



SOUTH-SOUTH DIALOGUE ON CONSTITUTION BUILDING PROCESSES
*“Strengthening Constitutional Legitimacy
 through inclusive and participatory drafting processes”*

10-12 October 2011

Blue Nile Room, Intercontinental Semiramis Hotel ♦Cairo, Egypt

Day 1	Monday, 10 October 2011
09.45-10.00	Registration
10.00-11.00	<p>Welcome and Introductions by Mr. Ayman Ayoub, Regional Director, <i>International IDEA, Western Asia and North Africa (WANA) Programme</i></p> <p>Dr. Magdy Abdel-Hamid, Chairman of the Board, <i>Egyptian Association for Community Participation Enhancement (EACPE)</i></p> <p>Mr. Paulos Tesfagiorgis, Senior Advisor, Democracy and Constitution Building <i>International IDEA, Africa Programme</i></p> <p>Key note address: Mr. Tahany El-Jibaly, Vice President, Supreme Constitutional Court <i>Egypt</i></p>

11.00-11.15	Group Photo
11.15-12.30	Session 1: Overview of the normative framework for democratic constitution building processes
	<p>This session is designed to develop a common understanding of participatory constitution building processes for normative principles and key values. The following issues will be discussed during this session:</p> <ul style="list-style-type: none"> (i) What are the emerging principles of democratic constitution building processes? (ii) How can these principles be made operational? (iii) What have been the experiences in organizing constitution building processes based on these principles? <p>Chair: Dr. Daniel Zovatto, <i>Regional Director, International IDEA, Latin America and the Caribbean Programme</i></p> <p>Speakers: Dr. Augustine T. Magolowondo, <i>Africa Regional Coordinator, Netherlands Institute for Multiparty Democracy (NIMD)</i> Mr. Somchai Homlaor, <i>National Human Rights Commission, Thailand</i> Dr. Boubacar Issa Abdourhamane, <i>Charge de mission, Office for Peace, Human Rights and Democracy, Organization Internationale de la Francophonie (OIF)</i> Prof. Ibrahim Darwish, <i>Professor of Constitutional Law, Cairo University, Egypt</i></p>
12.30-12.45	Coffee Break
12.45-13.30	<p>Session 1 (continued): Input from the plenary The second part of this session will allow general discussion and comments on perspectives and contributions from the panelists.</p>
13.30-14.30	Lunch
14.30- 16.00	Session 2: State of Constitution building Processes in the Arab world
	<p>This session looks at the broader context of the constitution building landscape in the Arab World with particular attention to ongoing and anticipated processes (Egypt, Tunisia, Libya); recently completed processes (Jordan, Morocco); and contexts with stagnated constitutional and democratic transition processes (Lebanon, Iraq, Algeria).The objective is to disaggregate the issues at stake, and key challenges for ongoing processes and to understand what lessons can be learned from recently completed and stagnated processes in the region , going</p>

	<p>forward</p> <p>Chair: Dr. Magdy Abdel-Hamid, Chairman of the Board, <i>Egyptian Association for Community Participation Enhancement (EACPE)</i></p> <p>Speakers: Prof. Mohamed Chafik Sarsar, Member , <i>High Commission for the Achievement of the Objectives of the Revolution, Tunisia</i> Mr. Salah Eissa, Historian and Journalist, Egypt Prof. Mohamed Madani, Professor, Mohamed V University, Morocco Dr Abdul Hussein Shaaban, Author, Iraq</p>
16.00-16.15	Coffee Break
16.15-17.00	<p>Session 2 (continued): Input from the plenary</p> <p>The second part of this session will allow participants and speakers to pull common threats from the key processes planned in the region.</p>
19.00-21.00	<p>Dinner Reception ♦ Pool Terrace of the Intercontinental Semiramis Hotel</p> <p>Evening address: Mr. Nicholas “Fink” Haysom, Director of Political Affairs, Executive Office of the United Nations Secretary-General</p>
Day 2	Tuesday, 11 October
9.00-10.30	Session 3: Design of Constitution Building Processes: Options for constitution-building institutions
	<p>This session will discuss the ways in which constitution building institutions can be structured, formed and organized. The following issues will be discussed during this session:</p> <ul style="list-style-type: none"> (i) What are the different options for constitution building institutions? What considerations should be had in making the choice for a constitution building institution? (ii) What are the benefits and challenges with the choices for constitution building institutions being considered? (iii) How can the integrity of the constitution building institution selected be protected from interference by dominant groups such as the

