



Dialogue for Constitution Building Practitioners

20-23 March 2011, South Africa

Concept Note

Contemporary constitutions serve multiple objectives, including functioning as a framework for the institutions and mechanisms that can promote economic growth, development and poverty reduction. Recent examples of constitution building in Bolivia, Ecuador, Nepal, Kenya, Sudan, Zimbabwe, Thailand and East Timor show that constitutional reform has been closely related to economic reform. Critical choices on wealth sharing and distribution, mineral wealth ownership, anti-corruption measures, land reform, fiscal decentralization, implementation of economic rights, legal empowerment of the poor, restrictions on foreign ownership, caps on national debt, etc., have increasingly assumed constitutional contours. These choices impact decisions on the political structuring of society through, for example, recognition of minorities, communal groups, different (traditional, customary) types of social organization and ownership, vertical separation of power and on visions of the scope of state authority in the economic sphere. Constitutional options on the role of political authorities in supervising the economy are not dilemma-free. Conflicts can arise between economic policy oriented towards growth and popular demands. In some countries, constitutional reform has appeared to function as a referendum on neo-liberal economic policy. The redistributive stakes in constitution building have been extraordinarily high in some countries, sometimes with destructive consequences in the form of violent conflict. The implementation of new constitutional orders frequently faces challenges, in particular when economic choices are perceived to create ‘winners’ and ‘losers’.

Regional and international entities have impacted the relationship between economic policy and constitutional choices. Globalization and regional integration has meant fewer trade and financial barriers between states. Regional organizations (EU, OAS, ASEAN, ECOWAS, SADC, etc.) strive for varying degrees of integration on issues related to economic and monetary policy, moving many such discussions to the supranational level. A globalization of constitutional governance can be seen as an overt objective of international organizations such as the regional organizations who have instituted accession criteria, conventions, charters and mechanisms to align constitutional and legislative standards of governance and rights. However states are also increasingly looking beyond the borders of their regions and beyond Northern models for constitutional solutions. A South-South exchange of experience and options appears to be contributing to dynamic influences on constitutional development, not least in the area of socio-economic rights and economic structures. What has been relevance of evolving regional constitutional norms in specific cases? Where did national actors turn to find innovative options for their constitutional challenges? What was the impetus for seeking outside solutions to constitutional challenges?

Other external actors play varied roles in constitution building processes, sometimes supporting constitutional change in accordance with national priorities and sometimes also leading in the demand for change. International financial institutions (IFIs) can wield enormous influence through their economic recommendations and good governance conditionalities. Constitution building can be an incidental outcome of broader economic and governance reform programmes. While IFIs pursue economic policies that have constitutional implications, their main line of work is not directly related to assistance or support to constitutional building. Their interventions are nuanced by policy variations from country to country and

interactions may be complex and operative at different levels of government and with varied national institutions. While not the only actors who influence economic drivers of constitution building, practitioners have not had much opportunity to systematically assess the contributions and impact of IFIs on constitution building. Hence it is not clear what kinds of partnerships exist between IFIs and national actors in this area. Although there are variances in policy and while partnership between external and national actors in all areas of support is constantly evolving, international support for constitution building processes has distinct implications as an area of greatest sensitivity for clear national ownership of the process. What impact do IFIs have on constitution building and how can it be assessed? Is constitution building considered distinctly or does it come to the fore only when economic reforms take on constitutional significance? How are tensions between the national priorities of constitutional actors and the economic policy reforms shaped by IFIs reconciled? Is this support based on frameworks and if so, which ones and how are they used for purposes of strengthening accountability? Are there specific examples of impact and outcomes that can be highlighted for deeper scrutiny? Should constitution building be more distinctly and strongly embedded in the work of IFIs? If so, on what terms?

Among external actors, international aid and assistance has a catalogue of efforts to increase effectiveness, primarily from the two lenses of aid effectiveness and effective democracy assistance. Effectiveness standards are for instance enshrined in the 2005 Paris Declaration and the 2008 Accra Agenda for Action. The latter action plan also explicitly recognizes the importance of South-South cooperation in the framework of international development cooperation. Standards for assistance in development and democracy building can apply to constitution building but do not address it comprehensively. Constitution building lacks similar dedicated standards to guide international assistance, even though the UN for its part has adopted the Guidance Note of the Secretary-General: United Nations Assistance to Constitution-making Processes (2009). The lack of standards and principles agreed among an international community of practice in support of constitution building is a policy gap that IDEA draws attention to in a series of policy discussions.

For national and international actors engaged in constitution building, strengthening a global community of practice that can share insights and build bridges will add value to constitutional reform processes. Mutual learning between international and national actors who are directly and indirectly engaged in constitution building will promote stronger, innovative partnerships and reduce the risk of fractured, non-collaborative and counterproductive assistance. One challenge is to bridge the expertise between constitutional practitioners and drivers of economic policy reform. Another is to encourage fruitful dialogue in an area of divergent views and considerably large scope and complexity on the twin subjects – constitution building and economic policy choice.

