

THE UN CONSTITUTIONAL

A Newsletter on United Nations
Constitutional Support



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FOREWORD



Graffiti for the Constitutional Assembly in Ecuador during the constitutional review process in 2007. Credit: ak.beck/Flickr

We, the United Nations Department of Political Affairs (DPA) and Department of Peacekeeping Operations (DPKO), the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), and UN Women are pleased to publish this inaugural issue of **"The UN Constitutional."**

The UN, through its field presence and from headquarters, has been providing assistance to constitution-making processes in a number of countries, including in Afghanistan, Cambodia, Iraq, Kosovo and Nepal. In an effort to strengthen system-wide information sharing, coordination, and partnership in the area of constitutional assistance, DPA, DPKO, OHCHR, UNDP, UNICEF, and UN Women created an internal coordination structure dedicated to making UN constitutional support to Member States more effective and efficient. To this end, DPA and UNDP conducted joint constitutional assistance missions to Libya, Sierra Leone, and Somalia in 2013. Additionally, the six UN entities have undertaken several joint initiatives to improve the quality of UN constitutional assistance and better share knowledge and lessons.

"The UN Constitutional" is one manifestation of our collective desire to raise awareness around the UN of constitutional issues and themes, share information, and strengthen the provision of constitutional assistance. It is also a testament to the depth and breadth of constitutional support provided by UN Missions and Country Teams.

This issue contains topical articles by constitutional experts, a Q&A with Fink Haysom, the UN deputy chief in Afghanistan, reports from the field, and a digest of recent constitutions-related publications.

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SIGN UP

FOR THE NEWSLETTER

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Interview with Nicolas “Fink” Haysom

Questions by The UN Constitutional Team

Q. The UN provides constitutional support in post-conflict/transitional states and stable states. Are there significantly different dynamics to constitution-making in these different contexts? If so, what are some of them?

A. The most significant difference is that stable states tend to have stronger institutions, both political and judicial. This allows for a wider range of constitutional options, as well as more meaningful guarantees in respect of promises that the constitution makes. For example, the kind of constitutional assurances that the South African Constitution is premised upon – equality and human rights enforced by robust judicial

institutions – had no traction for any Tutsi interlocutors in the Burundi Peace Negotiations. They had no faith in, and no experience of, independent and robust protection of their fundamental rights – including the right to life – by the courts. As a result they preferred to rely on establishing ethnic balances in the armed forces – an expedient and short term solution.

Q. In what ways has the UN’s approach to constitutional assistance evolved during your years working as a constitutionalist?

A. UN constitutional support still remains underdeveloped compared for example to UN assistance in the Electoral field. In part this is because

our efforts have been occasional, spread through the UN system and without a focal point to gather, evaluate and develop best practices. I would hope that the DPA initiative to establish this unit may reverse this. Overall, I am encouraged by the belated recognition of the importance of constitutionalism for peace building. There has been, notably, a growing appreciation of both constitutional design as well as constitution-making processes in laying a foundation for inclusive, stable democracies.

Q. What issues tend to reoccur in constitution making in post-conflict and transitional states that the UN should be prepared to address/support?

A. As regards constitutional design in the post-conflict setting, the one set of related issues that is an almost ubiquitous challenge are those that relate to creating a political framework that is inclusive – that broadens common ownership of the polity and lays the foundation for a common citizenship. Ironically, this may require recognizing, not denying, diversity. In most post-conflict situations, especially where the conflict follows identity based fault lines – ethnicity, religion, culture – the challenge is to recognize those fault lines whilst also creating structures for, and an interest in, collaborative management of the society as a whole. In other words, how can citizens manage a common destiny while finding real possibilities to express their distinct sub-national identities? Where sub-national identities have a geographical basis, the tension lies between autonomy/federalism/secession and national integration. This will play out in regard to natural resource sharing, official state religions and languages, human rights protections, and the division of



Fink Haysom, UNAMA Deputy Special Representative for the Secretary-General for Political Affairs on an official visit to Faizabad (Afghanistan) in July 2013. Credit: Fardin Waezi/UNAMA

power between the regions and the center.

Q. What are 2-3 lessons you have learned from your years of providing constitutional support?

A. Firstly, process is important. The wrong constitution-making process can stifle the possibility of the best result. If the object of a constitution is an inclusive, democratic society, then the process must also encourage broad ownership and participation. The notion of a few wise "men" drafting a good constitution has been broadly rejected – no matter how technically sound the result.

Secondly, in regard to both design and substance, constitution-making can be a profoundly disaggregating, fragmenting experience. This is especially so in post-conflict countries, the ones most likely to relapse into conflict. Divisions will manifest and indeed be brought out sharply – as they must be. For this reason, one should approach constitution-making with the twin obligations of: (1) transparent and candid engagement of the country's divisive problems; (2) but also of maximizing the nation-building moment of constitution-making, the celebration of shared and common values.

Thirdly, one is never an expert, but a perpetual student. One should never, like military commanders are wont to do, apply mechanically the successful models from one's last engagement.

Q. What tools or approaches do you most utilize when you engage in a constitutional process? What's in your metaphorical suitcase?

A. Although each country will need to craft a constitution appropriate to its own circumstances, history, and current challenges, there is an enor-



Nicholas "Fink" Haysom

Mr Haysom is the current Deputy Special Representative of the Secretary-General for Afghanistan (Political Affairs). Prior to this, from April 2005 to mid-2007 he was the Head of the Office of Constitutional Support in the UN Assistance Mission for Iraq (UNAMI).

mous amount that can be learnt from other societies' success and failures. It is, in my view, a duty for constitution-makers to do exhaustive research into the comparative treatment of the issues which they are dealing. Constitution-makers are frequently held hostage by their own national histories, their own limited knowledge of institutional possibilities. The particular contribution that the United Nations can make is to broaden the constitutional imagination of those who have the heavy responsibility of designing their country's constitutions.

It follows from my belief in the value of comparative knowledge that I do not think one should be coy in "expanding the imagination" of constitution-makers by sharing one's knowledge. Of course, making a constitution is still a supremely sovereign act and cannot be imposed. However, that sovereignty is exercised by making choices – not by repeating mistakes.

