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UNDP GUIDANCE NOTE ON CONSTITUTION-MAKING SUPPORT

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This UNDP Guidance Note brings together good practice experiences and lessons learned from across UNDP and is the result of contributions from UNDP's staff across the globe.

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FOREWORD



In 1985, fewer than half the world's countries were regarded as formal democracies. By 2011, that figure was nearly 90%.¹ The transitions at a national level reflected by these statistics indicate a consistent demand by people for better and more responsive, inclusive, accountable government.

Under what circumstances have such transitions been most likely to produce a foundation for peaceful, open and sustainable states? A growing body of evidence – as an increasing number of states have emerged from periods of conflict and social unrest – indicates a twofold requirement.

First, the process to support the making of a constitution must empower the participation of the diverse interests that comprise the nation. Inclusive constitution-making offers a decisive opportunity for people to shape their own democratic destiny, thereby reinforcing the stake they have in their own governance. Second, any new constitution must demonstrably take into account the results of the consultation that leads to its making. It must reliably embody the values of the nation, and reflect the social contract between the state and its citizens.

For the first time, the United Nations Development Programme has, in its 2014–2017 Strategic Plan, recognized the link between support to good constitution-making and sustainable human development. This support sits at the heart of UNDP's commitment to “ensure that citizen expectations for voice, development, the rule of law and accountability are met by stronger systems of democratic governance”.

This Guidance Note draws on UNDP's long experience in supporting national constitution-making processes to distill good practice and lessons learned for the benefit of UNDP staff across the world.

I encourage UNDP staff to read this Guidance Note carefully, and to apply it in ways that ensure we offer our partners well-informed, effective assistance. The aim should always be to enable governments and citizens alike to engage effectively with one another to harness the transformative capacity offered by inclusive national constitution-making processes.

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¹ “Menocal, Alina Rocha, “10 Things to Know about Elections and Democracy,” Overseas Development Institute, ODI: London, 2013. Available from <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8477.pdf>



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OVERVIEW

Support to constitution-making is not new to UNDP.² UNDP assistance to constitution-making is built on the recognition that constitutions are central to progress on sustainable human development as they comprise the overarching legal framework which sets out the basis of the social contract between a state and its people. Constitutions establish the institutions of government and their powers vis-à-vis each other and the people, affecting all aspects of policy and society.

Constitutional guarantees of human rights across the spectrum of civil, political, economic, social and cultural rights, and the mandating of courts and commissions to protect those rights, are vital steps in promoting a human rights culture. Support to constitution-making and reform of constitutions is thus a cornerstone of UNDP's support for democratic governance, rule of law and peacebuilding, and lies at the core of inclusive democratic transitions and post-conflict engagement.

UNDP's Strategic Plan (2014–2017) identifies support to constitutional reform as a key element in the support to peaceful and inclusive political processes and institutions that promote the rule of law, the protection of human rights and accountability, in order to help "countries achieve the simultaneous eradication of poverty and significant reduction of inequalities and exclusion." UNDP support to constitution-making takes place in line with the principles on constitution-making laid down by the United Nations Secretary-General.³

UNDP is committed to its role as a development knowledge leader in pursuit of the outcomes in the Strategic Plan, including by supporting knowledge production and information sharing among national partners and stakeholders, as well as between countries that are undergoing constitution-making processes across the global south and with the international community at the global level. A key role in this regard is to work with partners to capture examples and comparative experiences, and promote the development of practical guidance on key tenets and controversial or emerging issues in constitution-making.

This Guidance Note is a first step in developing a stronger knowledge platform to guide UNDP country offices on good-practice constitutional assistance approaches. It outlines the significance of constitution-making for UNDP and provides advice to UNDP practitioners who are designing and implementing support to constitution-making.

- Part I outlines why UNDP supports constitution-making, building on guidance from the Secretary-General.⁴
- Part II provides guidance on initial approaches to designing constitutional assistance, with special emphasis on developing strong partnerships with a range of counterparts and ensuring UNDP's own internal readiness to provide support.
- Part III focuses on the technical entry points for assistance, which UNDP country offices may wish to consider.
- Part IV provides a summary of key lessons learned in constitution-making support. The Annex provides resources and further reading.

² Brandt, Michele, *Report on UN Constitution-making Assistance*, Internal Report for the United Nations, 2012; Sripati, Vijayashri, "UN Constitutional Assistance: An Emergent Policy Institution," Social Science Research Network, 2009. Available from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1483265

³ United Nations Secretary-General, "Guidance Note of the Secretary-General : UN Assistance to Constitution-making Processes," United Nations, 2009. Available from http://www.unrol.org/files/Guidance_Note_United_Nations_Assistance_to_Constitution-making_Processes_FINAL.pdf

⁴ Ibid



*A Civic Education Forum in support of the constitutional review process in the Machakos area of Eastern Region in Kenya.
Photo: UNDP Kenya*

With the increasing focus in the Strategic Plan on inclusive political processes – including constitution-making – UNDP will continue to develop tools, publications and partnerships to further the knowledge base on which UNDP country offices can draw. This is in order to ensure high

quality support to national counterparts, to better design, implement and measure the impact of programming and to systematically document lessons learned and good practice to ensure UNDP’s knowledge from across the globe feeds into improving new programming.





PART ONE: THE IMPORTANCE OF CONSTITUTIONAL SUPPORT TO UNDP

A. CONSTITUTION-MAKING FOR MORE INCLUSIVE AND EQUITABLE SOCIETIES

The national constitution of a country is the framing legal document which captures the basis of the social contract between the state and the people it is supposed to serve. Legally, a constitution is known as the “supreme law of the land”, standing paramount to all other laws of the country and acting as the keystone of the rule of law. At its most basic, a constitution is a set of rules that establish the organs of the state and that prescribe their authority and powers, including in respect of the rights that citizens and others enjoy vis-à-vis the state.⁵

As the experience of South Africa’s emergence from apartheid and the recent Arab Spring have demonstrated, constitutions should be much more than simple legal documents – they can act as the legal foundation upon which a new or improved social contract is constructed which enshrines the social, cultural, economic and political values of the nation, guiding both the state and the people on their rights and responsibilities towards each other. Where the social contract is held together by coercion or force, however, often the result is the eventual breakdown of constitutional governance which, at its most extreme, leads to conflict and violence. Supporting inclusive processes that lead to a constitutional outcome which

is seen as legitimate by the state and by the people is a key strategy for developing a legal framework which will be genuinely owned by the society and lead to enduring equitable and sustainable development.⁶

For the United Nations, the term “constitution-making” covers the process of both

“UNDP has experience in supporting constitution-making around the world. Our observation is that when these processes are open and inclusive, they do tend to produce constitutions which respond to the needs of the people as a whole, including those who have been disempowered and marginalized.”⁷

– Helen Clark, UNDP Administrator, addressing the Constituent Assembly of Nepal, November 2011

drafting a new constitution and reforming an existing one. UNDP provides support for both the formulation of the process and the content of the constitution. It recognizes that constitution-making is a political and social as well as a legal process, because it entails the allocation and/or reallocation of power and resources. It is therefore almost always a contentious and sensitive process.

Constitution-making usually comes at a critical moment in a country’s development.

5 United Nations Secretary-General, “Guidance Note of the Secretary-General : UN Assistance to Constitution-making Processes,” United Nations, 2009. Available from www.unrol.org/files/Guidance_Note_United_Nations_Assistance_to_Constitution-making_Processes_FINAL.pdf

6 Brandt, Michele, Jill Cortell, Yash Ghai, and Anthony Regan, “Constitution-making and Reform: Options for the process,” Interpeace: Switzerland, 2011. As the Handbook notes in its Foreword, “Until a few years ago, the focus of international constitutional assistance was on providing guidance about the content of a constitution rather than on the process by which it is made. But the way a constitution is made in a war-torn country can play a key role in rebuilding or strengthening state and political systems as well as in securing a durable peace—particularly if it entails an inclusive process that leads to the creation of a consensus-based road map for a more just economic, political, and social order. Despite the important role such a process can play, little attention has been paid to how to design and implement a participatory and inclusive constitution-making process that supports a lasting peace.” Available from: <http://constitutionmakingforpeace.org/sites/default/files/Constitution-making-Handbook.pdf>

7 Available from <http://www.undp.org/content/undp/en/home/press-center/speeches/2011/11/24/helen-clar-to-the-constituent-assembly-of-nepal/>



Often, a transition out of crisis can be a turning point which triggers a constitutional process, and will be crucial in determining a country's subsequent development pathway. The process of constitution-making will likely be experienced as unfolding, multifaceted political negotiations, usually of great complexity and importance, increasingly with considerable participation from the public, as well as from national and international actors.

Constitutions are the product of the political

and social forces operating at a specific time in a particular country's history and reflect the underlying development context in which they are formulated or amended. In this respect, UNDP's approach to supporting constitution-making processes is guided by its overall mandate to support sustainable human development through inclusive political processes which enable the voice of the poor, marginalized groups, women and youth and help improve their choices and opportunities. This focus on inclusion is particularly signifi-

BOX 1: COMPREHENSIVE SUPPORT TO CONSTITUTION-MAKING IN KENYA

The process of constitution-making in Kenya was a key pillar in the nation's transition to more democratic development. After the first process of constitutional reform that started in 2000 was stalled in 2005, in 2008, post-election violence gave a new impetus to the process. A Committee of Experts on Constitutional Review (CoE) was formed to guide the constitutional review as part of the broader national reconciliation process. UNDP provided comprehensive support to the process over many years, acting as the basket fund facility manager for the substantial project supported by the donor community.

UNDP provided technical support to the CoE Secretariat, including helping the CoE with overall strategic planning to vision the process. UNDP also supported the CoE to identify contentious issues during the drafting process and to maintain public engagement in the constitution-making process. The CoE conducted regional hearings in 18 districts countrywide, collecting feedback on the contentious issues. In November 2009, the CoE published the Harmonized Draft Constitution. UNDP also supported a broader political and civic participation programme, in collaboration with the Government, the CoE, civil society, faith-based organizations and the media. UNDP helped reach all parts of the country to improve public awareness of the draft constitution through town hall meetings, radio, TV, newspapers, village gatherings, music, skits, etc. Nearly 7 million copies of the draft Constitution were distributed. Through its civil society project, known as Amkeni Wakenya, UNDP provided grants to about 60 civil society organizations to enable them to undertake civic and voter education on the Constitution. In collaboration with the CoE and the Media Council of Kenya, Amkeni trained some 67 journalists to enable the media to more effectively moderate debates and report factually on the proposed Constitution and work to counter misinformation from politicians with vested interests.

UNDP helped to develop the capacity of the media to provide balanced coverage of the elections, mobilized citizens to engage in all the processes of the constitutional review, facilitated a peaceful dialogue on the draft Constitution and promoted voting in the referendum. At the end of the process, the proposed Constitution was approved at a referendum, with over 65% of voters ratifying the document in early August 2010. UNDP is now supporting implementation through a dedicated project to support the Commission for the Implementation of the Constitution (CIC). This follow-up project is supporting the capacity of the CIC to ensure that policies, laws, structures, systems and administrative procedures at all levels are consistent with the Constitution of Kenya 2010.



cant to constitutional assistance, as it enhances the perceived legitimacy of both the process of constitution-making and the content of the constitutional provisions. Over the long term, this contributes to the creation of an enabling political and governance environment that has buy-in from across society. This can ground further efforts to strengthen democratic governance, and protect and promote human rights and the rule of law, as the foundation for equitable, sustainable human development.

B. PRINCIPLES OF UNDP SUPPORT TO CONSTITUTION-MAKING

As an agency of the United Nations system, UNDP's support to constitution-making is guided by the 2009 Guidance Note of the Secretary-General: United Nations Assistance to Constitution-making Processes,⁸ which sets out the UN's principles and framework for engagement in constitutional assistance. The framework is derived from lessons learned from the UN's previous engagement in such processes. It outlines the components of a constitution-making process and identifies the expertise the UN will require to provide effective assistance. The Secretary-General's Guidance Note highlights that UN assistance needs to include options and advice tailored to the specific country context and should recognize constitution-making as a sovereign national process which, to be legitimate and successful, must be nationally owned and led.

The note recognizes that "[t]he design of a constitution and its process of development can play an important role in peaceful political transitions and post-conflict peace

consolidation. It can also play a critical prevention role. Constitution-making presents moments of great opportunity to create a common vision of the future of a state, the results of which can have profound and lasting impacts on peace and stability." It sets out six key principles which should guide the UN's support, and which are elaborated upon further in the Note, namely:

- Seize the opportunity for peace-building;
- Encourage compliance with international norms and standards;
- Ensure national ownership;
- Support inclusivity, participation and transparency;
- Mobilize and coordinate a wide range of expertise;
- Promote adequate follow-up.