	<p>government, media or other groups with vested interests?</p> <p>Chair: Prof. Cheryl Saunders, <i>International IDEA Board Member, Laureate Professor, Melbourne Law School, Australia</i></p> <p>Speakers: Dr. Rebecca Delgado, <i>Former Member Constituent Assembly of Bolivia</i> and current President of the Andean Parliament Dr. Hamdan Zoelva, <i>Justice, Constitutional Court, Indonesia</i> Mr. Robert Dossou, <i>President, Constitutional Council, former member of the Constitutional Commission, Benin</i> Prof. Mohamed Nour Farahat, <i>Constitutional Expert</i></p>
10.30-11.15	<p>Session 3 (continued): Input from the plenary</p> <p>The main purpose here is for the moderator to engage the other members of the plenary to input into the discussion and comment on the positions taken by the speakers in the first part of the session.</p>
11.15-11.30	Coffee break
11.30- 12.30	Session 4: Constitutional negotiation, drafting and options for approval mechanisms
	<p>(i) In the deliberation and ratification stages, how can the widest possible role be guaranteed for the public-bearing in mind its diversity?</p> <p>(ii) Considering the various mechanisms used in the approval process such as referenda or parliamentary approval, and bearing in mind required approval thresholds, voter turnout rate and the possibility of manipulation, what have been the experiences in terms of practical impact of these endorsement mechanisms?</p> <p>Chair: Ms. Noria Mashumba. <i>Project Manager, Support to Participatory Constitution Making in Zimbabwe, UNDP Zimbabwe (TBC)</i></p> <p>Speakers: Mr. Hassen Ebrahim, <i>Former CEO, Constituent Assembly, South Africa</i> Mr. Carlo Ruiz Giraldo, <i>Former Advisor, Constituent Assembly, Ecuador</i> Dr. Abdi Kader Hussein Mohammed, <i>Member of Parliament, Kenya</i> Mr. Negad El-Boraie, <i>Human Rights Advocate and Attorney, Court of Cassation</i></p>
12.30-13.30	<p>Session 4 (continued): Plenary Discussion</p> <p>The main purpose here is for the moderator to engage the other members of the plenary to input into the discussion and comment on the positions taken by the speakers in the first part of the session</p>
13.30-14.30	Lunch

14.30- 15.45	Session 5: Resolving intractable issues in constitution building
	<p>Constitutions, especially in contexts of conflict transformations, are increasingly becoming products of a negotiated settlement among diverse groups with opposing interests. The risk of parties adopting irreconcilable positions over contentious issues resulting in deadlocks that can delay or derail the process is real.</p> <p>(i) How do we determine what is a contentious issue and at what stage in the process should this determination be made?</p> <p>(ii) What kind of planning should be considered for dealing with contentious issues during the process?</p> <p>(iii) What have been the experiences that might point to best practices in dealing with deadlocks over contentious issues?</p> <p>Speakers will be invited to use the following examples to explore the resolution of deadlocks in constitutional negotiations:</p> <ul style="list-style-type: none"> • The relationship between civil institutions and the military (in particular in so far as oversight is concerned); • Religion • Decentralization (including financial decentralization) • Gender equality. <p>Chair: Ms. Bothania Kamel, Journalist and Human Rights Activist, Egypt [TBC]</p> <p>Speakers: Mr. Torquato Jardim, Former Justice, <i>Superior Electoral Tribunal</i> , Brazil Mr. Nicholas “Fink” Haysom, Director of Political Affairs, Executive Office of the United Nations Secretary General Ms. Sapana Malla Pradham, Member, <i>Constituent Assembly</i>, Nepal Dr. Amr El Shobaki, Political Analyst and Writer Mr. Salman Raja, Advocate before the Supreme Court, Pakistan</p>
15.45-16.00	Coffee Break
16.00-17.30	Sessions 6: Wrap up Session

	<p>This session is designed be an interactive session with both panelists and the plenary to draw together the threads of all earlier discussions to identify clear lessons from the dialogue. The following questions shall be addressed:</p> <ul style="list-style-type: none"> (i) What are the lessons emerging from these discussions? Which ones will be most beneficial going forward into potential constitution building processes in the Arab world and other places like South Sudan? (ii) How can these lessons be pulled together for the benefit of these processes? What kind of follow up will be needed in the process? <p>Chair: Mr. Ayman Ayoub, <i>Regional Director, International IDEA, WANA Programme</i></p> <p>Speakers: Dr. Marina Ottaway, <i>Senior Associate, Middle East Programme, Carnegie Endowment for International Peace</i> Justice Deng Biong Mijak, <i>Chairman, Law Reform Commission, South Sudan</i> Mr. Paulos Tesfagiorgis, <i>Senior Advisor, Democracy and Constitution Building, International IDEA, Africa Programme</i> Mr. Medhat El Zahed</p>
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<p>Day 3 - Wednesday, 12 October</p> <p>Teeba Room, Intercontinental Semiramis Hotel</p> <p>Constitutional Drafting and Legitimacy in Egypt:</p> <p>What common practices exist internationally and are applicable to Egypt?</p> <p>Are there distinctive characteristics of Egypt that should be taken into account in the choices made?</p>	
09.30-11.00	Session 7: Design of Constitution Building Processes
	<p>This session will discuss whether common ground exists among constitution-building societies on the process through which constitutions are drafted. In particular, the following issues will be discussed:</p> <ul style="list-style-type: none"> (i) Do constitutions have to be drafted in a democratic fashion? If so, is there such a thing an ideal process that can be followed to draft a constitution? (ii) What are the appropriate design options for constitution building institutions - a Constituent Assembly, Constitutional Commission,