In addition, the better approach to constitution-making is to treat it as forging a long term social contract – designed to provide for lasting peace and justice. In other words, it is not to be crafted to fit current political leaders and their immediate and personal needs.

Finally, one must respect the national desire to treat issues which have little constitutional bearing, which punch above their "constitutional" weight, and yet have great symbolic value. Constitutions need to speak to the people's concerns and issues – and in a language they understand.

Q. It is said that in each constitutional negotiation there are typically one or two "magical moments" when deadlocks are broken and a tipping point towards consensus is achieved. Can you share with us one such moment from your experiences?

A. In resolving difficult issues, I am struck that the difference between glorious success and disastrous failure is very thin indeed. I recall a moment in the Sudan Peace Talks when the parties had actually determined to abandon the talks over a disagreement on a question of defence governance – the size of the joint armed forces in the future unified Sudan pending the referendum on secession. A last minute mediation proposal (rather simply splitting the difference) magically changed the mood, secured a respite, caused bags to be unpacked, and lead to the comparatively swift conclusion of the talks. Another example of the phenomenon was in Iraq. The divisive issue was whether laws were required to be in conformity with Islamic values, or comply with a charter of human rights. The clash between the two – viewed intuitively as oppositional – was resolved by requiring compliance with both. This implied interpreting each in favour of consistency with the other. It was received as a real jurisprudential and constitutional breakthrough of States. Of course it remains to be seen as to how this will play out in reality. ■

Experience from UNDP's work on Civic Education in Kenya

By the UNDP Country Office Team in Kenya

The promulgation of a new national Constitution in 2010 remains a milestone in Kenya's democratic journey. It was a momentous celebration, a culmination of close to

two decades of effort to replace the 1969 post-independence Constitution, modeled on a colonial system of governance. UNDP supported the Committee of Experts (CoE) that

drafted the 2010 Constitution, supported a comprehensive civic education process and also supported the new Electoral Commission to successfully run a credible constitutional referendum.

The promulgation of the Constitution was the pinnacle of a constitutional reform process in which Kenyans overwhelmingly voted for the new order.

The preamble of their Constitution states:

"We, the people of Kenya, exercising our sovereign and inalienable right to determine the form of governance of our country and having participated fully in the making of this Constitution; Adopt, Enact and give this Constitution to ourselves and to our future generations."

Why is civic education a crucial part of the entire constitution-making process?

Historically, many have argued that constitution-making should be left to "experts", either lawyers or economists or policymakers. However, to do so would be to deny a fundamental right of citizens to determine their form of governance, to shape the public administration framework, to defend their rights and freedoms, to have a say in determining their destiny and in shaping policy making and peoples' participation. With these objectives in mind, UNDP supported a comprehensive nation-wide civic education programme to empower the people to exercise their democratic right and contribute to strengthening good governance in Kenya.

To this end, UNDP implemented a Civil Society Project known as *Amkeni Wakenya* (a term from the Kenyan National Anthem that calls upon all Kenyans to actively participate in



Kenya. Members of Civil society gathered for an Amkeni i Wakenya Forum.
Credit: UNDP

nation building), which mobilised citizens to engage in all the processes of the constitutional review - including mobilising citizens to engage in peaceful dialogue on the draft Constitution, building the capacity of the media to provide balanced coverage and support to the constitutional review process and engaging in voter registration and voting in the referendum.

Partnering with civil society on civic education

Amkeni Wakenya provided grants to about 60 civil society organizations which undertook civic and voter education on the Constitution and produced and disseminated a variety of voter education and civic education materials including posters and stickers. Under the theme, "*Katiba Mpya, Maisha Mapwa*" (New Constitution, New Dawn), Amkeni undertook a media campaign through a Swahili radio station which reached about 10 million people nationally with specific messages on the need for a peaceful referendum. The civic education conducted was also important to clarify some of the contentious issues that were distorted by politicians and other interested parties to ensure citizens made informed choices.

Amkeni also conducted learning forums in select areas all aimed at ensuring that citizens made informed choices at the ballot. In collaboration with the Committee of Experts and the Media Council of Kenya, Amkeni trained about 67 journalists mainly radio presenters in a course "Understanding The Constitution." This enabled them to moderate debates and report factually on the proposed Constitution and worked effectively to counter misinformation from politicians with vested interests. Information is power, and it was important that ordinary people in urban and rural

areas alike were informed on how the Constitution would change how the country is governed, to know that they have a role to play, and to make a connection between their vote in the national referendum and setting a foundation for a better future.

UNDP in collaboration with the Government, the Committee of Experts, civil society, faith based organizations and media reached all parts of the country using different mediums (town hall meetings, radio, TV, newspapers, village gatherings, music, skits etc). Almost 6.9 million copies of the draft Constitution circulated all over the country and almost 2.9 million people visited the CoE website and downloaded the draft constitution.

Supporting constitutional implementation

UNDP supported Kenyans to exercise their right to participate in this historic process and the people voted overwhelmingly in favor of a new Constitution. After the promulgation of the new Constitution, Kenyans embarked on the constitutional implementation process. The Government of Kenya in partnership with non-state actors and supported by development partners including UNDP, developed a national programme for civic education known as Kenya National Integrated Civic Education Programme (K-NICE). This was critical to facilitate a fundamental national transformation through policy, legal and institutional reforms which are still underway. The current UNDP K-NICE Programme aims at promoting the collective national aspirations in the constitution, enhancing citizens' participation and promoting responsive governance.



A Civic Education Forum in Machakos Area, Eastern Region of Kenya. Credit: UNDP

A key milestone already achieved in the implementation of the Constitution was the general elections of March 2013 which ushered in a new process of devolution of government. This process was new to Kenya such that civic education is needed to inform and educate Kenyans on the new system of devolved government and promote buy-in and national ownership over this process. Both state and non-state actors participated in the civic and voter education that saw a peaceful election and the beginning of the roll out of the new devolved government.

