after the Arab Spring

By Center for Constitutional Transitions at NYU

This report applies comparative and academic research on political party finance law to the Middle East and North Africa region. The report discusses five areas of political party finance regulation: the provision of public funds to parties and campaigns; limits on party income; limits on party spending; disclosure of party finances to the public; and enforcement of political party finance laws.



Sharia and Women's Rights in Afghanistan

By USIP

This report discusses recent efforts and future opportunities for using an Islamic perspective to promote women's rights in Afghanistan, based on interviews conducted between June and October 2013 with legal aid and women's rights organizations, activists, and donors. This research is part of USIP's women's access to justice portfolio in Afghanistan, which has focused on community-based means for women to seek justice.

*The text on this page is the original summary provided by the publisher. Some adaption possible.

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