This Guidance Note aims to provide a framework for the application of these principles in UNDP's support to constitution-making. It is in line with the UNDP Strategic Plan 2014–2017, which reaffirms UNDP's commitment to constitutional support to ensure that "citizen expectations for voice, development, the rule of law and accountability are met by stronger systems of democratic governance."⁹ UNDP recognizes that constitution-making is a fundamental political process which determines the rules of engagement between the state and society under the rule of law.¹⁰ It is also of critical importance across all outcomes of the Stra-

8 United Nations Secretary-General, "Guidance Note of the Secretary-General : UN Assistance to Constitution-making Processes," United Nations, 2009. Available from http://www.unrol.org/files/Guidance_Note_United_Nations_Assistance_to_Constitution-making_Processes_FINAL.pdf

9 See UNDP's Strategic Plan for 2014–2017 Changing with the World, in particular outcome 2, and output 2.1 on inclusive political processes. Available from www.undp.org/content/dam/undp/library/corporate/UNDP_strategic-plan_14-17_v9_web.pdf

10 See the Theory of Change outlined in Outcome 2 of UNDP's Strategic Plan for 2014–2017 Changing with the World "... rules of engagement are established and agreed upon through constitutional processes and/or other charters that form the basis for state and society to interact with each other within the rule of law. Part of this particular pathway involves the adoption of international norms and standards and fundamental principles, including those enshrined in international treaties that countries have ratified, into national constitutional provisions and legislation. A key variable throughout is the degree of inclusion of all groups in society regardless of their gender, age, ethnicity, class, religion or faith. Where this is high, the resulting rules of engagement stand a better chance of being owned and adhered to by society." Available from www.undp.org/content/dam/undp/library/corporate/UNDP_strategic-plan_14-17_v9_web.pdf



tegitic Plan as a national constitution impacts on all aspects of development, such as the institutions of government and society, their powers and limitations, the management of national fiscal and other resources, the management of the environment, and the fundamental guarantees and protection of economic, social, cultural, civil and political rights.

BOX 2: CHANGING WITH THE WORLD: UNDP STRATEGIC PLAN 2014–2017¹¹

We will assist countries to maintain or secure peaceful and democratic governance, either when faced with large-scale changes or confronting specific challenges such as reforming constitutions, organizing credible elections or strengthening parliaments. We will also help governance institutions adapt to changing public expectations and deliver clear benefits to citizens, whether in terms of better services, improved access to resources needed for employment and livelihoods or greater security of persons and property. In designing our work, we will bring together our ability to advocate, advise, promote dialogue, achieve consensus and build institutions.

UNDP’s engagement principles are laid out in its Strategic Plan and reflect the agency’s comparative advantages. These principles, which should also guide UNDPs constitutional support, are:

- Utilizing sustainable human development to guide our contributions, understanding the concept to mean the process of enlarging people’s choices by expanding their capabilities and opportunities in ways that are sustainable from economic, social and environmental standpoints, benefiting the present without compromising the future;

- Recognizing the intrinsic value of the body of economic, social, cultural, civil and political rights endorsed by the UN that are pursued through human-rights-based and other approaches, as well as other commitments made through multilateral agreements;
- Being guided by national ownership and capacity, with programme countries making decisions on how best to meet their people’s aspirations and UNDP helping to develop the policies, leadership skills, partnering abilities and institutional capabilities that can sustain results over time;
- Ensuring participation and voice in pursuit of equitable access to development opportunities and gains across the population, working with the poor and other excluded groups, whether women, youth, indigenous peoples or the disabled, as agents of their own development;
- Reflecting the pivotal significance of gender equality and women’s empowerment;
- Advancing South–South and triangular cooperation;
- Assisting countries to play an active role as global citizens; and
- Adhering to universality, offering all programme countries access to the services of UNDP and, through the effective exercise of UNDP’s coordination function, to those of the United Nations Development System.

¹¹ Available from http://www.undp.org/content/dam/undp/library/corporate/UNDP_strategic-plan_14-17_v9_web.pdf



PART TWO: DESIGNING UNDP'S CONSTITUTIONAL SUPPORT

To effectively provide constitution-making support, as early as possible in the process, UNDP country offices need to take steps to prepare for engagement and ensure strong partnerships and coordination throughout the process. As constitution-making happens infrequently, country offices usually have limited in-house specialized knowledge of constitution-making or how to support it. In addition, constitutional processes are highly complex activities which involve a range of different stakeholders, such that it is essential for UNDP to ensure that its support does not duplicate or infringe other national or international capacities. This section therefore discusses:

- A. The importance of building relationships of trust with national partners;
- B. Collaboration with the UN and other international partners;
- C. Coordination with domestic and international partners; and
- D. Ensuring internal readiness of the country office to respond to the demand.

A. ENGAGING WITH NATIONAL PARTNERS

1. POLITICAL PLAYERS

Developing relationships of trust and confidence with key political and legal actors will be crucial to providing strategic and effective support to constitutional processes. This is primarily the responsibility of the UN Resident Coordinator (RC)/UNDP Resident Representative (RR) and/or Country Director, with support from programme staff. In this respect, UNDP's existing presence in-country

means that it is usually well positioned to engage with the political players who are often at the centre of any constitutional review exercise. Channels for engaging with such groups might be found in UNDP's existing portfolio, for example, through national dialogue projects, security sector reform initiatives, rule of law activities and/or parliamentary or political party development activities.

Government leaders, members of the legislature, political party officers, legal experts and the judiciary, and local level officials will all have views on constitutional process and content and will need to be engaged proactively. In many post-conflict countries, a constitution serves as a proxy peace agreement, which sets out the new divisions and distributions of power across the institutions and levels of government. Ex-combatants, revolutionary leaders, militia or the military often have a key stake in such constitutional processes and will need to be involved early in the process in order to avoid their acting as "spoilers". At the outset, in support of this effort to build strong relationships with national counterparts, country offices might consider undertaking an analysis of key stakeholders and their political and economic influence in the constitution-making process, which can include mapping the allegiances and views of members of parliament, political parties, militia leaders, local governance leaders, traditional leaders and influential civil society groups (see D2, Institutional and context analysis and risk assessment).

2. TRADITIONAL AND RELIGIOUS LEADERS

In addition to government officials and formal political leaders, it is important to identify and engage with key civic leaders.



In many UNDP partner countries, traditional/ clan/indigenous leaders and/or religious leaders can be very influential and have authoritative views within the society, particularly where constitutional processes touch on issues around land, culture or religion. For example, in the Pacific, many national constitutions establish an advisory upper house of traditional leaders which has a law-making role in relation to bills that affect land or culture and, in some countries, traditional councils are also constitutionally recognized as part of sub-national governance structures. One of UNDP's key comparative advantages is that it can often draw on partnerships with such actors which have been developed through existing projects in its governance or other portfolios.

“Constitutional assistance requires mobilizing and coordinating a wide range of expertise, both within and outside the UN system, to ensure access to international and comparative best practice. Best practice can contribute to expanding national actors’ knowledge of options and help them explore solutions that are technically sound and likely conducive to long-term stability.”

– Guidance Note of the United Nations Secretary-General, 2009

In a similar vein, religious leaders may have influential views on political processes, including the role of religion and relationship between state and religion, which can have an important impact on constitutional provisions around the system of law which will be implemented in the country (e.g. the position of religious law within the legal system). Where this is so, religious groups should be engaged at the outset in constitutional discussions, possibly by including

their representatives in the constitution-making body that is to propose the revised/new draft constitutional text.

3. NATIONAL CIVIL SOCIETY AND ACADEMIA

Civil society does not just mean NGOs, but also covers think tanks, trade unions, community-based organizations and social movements and, depending on the context, academic institutions. With UNDP's emphasis on inclusive political processes, engagement with civil society is a crucial part of any constitutional support effort, as it is both a key stakeholder whose (multiple) voices need to be heard during the process, as well as an implementing partner. With regard to the former, it is important for UNDP to ensure constitutional support is provided transparently in order that civil society itself can understand what UNDP is doing, how and why. Often, UNDP engages closely with government partners but is more opaque to civil society actors. It is important to address this proactively, as civil society has sometimes been critical of UNDP's closeness to government, a perception that can undermine the consensus-building that is so important to participatory constitution-making. Regular briefings for key civil society actors is a way of encouraging a two-way flow of information, which is particularly important in countries undergoing democratic transition or rebuilding after conflict, where confidence and trust may be low.

UNDP's engagement with civil society as an implementing partner in constitution-making requires early and regular interaction with partner organizations to build relationships of trust and ensure effective coordination. At an operational level, UNDP often effectively works with civil society organizations (CSOs) to support outreach to locations which are diffi-



cult to access (whether because of conflict or remoteness). In some countries, UNDP uses expressions of interest in order to ensure an inclusive and transparent process of partnering. UNDP also often works closely with local academia, drawing on universities and research bodies as sources of expert advice.

4. MEDIA AND JOURNALISTS

Noting the potential for political division in such a sensitive process, it can be a crucial contribution for UNDP to engage with the media to support peaceful and constructive public discourse and debate. The role of the media in constitution-making processes is critical; they may contribute to divisive rhetoric and further polarization or act in a neutral, professional manner which builds common understanding around contentious issues.

Whether satellite broadcasting channels or press or social media, these stakeholders have a wide reach and important awareness-raising role. Moreover, users of their services may be influenced by the way the process and political debate is framed, so accurate and fair reporting on constitutional issues is a key concern. UNDP engages with professionals in this area to support the media's civic education and outreach activities. In addition, UNDP often works with the media as a beneficiary of constitutional capacity-building support.

B. COLLABORATING WITH THE UN AND OTHER INTERNATIONAL PLAYERS

Constitutional processes are complex, multi-sectoral exercises which require a range of

*Women activists in group discussion on gender-related issues in relation to the constitutional review process in Bo, Sierra Leone.
Photo: UNDP Sierra Leone*





substantive and process inputs. While UNDP is commonly the leading agency providing capacity development and logistical/administrative support to national constitutional processes, it cannot and should not provide all the technical support that may be sought by partners.

1. UN MISSIONS

An increasing number of constitutional processes are occurring in countries which have a UN mission in place, whether a peacekeeping mission managed by the Department of Peacekeeping Operations (DPKO), or a special political mission managed by the Department of Political Affairs (DPA). UN missions are commonly mandated to engage in high-level strategic political processes with the government, including constitutional processes. Implementing that mandate requires close collaboration among UNDP, the UN country team and the mission.

The Secretary-General's 2008 decision on integration and the 2009 Policy on Integrated Assessment and Planning both guide the relationship where there is a mission in-country. UNDP must be engaged in all phases of the assessment and planning processes, from mission start-up to withdrawal and drawdown. When possible, UNDP should participate in strategic and technical assessment missions and support the drafting of various integrated planning documents such as the Secretary-General's directive to the Special Representative of the Secretary-General (SRSG) and RC and the Integrated Strategic Framework. Engagement in these processes enables UNDP, other members of the UN country team and the mission to establish the practical working relations in each context.

While the assessment and planning documents directly derived from these integrated mission processes are not sector specific, they provide overall strategic guidance for all sectors. Integrated sector-specific plans, including for constitutional review processes, can then be derived and developed on the basis of the strategic documents. There is currently no template for UNDP partnerships with UN missions in relation to constitutional support, although, in recent years, an increasing amount of good practice has been developed which can be drawn on. These practices include joint missions between the DPA and UNDP and integrated constitutional teams in mission settings, which also engage other members of the UN country team (see Box 4 and Box 6). Such integrated approaches are also favoured by UN funding pools such as the Peacebuilding Fund.¹²

2. UN COUNTRY TEAMS

In many contexts, the UN country team has provided the mechanism for ensuring coordinated substantive inputs into the constitution-making process, through the development of shared UN positions and recommendations. Many UN agencies have specialized subject knowledge based on their mandates, which should be drawn on for the benefit of the partner country, for example, OHCHR on human rights, UN Women on gender equality, UNHCR on refugees, UNICEF on children's rights and UNODC on anti-corruption/accountability institutions. In addition, these entities will also have important networks which can be leveraged for the benefit of the process, for example, UN Women will often have close ties to women's networks, while UNFPA

¹² The Peacebuilding Fund is a UN fund that supports activities, actions, programmes and organizations that seek to build a lasting peace in countries emerging from conflict. See <http://www.unpbf.org/>



and UNICEF may have relationships with youth organizations. Ideally, integrated UN country team support will also be reflected in the national UN Development Assistance Framework (UNDAF), the country programme document (CPD) and/or any project document on constitutional support.

BOX 3: SUPPORTING CONSTITUTIONAL STRENGTHENING IN GEORGIA

With its democratic governance development mandate, UNDP has been a consistent partner of the national authorities, the judiciary and civil society in the ongoing process of constitutional strengthening in Georgia.

With the wave of democratic reforms in 2010, UNDP supported the State Constitutional Commission (SCC) to review the Constitution in order to address the political crisis facing the country, with an emphasis on inclusion of all actors in the drafting process, to ensure vast support and political legitimacy. The SCC was composed of 55 members, most of whom represented the legal field, political parties, NGOs and state organizations (including the parliament, government, judiciary and presidency).