Is the Constitution perfect? No. But, has it brought improvements to lives of Kenyans and the governance of Kenya, and does it defend rights and promote inclusion and accountability? A resounding "Yes". ■

The Author

- **Sheila Ngatia**, Governance Team Leader, UNDP, Kenya

Comments on the Nature and Importance of “Equal Citizenship” for Political Transitions

By John Packer

The concept and contents of citizenship are of central importance for political transitions, both with regard to its acquisition (i.e. membership of the polity) and the rights and responsibilities the status entails. The former – acquisition – is in principle a prerogative of the sovereign State (governed in international law by the notion of “nationality”), with some constraints. The latter – attributes of the status – is often at the core of constitutional design, responding to past discrimination and exclusion by guaranteeing full rights based on equality of citizenship.

Conceptually, citizenship is about the socio-political relationship between the governed and the governors, i.e. about order and power, its basis, legitimacy, structure, uses and control. Crucially, it concerns the legitimacy of authority and the need for responsible, transparent and accountable governance. It is the essence of “popular sovereignty” and the democratic constitution which relies upon a knowledgeable and active citizenry to deliver “government of the people, by the people and for the people”.

International Human Rights Law stipulates not only the general requirement that “the will of the people shall be the basis of the authority of government” (see Article 21(3) of the Universal Declaration of Human Rights), but Article 25 of the International Covenant on Civil and Political Rights stipulates more precisely as follows:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Thus, for purposes of the polity, “the people” is universally understood to comprise the (adult) citizenry crucially “without distinction...” (which is a much more exacting standard than the prohibition of “discrimination”).

Equal and active citizenship entails far more than the holding of periodic elections. Indeed, for elections to be meaningful, inclusive participation throughout the polity and in all areas of life, guaranteed by rights and freedoms, must be secured in the constitution and enjoyed in fact. This holds implications for constitutional design in terms not only of rights and freedoms, but of institutions.

The concept of “equal citizenship” implies the use of agency whereby differently situated citizens may nonetheless enjoy in fact the same (or largely similar) **access** to institutions and processes of socio-political exchange, deliberation, decision-making and control (e.g. oversight) as well as the same (or largely similar) **opportunities** for participation within these (e.g. legislative bodies, the civil service, etc.) and the **enjoyment** of their services and benefits.

The concept of “equal citizenship” also applies to **responsibilities** (e.g. for tax-paying, military service, and the public good). It also implies some degree of equality **in life chances**. Institutions – key ones embedded in the constitution – are needed to



In July 2013, the UN Special Adviser on Yemen, Jamal Benomar, led a discussion entitled “Towards Equal Citizenship in Yemen” in Sana’a, Yemen. Participants included academics, civil society organizations and members of Yemen’s National Dialogue Conference (NDC). Credit: NDC

facilitate, protect and ensure all of these.

This sense of “equal citizenship” raises major issues for a country in the midst of a “political transition” from authoritarian to good and democratic governance. Among such key issues are the following:

- ◆ **The nature of the State:** What does “popular sovereignty” mean? If we remain true to the notion that the State is “of” and “for” the people, how is this to be manifested in State institutions and official conduct?
- ◆ **The nature of authority/government, “of, by and for the people”:** How is such authority constituted and used? As opposed to there being ‘subjects of rule and rulers’, government implies a trust between the citizenry and their elected representatives who “govern” for them according to express terms and for the benefit of the citizenry alone.
- ◆ **The nature of citizenship, encompassing rights and duties, including facilitated opportunities especially for the disadvantaged (notably the poor or indigent, the disabled, minorities etc.):** What needs to be done to give concrete expression to this idea, e.g. in terms of general and public education, promotion of social attitudes, the teaching of skills for “civic education and engagement”, the creation of public spaces, places and experiences to exercise and develop meaningful citizenship?
- ◆ **The nature of “public property”:** What does this encompass (including natural wealth and endowments) and how should they be used, managed, their benefits distributed (especially productive potentials) etc.?

- ◆ **The nature of “public services”:** Which? How do you prioritise (especially in terms of equal access to them and opportunities for equal development and life chances)? What about equities? And what is the role of the Executive and public administration (notably the civil service) in regulating and delivering these?

As a matter of constitutional design, these must be considered and addressed in appropriate constitutional provisions such as with regard to rights and freedoms, duties of the State, institutional mandates, limits on abuses and (other) guarantees.

For countries aspiring to create new, just societies based on “equal citizenship”, and for those assisting such countries, the following basic questions offer a good starting point to understand the scope of an actual situation and to adopt appropriate policies, laws and programmes, beginning with constitutional provisions:

- ◆ What are some of the problems with citizenship in the country?
- ◆ Who are the “disadvantaged”, what are their needs, and what can be done to empower them?
- ◆ How can equal citizenship be achieved, in law and in fact, for all citizens?
- ◆ Should special measures (such as affirmative action) be adopted in an effort to achieve equal citizenship?

- ◆ What is the role of education in general, and civic education in particular, in achieving equal citizenship?
- ◆ Are civil servants being trained in the rights of the citizenry and developing practices that fully respect and serve the citizenry?

Focusing on the answers and their implications will contribute to advancing a political transition from authoritarian to good and democratic governance as a prerequisite for sustainable peace and development. Indeed, equal citizenship in conceptual and programmatic terms – rooted in a new or reformed constitution – can be both instrumental in achieving the transition and an end in itself.

The concept and contents of citizenship is of central importance for political transitions, both with regard to its acquisition (i.e. membership of the polity) and the rights and responsibilities the status entails. The former – acquisition – is in principle a prerogative of the sovereign State (governed in international law by the notion of “nationality”), with some constraints. The latter – attributes of the status – is often at the core of constitutional design, responding to past discrimination and exclusion by guaranteeing full rights based on equality of citizenship. ■

About the Author

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A CALL FOR DOCUMENTS

Collecting Documents from Constitutional Processes

The UN is developing an online resource centre (“**CONSTITUTIONMAKER**”) dedicated to providing UN staff with constitution-making approaches, resources, and tools, and preserve the UN institutional memory. For this purpose, we are gathering documents on substantive and procedural constitutional matters.