	<p>National Conference or a Parliament?</p> <p>(iii) What should be the role of other institutions like civil society in the drafting negotiation and approval phase? Which mechanism best allows for meaningful exchange between drafting bodies and civil society?</p> <p>(iv) What if any, should be the scope of external involvement?</p> <p>Chair: Dr Amr Hamzawy, Professor of Political Science, Cairo University</p> <p>Speakers</p> <p>Mr. Ahmed Seif Al-Islam, Human Rights Activist</p> <p>Mr. Abul Ezz Al-Hariry, Former Member of the Egyptian Parliament</p> <p>Mr. Essam Shiha, Lawyer and Member of the higher executive committee of Al-Wafd Party</p> <p>Mr. Hassen Ebrahim, Former CEO, <i>Constituent Assembly, South Africa</i></p>
11.00-11.30	Coffee Break
11.30-13.00	Session 8: Human rights and the rule of law
	<p>This session will discuss whether common ground exists as to whether fundamental rights and the rule of law must be provided constitutionally. In particular, the following issues will be discussed:</p> <p>(i) What human rights, if any, must be protected constitutionally?</p> <p>(ii) Assuming any such rights must be protected by the constitution, what is the source of that requirement?</p> <p>(iii) Given that most Arab constitutions provided for a certain number of rights (e.g. the right not to be tortured) that were routinely violated, what mechanisms (if any) should a constitution include to ensure that such rights will not be violated in the future? What mechanisms should a constitution provide for to ensure that all the human rights that are provided for are reflected in criminal procedural law?</p> <p>Chair: Dr. Afaf Marie, Director, EACPE</p> <p>Speakers</p> <p>Mr. Abdullah Khalil, Attorney and legal researcher</p> <p>Mr. Nasser Amin, Member of the National Council for Human Rights</p> <p>Mr. Mahmoud Kandil, Lawyer before the Court of Cassation</p> <p>Mr. Nageeb Shamiri, Supreme Court Judge, Yemen</p>

13.00-14.30	LUNCH
14.30-16.00	Session 9: Is there a requirement that constitutions provide for democratic rights?
	<p>This session will discuss whether common ground exists on whether democratic rights must be provided constitutionally. In particular, the following issues will be discussed:</p> <ul style="list-style-type: none"> (i) Must a constitution provide for the separation of powers? (ii) Assuming that is the case, and given that the separation of powers was routinely violated by Arab constitutions in the past (including by the executive's control of the judiciary), what measures must be taken to ensure that the separation of powers is respected in practice? (iii) What types of electoral rights do constitutions have to provide for? What matters should be decided during the constitutional drafting process and what matters should be left for future legislation? <p>Chair: Chair: Ms. Nawla Darwish, Feminist activist and member of the New Woman Organization</p> <p>Speakers Professor Tharwat Badawy, Constitutional Law professor, Cairo University Judge Ashraf Baroudy Professor Atef El Banna, Law School Cairo University Mr. Khaled Ali, Director of the Egyptian Center for Economic and Social Rights (ECESR) Mr. Nicholas "Fink" Haysom, Director of Political Affairs, Executive Office of the United Nations Secretary General</p>
16.00-16.15	Coffee Break
16.15-17.45	Session 10: Constitution-building and decentralization
	<p>Constitution building is, amongst other things, essentially about power politics. It is a search for an equitable solution for the partition of power and resources among different interest groups. In some cases, decentralization has been the formula for addressing these concerns.</p> <ul style="list-style-type: none"> (i) Is decentralization a solution for Egypt? If so, how detailed should the provisions on decentralization be – what should be provided by the constitution and what should be allowed for legislation? (ii) What should be appropriate level and scope of decentralization required? Which institutions and sectors should be decentralized? (iii) Are there any particular conditions that may hinder or enhance the effectiveness of decentralization? What are the key lessons in

	<p>comparative practice and what can constitution building practitioners in Egypt learn from them?</p> <p>Chair: Mr. Abdel Ghaffar Shukr</p> <p>Speakers Mr. Farid Zahran, political activist, the Egyptian Bloc Dr. Salwa Shaarawi Gomaa, Public Administration, Political Science School- Cairo University Mr. Abdel Hamid Kamal, former MP Mr. Torquato Jardim, Former Justice, Superior Electoral Tribunal , Brazil Mr Mohamed Youssef Al-Saadi, Senior Legal Adviser to the Council of Representatives, Iraq</p>
<p>17.45-18.00</p>	<p>Concluding remarks and Vote of Thanks!</p> <ul style="list-style-type: none"> • Dr. Magdy Abdel-Hamid, Chairman, Egyptian Association for Community Participation Enhancement (EACPE) • Mr. Ayman Ayoub, Director, International IDEA, WANA Programme