UNDP, together with GIZ, supported the SCC to consult with international experts, most notably the European Commission for Democracy and the Law (better known as the Venice Commission). The Venice Commission provided feedback on key principles underlying the Constitution and advice on proposed amendments. UNDP also provides expert advice to support inclusion of a new chapter on local self-governance in the Constitution, which led to constitutional guarantees for self-governance for the first time in the history of the country. Expert advice was also provided on different models of governance, constitutional regulations of legislative and executive powers, practical and legislative problems between different branches of power, and provisions on judicial power.

To ensure active participation of the public in the constitutional reform process, UNDP also helped the SCC to raise awareness and hold consultations with the Georgian people, including through conducting informational round tables in the regions and seminars for representatives of central and regional media entities. UNDP supported the Parliament of Georgia, to create an official web page where citizens could access the draft amendments and share their own ideas and remarks. The web page had a section for “experts’ opinion”, where analytical articles about the recent changes to the constitution were published. In addition, an expert was hired to analyse and summarize the remarks and ideas posted by the public. As a result of public input, some changes to the amendments were made, which were passed in October 2010.

The 2013 process of constitutional amendments by the Parliament also involved UNDP support to continue the practice of inclusive constitutional strengthening. In particular, UNDP helped establish the interactive website www.constitution.ge and a Facebook page linked to the Parliament’s official web portal. The website holds a variety of information, including the text of the Constitution and draft constitutional amendments, and video recordings of the meeting of the Public Debates Commission of the Parliament. Some meetings were also live streamed. Most importantly, both the website and Facebook page enabled citizens to engage in the constitutional discussions by posting comments, remarks and recommendations, and in running interactive public opinion polls on selected draft amendments. The summary of expert opinions and results of public opinion polls have been regularly provided to the Public Debates Commission. Since January 2013, the website has had around 38,000 visits with over 26,000 unique visitors. Each Facebook post has an average of 800 views and over 3,500 people have participated in website-administered polls. In the end, Parliament decided to adopt the draft amendments, modified in line with the expert and citizen feedback collected on the website.



3. INTERNATIONAL EXPERT ORGANIZATIONS

Increasingly, international organizations are also providing comprehensive support to constitutional processes, and are becoming more important partners for UNDP. In countries that are members of the Council of Europe, the European Commission for Democracy and the Law (the Venice Commission), which acts as the Council of Europe's advisory body on constitutional matters, can be an excellent source of technical advice and support.¹³ Likewise, a number of international organizations are increasingly partnering with UNDP on constitutional support. For example, the International Institute for Democracy and Electoral Assistance (International IDEA) has been an important partner to UNDP in constitution-making in many countries and has been a substantial contributor to the literature and practice on constitution-making. The Centre for Constitutional Transitions of the New York University (NYU) Law School, National Democratic Institute, Max Planck Institute, Forum of Federations, the International Law Development Organization (IDLO) and US Institute for Peace have also engaged in technical seminars and direct advice to governments working on constitutional processes. Many of these organizations have their own funding and partnership networks, and UNDP country offices can explore options for proactively partnering and coordinating with them to develop shared objectives and maximize the support available to national stakeholders.

¹³ <http://www.venice.coe.int/>

C. PROMOTING INTERNATIONAL COORDINATION

Constitutional processes are major national exercises which have huge implications for democratic and development outcomes. In that context, a range of international partners – both donors and international organizations – will also be keen to engage in the process. The risks of overlap and duplication are very real, as is the risk of excessive time burdens on those who would prefer to be focused on making the constitution, rather than engaging with donors to access and report on funds.

UNDP has substantial experience in using its convening power and neutrality to assist national constitutional bodies by supporting coordination efforts, including by sharing good practice from elsewhere. However, effective coordination may be a challenge, as some international partners may elect not to participate as a matter of policy, while others may be limited by their own funding or project regulations. Still, UNDP coordination will usually be welcomed by national and international partners. It has four primary goals:

- Information sharing among all partners;
- Collaboration on particular issues from those with an interest in the issue;
- Resolution of particular problems in which it might be helpful for partners to follow the same policy (e.g. the scheduling of study visits for members of the constitution-making body or the standard level of payment of salaries for constitutional secretariat staff); and
- Pooling of resources: Pooling resources on constitution-making processes



BOX 4: CONSTITUTION-MAKING, PEACEBUILDING AND STATE BUILDING IN SOMALIA

On 20 August 2012, Somalia's Transitional Federal Government ended its official mandate and was replaced by a new set of federal institutions. These new institutions 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 while, at the same time, trying to review its terms and agree a revised national federal constitution.

In recognition of the centrality of the constitutional process to the rebuilding of Somalia's nascent social contract, Somalia recognized an inclusive agreement of a final federal constitution as one of its core peacebuilding and state building goals. Specifically, the New Deal Compact agreed by the Government in September 2013 outlined three key priorities for promoting inclusive politics over the next two years: (1) state formation and social reconciliation; (2) constitutional review; and (3) elections.

UNDP is working closely with the UN mission in Somalia (UNSOM) to support these overarching national goals. UNSOM is leading coordination of the UN's constitutional support through the UN Integrated Constitutional Support Team (ICST), which 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 and UNDP are also working closely to provide technical advice and support to the Somali Government on implementation of the Provisional Constitution, including the establishment of key constitutionally mandated institutions. As is commonly the case in such contexts, UNDP has leveraged its existing institutional-strengthening support to the Federal Parliament to provide support to the Parliamentary Constitutional Oversight Committee which is leading the review process, including by providing support to develop and implement an Outreach and Dialogue Strategy.

under UNDP management has many advantages, including creating a fire-wall between donors and the constitution-making body, to ensure the body's independence is untainted by any unnecessary exposure to or misperception of external interference, and reducing the transaction costs related to donor reporting and coordination meetings and liaison.

Many UNDP projects in constitutional support have integrated a coordination mechanism into their design, which includes liaising with international partners and basket funds, either as a standalone effort or linked to other projects (such as UNDP's parliamentary development proj-

ects). It is not uncommon for some type of donor working group or international partner process to be established, specifically to address donor coordination and assistance around the constitutional review process. This often involves regular monthly meetings and special interest meetings held periodically among subgroups of donors and implementers with shared interests and projects. It can also involve providing regular briefing notes to the UN RC/UNDP RR and interested parties, as well as frequent briefings to embassies and international organizations. Consideration can be given to including some partners on the project board and in operational-level working groups, where they exist.



D. ENSURING UNDP'S INTERNAL READINESS

UNDP country offices need to be proactive in preparing to support constitution-making. Planning, a mainstay of country office work, takes on a new shape in constitution-making contexts, where the process can start unexpectedly and always unfolds at its own pace. Once underway, constitution-making is not easily controlled, and is often politically volatile. It has a tendency to take rapid, unforeseen turns, bringing the risk of rapid change in planned support requirements. For these reasons, country offices need to be proactive in anticipating possible support and in preparing to manage the risks that come with it.

1. UN AND COUNTRY OFFICE SENIOR MANAGEMENT AND STAFF

Constitutional support is a sensitive area of work. Hence, more than with other projects, constitutional support activities will require close involvement from senior UN/UNDP management at all stages – in designing the support package, gaining and maintaining the confidence of national counterparts, enhancing the engagement of the country office and its internal relationships (with the UN country team, any UN mission and headquarters), engaging with international partners, and dealing with the occasional public crisis which may arise as a result of UNDP's assistance (most commonly, an allegation of "foreign interference"). A great deal depends on UNDP's leadership – in particular the UN RC/UNDP RR and Country Director – giving priority to leading the support process personally and proactively.

There will always be a premium on providing senior management solid information on

emerging debates, good information about the best practices available to decision makers and timely analysis where events unfold in a way that may lead to possible intervention.

Experience has shown that UNDP constitution support efforts benefit from mature expertise, e.g. a senior adviser who has the credibility and knowledge to engage in high-level policy discussions. Regular briefings to senior management should be part of any constitution support team's duties. It will also help to focus senior management on difficult issues and plan how they will be addressed. Analysis and advance planning will also facilitate decisions about interventions being made in collaboration with the UN mission, where applicable, and the UN country team and international partners. Decisions should be taken on the basis of a thorough understanding of the context and possible risks (see D2, Institutional and context analysis and risk assessment).

While senior management engagement is crucial, all country office staff are key to the success of any constitutional support. Constitutional processes are multisectoral and multi-issue, and it is therefore even more important to tap all of the country office's technical experts for their inputs, as appropriate.

At a minimum, capacities within the country office need to be harnessed to produce valuable analysis, but technical experts may also be useful in providing direct advice to national counterparts. For example, environment experts may provide advice on clauses regarding environmental protection or natural resource management, gender equality experts may provide advice on including women in the process and/or



BOX 5: UNDP PROJECT MANAGEMENT COORDINATION IN ZIMBABWE

In Zimbabwe, at the request of the Government, UNDP helped the Constitutional Parliamentary Committee (COPAC) to mobilize much-needed technical expertise in support of the process and specifically augmented the capacity of the COPAC Secretariat. UNDP assisted with resource mobilization for the constitution-making process, including establishing a basket fund under its management. This fund became the preferred modality for development partners supporting the constitution-making process. A Project Management Team comprised of a Project Manager, a Finance Specialist to assist with management of the basket fund, an Information Technology Specialist and a Communications Specialist was set up to support the Secretariat. This support proved critical during the data analysis phase when the stakeholders were battling with methodological issues. UNDP also provided a Constitutional Adviser with wide regional and international experience in constitution-making processes, who was able to offer strategic advice and share international experiences, which proved crucial, especially during the drafting stage.

In providing support, UNDP often had to balance the expectations of the national stakeholders with those of the development partners in a manner that ensured that its neutrality and impartiality were not compromised. The governance structure of the constitution-making process generally, and the project in particular, were critical. COPAC and its Management Committee assumed national leadership of the process. A Project Board established at project inception brought together key decision makers, from both the Government and opposition political parties, as well as from contributing development partners to make key decisions in respect of project implementation. The Project Board was high level and tripartisan, comprising members of the Management Committee, the UNDP Resident Representative and ambassadors representing development partners. The Project Board met on a quarterly basis to consider work plans and budgets. It also became a forum for information-sharing on key strategic and political considerations in respect of project implementation.

Prior to each Project Board meeting, UNDP convened two meetings with partners. The first was at a technical level, where details of work plans and budgets were thoroughly discussed and clarifications made. The second was at heads of agency level where the contributing partners' heads of development cooperation would raise any strategic issues of concern or needing clarification from the national authorities. This information would then be channelled back to the Government through the Project Board. Through this process, UNDP helped broker a better understanding of strategic issues and challenges between national authorities and development partners.

gender equality in the drafting, or poverty experts may provide advice on integrating economic, social and cultural rights into the bill of rights.

Furthermore, national staff will have a strong understanding of their own country's political and social context and the burning issues that may be important in revising the constitution. Their knowledge and analytical skills will be invaluable, as part of a non-partisan UNDP team, and their networks may be crucial in enabling the organization

to engage sensitively in complex national operating environments.

2. INSTITUTIONAL AND CONTEXT ANALYSIS AND RISK ASSESSMENT

The more UNDP knows, the deeper its knowledge and networks and the more perceptive its analysis, the more it is likely to have influence when it counts with national and international partners in supporting constitution-making. Early analysis will prove invaluable when assessment missions and



experts arrive (they will invariably need local support to make contacts, update their understanding of the local context and receive mission support), when developing project documents (funders will want to see a deep understanding of the local context reflected in project documents and not just a rehearsal of what is in the press or a repetition of what UNDP did elsewhere) or when making ongoing project decisions.

As constitution-making is a highly political exercise and also takes place in a unique period in a country's history, it is strongly recommended that the country office undertake an Institutional and Context Analysis (ICA)¹⁴ or Conflict-related Development Analysis (CDA)¹⁵ at the start of the process. The ICA and CDA involve analysing the interests and incentives of different groups and individuals in society, the role that formal and informal social, political and cultural norms play, and the impact of values and ideals (including political ideologies, religion and cultural beliefs). The ICA and CDA can help the country office map the key stakeholders, including the allegiances and views of members of parliament, political parties, militia leaders, local governance leaders, traditional, indigenous or religious leaders, and influential media and civil society groups.

Where a Peace and Development Adviser is deployed in-country, this may be a useful exercise for him/her to lead. Where a UN mission is in-country, it will often be able to contribute to this process. Identifying key stakeholders can assist UNDP in supporting

a more inclusive process, as well as helping to identify partners with whom to work. The ICA and CDA also assist with risk identification and mitigation, management and better delivery of realistic results. This kind of analysis will be particularly useful for the UNDP RR and Country Director, to inform their interactions with stakeholders, and will help guide UNDP's advice and programming over time.