TYPE OF DOCUMENTS: any document related to UN’s assistance to a constitutional process (i.e. project documents, work plans, issue papers), reports from constitution-making bodies, public consultation materials, etc. The online platform will only be accessible to UN staff, and all confidential documents will be protected. Contact: constitutionmaker@un.org

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.

IRAQ

UN Assistance Mission in Iraq
(UNAMI)



The 2005 Constitution of Iraq has over 50 articles that explicitly require implementing legislation. UNAMI is assisting the Iraqi parliament in addressing many of these critical laws, including legislation to realize the administrative rights of Iraqi minorities as set out in Article 125.

Iraqi minorities – religious and ethnic – are among the most vulnerable communities in the country today. Minorities are victims of discrim-

ination in education and employment, rampant incitement and hate speech, deliberately poor service delivery, and terrorism and other acts of violence.

In September 2011, UNAMI facilitated a roundtable discussion where participants agreed to a set of policy recommendations aimed at reforming certain administrative practices related to minorities and key elements of framework legislation for administrative rights. The Iraqi Council of Representatives (CoR) subsequently formed a special committee charged with drafting legislation associated with minority administration under Article 125.

Under the auspices of the CoR Article 125 Committee, UNAMI's Office of Political Affairs and UNAMI's Human Rights Office convened a dialogue on the draft Law for the Protection of the Rights of Ethnic and Religious Minority Communities on 10 September 2013. On 2 October 2013, UNAMI

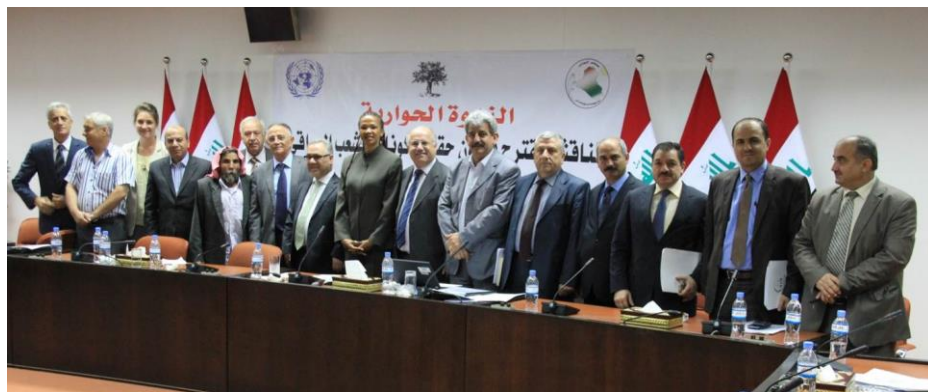
facilitated a second dialogue, during which participants examined comments from various civil society organizations and revised the draft law article by article. Since then UNAMI has continued to support the Article 125 drafting committee as it refines the draft law to ensure the draft meets international standards. UNAMI will facilitate additional dialogues as needed and is engaging the support of an international expert to assist the CoR in finalizing the law.

UNAMI has supported a range of other activities to protect the diversity of Iraqi society, especially with respect to minority communities, including working with the Government of Iraq (GoI), the Kurdistan Regional Government (KRG), and Iraqi governorates to enforce constitutional minority rights and protections and to consult with minority communities on matters that affect them directly. UNAMI is also working with representatives of the minority communities themselves, senior ministerial officials and policy advisors of the GoI and KRG to promote the inclusion of quotas for minorities in the Federation Council (second chamber of parliament, still to be established under the Constitution) and the Provincial Elections Law.

Finally, UNAMI has provided technical assistance for legislation to guarantee the "right of equality" as stipulated in the Iraqi Constitution. This includes advocating for the enactment of a law prohibiting Hate Speech; a new labour law to ensure that minorities have fair access to job opportunities in state and security institutions; and the recruitment of minorities in the police forces, military and throughout the security sector.

Briefing prepared by:

- **Mmabatlharo Nono Dihemo,**
UNAMI Political Affairs Officer



Iraq. UNAMI facilitated a dialogue on the draft Law for the protection of the rights of ethnic and religious minority communities. September 2013. Credit: UNAMI

LIBERIA

UNDP and UN Mission in Liberia (UNMIL)



In post-conflict Liberia, the need for a review of the 1986 Constitution, which was adopted during the time of the military regime, has consistently been stressed by many national and international stakeholders as critical to laying the foundations for long-term peace and stability. Various initiatives have been launched, but none have raised such interest as the appointment of a six member Constitution Review Committee (CRC) by President Ellen Johnson-Sirleaf in August 2012. The CRC was tasked to lead civic education and public consultation process and to submit a list of proposed amendments, initially by mid-2013, but the deadline was later extended to mid-2014. The CRC recommendations are expected to be submitted to the Legislature through the President, where any amendments will need to be approved by a two-thirds majority in both Houses before they can be subject to a public referendum, currently envisaged for 2015.

The timeliness of this development was recognized by the Security Council which, in September 2012 in Resolution 2066 (2012) and again in 2013, called on UNMIL to support the people and the Government of Liberia in taking forward constitutional reform. In line with this mandate, UNMIL, along with UNDP and working under the auspices of a Constitutional Review Working Group (CRWG) has since provided a range of technical

and operational support to the process and strategic engagement at the political level with all stakeholders to ensure an inclusive and participatory process. The bulk of technical expertise will be provided through a dedicated UNDP-supported programme, which includes the recruitment of key personnel to assist the CRC. UNMIL has contributed significantly to the process, deploying its range of technical expertise and assets. For example, the UNMIL Office of the Gender Advisor helped set up a consultative meeting with women from around the country to inform a strategy for women's involvement in the review process. The Public Information Office has worked with the CRC to develop a short-term media outreach strategy, helping to design the CRC's introductory brochure, flyers and posters. The CRC also regularly appears on UNMIL Radio, the radio with the widest coverage in the country. A Quick Impact Project for printing over 21 thousand copies of the Constitution has also been completed. In support of the UN in Liberia, the Department for Political Affairs has also provided expertise through regular short-term deployments, including from its Standby Team of mediation experts.

