



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

10- 12 October 2011, Cairo, Egypt

CONCEPT NOTE

[DRAFT]

Background

Since the end of 2010, historic events in the Arab region have forced much of the world to reconsider a number of important assumptions that had previously seemed so certain. Citizens have risen against seemingly unshakable regimes in the Arab world demanding regime change, greater democracy, the rule of law, government transparency and accountability. While the uprisings have had mixed results in some places like Bahrain and, the outcomes remain uncertain in others like Yemen and Syria, they have already generated significant changes in other places:

- In Jordan and Algeria, incumbent regimes quickly launched processes of political reforms to pre-empt the uprisings. In Morocco, this resulted in a new constitution that has been in force since July 1,
- More importantly, in Egypt, Libya and Tunisia, regimes that have ruled over their populations for decades have come to an unexpected demise. These three countries are now in transition, preparing for elections and constitutional reform processes that are expected to embody the new shifts in power, catalyse democracy and increase fair economic opportunities for all segments of society.

The demise of these regimes and increasing demands for new constitutions that provide for democracy, better government, citizen empowerment and participation in public affairs creates, amongst others, the expectation of inclusivity in the ongoing and expected processes of constitution building. This is important for a number of reasons. Most notably, however, it ensures that there is buy-in from all by allowing for broad-based consensus building; legitimizes both the process and agreements reached; and thus ensures the acceptability and endurance of the document. This is the essence of democratic participation, which is emerging as a principle of international law with potential application to constitution building, (UNDHR, 1948, Article 21; ICCPR, 1977, Article 25). Against the backdrop of constitution building processes that have characterised the preceding decade, the United Nations has further articulated and re emphasised this guiding principle (Guidance Note of the Secretary-General: United Nations Assistance to Constitution-making Processes, 2009).

However, beyond this very general framework, as the Secretary-General’s note also emphasised, processes of constitution building are essentially national political processes, responding to unique circumstances and challenges. Historic local customs, traditions and practices often inform the process, some of which may conflict with international standards. In societies in transition from conflict, which may have created an institutional vacuum, designing a constitution building process in itself presents

complex technical operational and logistical challenges. In other societies with little if any history of democratic participation, such as Libya, the absence of a democratic experience presents an even greater challenge. In such contexts, designing constitutions that meet various stakeholder expectations present operational, rather than normative challenges. What, for instance, are the appropriate procedures and institutions for designing such a process? To what extent should these be informed by international standards? How can some of the challenges to commencing and successfully completing the process be overcome? What should be the scope of external involvement, if any, in these processes?

Against this background, the [International Institute for Democracy and Electoral Assistance](#) (International IDEA), in partnership with the [Egyptian Association for Community Enhancement Participation](#) (EACPE) is convening a three day **South-South dialogue** on the theme “***Strengthening Constitutional Legitimacy through inclusive and participatory drafting processes***”. Rich comparative experience, on the design and implementation of participatory constitutional processes from practical cases across Latin America, Asia and Africa, will provide the bases for discussion and lesson learning.

Objectives:

The objectives of the workshop are to:

- Distil practical lessons, share experiences, discuss challenges and generate ideas for designing inclusive and participatory constitution building processes for the benefit the ongoing, and potential political and constitutional reforms processes across the Arab world
- Promote South-South experience sharing and lesson learning for the benefit of practitioners from the Arab world

Expected Outcomes:

- Increased understanding by practitioners from the Arab world of the practical challenges of, and ideas and recommendations for, designing and implementing successful participatory constitution building process.
- Enhanced insight into the context in which constitution building is taking place in the Arab world, including respects in which the experiences of these countries enhances world understanding of constitution building.
- More precise understanding of the extent, content and applicability of the international framework for constitution building

Participation:

35 participants consisting of both new and experienced practitioners, many of whom have played key roles in the design and implementation of participatory constitution building processes across the global south, together with representatives of International Organisations that work in the area of governance and institutional reform. Up to 40 Egyptian participants, including politicians, constitutional experts and civil society activists will be invited for an Egypt-focused day on the third day of the dialogue

Rationale for south – south dialogue

Inclusive and participatory constitution building is a current and topical issue in the Arab world. There is evident demand for increased popular participation in governance, but relatively less experience of it through existing institutional mechanisms. Experiences in other countries are useful; many countries in the global south successfully adopted popularly endorsed constitutions in spite of broadly comparable institutional and operational challenges and limitations. The IDEA CBP network includes practitioners who have been involved in these processes and who can share useful insights. A south – south dialogue forum can provide effective space for interaction and peer/peer exchange among practitioners, while also contributing to IDEA’s understanding. The Global CBP programme has experience convening south – south dialogues in order to identify insights and options that creatively assist those seeking to organise inclusive and participatory constitution building.