3. CONSTITUTIONAL SUPPORT PROJECT DOCUMENTS

UNDP has long experience in designing and implementing constitutional support projects. There are several supports to constitution-making project documents now available on Teamworks. The UNDP Bureau for Policy and Programme Support (BPPS) is able to assist with the development of project documents, through both the direct provision of technical expertise as part of a project formulation team and the management of expert consultants.

Experience has shown that an early needs assessment can be useful in formulating project assistance, where it considers the likely requirements for UNDP in-house support as well as the early planning of other partners. Such an assessment should consider financial, administrative and expert support that will be needed for the constitutional body, political stakeholders, civil society, media and the public. It should also consider more operational issues such as donor coordination and operational implementation issues. Where a UN mission is in place, BPPS can also assist in supporting country office efforts to engage in joint programming.

Lessons learned from the field suggest that,

14 See UNDP, "Institutional and Context Analysis Guidance Note," UNDP: New York, 2012. Available from http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/oslo_governance_centre/Institutional_and_Context_Analysis_Guidance_Note

15 See UNDP, "Conflict-related Development Analysis (CDA)," UNDP: New York, 2003. Currently being updated. Available from http://www.undp.org/content/dam/undp/documents/cpr/documents/prevention/CDA_complete.pdf



when designing a constitutional support project document, the following issues should be addressed:

- **Early readiness and flexibility:** Because of the complex dynamics involved in constitution-making processes and the fluid political environment in which they take place, support activities may need to change too. This means that, in its design and management approaches, any project document should emphasize early readiness and flexibility to adapt to changing support requirements. This may require project activities to be drafted in more general terms, as well as building in more flexible timing for delivery of activities. The monitoring

and evaluation framework also needs to be developed to enable flexibility.

- **Risk management:** The situation analysis in the project document will need to clearly identify risks to the process, and a strategy indicating how those risks will be managed. Risks commonly include change in the influential actors, and disagreement around controversial issues, as well as risks that the constitution-drafting process may not be completed on time. In conflict-affected countries, the risk of the process resulting in or being affected by the eruption of violent conflict may also need to be accounted for. Many risks may be reduced by ensuring that project design provides for the flexible applica-

*Somalia's Constituent Assembly Discusses Draft Provisional Constitution.
Photo: UN, Robin Gary*



BOX 6: UNDP'S "ONE UN" APPROACH TO CONSTITUTIONAL SUPPORT IN SIERRA LEONE

As part of the process of negotiating the end to the civil war, the 1999 Lome Peace Accord provided for a review of the 1991 Constitution. Subsequently, the Truth and Reconciliation Commission (TRC), established in 2002, also urged the Government of Sierra Leone to give "serious consideration" to the creation of a "new constitution", in order to contribute to human rights. To that end, a broad-ranging Constitutional Review Committee (CRC) representing different stakeholders in society, including political parties, democratic institutions, NGOs, the media and key independent bodies was set up in July 2013 with a mandate to review the Constitution. At the conclusion of the process, Parliament will need to pass a bill, after which a referendum will be held to approve the new Constitution.

In support of the constitutional process, UNDP worked closely with the UN Integrated Peacebuilding Mission in Sierra Leone (UNIPSIL) to develop an integrated support package for the Government. The UNDP Constitutional Support Project, which was mobilized in September 2013, was also designed to specifically recognize the multiple UN agencies with relevant technical expertise which will be partners in the project, including UN Women, OHCHR and UNICEF, as well as UNIPSIL and the DPA Electoral Assistance Division, in recognition of the need for a referendum eventually to be organized as part of the constitutional process. To this end, each agency is explicitly recognized as a partner in the Project Document, and UNIPSIL – whose Executive Representative of the Secretary-General also operates as the Resident Coordinator – is also on the UNDP Project Board.

tion of resources, and includes regular monitoring of project performance (preferably by neutral experts) and specific dialogue and mediation work within the project's activities.

- **Monitoring & Evaluation (M&E):** M&E is a core responsibility and task within UNDP's project management. Where the constitutional support project is funded by development partners, UNDP is accountable for both how donor funds are being used and the delivery of pro-

ject results according to planning and the agreements signed with donors. Both monitoring and evaluation are essential to determine the results-orientation and effectiveness of development initiatives in constitution-making and to inform practice on how to adjust project implementation.¹⁶

- **Best practices and lessons learned:** What national partners seek from UNDP and what will likely make a positive contribution to constitution-making will depend on the local context. That said, there are many common features to a constitutional support process – for example, public consultation, expert advice and negotiation around content – from which lessons can be learned. Project documents can therefore usefully draw on existing lessons by tapping expertise on Teamworks or the UN Constitutionmaker website.¹⁷ They could also include specific funding for South-South and triangular cooperation, to support the sharing of experience across countries.

4. ASSURING OPERATIONAL AND TECHNICAL SUPPORT

While UNDP country offices will already have existing operational support teams in place, the sheer scale and immediacy of a constitutional support activity, coupled with extreme political sensitivity, often requires very quick and flexible support. This makes it even more essential to have strong support mechanisms in place early. Human resources, finance, premises, security and communications capacities are likely to be stretched by a large, new constitutional support project

¹⁶ See UNDP, "Handbook on Planning, Monitoring and Evaluating for Development Results," UNDP: New York, 2009. Available from <http://web.undp.org/evaluation/guidance.shtml#handbook>

¹⁷ www.constitutionmaker.un.org



working to deadlines that are usually tight and often changing. Success or failure in delivering timely support (e.g. simplifying a purchasing process so that a constituent assembly secretariat obtains the translation equipment it needs on time) can have a major, immediate impact on the credibility of UN support.

Early attention to developing operational support capacities will mitigate the risk of non-delivery. Drawing on lessons learned from past constitutional support projects, country offices may wish to develop the following tools and strategies:

- **Country Office Expert Roster:** Being able to quickly access high-quality constitutional experts has long been crucial to UNDP constitutional support projects. Even where a Chief Technical Adviser is in place, it will often be necessary to deploy specific experts to provide advice on highly technical issues, such as power-sharing, federal structures or natural resource management, as well as national experts who can bring historical and cultural perspectives to their advice. Language requirements may also make a national roster more attractive.

To pre-empt a heavy set of recruitment processes over the course of the constitutional process, consideration can be given to developing a nationally managed expert roster which can be established through a single procurement exercise. This expert roster could then be drawn upon throughout the whole period of the constitutional process. For example, UNDP Somalia developed a Constitutional Consortium which brought together expert NGOs working in Somalia, and supplemented this with a roster of experts which it drew on over a number of years. To set up such a roster, the project team will need to liaise

closely with the country office operations team to ensure proper administrative procedures are in place at the outset for the roster to work as a quick-deployment facility. When developing a procurement approach, the country office will need to consider how to utilize expertise from institutions (e.g. academic bodies, other organizations such as International IDEA) as well as individuals, through the roster.

- **HQ and Regional Experts:** country offices rarely have in-house expertise in constitution-making at the time a constitutional process starts, although there will likely be governance specialists to draw on and, in some circumstances, a Peace and Development Adviser with relevant capacities in relation to political analysis, stakeholder engagement and mediation/dialogue. Once a country office has decided to provide substantial assistance to any constitutional process, expertise will need to be resourced as soon as possible. To supplement country office expertise, specialists in BPPS, including advisers at headquarters and in the regional centres who are working on different subject matters, can also be sourced. Country offices can also draw on expertise and rosters located at headquarters. The UNDP Express Roster, which provides quick-deployment consultants to crisis-affected countries, includes constitutional experts. The joint UNDP and DPA Constitutional Experts Database managed at headquarters is also designed to support the quick deployment of experts to the field. DPA HQ has a Constitutional Focal Point and the DPA Mediation Support Unit runs a Mediation Standby Team,¹⁸ which comprises a range of experts (including on constitutional process, mediation, power-

¹⁸ An explanation of the objectives of the team and biographies of all current MSU Standby Team Members is available from <http://peacemaker.un.org/mediation-support/stand-by-team>



sharing, federalism and gender) who can be deployed within 72 hours, free of charge to UNDP country offices and UN missions.

- **Dedicated operations support:** While most country offices have an operations team in place, constitutional support projects may warrant their own operations support. Projects in this area are known to require responsive, flexible and speedy procurements and financial disbursements, to ensure that timely advice and assistance is

provided by UNDP, despite fluid political situations. For example, large national dialogue meetings may need to be supported on only a week's notice, technical advice may need to be procured and provided within a matter of days, and small grants to large numbers of CSOs may need to be paid and managed. Dedicated operations support in constitution-making projects can help ensure such support can be implemented without putting an undue burden on the country office overall.



Members of civil society gathered for an Amkeni I Wakenya Forum in support of the Kenya constitutional review process.
Photo: UNDP Kenya



PART THREE: ENTRY POINTS FOR UNDP SUPPORT

UNDP has a range of entry points for support to constitution-making, based on long experience in providing constitutional support. The nature and extent of support will depend on the political, economic and other circumstances of each country and on the request of national authorities and stakeholders. In some contexts, UNDP will be requested to support the entire process; in other contexts it might provide support to the public consultation, outreach and dialogue aspects of the process. In still others, UNDP might be called on to identify targeted technical expertise or provide comment on specific constitutional provisions which are under review. This section sets out some of the most common entry points for engagement, and identifies good practice and lessons learned, in order to help country offices work through options for support.

In supporting constitution-making in a wide range of developing contexts, UNDP is well placed to assist constitution makers by making available to them the most relevant experiences from across a range of different national contexts. UNDP can also offer added value as a neutral provider of assistance and an impartial advocate for compliance with international norms, and engage effectively with a wide range of involved stakeholders. This support is most effective in country contexts where UNDP is recognized by both government and non-government stakeholders as a trusted neutral partner and “honest broker” of both advice and assistance. At the same time, UNDP will always have to balance its capacity to positively influence and support this crucial democratic process with the risk that engagement with a politically compromised consti-

tutional process may undermine the international standards and universal values to which UNDP is committed. This balancing requires consistent attention throughout a constitutional process from the highest levels of the UN and UNDP in-country and at headquarters, in order to ensure that UNDP’s contribution “does no harm” and accords with the organization’s mandate and principles of engagement.

A. SUPPORT FOR CONSTITUTIONAL PROCESS DESIGN

In thinking about supporting constitution-making, it may be useful to make a distinction between process support and content support. Support to the process relates to UNDP assistance to help countries determine how they would like to undertake a constitutional drafting/review exercise. For example, what kind of body will be responsible for the drafting/review? How long will it take? How will the public be consulted? Support to the content relates to UNDP technical assistance on the actual provisions in the constitution, for example, advice on different systems of government, the composition of the legislature, the division of power and resources, or the creation of independent commissions.

As a broad generalization, the design and launching of the constitutional process will usually take place before work starts on reviewing the content. However, in many transition or post-conflict countries, an interim constitution may be put in place (sometimes by an interim government) to guide a longer process of consultation and revision. Important decisions about the substantive aspects of the constitution may therefore be taken even before the larger process begins, which may still have a major



impact on later work on content. This was the case, for example, in Nepal, where the Interim Constitution itself provided that Nepal, formerly a Hindu kingdom, was henceforth a federal democratic republic. It was also the case in Somalia where the Provisional Constitution has established a federal republic, but federal member states and the division of powers between levels of government must still be agreed through the ongoing process of constitutional review.

promoting stability, reconciliation (where necessary) and successful democratic transition? Supporting decisions about this and other questions may give rise to demands for specific international advice. In some cases (e.g. Tunisia), all these questions may be completely open when the process starts. In others (e.g. Bolivia, Nepal), some or all questions may have already been addressed by prior agreement or by law (e.g. an existing constitution with an amendment procedure).

“The authority of government comes from the people through the Constitution. Your tasks and responsibilities, as well as your power, come to you from the people through the Constitution. The people speak through the Constitution. The Constitution enables the multiple voices of the people to be heard in an organized, articulate, meaningful and principled manner.”

– Nelson Mandela, speech at the inauguration of the Constitutional Court of South Africa, 14 February 1995, Johannesburg

The politics of the day will necessarily shape the design of the constitution-making or review process. Design is a critical step in which political competition may be at its most intense, because the design of a constitutional process may affect the outcome. A demand on a content issue, such as the creation of a federal state to accommodate ethnic or religious diversity, may be signaled by an early demand for inclusion of such minorities in the process through reserved seats for minorities in the constitution-making body.