UNDP's Constitutional Support Project will provide technical and operational support to the process over the coming three years. The Project has a budget of \$10.5 million over three years, including contributions from UNDP's core resources, \$2m expected from the Peace Building Fund and \$1.5m expected from the US Government. UNDP's support seeks to bring about an inclusive and participatory constitutional reform process, recognizing that the constitutional reform process provides a unique opportunity to advance reconciliation, political dialogue, and peace consolidation efforts in Liberia. It is envisaged that a second phase of the project will focus on providing support to the finalization of the review

process, in particular, working with the Legislature to approve a final constitutional review bill and running a referendum.

Attention is currently focused on two key areas working through the UNDP-supported programme in consultation with the CRWG. Firstly, the provision of technical, financial and logistical support to the CRC and its secretariat seeks to ensure that the CRC has proper capacities to undertake its mandate and address its financial and capacity constraints, seriously impacting the pace of its work and its ability to meet its timeline. Secondly, support will be provided to a civic education programme at national, county and community levels, working among others through and with civil society organisations. The programme will engage with political parties, civil society, women, youth and the media to adequately familiarize the public with the constitutional review process. In addition to civic education, support is also being provided to a public consultation exercise with the general public and key stakeholders, including political parties, the Legislature, religious and traditional leaders, and youth and women groups.

Complementing this support, UNMIL Field Offices have already undertaken a mapping exercise of civil society organizations, which is now being used to help the CRC select partners for their civic education in the counties. UNDP is contributing to this effort through the deployment of an expert to help design an operational and deployment plan covering all the counties while the UNMIL Integrated Mission Training Center will help with the training of the civic educators.

The road ahead remains challenging, with much of the civic education, public consultation and drafting of proposed amendments still to do with a timeline that calls for the submission of the proposal of amendments by

UPDATES FROM THE FIELD & HQ

March 2014. The United Nations will continue to extend strong support to the process, delivering as one, and ensuring a close working relationship among all relevant UN actors, especially UNMIL and UNDP. However, the Government's political and financial commitment, together with support from the international community, will be critical in ensuring a successful process.

UNDP Team

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- **Tamrat Samuel**, Deputy Special Representative of the Secretary-General for Rule of Law
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LIBYA

UNDP and UN Mission in Libya (UNSMIL)



"The constitutional drafting process presents an opportunity for the Libyan people to forge a new social contract that will govern the new Libya, making it therefore imperative that it be transparent, consultative and inclusive."

Special Representative of the Secretary-General Tariq Mitri, Briefing to Security Council, 16 September 2013

The constitution-making process in Libya will play an important role in



Libya. Trainings of Dialogue Facilitators on Women's Political Participation organized jointly by SCLT and ABC - June and August 2013. Credit: UNSMIL

Libya's political transition and is an opportunity for the UN to support the development of a culture of dialogue and much needed national consensus on the set of rules by which the country will operate in the future. The United Nations is engaging in a range of efforts in support of the Libyan constitutional process. UNSMIL is currently in the preparatory stage of working through options for supporting government officials and institutions, particularly the Constitution Drafting Assembly (CDA) which is to be elected in early 2014. Although the Assembly has yet to be established, the UN has already provided advisory assistance on the process for creating the Assembly and the necessary supporting legal frameworks. The UN Electoral Support Team is currently assisting the Libyan High National Electoral Commission with the organization and implementation of elections for the Assembly over the coming months. Once these elections are complete, its efforts will shift to preparations for a national referendum on the draft constitutional text. Once the Assembly is seated, UNSMIL will also offer technical and substantive advice through international experts, beginning with an initial induction program and continuing throughout

the drafting exercise. The UN's precise role in this part of the constitutional process, however, is contingent upon the Libyans' interest in and openness to international participation.

The UNDP has also provided support to civil society, with a focus on public outreach, civic education and other efforts to enable the public to participate meaningfully and productively in the process. The UNDP "Assistance to Building a Constitution" (ABC) Project is working to support UNSMIL's mandate to assist with the constitutional and national dialogue process by addressing the urgent need for developing public engagement and dialogue capacities in Libya. In the framework of the ABC project, UNDP supported a National Survey on the Constitution, which was undertaken by the University of Benghazi. More than 3,300 interviews were conducted all over the country and the survey results will be used to help the CDA identify and respond to the expectations of the Libyan citizens in the constitutional process.

To encourage grassroots involvement in the constitution-making process, UNDP also launched the initiative "I WANT... in my Constitution" with the

national CSO Forum for a Democratic Libya. The process has already engaged more than 1000 persons across Libya representing various ethnic groups and political opinions and was one of the first structured dialogue processes ever conducted in the country. In partnership with the Libya Research Center for Strategic and Future Studies, the ABC project has also launched a series of public panel debates targeting Libyan academia, civil society and political groups to foster debate on the constitutional process.

The other activities of UNDP's ABC and "support to Civic Engagement in Libya's Transition" (SCELT) Project complement this work by strengthening the capacity of CSOs to run their own civic education and dialogue sessions on the constitutional process. The UNDP Civic Education Grant Fund Facility (CEGF) is to distribute small grants to Libyan CSOs to support their implementation of civic education and constitutional activities. To further its commitment to ensuring women's voices are heard during the constitutional review process, UNDP has also organized Training of Facilitators workshops aimed at building the capacities of 26 local facilitators to run local dialogue sessions for women in 20 locations throughout the country. UNDP also supported three workshops for 60 women (representing CSOs and political parties) to build their understanding of the different roles of the legislative, executive and judicial branches, based on comparative country case studies from Lebanon, France, Spain and South Africa.

As the project looks forward to the imminent elections of the CDA, a growing priority is the importance of creating and maintaining high quality media engagement throughout the constitution-making process. To this end, the ABC Project is working with the Libyan Rashad Foundation to develop a national media campaign, which will target key focus groups,

including women, youth and minority groups. Current activities in this area include also work on drafting a media communication strategy for the CDA as well as developing a website, which will facilitate broader public participation in the constitutional review process once the CDA is elected.