Against this background, International IDEA is convening the *Dialogue for Constitution Building Practitioners* to provide a platform for mutual learning and exchange. The workshop will focus on:

Knowledge enhancement – How do economic policy choices relate to constitution building? How have economic reform initiatives influenced constitution building processes? What roles were played by economic actors within and outside national constitution building processes to shape constitutional choices and with what consequences? How can this knowledge contribute to reducing the gap between policy and practice?

Lesson learning and harmonization – While interactions between IFIs and national processes are certainly context specific, what general or specific insights can be offered to deepen understanding of how external actors can meaningfully work together to support the strengthening of constitutional governance through constitution building?

South-South exchange and solidarity – Fostering an exchange of insights within a South-South framework aims to contribute to capacity building and enhanced solidarity among actors from the global South. Both are

essential to independent, creative approaches to constitution building and to negotiating effective partnerships along the North-South dimension.

Objective:

Constitution building practitioners from Africa, Asia, Latin America and international economic policy makers will gather to enhance understanding of the economic factors that influence constitution building processes and choices.

Outputs:

- A platform for continuing dialogue and sharing of insights and lessons learned among practitioners of constitution building and policy makers;
- A policy paper will summarize the key insights for wider dissemination among a community of practice; and
- Awareness-raising for constitutionnet.org as an online platform for continued support for a network of practitioners.

Outcomes:

- Contribution to the increased comparative understanding of the nexus between constitutions and economic policy choices and the way economic policy can drive and shape constitution building;
- Contribution to the increased systematic understanding amongst national actors of the role of IFIs in supporting national processes of constitution building; and
- Contribution to the understanding amongst international policy makers of the expectations and priorities of national practitioners regarding international support for constitution building; and
- Strengthened capacity for International IDEA to design tools and programmes to promote effective international partnerships for constitution building.

Proceedings

The workshop will generate discussions amongst national actors and policy makers who will speak in their individual capacities on basis of the *Chatham House Rule*. To structure the discussion, the agenda will frame the sessions, each with a defined scope. Plenary discussion will synthesize insights and lessons, which will be reflected in a policy paper.

Participation:

- 30 – 40 participants, including a primary target audience as well as other stakeholders comprising –
- National actors who were directly engaged in processes of constitution building in their own countries;
 - Personnel of IFIs who contribute to increased comparative knowledge of constitution building and how it relates with policy reform initiatives in the economic sphere;
 - Representatives from UNECA;
 - Representatives from IDEA Member States; and
 - Civil society actors and scholars active in increasing knowledge and understanding of the inter-linkages between constitutional design options and the impact of economic policy choices.

The Policy Series and South-South Dialogue

The *Policy Series* is a series of round tables over the course of 2010 and 2011 that bring together organizations and individuals engaged in supporting constitutional processes, broader democracy assistance activities and those with direct experience as constitution builders. They serve as a platform for exchange of approaches, lessons and challenges in order to examine how constitution building processes can best be supported by the international community. The paper resulting from each round table aims to synthesize the experiences and lessons of constitution building assistance. The aim of the round tables and papers,

collectively known as the policy series, is to provide evidence based options for the support of constitutional reform processes by the international community, drawing on comparative experiences. The first *Policy Series* round table took place in April 2010; the theme of the Pretoria dialogue grew out of the issues for further research and dialogue identified in April.

The annual *South-South Dialogue* has been convened in Ecuador (2007), Benin (2008) and Jakarta (2009). The objective of the *South-South Dialogue* is to provide a platform for peer exchange amongst practitioners from the global South on constitutional issues. This year, the *South-South Dialogue* is also a part of the *Policy Series*, allowing for an exchange between national and international actors. Thus relevant stakeholders from international organizations will also take part in the *South-South Dialogue* and a policy oriented paper will be produced from the proceedings.

Constitution Building Programme at International IDEA

The Constitution Building Programme (CBP) is a global programme at International IDEA. The programme objectives are to:

- Undertake research in constitution building to strengthen how it is understood in relation to conflict dynamics and democratization challenges;
- Build and share knowledge tools for application by practitioners and policy makers in constitution building;
- Invite practitioners to network through symposia, events and online discussion forums and to track the benefits of knowledge resources; and
- Support specific national processes to be inclusive, participatory and sustainable based on comparative experiences.

United Nations Economic Commission for Africa

The United Nations Economic Commission for Africa (UNECA) is mandated to promote economic and social development of its member states, to foster intra-regional integration, and promote international cooperation for Africa's development. To accomplish its mission and serve its constituencies, ECA conducts policy analysis on critical issues and provide technical assistance and policy advisory services to its stakeholders. The commission is structured into substantive technical divisions that carry out its mandate.

The Division for Governance and Public Administration (GPAD) is ECA's substantive division charged with promoting good governance and popular participation in development in Africa. Through its research and policy advocacy work, the Division helps African states to set an agenda that promote good governance and popular participation through effective partnerships between the public, private sector and the civil society. GPAD is organized into four sections, namely Public Administration, Civil Society, African Peer Review Mechanism (APRM) Support Section and Private Sector and Enterprise Development. The overall objective of the Division is to promote good governance practices for all sectors of society including public sector, private sector and civil society, and to support the APRM process.