The country office might be called upon to support the design of the process as a first point of engagement, while supporting development of the content of the constitution at a later stage. Design of the process will involve answering important questions, that might require trade-offs and balancing of interests. For example, How will the process address issues around inclusion of opposition parties or ex-combatants? Will it engage minorities? Will it seek to resolve issues of gender equality? Will it involve endorsement by parliament only or also by referendum? Will the constitution-making body be appointed or elected? Most importantly, the driving question will be, How can the process be designed to maximize legitimacy and national buy-in while

Another design decision that is often hotly contested is the timeline for the process. In post-conflict countries in particular, there is often a strong push for a speedy constitutional review process, as a result of the desire to quickly transition to a new democratic dispensation. However, experience from numerous constitutional processes indicates that short deadlines are almost never met in reality and, in fact, are often a hindrance to the broader goal of designing a constitution which reflects the will of the people, and is based on meaningful consultations with a broad cross-section of society.¹⁹

UNDP should be alert for opportunities to advocate for an open, inclusive process which is prop-

¹⁹ Brandt, Michele, Jill Cortell, Yash Ghai, and Anthony Regan, "Constitution-making and Reform: Options for the process," Interpeace: Switzerland, 2011. Available from: <http://constitutionmakingforpeace.org/sites/default/files/Constitution-Making-Handbook.pdf>



BOX 7: PROMOTING AN INCLUSIVE AMENDMENT PROCESS IN VIET NAM

In 2011, the National Assembly of Viet Nam announced a two-year constitutional review process, to bring the 1992 Constitution up to date with the country's fast-changing social and economic trajectory. The process was entrusted to the National Assembly, which asked UNDP to help bring international experts and comparative experiences to bear on some of the most controversial issues to be discussed, including different models of constitutional review, and of local governance, and provisions on human rights.

UNDP was specifically asked to advise on international best practices concerning public consultation on constitutional reform. UNDP advocated for the role of media and civil society in ensuring that constitutional issues were discussed widely, and also urged that women and excluded groups be fully engaged in the process. UNDP utilized the advice contained in the Interpeace Manual on "Constitution-making and Reform: Options for the Process"²⁰, including translating it into Vietnamese for national experts. Following these discussions, and in line with the increasing aspirations of the Vietnamese people for democratic reform, the National Assembly adopted a framework for the public consultation in constitution-making, which recognized the role of the media and allowed civil society and individuals to submit comments over a three-month period.

UNDP also directly engaged with non-state actors to help facilitate a more open public consultation phase, including supporting Vietnamese CSOs to engage with women and excluded groups to canvas their views on constitutional reform, and contributing articles on public consultation and other topics to Vietnamese publications and journals. During this period, Vietnamese CSOs publicly conveyed the views of many excluded groups including youth, the elderly, people with disabilities, migrant workers, people living with HIV, LGBT people and women, on a wide range of social and governance issues, including land rights, decentralization and rule of law.

To achieve this support, UNDP Viet Nam leveraged its existing governance portfolio, including its Parliamentary Development and Access to Justice Projects and, in particular, the (directly implemented) Policy Advisory Project. In late November 2013, the National Assembly adopted an amended Constitution, which includes revisions to some human rights provisions (most notably, a new provision against discrimination), and a refinement of the country's commitment to rule of law, as well as a stronger affirmation of the role of the courts.

erly timed to enable meaningful consultations involving stakeholders across the country. The government should be encouraged to formulate the design process in a participatory way, for example, by formulating the law, decree or resolution that establishes the constitutional process in collaboration with opposition political parties, CSOs, minority groups and indigenous peoples, and with the general public empowered to provide input. UNDP also commonly advocates for the process to include a *representative* constitutional body, with particular emphasis on ensuring that women, youth and marginalized groups are systematically included. Reserved seats for

such groups in the constitutional body are a common tool for promoting inclusion. Finally, UNDP usually encourages the constitutional process to include a major public consultation exercise, in order to enable the public and key stakeholders at all levels of society to directly provide input into the process (see Box 7).

In the end, it is for the national actors to design the constitutional process and to determine if, when and for what purpose UNDP support should be sought. Other UNDP support for inclusive political processes will often be impli-

²⁰ To download the Handbook go to <http://www.interpeace.org/index.php/2011-08-08-15-19-20/latest-news/203-the-first-of-its-kind-a-constitution-making-handbook-for-peace>.



cated in these dynamics. For example, where an election of the constitution-making body is required and/or a referendum called for, UNDP will likely be asked to leverage existing in-country electoral cycle support for these processes or, where parliaments or committees thereof are the constitution-making body, support to that body can be built on UNDP parliamentary development efforts.

B. SUPPORT TO CONSTITUTION-MAKING BODIES

UNDP provides capacity development and institutional support to constitution-making bodies, by drawing on good practice and lessons learned from prior support to a range of constitution-making bodies and national legislatures. Constitution-making bodies can be created in many different forms; existing bodies can be tasked or new bodies established. Bodies can be appointed and technical, elected and populist, or a mix of both. Common examples include:

- An existing or newly established legislature – which may be tasked with undertaking a participatory review of the constitution and making amendments through the parliamentary process. Legislatures are often given this mandate where a constitutional review process is focused more on technical amendments or smaller, targeted changes.
- A constituent assembly (CA) – CAs are usually larger bodies and more political in their composition. They can be elected or appointed, and usually their recommendations will be considered final, before being put directly to a referendum.
- A constitutional review committee

or commission (CRC) – CRCs are usually smaller, technical bodies whose members are appointed based on their technical expertise, trusted reputation or both. Appointment may be by the executive branch or the legislature. Such bodies are usually seen as impartial and independent, and will be tasked with providing technical recommendations which may then be considered by a second political body (e.g. the executive or legislature) and/or eventually at a public referendum. In a few countries, both national and international experts may be appointed to a CRC.

- A round table or national conference – sometimes these bodies are used as a precursor to a second body which will be responsible for technical drafting of the constitution, and focus on bringing together key stakeholders (round table) or a larger group of representatives (national conference) for dialogue around key contentious issues and to identify guiding constitutional principles and/or an overarching set of core agreements on constitutional content. In other instances, these constitution-making bodies may be responsible for reviewing a final draft of a proposed constitution and providing endorsement of the content.

UNDP has prior experience in supporting different types of constitution-making bodies, whether it be a combined constituent assembly/parliament (e.g. Tunisia, Nepal), an existing parliament/committee (e.g. Somalia), or a single-purpose constitution-making body with a limited lifespan (e.g. Ghana, Kenya). Where a new constitution-making body is established – and, in some cases, where an existing body is tasked with formu-



lating the constitution – it will often require substantial institutional support and capacity development to enable both members of the body and secretariat staff to do their jobs effectively. Such support might consist of UNDP providing capacity development for members of the constitutional body, for example, in areas such as mediation/dialogue, substantive content or procedure. This can involve support for an induction programme, as well as providing ongoing support through technical seminars or, commonly, through a longer-term constitutional adviser.

A key component of this type of support usually focuses on the development or establishment of a constitution-making body's secretariat. The secretariat is commonly responsible for servicing members of the constitutional body, as well as organizing public outreach and consultation activities. While some constitutional processes will be run by an existing legislature and rely on an existing secretariat, overwhelmingly, UNDP's assistance has involved support to

a nascent secretariat, in particular, in transition or post-conflict settings (see Box 4 and Box 8).²¹ The institutional-strengthening support requested may be for physical infrastructure, equipment, logistics, information and communications technology, media and communications assistance, and staff capacity development. Strategic planning and formulation of the rules of procedure by the secretariat and the constitution-making body is also commonly supported by UNDP. This type of operational-level assistance can be a solid entry point to build trust in advance of more substantive involvement in the drafting process.

C. EXPERT ASSISTANCE ON CONSTITUTIONAL CONTENT

Many older constitutions were made or strongly influenced by committees of constitutional lawyers, with limited or no involve-

*Moment of vote on the draft Constitution by Tunisia National Constituent Assembly deputies.
Photo: UNDP Tunisia*

²¹ The Secretariat Structure Graph was prepared by Hassan Ibrahim during a DPA/UNDP joint support mission to Sierra Leone in 2013.



ment from outside experts, let alone from the general public. However, these days, both national and international constitutional experts commonly play a key role in providing advice on the content of the constitution. Most constitutions address complex legal questions around governance – such as federal–provincial relations, local government, land distribution, environmental protections, powers and limitations

BOX 8: UNDP SUPPORT TO CONSTITUTION-BUILDING IN TUNISIA

Since Tunisia's Jasmine Revolution, that culminated on 14 January 2011, UNDP has been Tunisia's main international partner in constitutional support and parliamentary strengthening, as the country moves to establish a democratic, accountable system of governance. UNDP's Project of Support to Constitution-building, Parliamentary Development and National Dialogue in Tunisia was designed in 2011 at the request of the new Tunisian authorities and runs from 2012 to 2015. With funding of US\$18 million, the Project's scope, resources and duration have allowed UNDP to offer substantial and multidimensional support to Tunisia's democratic transition.

The project has supported the National Constituent Assembly (NCA) in three key areas: (1) organizing an open and participatory constitutional process; (2) strengthening of institutional capacities to undertake law-making, oversight and representation; and (3) development of constitutional and political dialogue mechanisms, in order to ensure citizen and civil society input into constitutional and political process. Through the Project, UNDP has responded quickly with high-level international constitutional expertise whenever requested, and has worked closely with the UN Country Team to provide substantive input on successive constitutional drafts in key areas such as human rights and gender equality.

Over 2012–2013, the Project supported a nationwide dialogue between NCA members and citizens and civil society organizations (CSOs) in all 24 of Tunisia's governorates, involving 80 Assembly deputies, with training provided in both legislative and constitutional drafting, and in public consultation techniques. Over 6000 citizens, 300 CSOs 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. Through civil society initiatives supported by the Project, 30,651 citizens were consulted on the Constitution. A national survey of 1100 young people provided detailed information on the desires and expectations of Tunisian youth, the segment of the population whose exclusion sparked the 2011 Revolution.

The new Constitution was approved by the NCA on 26 January 2014 by an overwhelming majority from across the political spectrum, and promulgated the next day. The Constitution reflects a constructive balance of the diverse perspectives of Tunisian citizens, grounded upon the entrenchment of strong human rights protections, including gender equality guarantees. The consensual approach that enabled constitutional agreement has continued, with the new electoral law and calendar approved and the new Assembly of the Representatives of the People in place by the end of 2014 as mandated in the Constitution. The Project supported an NCA-led campaign of public education on the new Constitution that was again carried out throughout the country, directly engaging over 3000 citizens in public meetings led by NCA deputies.

The new Assembly will have a major role in both assuring the implementation of the new Constitution – which will require the adoption of a new legal and institutional infrastructure – and playing its key roles of executive oversight and representation of the citizen. The President of the NCA has formally requested UNDP to continue its support through to the new Assembly, and a new project of support from 2015 to 2018 is being planned.



of the three branches of government, and human rights and citizenship – each of which may warrant bringing in specific expertise to enhance the understanding of national partners. The final content of a constitution provides for the rights of the people, the responsibilities of those who govern, and the distribution of power and resources in society. In this regard, the deliberation on what is and is not to be included, and how provisions are formulated within the constitution, will be a central battleground for controversy and advocacy. Supporting such discussions with expert, impartial technical advice has often proved to be a vital UNDP contribution to enabling the parties to make informed decisions on contentious issues, and can be a key mechanism for assisting counterparts to deal with political deadlocks.

UNDP's global network of expertise is an invaluable resource when supporting consti-

tution-making processes, as its engagement nationally, regionally and globally across multiple sectors enables country offices to quickly access high-quality advice on a range of content issues which is both non-partisan and based on internationally agreed norms and standards. In particular, the ability of country offices to access comparative experiences from other country offices and experts enables UNDP to demonstrate its thought leadership to national counterparts by providing access to good practice advice and lessons learned. This can be particularly important when providing advice on controversial constitutional content, where UNDP may need to be careful about appearing to "take a position" but can instead offer options based on comparative good practice.

Technical advice is most often offered by UNDP to members of the constitution-making body itself (see Box 5 and Box 9). UNDP can also offer

Nigerian women participate in a roadshow supporting the Gender and Constitution Review Process in South Nigeria. Photo: UNDP Nigeria



technical advice to other stakeholders, such as members of parliament, who may require separate advice from the constitutional body, particularly where the legislature has a specific role in amending or finalizing the constitution once the constitution-making body has made recommendations. It can also be provided to assist CSOs to more effectively engage in the constitutional process and develop their own advocacy proposals. For example, often UNDP provides technical advice to women's groups on good practices in gender equality provisions, or to human rights organizations on the bill of rights (see Box 10).

Experience has shown that it is important to liaise closely with national counterparts at all stages in a constitutional review process to properly identify their advisory needs and preferred approach to using experts. Early planning with counterparts can enable the country office to prepare more effectively to source expertise (see C above), and can enable the country office to draw on its existing knowledge base of how governance functions in the country. It is imperative to find constitutional experts who can communicate in the local language. Every word in a constitution has meaning and the specific translation of provisions can be significant.

BOX 9: SUPPORTING CONTENT IN KYRGYZSTAN'S CONSTITUTIONAL PROCESS

In 2010, in a context of instability and political crisis, UNDP in cooperation with the European Union, provided support to the Kyrgyz Republic through a constitutional reform project, which involved both advice on the substantive elements of the constitution and support to public awareness, civic education and outreach efforts. With project support, the schedule and rules of procedure of the Constitutional Council were developed, including four working groups on key sections of the constitution, namely, "fundamentals of constitutional set-up and state institutions", "human rights", "the judiciary" and "local self-governance". The project simultaneously supported all four working groups, and ensured liaison among them, a common informational framework, and coordination and exchange of opinions which helped created synergies across the proceedings of the Council.