UNDP ABC Project Team

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UNSMIL Constitutional Team

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MONGOLIA UNDP

Two decades after the fall of the communist system in 1990 triggered Mongolia's democratic and economic transition, many stakeholders in Mongolia have identified the need to take stock of where the country stands and to analyze and assess the successes and remaining challenges in establishing a robust and accountable democratic system. One key element in such an analysis is to review the performance of the 1992 Constitution.

Mongolia's Constitution is over twenty years now. The resilience of the Constitution is considered a big achievement; research shows that the average constitution lasts only 17 years.* The overall objective of the Constitution was to provide a legal basis for the transition to democracy, the protection of human rights, and economic development through a market economy. The country has changed greatly under the constitutional regime in the last two decades. The party system has evolved; institutions have developed; the economy has grown, and the discovery of mineral wealth has changed

the economic structure dramatically.

Recognizing the changing political, economic and social context in Mongolia, there are discussions in the political arena about the possibility of a constitutional amendment. UNDP has been requested to support a comprehensive assessment of the 1992 Constitution. The objective is to provide Mongolia's decision-makers and citizens with a document that will help them understand how the Constitution has performed in light of its overarching goals and how constitutional implementation has evolved over time. Drawing on both comparative materials as well as an examination of Mongolia's experience, it will highlight the achievements of the Constitution, as well as its shortcomings. Options will be identified that might be considered in any future constitutional revisions or amendments to address any shortcomings.

The study is being conducted by a team of leading Mongolian scholars working in collaboration with Professor Tom Ginsburg of the University of Chicago Law School. The research team will complete its work in February 2014.

*<http://www.law.uchicago.edu/alumni/magazine/lifespan>

Briefing prepared by:

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NEPAL UNDP

Nepal went to the polls on 19 November to elect a new Constituent Assembly/Legislature Parliament (CA/LP) to resume the important task of constitution-making. The previous CA, that also functioned as a Parliament and was elected in 2008, failed to adopt a new constitution within the

time frame specified by Nepal's Interim Constitution of 2007. A new Constitution for Nepal which would be drafted and adopted by an elected and inclusive Constituent Assembly is a key element of the Comprehensive Peace Agreement (CPA) of November 2006 that ended a decade long Maoist insurgency. The Interim Constitution preceded CA/LP elections which elected a 601 member body representing Nepal's diverse population, including 197 women. The CPA and the Interim Constitution mandated the CA to draft and adopt a constitution that eliminated the centralized, unitary state and introduced instead progressive state restructuring and the empowerment of Nepal's excluded communities.

The collapse of the Constituent Assembly in May 2012 created a crisis that was not anticipated by the framers of the Interim Constitution. The CA/LP elected in 2008 was expected to continue in office until the adoption of a new constitution and there were therefore no provisions for a second CA election.

After months of uncertainty a political consensus was reached in 2013, by the main political parties in the country according to which an election for a new CA, under an election council of ministers chaired by the Chief Justice was the way to resolve the constitutional crisis. Since there was no Legislature Parliament to amend the Interim Constitution to allow for such elections, a provision that gave the President the power to "issue orders to remove difficulties" was used to give legal effect to the political consensus to conduct new elections.

It is important to note however, that the constitution making process of 2008-12 did produce significant achievements. There is today broad agreement that Nepal should be a federal, secular and inclusive republic. There has been a widespread

public debate on complex constitutional issues and the various thematic committees of the former CA produced impressive reports on the main constitutional issues. The issues where consensus has proved difficult include the basis for the demarcation of provinces (the balance between identity and viability) in a federal Nepal and whether Nepal should adopt a presidential system, continue with the Parliamentary executive model, or explore a semi-presidential compromise.

Since 2008, UNDP's Support to Participatory Constitution Building in Nepal (SPCBN) project has supported the constitution making process in partnership with the Constituent Assembly, political parties and civil society, by facilitating an informed public debate on constitution-making, developing options on contentious constitutional issues and providing technical assistance on comparative best practice and international norms and standards.

From 2008 to 2011, SPCBN established and supported the Centre for Constitutional Dialogue (CCD) that was located close to the CA and served as a resource centre for CA members and a forum for open and informed discussion on constitutional issues. More recently, SPCBN has supported initiatives to clarify myths and misconceptions about federalism and inclusion, and also a lessons learned programme to review the achievements and shortcomings of the past CA process with a view to ensuring that the new CA will be better equipped to complete the task of constitution-making, thereby consolidating the peace agreement of 2006.

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SOMALIA

UNDP and UN Mission in Somalia (UNSOM)



On 20 August 2012, Somalia's Transitional Federal Government ended its official mandate and was replaced in November by the Federal Government of Somalia (FGS), comprising the (selected not elected) National Federal Parliament (NFP) and a new President and Prime Minister endorsed by the Federal Parliament. The new institutions of Somalia are guided by the Provisional Constitution, which was endorsed in August 2012 by a National Constituent Assembly comprised of selected political and community representatives from across the country.

Somalia is in the rare position of trying to implement the Provisional Constitution at the same time as reviewing its terms and agreeing a revised national federal Constitution. The Speaker of Parliament officially launched the constitutional review process in March 2013, taking the lead in line with the mandate given by the Provisional Constitution to the NFP. Within that framework, the NFP has been working closely with the Executive branch and sub-national stakeholders to take forward a process of dialogue and reconciliation. This dialogue process is aimed at the peaceful creation of Federal Member States, a necessary precursor to finalizing the federal Constitution.

The UN is supporting these processes. UNSOM is coordinating of the UN's

support through the UN Integrated Constitutional Support Team (ICST). The ICST has been developed to ensure that relevant UN/UNCT staff working across all branches and levels of Government regularly share information and coordinate their efforts across government.

UNSOM is also facilitating the development of a Constitutional Donor Coordination Framework to promote complementary efforts in supporting constitutional reform in Somalia. Donors will be encouraged to commit to coordination to reduce duplication of efforts and the coordination burden on national partners. UNSOM is also encouraging international NGOs, consultants and other entities involved in constitutional work in Somalia to share information and coordinate efforts.

UNSOM, together with the UNCT, is advising the FGS on the formation of Federal Member States and supporting political dialogue in the regions on state formation. UNSOM, in coordination with the UNCT, is also providing strategic advice to the FGS on implementation issues, including the establishment of key constitutionally-mandated institutions such as the electoral, human rights, judicial service and anti-corruption commissions as well as the Constitutional Court.

UNDP is also supporting the NFP to engage in both constitutional review and implementation. To date, this has primarily been done through UNDP's overarching Parliamentary Support Project, which is supporting the new Federal Parliament to establish its institutional capacities to undertake its roles of law-making, oversight and representation. On 16 June 2013, UNDP supported the Parliament Constitutional Oversight Committee to hold its own constitutional launch with members of the civil society, academia, youth and women groups and the media present, sending a strong



Somalia. Inauguration of the constitutional review process by the Parliament and the Oversight Committee on 16 June 2013. Credit: UNSOM

message to Somali people that the review process will be as inclusive and participatory as possible.

UNDP is now working with UNSOM to support the Speaker, the Oversight Committee and MPs generally to undertake outreach, information and education and to promote buy-in for the constitutional process. A draft Dialogue and Outreach Strategy was developed with UNDP support and a validation workshop and training for Parliament on the strategy was conducted in September 2013 in Mogadishu with approximately 50 MPs. UNDP is also working to support the Oversight Committee's secretariat to develop its capacities, and to undertake a nation-wide information and civic education campaign. UNDP's work with the Parliament is intended to support the broader effort of UNSOM and the UNCT to assist Somalia to progress its peacebuilding and statebuilding goals (PSGs). These were captured in the New Deal Compact agreed by the Government in September 2013. PSG-1 of Somalia's Compact focuses on legitimate politics, identifying three key priorities over the next two years, namely: (i) state formation and social reconciliation; (ii) constitutional review; (iii) elections.

The UN is currently working through its own internal strategic planning to identify how it can best support this effort. Once finalized, this strategic plan will be used to guide the entire UN's engagement in support of the constitutional review and implementation process, and serve as base for the UN in agreeing with the FGS the actions and support to achieving political milestones outlined in the New Deal Compact.

UNDP Project Team

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TUNISIA UNDP



Since the revolution of 2011, UNDP has been Tunisia's main international

partner in constitutional support and parliamentary strengthening. UNDP's Constitutional Support Project* was designed in response to the changing national political context, and will run from 2012 to 2015. It is supported with funding of \$18 million from Japan, Belgium, the European Union, Sweden, Denmark, Norway, and Switzerland, as well as UNDP's Bureau for Crisis Prevention and Recovery in recognition of the importance of the constitutional process to the transition in Tunisia. The project's scope, resources, and duration have allowed UNDP to offer substantial and multi-dimensional support to Tunisia's democratic transition.

The project prioritized support to the National Constituent Assembly (NCA) in three key areas: (1) support to the NCA to organize an open and participatory constitutional process; (2) strengthening of institutional capacities of the NCA to undertake law-making, oversight and representation; and (3) development of constitutional dialogue mechanisms, including at local and national level, in order to ensure citizen and civil society input into constitutional and political processes.

Over 2012-2013, UNDP supported a nationwide dialogue between NCA members and citizens and civil society organizations in all 24 Tunisian governorates, involving 80 Assembly deputies, with training provided both

in legislative and constitutional drafting, and in public consultation techniques. Over 6000 citizens, 300 civil society organizations, and 320 university representatives provided input during the dialogue. Over 300 participants including 40 Assembly members took part in activities fostering constitutionalization of gender equality and the political participation of women. UNDP also provided extensive support to build the capacity of Tunisia's fledgling civil society sector to participate in the political process, from Constitution-drafting to local and national policy advocacy. 140 civil society development projects have focused on marginalized regions of the country, and include special emphasis on consensus-building skills and strategies for preventing violence. 30,651 citizens were consulted on the Constitution through civil society initiatives supported by the UNDP project. A national survey of 1100 youths provided detailed information on the desires and expectations of Tunisian youth: the segment of the population whose exclusion sparked the 2011 Revolution.

Throughout the process, UNDP has responded quickly with high-level international constitutional expertise when requested by the Assembly. The UNDP project has also collaborated with other UN agencies to develop recommendations on how to ensure the constitution conforms with

Tunisia's international commitments in the area of human rights. Successive constitutional drafts have strengthened human rights protections.

Since the new Constitution will grant parliament considerable powers, the Project was designed to support the development of an effective and efficient parliament to ensure successful implementation of the constitution. It focuses in particular on building supportive partnerships with sister parliaments in established democracies to increase awareness of international best practices in organizing democratic institutions, including collaboration with Belgium, Lebanon, Switzerland, Denmark, Portugal, South Africa, Canada, France and the European Union. The "information infrastructure" is also receiving significant investment so parliament's activities can be carried out transparently to promote interaction with the population through real-time web broadcasting, a modern media centre, and tools such as electronic voting.

* Project of Support to Constitution-building, parliamentary development, and national dialogue in Tunisia

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LAUNCH OF "CONSTITUTE"

The World's Constitutions to Read, Search and Compare Online



New constitutions are written every year. The people who write these documents need to read and analyze texts from other places. In this context, Google Ideas was interested in exploring how technology can continue to support and improve constitution design. The result was **Constitute**: a project developed by the Comparative Constitutions Project, a collaboration between the University of Texas, the University of Chicago and University College London, and seeded by Google Ideas. **Constitute allows drafters, academics and global citizens to find and compare the world's constitutions.**

Drafters and citizens can browse constitutions by country and year, or cross-compare whole or parts of documents. Users can also search for specific words and phrases, or use the topics menu to drill down into specific themes such as "Citizenship" and "Foreign Policy," to the very specific, such as 'suffrage and turnouts' and "Judicial Autonomy and Power." *Text reproduced from Google Ideas' website.*

www.constituteproject.org

This section highlights a selection of papers on constitution-making offering insights into current debates and issues in this area. It includes articles from a wide variety of sources, such as academia, policy- or practitioner-oriented organizations, and material produced by United Nations entities.