An international legal expert from the project supported the Council to maintain the democratic framework in the text of the law, and to enable expert consultations and dialogue on key constitutional questions (such as secularity, decentralization and political competition), and the provision of options and solutions which significantly improved the drafting process. In order to align the Constitution with the international standards, the project ensured liaison between the Interim Government and the Venice Commission, Constitutional Council and national experts, and also created expert platforms for exchange of opinions and discussions. A Kyrgyz delegation participated in a session of the Venice Commission in June 2010 and the Opinion on the Draft Constitution of the Kyrgyz Republic was adopted by the Venice Commission at its 83rd session. The Venice Commission later heralded the adopted final text.

Expert analysis of the drafts across five key dimensions (legal, gender, human rights, anti-corruption and environmental) resulted in significant promotion of a national agenda in respect of the rights of vulnerable social groups – children, youth, persons with disabilities and pensioners. Human rights and gender experts were directly involved in the activity of the Constitutional Council and the working groups. This instrumental support from the EU and UNDP contributed to increased awareness of gender and human rights issues within the process and society, and a constitutional dispensation with strong gender equality and human rights protections. As a result, the final Constitution has been commended for well integrating democratic and human rights principles. It provides a strong base on which to ground Kyrgyzstan's future democratic developments.



A common practice is to explore partnerships with national/regional academic institutions or think tanks, to draw on the local intelligentsia who understand both context and content. South–South cooperation can be a useful modality as local academics can also benefit from capacity building through peer reviews and exchange of knowledge, to develop their own comparative knowledge in advance of advising their national counterparts.

It is important to identify when general advice on an issue is warranted (perhaps in the early stages, when stakeholders are familiarizing themselves with the issues) and when more detailed expertise may be needed. For example, federalism is an issue often identified as requiring very specific expertise, not only on the technical aspects of federalism of which there are many sub-specialties, but also, and importantly, on the political implications of such reforms. In many areas, however, the constitutional negotiations stay at the level of principles, leaving the details of the reforms (e.g. division of legislative powers, distribution of resources, etc.) to subsequent reform policies and related legislation.

D. ADVOCACY ON INTERNATIONAL NORMS AND STANDARDS

As a member of the UN family, UNDP also uses agreed international benchmarks (most notably, international human rights instruments) to help inform constitutional content.

In reality, country office engagement during the early stages of the process may be limited to advocacy and ad hoc advice (such as examples from other countries). In such

cases, as the constitutional process moves forward, UNDP will need to make decisions about whether and how to enter into debates on content more proactively. These decisions will depend on the local context, and the need for and political will to request technical assistance and input. It is thus not uncommon to witness UNDP support move from quiet interventions to more formal and publicly acknowledged advocacy.

While UNDP is often at the forefront of sharing information on international norms and standards, the applicability and interpretation of international obligations may be contested by national actors. For example, while freedom from gender-based discrimination is a universal right recognized in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), UNDP is often caught in the difficult position of advocating in favour of this right in the face of strong sectional opposition to integrating some or all of CEDAW's principles into the national constitution.

Reminders to decision makers, particularly about international obligations, may become more pointed and more public as time goes on, and can be strengthened by supporting and providing parliamentarians, local experts and civil society with the technical knowledge and capacity to take on this advocacy work themselves. Organizing public and private input from influential experts and respected international political figures may also be helpful. In later stages, as approval draws near and implementation is on the agenda, a country office, in coordination with the UN country team, may be able to provide clear recommendations and commentary on draft text with a view to aligning constitutional provisions with international standards.



BOX 10: PROMOTING GENDER EQUALITY IN PROCESS AND CONTENT

UNDP’s comparative experience involves working with national civil society and government partners to promote gender equality in constitutional processes. It is a key lesson learned from constitutional exercises the world over, that the composition of the constitution-making body can have a major impact on constitutional outcomes. With this in mind, UNDP has increasingly provided early support to civil society lobbying for greater representation of women (and other marginalized groups) in constitutional bodies, as well as strongly advocating for such representation directly with government partners. For example, in Tunisia, UNDP and UN Women supported successful efforts to advocate for a women’s quota, which resulted in the election of 49 women to the 217-member Tunisia National Constituent Assembly which drafted the new Constitution. In Libya, the UNDP Constitutional Dialogue Project is working in partnership with the UNDP Support to Civic Education for Libya’s Transition (SCFLT) Project to train local partners on issues around women’s inclusion in terms of both constitutional process and outcomes. Many CSOs have already used this knowledge to successfully push for a women’s quota in the electoral law to elect the new Constituent Drafting Assembly (CDA)²² and also lobbied for the CDA’s Rules of Procedure to be drafted to ensure that voting rules do not undermine the impact of women members of the CDA.

UNDP also works closely with constitution-making bodies and civil society to build their technical capacities to consider and integrate constitutional provisions that actively promote gender equality. For example, in Colombia, UNDP worked with International IDEA in support of constitutional revisions which resulted in the inclusion of gender equality as one of the basic democratic principles for the organization of political parties. UNDP’s forthcoming publication “Global Good Practices in Advancing Gender Equality and Women’s Empowerment in Constitutions”²³ focuses on the substance of constitutions, provides explanations of key gender equality issues, and presents good practice examples of how gender equality and women’s empowerment have been advanced in a wide range of constitutional provisions dealing with civil, cultural, economic, indigenous, political and social rights, referring to a wide range of constitutions from all regions and development contexts. The publication also identifies the importance of and provides examples of how gender equality and women’s empowerment can be advanced across constitutional provisions, including through the use of gender-inclusive language, by ensuring comprehensive equality and non-discrimination provisions, providing for temporary special measures, the incorporation or domestication of human rights treaties (including CEDAW) and the authority to establish a national institution with an explicit mandate to protect and promote women’s rights.

E. SUPPORT FOR PUBLIC EDUCATION AND CONSULTATION

UNDP strongly supports inclusive constitution-making, particularly involving women, youth, minorities (including religious, ethnic

and sexual minorities) and other marginalized people. From the beginning of the process to its conclusion, decision makers should be encouraged to make as much room as possible for members of the public to understand and engage in the constitutional process. Public participation, while costly and time consuming, contributes to legitimacy by encouraging broader acceptance of the process – whatever the outcome.

²² The new electoral law for the CDA reserves 6 out of 60 seats in the CDA for women. Notably, it also reserves 6 out of 60 seats for minorities.

²³ UNDP, “Global Good Practices in Advancing Gender Equality and Women’s Empowerment in Constitutions,” UNDP: New York, forthcoming 2014



If the public at least understands how the process has progressed, what was discussed and why decisions have been made, it is more likely that they will be willing to accept the final outcome peaceably. Nonetheless, in many countries in which UNDP provides constitutional support, there is limited space for inclusion due to both political and security constraints. In such cases, UNDP has to balance sensitivity to context with the duty to support the inclusion of marginalized voices. Even where the spaces for consultation are more constrained, constitutional reform can still be seen as a staged process which will be implemented over time. In this instance, the first pact may be driven by more powerful actors with the inclusion of other stakeholders advancing progressively in the process, possibly even at a later stage, during constitutional implementation and subsequent review. Having a longer term perspective is important: constitutional reform should be supported as a process to be implemented over time and not as a single event.

UNDP's approach puts a premium on public outreach by constitutional bodies, but the call for broad participation often comes at a time when the institutional capacity of such bodies is limited and political disagreements and polarization are at their sharpest. Even simple outreach tools, such as publications, websites and media centres, may be challenging in technical and financial terms. More complicated undertakings, such as major national public awareness campaigns, often pose both logistical and political challenges, as politicians and others contend for control of the constitutional narrative and the overall process. There will be instances where the eagerness of some to precipitate public debate (e.g. the debate about federalism in Nepal) is matched by the determi-

nation of others to stifle it. In these circumstances, the neutrality of UNDP and its ability to bring in impartial technical experts can make it a particularly important partner in public outreach and engagement.

In reality, it is commonly the government of the day, sometimes with the engagement of key political and legal players, parties and/or ex-rebel or military groups, which will be in a position to shape the constitutional process in the early stages. This can sometimes prove challenging in terms of enabling a broader discussion about the constitution, but UNDP can still support efforts to facilitate public participation in the constitution-making process by working directly with existing groups, such as CSOs, political parties, local representative bodies, or traditional, indigenous or religious fora.

Support to the constitution-making body, and its secretariat, on public consultation and civic education often involves planning public consultations and outreach strategies, and helping to facilitate operations. In many instances, UNDP lends assistance to review the public contributions and opinions, and helps develop the platforms for recording and analysing public input so that it can be taken into account. Innovations in the use of information and communications technologies can help in the process of public consultation and overcome some traditional outreach challenges (see Box 3). However, while many constitutional bodies try to promote public participation, in reality, they are often also faced with the daunting task of managing the public input which they receive (see Box 11). Small, under-resourced constitutional bodies may struggle to trawl through large numbers of public submissions, and in highly divided societies, these submissions may be problematically contradictory.



BOX 11: WORKING WITH COMMUNITIES IN FIJI TO PROMOTE PUBLIC PARTICIPATION²⁴

In March 2012, the Interim Government announced its intention to embark on a transition process leading to a democratically elected government. On 18 July 2012, the Interim Government published two decrees setting out the process for the drafting and adoption of the Constitution, which laid out the timeframe of the process, principles for the new constitution, and the composition of the Constitution Commission and the Constituent Assembly.²⁵ The decrees provided for public participation and for the Constitution Commission to hear people's views before the preparation of a draft Constitution.

In order to maximize participation in the constitutional development process, UNDP implemented a Community Outreach to Support the Constitutional Development Process Project, which aimed to enhance public understanding of why the Constitution is important to the everyday lives of all Fijians and promote inclusive and participatory spaces for people to talk about it and enable them to make a submission to the Commission. The Project supported capacity-development workshops for CSOs to develop their skills to facilitate community outreach and participation for the constitution-making process (including development of UNDP's "Handbook for Community Facilitation: Guide to Strengthening Citizen Engagement with the Constitution Development Process in Fiji"). Tailored workshops were also run for specialized groups, including a workshop on art-based approaches to making a submission.

A key aspect of the Project was the provision of small grants to support civil society in efforts that encouraged the active and peaceful participation of ordinary Fijians in the constitution-making process. UNDP made two calls for proposals to community, special-interest and faith-based organizations. Small grants totaling USD\$612,460 were awarded to 114 CSOs, religious institutions, village-based organizations and special interest groups (including groups supporting the disabled, farmers, villages, public service workers, medical care providers, the LGBTI community, women, peacekeeping veterans, scouts, tradespeople, law students, cane growers and market vendors). Outreach activities were conducted by a variety of organizations in all provinces in the four divisions of Fiji. Efforts focused on providing opportunities for Fijians to freely and openly discuss issues of concern to them and the linkages to the Constitution and helping them find appropriate ways to make submissions to the Constitution Commission. Submissions on the Constitution could be verbal, in writing, online, via SMS text messaging or even through multimedia and arts-based approaches such as video, theatre, dance, music or other creative means. The Project Team calculated that people developed an estimated 4,000 submissions to the Constitution Commission through the Project.

The modern trend in favour of more inclusive constitutional processes aligns with UNDP's own mandate, as constitutional processes increasingly envisage a larger role for civil society. UNDP commonly provides support to CSOs and the media to engage in constitutional processes and related awareness-raising. The media and CSOs often ask UNDP for

expert assistance to build their own internal capacities to analyse constitutional issues and undertake effective advocacy. Capacity-building often includes training on constitutional process and substantive issues, and methods to engage particular groups, such as women, in the process. Additionally, UNDP often works with CSOs and the media as implementing partners for public outreach programmes. Civil society often has a unique capacity to access key geographic areas or groups of people, particularly in conflict-affected countries where

²⁴ A detailed Project Report was produced by the UNDP Pacific Centre, which sets out the methodology in more detail, as well as breaking down the key issues raised by Project participants in relation to the Fiji Constitution. For more information, contact the UNDP Pacific Centre at registry.pacificcentre@undp.org

²⁵ Subsequently, the Fiji Interim Government amended the decree and dispensed with the establishment of the Constituent Assembly.



UNDP may be more constrained in its operations. Working with civil society on such important civic education activities also has longer-term benefits, in terms of assisting a core group of local counterparts to develop training capacities which they can use in future. Most commonly, UNDP uses a small grants mechanism to work with CSOs, using some form of call for proposals to ensure fairness in identifying partners.

F. SUPPORT FOR DIALOGUE AND MEDIATION

Very often, the constitution-making process is part of a process of political transition, which involves political negotiations and debate about the future of the society. In transition and post-conflict countries they are particularly fraught, and often act as a quasi-peace-process. New constitutional dispensations or even amendment processes often involve a redistribution of power and roles among different institutions and the rights of individuals and groups within society. These processes are thus highly sensitive and political. If they are not managed carefully, polarization within and between political groups and society might sidetrack, obstruct or stall the process altogether.

Facilitating democratic dialogue and mediation towards bringing stakeholders together for meaningful discussion and resolution of disputes has proved to be a key entry point for UNDP's efforts to support peaceful, sustainable constitutional outcomes and processes, in collaboration with UN missions where they are in place. Such support commonly involves convening or facilitating constructive dialogues between politicians, ex-combatants, traditional, local or religious leaders and the people. Often, the agendas of these

different groups will differ vastly. In many situations, the conflict management skills of these groups may also prove to be limited, particularly in previously autocratic countries where opposition has been stifled for many years, or countries emerging from conflict, where contestation has previously been manifested in violence.

*Training of Constitutional Dialogue Facilitators on Women's Political Participation organized by UNDP Libya Country Office.
Photo: UNSMIL*



Increasingly, many constitutional processes actually integrate some form of official national dialogue as part of the overall constitutional reform road map. This has been the case in Yemen, for example, where a National Dialogue Conference, overseen by the UN Special Envoy to Yemen, was used as a precursor to constitutional drafting, and has been perceived as relatively successful in building consensus around contentious issues.²⁶ This type of staged dialogue and drafting process is increasingly being considered as an option for fragile and post-conflict contexts.

While support to national dialogues can, in principle, help to avert a stalling a constitution drafting process, it is important to remain alert to the political economy dynamics, in order to well understand who is dominating

²⁶ The National Dialogue Conference ran from March 2013 to January 2014 and comprised members from all parts of the country. It was headed by a nine-member presidency, and primarily worked through 11 Working Groups dedicated to key issues which required consensus building and discussion (e.g. on civil service and on decentralization).



Youth discussion and consultation with Constitutional Review Commission members on youth issues. Photo: UNDP Sierra Leone

these dialogues, who is boycotting them and for what reasons.

UNDP has a variety of experiences in supporting mediation and dialogue efforts, by directly facilitating national discussions (e.g. through the brokering role of a Peace and Development Adviser), as well as through providing capacity-development support in conciliation and conflict management, in order to help different groups to resolve their differences. This type of assistance extends far beyond constitution-making processes to enable dialogue and mediation around any political process taking place in the local context, such as, for example, transitional justice processes and local and national elections. Specific options for UNDP support to mediation and dialogue include the following:²⁷

- **Capacity development** for carefully identified and trusted intermediaries or “insider mediators”, who can play crucial

confidence-building roles during situations of deadlock or tension.

- **Supporting key leadership** with necessary technical knowledge, as well as the “process” skills for negotiation and mediation in which disputes and deadlocks can be resolved in a timely manner, and then accompanying them in applying these skills.
- **Convening spaces** for consultation among several actors wherein mutual trust and confidence can be built outside the formal space of the constitutional dialogue, and ideas can be developed which the actors can then themselves carry into the formal process.

G. SOUTH-SOUTH AND TRIANGULAR COOPERATION

South-South and triangular cooperation has been a feature of constitution-making support by UNDP, involving support for knowledge exchange across countries and regions, as well as among members of consti-

²⁷ Country offices may wish to consult the UN Guidance for Effective Mediation which sets out strategies and tools for supporting national mediation efforts. Available in all official languages from <http://peacemaker.un.org/guidance-effective-mediation>



tution-making bodies, CSOs, policy makers and think tanks. For example, following the Arab Spring, UNDP supported a number of Latin American experience exchanges with officials from the Arab States. Study tours for key stakeholders are one component of this work (see Box 15). In some countries, more systematic South–South partnerships have been developed. For example, the UNDP Tunisia Constituent Assembly Support Project supported the development of twinning partnerships between the new Constit-

uent Assembly and other parliaments in the region (e.g. Lebanon) and elsewhere (e.g. France). These twinning approaches are increasingly common and have proved effective because they serve to develop longer-term relationships of trust which are more sustainable and impactful. This is also an area where UNDP’s network of regional centres and country offices has proved essential, allowing the facilitation of such exchanges of knowledge and experience across the globe.

BOX 12: SUPPORTING PUBLIC ENGAGEMENT AND EDUCATION IN LIBYA

In Libya, the constitutional reform process was initiated in 2011 following the revolution which overthrew the Gaddafi regime. Although a constitutional process was laid out in mid-2012 through a constitutional decree, multiple political deadlocks stalled the process of setting up the Constitutional Drafting Assembly (CDA) for more than a year. Since its election in December 2014, it has attempted to progress its mandate, but efforts to promote a participatory and inclusive constitution-making process have been hampered by a serious deterioration in security which poses serious limitations on UNDP’s ability to ensure broad countrywide engagement of the population and has undermined the CDA’s efforts to design a constitution which reflects an inclusive political settlement.

Nonetheless, since 2012, UNDP has been supporting efforts to convene dialogue spaces where different stakeholders can work through their ideas and differences in advance of the review process starting in earnest. UNDP’s Assistance to Building a Constitution (ABC) Project supported the mandate of the UN Mission in Libya (UNMIL) by addressing the urgent need for public engagement and dialogue to find some form of constitutional consensus across the country. To encourage grassroots involvement in the constitution-making process, the UNDP launched the initiative “I WANT... in my Constitution” with the national CSO Forum For A Democratic Libya. The process engaged more than 1000 people across Libya, representing various ethnic groups and political opinions, and was one of the first structured dialogue processes ever conducted in the country. Through the Libya Center for Strategic and Future Studies, the Project also launched a series of public panel debates targeting Libyan academic, civil society and political groups to foster debate and dialogue around the constitutional process. The ABC Project has also contracted a local Libyan foundation to develop a national media campaign that will target key focus groups, including women, youth and minority groups. The campaign is designed to fill the gap in understanding the constitutional process and will engage the General National Congress, the CDA, political parties and influential national actors to ensure they are also effectively engaged in the process and take on board public feedback and ideas as they emerge.

The UNDP ABC Project has also been working in partnership with the UNDP Support to Civic Education for Libya’s Transition (SCELT) Project to develop the capacities of civil society to facilitate engagement in dialogue both across community groups and between communities and political stakeholders, with a particular focus on training local trainers on methods for including women in both the process and the eventual constitutional outcomes. UNDP also provided direct technical advice to CSOs upon request in relation to specific constitutional issues, both process related (e.g. rules of procedure for the constitutional drafting assembly) and substantive (e.g. integrating gender equality into the constitution).



H. SUPPORT FOR CONSTITUTIONAL REFERENDA

While some constitutional reform changes are able to be legally concluded through endorsement by the legislature, many constitutional review processes involve a national referendum, in an effort to enable the public

to more proactively engage in deciding on their new national legal framework. Constitutional referenda are particularly common in transition or post-conflict countries, where trust in the legislature and/or political leadership may be lower and where the public want a more explicit say in deciding on the new vision for their country.

BOX 13: SUPPORTING EVIDENCE-BASED ENGAGEMENT CONTRIBUTES TO DIALOGUE IN BOLIVIA²⁸

In January 2006, Bolivia’s first indigenous President was inaugurated promising to create a new, more representative constitution that would help to reduce the high levels of poverty and social and economic inequality in Bolivia. The indigenous community in Bolivia constitutes the majority and was committed to a process that would “re-found” the country, but this promise caused great tension among Bolivia’s entrenched economic elites. A Constitutional Assembly was formed in August 2006, but divisions quickly became apparent. As the Constitutional Assembly stalled, violence within the country ensued.

UNDP was active during this process in working towards a peaceful resolution of the constitutional impasse. Through the Political Analysis and Prospective Scenarios Project (PAPEP) – a project currently being replicated across Latin America²⁹ – the Country Office supported high-quality analysis of political developments that was crucial to the strengthening of ties with national and international partners, which in turn proved beneficial to a difficult national dialogue process which ran during 2008. PAPEP commissioned regular public opinion polls between May and September 2008, which stressed the resolve of the Bolivian people to continue the dialogue process over the Constitution. The surveys – which showed in September 2008 that 92% of Bolivians supported a return to dialogue – were instrumental in jump-starting renewed efforts by the Government and the opposition to reach an agreement. Critically, the survey was the vehicle that allowed citizens’ voices to be heard by political actors and make them clearly aware that Bolivians rejected violence and demanded dialogue.

In addition, UNDP established a special governance office which was instrumental in providing technical support and information to Bolivian governmental institutions. For example, PAPEP produced three different scenarios which mapped the trajectory of the conflict, in the absence of a constitutional agreement. Forecasting these scenarios allowed for the establishment of steps to support the peacemaking efforts of various sectors of Bolivian society and guided the actions of the UN system at a time when most actors were highly uncertain of any political outcomes. PAPEP also supported various spaces for dialogue that facilitated meetings and discourse among political and social actors, helping to maintain communication and the exchange of diverse ideas and views.

The process resulted in a peaceful resolution and majority agreement on a new Constitution through a referendum which recognized the rights of indigenous peoples as a transversal dimension. Indigenous languages, symbols, ethical principles, land rights, and political and justice systems are enshrined in the text.

28 http://www.undp.org/content/dam/undp/library/crisis%20prevention/BCPR_Bolivia%20-%20It%20was%20not%20how%20we%20imagined%20it_2011.pdf

29 <http://www.papep-undp.org/drupal/en>



BOX 14: UNDP'S CENTRE FOR CONSTITUTIONAL DIALOGUE IN NEPAL

The Comprehensive Peace Agreement signed in Nepal in 2006 called for a constitutional review exercise, in line with the Interim Constitution which brought into effect the Constituent Assembly (CA). Since that time, UNDP has provided a range of assistance, with a particular focus on support for dialogue. For example, a self-constituted group of “senior facilitators” has been working since 2010 to facilitate dialogue. These six Nepalis are known nationally for their credibility as eminent persons and as intermediaries. They represent different regions and groups (e.g. the most prominent female Dalit rights activist is a member). While they have no formal links with UNDP, they have received significant support from UNDP in terms of resources, capacities, accompaniment and access.

More formally, UNDP also worked with the Speaker of the Constituent Assembly and the Secretariat to design and manage a Centre for Constitutional Dialogue (CCD).³⁰ Conceived as a “free, democratic dialogue space”, the CCD was open for three years. Situated near the CA premises, it was open every day from early morning until late in the evening – longer if required – to accommodate CA members who were usually in session during the day. From the beginning, it received thousands of visits each month. The CCD offered wide-ranging support to anyone interested in participating in the constitution-making process. Its expert teams advised the Prime Minister, the Speaker and the Secretariat, CA committees, individual politicians and members of the public. Some CA members asked for training in the English language and computer use. Others were interested in training in dispute resolution. The meeting spaces were also open to any member of the public who wanted public or private discussion of constitutional issues. Political meetings took place in special meeting areas. The CCD programme team also organized public workshops and conferences on constitutional issues. The work of its translation team proved particularly important, as many of those who wished to participate in the constitutional process did not speak English, and sometimes preferred to speak in a local language other than Nepali.

UNDP support for constitutional referenda is usually undertaken via an electoral support project, as it will commonly involve assistance to the national electoral management body to support the voting process. Accordingly, in line with UN requirements for delivering electoral assistance, any support will need to be provided after consultation and endorsement by the DPA Electoral Assistance Division. This support should be triggered by contacting the Electoral Team within BPPS.

I. SUPPORT TO IMPLEMENTATION OF THE CONSTITUTION

No matter how well or efficiently made, a constitution needs to be implemented if it is

to have the desired effects. Implementation will inevitably demand complex acts of policy, legislation and public administration and is a long-term process, usually requiring years of institutional and related support. Where implementation fails, any gains in state building or nation building made through the constitutional process may be dissipated. UNDP's long-term engagement in a country requires it to look towards constitutional implementation as a key foundation for the future sustainable development pathway of the country. With this in mind, country offices need to pay attention to implementation issues throughout the entire process of formulating the constitution, in order to be well prepared to support the final pact that is agreed.

Some implementation issues will need to be canvassed with decision makers while the constitution is actually being made, because

³⁰ www.ccd.org.np



the constitution itself may need to provide clear guidance on them. Guidance may be needed on how a constitutional provision is to be implemented and its realization overseen, adjudicated and interpreted. For example, the constitution may set out details on the appointment and removal of judges, to control the possibility of executive interference and ensure the independence of the judiciary, but more detail may be needed on the body that will be responsible for implementing that type of provision. The constitution may set out the principles of autonomy of local governments, or proclaim the principle of a federal state, while leaving it to subordinate legislation to define the details of such state restructuring. In many countries, both developed and developing, that reform process to implement a constitutional provi-

sion may take years, even decades, of further negotiations to conclude. Because of the complexity of such reforms, it is not always possible to consider all implementation issues during the constitutional drafting process.