Constitutional Review in New Democracies, By Democracy Reporting International & the Center for Constitutional Transitions at NYU School of Law

Constitutional Review in New Democracies explores judicial mechanisms for constitutional review and interpretation. It asks key questions about designing a constitutional court and emphasizes the role of the constitutional review in legitimizing new democracies, especially on the constitutionality of legislation and government action.



Constitutional Reform Processes and Political Parties. Principles for Practice, By the Netherlands Institute for Multiparty Democracy, IDEA & the African Studies Centre

Constitutional Reform Processes and Political Parties. Principles for Practice provides a set of guiding principles for constitutional reform based on practical experiences of constitutional reform processes in a number of countries. While its primary focus is on the role of political parties in constitution-building, it also provides an overview of common phases, characteristics, challenges and guiding principles that may be customised to country specific contexts.



Security Forces Reform for Tunisia, By IDEA & the Center for Constitutional Transitions at NYU School of Law

Security Forces Reform for Tunisia suggests that a new Tunisian constitution should provide for constitutional principles to govern the security sector. One of these principles discussed among others is the need to respect the rule of law. It further suggests that even qualified immunities for security sector actors and the president are in tension with the rule of law principle.



Semi-Presidentialism as a Form of Government: Lessons for Tunisia, By IDEA & the Center for Constitutional Transitions at NYU School of Law

Semi-Presidentialism as a Form of Government: Lessons for Tunisia considers the range of institutional design options adopted in some of the world's semi-presidential regimes, illustrating that the democratic performance of a semi-presidential regime largely depends on the choices that are made among these design options.



Decentralisation in Libya, By Democracy Reporting International

Decentralisation in Libya describes theories of decentralization and places them in the Libyan context. The purpose of the report is to give civil society, lawyers, academics, and

policy-makers new tools to talk about decentralization, and to move the discussion from conflict-prone binaries to a reasoned debate over policy options.



Women Members of the Constituent Assembly: A Study on Contribution of Women in Constitution Making in Nepal, By IDEA

Women Members of the Constituent Assembly presents the stories of the women of Nepal's Constituent Assembly who struggled to bring equality to Nepali society. Their stories include journeys from battlefields to politics and from student politics to national politics, transformations from oppressed village girl to prominent politician, and life-long engagements in the political arena.



Islamic Law: Practitioner's Guide By the International Network to Promote the Rule of Law (INPROL)

Islamic Law: Practitioner's Guide provides a primer on Islamic law, explaining its sources, principal doctrines, institutions, and terminology. A section on "Islamic Law within Nation States" explores contemporary Islamic constitutional law and personal status law.



Constitution-making and Reform Options for the Process By Interpeace

Constitution-making and Reform Options for the Process provides practical guidance on how to design transparent, nationally led and owned processes that are also participatory and inclusive. In addition to English, the handbook is also available in French, Arabic and Vietnamese, with support from UNDP.



UN WOMEN INTRODUCES ITS CONSTITUTIONAL DATABASE

UN WOMEN LAUNCHED its Constitutional Database on December 13th: <http://constitutions.unwomen.org> - the first searchable online portal that looks at constitutions through a gender lens.

THE DATABASE SEEKS to provide a comprehensive picture of constitutional provisions relevant to gender equality, and allows users to search by keyword, provision, region or country. Provisions are organized into 16 categories, such as equality; non-discrimination; rights of women; public authorities, institutions and services; political participation and freedom of association; citizenship and nationality; education; employment; equal before the law; marriage and family life; status of religious/customary law; status of international law (including human rights law); limitations and derogations; general human rights duties; right to property/inheritance; and reproductive rights. These were selected by looking at content through a human rights perspective, the CEDAW Committee's many analyses of contents of national constitutions, as well as UN Women's report "Progress of the World's Women". The portal covers 195 countries, including all Member States and Observers of the UN, and provisions are available in the language of origin as well as in English (currently the database contains 62 languages).

UN women hopes this resource will be of use for UN headquarters, country and regional offices; gender equality advocates and activists; human rights experts; academics; and especially to constitutional drafters and other national actors engaged in constitutional reform.

For further details please contact the team directly at constitutional.database@unwomen.org



RECENT EVENT: ARAB CONSULTATION ON THE PROTECTION OF ECONOMIC AND SOCIAL RIGHTS IN POST-REVOLUTION CONSTITUTIONS

The consultation held in Cairo, Egypt from 25-26 November 2013 was organized by UNDP in collaboration with the Arab Institute for Human Rights, the Arab Organization for Human Rights, The Egyptian Center for Economic and Social Rights, the Egyptian Initiative for Personal Rights, New Woman Foundation, Association for Freedom of Thought and Expression, and Tadamun: The Cairo Urban Solidarity Initiative. It welcomed about a hundred participants who are key actors in the Constitution making processes in Egypt, Iraq, Libya, Morocco, Tunisia and Yemen, together with international experts from Brazil, Ecuador, Kenya and South Africa, countries well known for their Constitutions, both in the participatory drafting process and inclusion of social and economic rights. This regional consultation was the opportunity to share experiences of participatory processes for the preparation of the constitution as well as the content of the constitutional text. It also looked at some of the tools available to civil society after the adoption of the constitution, such as social pressure or strategic litigation, to support the enforcement of the protections enshrined in this important document. The consultation was covered through social media with a specific hash tag (#عدالة_اجتماعية). Estimated reach for Day 1 of the consultation was around 1.7 million with an exposure of 4.9 million. As for Day 2, the outreach was about 1.8 million and the exposure 4.1 million. The entire Consultation was covered by the press, with a live streaming broadcasting, as well as journalists dedicated to Tweets and reporting. Several other newspapers were reporting on the conference, as well as TV channels.

THE UN CONSTITUTIONAL

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We welcome your comments and suggestions. Please contact us at: constitutionmaker@un.org

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