On a more operational level, the constitution may also need to clarify whether implementation should take place all at once or in stages (e.g. whether there is sufficient capacity to implement the entire constitution all at once, or whether some provisions should be delayed for implementation). A constitution will normally contain some provisions governing its own implementation, including when it comes into effect (ie. all at once, immediately or by staggering certain parts), transitional provisions concerning the status of pre-existing laws,

BOX 15: ARAB CONSULTATIONS ON CONSTITUTIONS

Responding to the growing demand from Arab countries to benefit from exchange of experiences during the Arab Spring, UNDP organized The Regional Consultation on Constitutional Dialogue in 2011, which brought together stakeholders from nine countries in the region (Libya, Tunisia, Egypt, Palestine, Sudan, Somalia, Lebanon, Yemen and Kuwait) with international experts (from Ecuador, Chile, South Africa, Turkey, Malaysia and academia). The themes debated included constitutional dialogue as a process, the protection of diversity, gender equality in constitutions and constitution-making, the role of local governance, and the protection of social and economic rights. The consultation started and ended with sessions on public engagement and dialogue, with a view to translating popular demands into the participatory process and constitutional provisions.

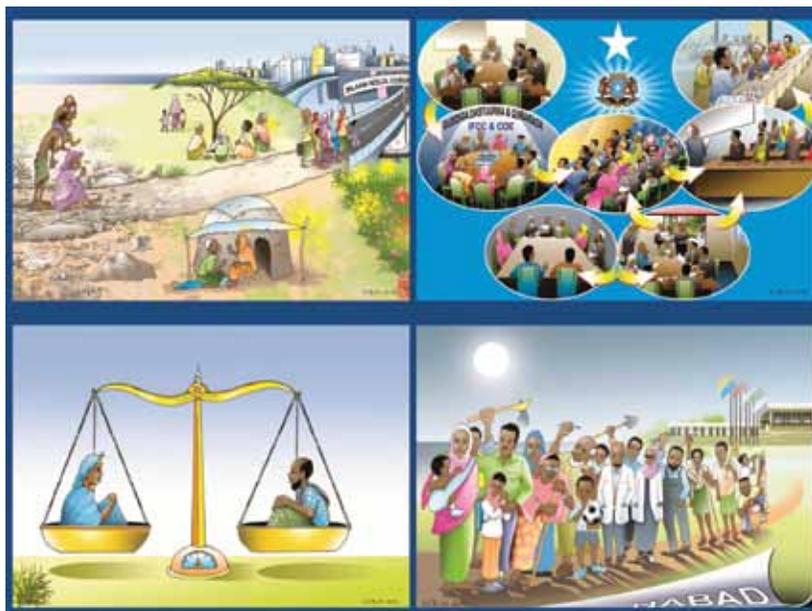
In follow-up to this consultation, UNDP, in collaboration with the Arab Institute for Human Rights, Arab Organization for Human Rights, Egyptian Center for Economic and Social Rights, Egyptian Initiative for Personal Rights, New Woman Foundation, Association for Freedom of Thought and Expression, and Tadamun: The Cairo Urban Solidarity Initiative, organized a consultation on the protection of economic and social rights in post-revolution constitutions. International expertise was made available to key actors in the constitution-making processes in Egypt, Iraq, Libya, Morocco, Tunisia and Yemen, drawing from Brazil, Ecuador, Kenya and South Africa – countries well known for their constitutions, for both the participatory drafting process and inclusion of social and economic rights. The meeting also looked at the tools available to civil society after the adoption of the constitution, such as social pressure or strategic litigation, to support the enforcement of constitutional protections. The consultation was covered through social media with a specific hashtag (#الادع_ةي عامتج ا), which helped ensure that around 1.7 million people were reached with key messages from the discussions. The consultation was also covered by print and broadcast media, with live streaming as well as journalists dedicated to tweets and reporting.



in-built constitutional review deadlines and sunset provisions, which allow for certain actions which will be phased out over the long term (e.g. temporary special measures).

As part of implementation planning, UNDP can support constitutional actors and the government to think about the sequencing of implementation. For example, in the creation of new federal units, it may make sense to strengthen or re-establish local governments, despite their legally subordinate status, before new state institutions are established, as they will deal with many of the issues that most concern the people. The establishment of independent constitutional commissions may also need to be sequenced, particularly where a government has limited capacities and funding. For example, while establishment of a judicial services commission may be essential to creating an independent judiciary, it may be that the establishment of a national anti-corruption commission can be delayed until funding is available to meaningfully capacitate it. When considering when and how to establish new constitutional bodies or other features of government under a new constitution, it is vital that they be affordable. Early support to constitutional bodies and to governments in assessing financial feasibility is important because unaffordable measures will probably never be implemented.

UNDP's comprehensive development mandate means that it is well positioned to approach constitutional implementation in an integrated manner, with capacities to assist across all aspects of implementation, leveraging its full complement of country programmes. Its knowledge of the various capacities of national actors also means that UNDP may be able to play an important role in alerting constitution makers to potential roadblocks in implementa-



tion. Broader programming can be utilized to support implementation of a range of constitutional provisions, for example, through parliamentary development, justice reform, human rights, transparency and accountability, anti-corruption, environment and energy, decentralization and local governance, public administration and civil service reforms portfolios.

Specific targeted support for follow-on programmes focusing on key constitutional implementation issues are also common, including in some or all of the following areas:

- **Subsequent legislative initiatives:** A constitution will often provide for a general principle, such as the independence of the judiciary or of other constitutional bodies, but then leave the details to subsequent implementing legislation. To support the enactment of such legislation, UNDP often provides legislative drafting support to national ministries of justice, capacity-building to the legislature responsible for enacting the relevant legislation and technical advice on the substantive issues involved.

Illustrations from the Provisional Constitution Presentation Guide for Civic Educators in Somalia.
Photo: M.B.M Arts



BOX 16: FURTHERING CONSTITUTIONAL IMPLEMENTATION IN IRAQ

UNDP and many other UN agencies supported the constitution-making process in Iraq under the leadership of the United Nations Assistance Mission to Iraq (UNAMI) and its Office of Constitutional Support (OCS). The first programme, implemented in 2005–2006 by OCS, UNDP, UNOPS, UNIFEM and UNESCO, focused on the drafting of the Constitution and public outreach and civic education, through to the referendum. The second programme, implemented by OCS, UNIFEM, UNESCO, UNOPS, UNDP and UNICEF, ran from 2007 to 2008 to build the capacity of key stakeholders to meet their constitutional commitments. Despite the fact that the process did not meet the standards of inclusiveness and that the content of the Constitution is currently contested by prominent experts in comparative constitutional law, UNDP has continued to try to assist the Government with constitutional implementation.

For example, the Constitution established new independent commissions on thematic issues, such as anticorruption and transparency, human rights and elections. UNDP assisted the national authorities in creating these commissions, including supporting the Parliament to enact relevant laws, and developing the capacities of the new institutions to deliver effectively. It is worth noting that the Parliament’s enactment of relevant laws to create the commissions was done over stages, and in some instances was delayed (e.g. enactment of the Human Rights Commission law was late and did not take place until 2009). Support to the Iraqi Independent High Electoral Commission (IHEC) commenced from the early days of the creation of the body in 2007, to enable it to become a sustainable government structure capable of carrying out its constitutional mandate fully, independently, transparently and accountably, in line with international professional standards.

UNDP also provided support to the judiciary to deliver effectively on its mandate, in line with the relevant articles in the Constitution. This covered capacity-development of court reporters, surveys on capacity gaps in the Judicial Training Institute, and producing the Iraqi Legal Database with the necessary training and maintenance steps. On local governance, the Constitution provided a new framework for decentralization. UNDP supported dialogues on local administration and decentralization as early steps to sensitize the national stakeholders on the approach to and application of local governance reform and decentralization. This was followed by the development of a fully fledged UNDP programme that is dedicated to public sector reform and local governance.

▪ **Subsequent administrative initiatives:**

Even where the constitution is reasonably specific on what is to be done, there will remain a host of questions associated with subsequent administration. These subsequent initiatives will be vital where they are central to the creation of a new social contract (e.g. in the case of decentralization in Ghana and Liberia). UNDP has considerable experience in supporting the implementation of new administrative and institutional structures, for example, new legislatures (especially where a new constitution creates or removes an upper house), new public services (including the establishment or

reform of a public service commission) and the roll-out of new federalism or decentralization structures.

- **Constitutional bodies:** Constitutional bodies are very often entrenched in constitutions and their establishment and capacitation will be crucial implementation activity. Such institutions include the judiciary, constitutional courts, a new human rights commission, electoral commission, anti-corruption commission, public auditor or Ombudsman. UNDP will often assist with major institutional-strengthening support to assist governments to set up these bodies early on (see Box 8 and Box 9).



PART FOUR: LESSONS LEARNED

As emphasized throughout this Guidance Note, constitution-making support is highly politically sensitive and complex. It is a crucial area of work for UNDP, as it goes to the heart of the social contract which sets out the rights and duties of the state and the people to each other. This area is thus fraught with political, technical and operational challenges, all of which need to be managed by UNDP if it decides to proceed with support.

The following are important lessons learned, both positive and negative, for consideration by country offices as they engage in constitutional support initiatives:

- **Engagement is required at the highest levels of the UN/UNDP:** The political nature of constitutional reform, and the level of national officials involved, means that engagement is needed at very senior levels of the organization to broker the space for UNDP to engage and to ensure the ongoing health of the relationship, as well as the continuous management of risks and trade-offs. While technical teams can assist with advice and support, nonetheless, the level of direct attention and involvement by senior management is often a determinant of success. In countries with a UN mission, this will require close coordination between the SRSG (or Deputy) and the UN RC/ UNDP RR/ Country Director.
- **Ongoing political and risk analysis is necessary at the outset and throughout the process:** Especially for major processes of reform which are initiated following political upheaval or conflict, it is imperative to undertake a proper analysis of stakeholders, the operating environment and associated risks, and ensure that analysis effectively impacts on risk management and programming decisions. The Institutional Context Analysis or Conflict-related Development Analysis tools can provide helpful guidance, but even where such full analysis is not undertaken, the situation analysis in any project document should be substantive and deep. Ideally, such analysis will be constantly updated, to ensure that engagement approaches and programming responses are being refined and recalibrated to address what is often a very fluid and changeable environment. Reports from Electoral Needs Assessment missions, as well as human rights mechanisms, can also provide valid information on the political context and possible risks that need to be taken into account. Without such analysis, it will not be possible to effectively identify and manage risks and trade-offs, for example, where peacebuilding and constitution-making go together, and there is a tendency to emphasize short-term goals related to the conflict, rather than constitutional dispensations that ensure long-term institutional solutions, or where a body responsible for constitutional debate is heavily dominated by a single party. Though the nature of risks and trade-offs are variable by context, they almost always involve high stakes and crucial issues in constitutional support processes.
- **Care needs to be taken not to be co-opted into a compromised process:** As a UN system entity, UNDP is a Member States organization and, as such, responds to requests from national governments. In this process, UNDP needs to draw on the political



economy analysis mentioned above, to ensure that any support given to a constitutional process “does no harm” and does not inadvertently legitimize an undemocratic process which is contrary to international norms and standards. This is not a decision for technical teams, but the responsibility of senior management, who will need to be kept apprised of issues throughout the constitutional process so that they are sufficiently informed to provide the technical teams appropriate political guidance.

- **A participatory process is necessary, but insufficient to guarantee a good constitutional outcome:** UNDP is committed to promoting inclusion and participation as a matter of principle, and much of our constitutional support is focused on facilitating inclusion. However, public consultations are not a panacea for a process centrally controlled by political powers, and will not ensure an ideal process or constitutional outcome. UNDP needs to be careful that expectations on the impact of public consultations are not raised too high and are managed effectively, taking into account limitations that exist in the environment, and that engaging the public does not become a basis for legitimizing a process that is otherwise politically compromised.
- **Advocating normative values needs to be undertaken respectfully:** UNDP is committed to advocating both constitutional process and content principles, including inclusion of diverse voices, respect for human rights and respect for gender balance, in line with universal norms and standards and the international legal obligations of partner countries. While it is essential that UNDP promotes those values, at the same time, an

understanding of dynamics in the local context is required in order to ensure that such advocacy has a positive effect. Care needs to be undertaken to avoid allegations of “political interference”. To counter such suggestions, consideration should be given to working more closely with like-minded local partners and change agents which can be supported to make those same normative arguments.

- **Technical expertise must be targeted at the right time and to the right issues:** Except for support to constitutional amendment processes, many constitutional support projects are large and include a Chief Technical advisor who will be responsible for leading the project and providing direct technical advice to counterparts. However, constitutions cover a multiplicity of issues and no single adviser can be expected to be expert in them all. Language barriers may hinder the advocacy on international norms and principles. In many cases, these processes are undertaken in non-English-speaking contexts in which technical knowledge and language skills are intricately linked and essential – as are capacities to make available resources to translate available knowledge into local languages. Thus, it is crucial that UNDP positions itself to be able to source technical experts on the right issues at the right time. This means setting up expert rosters in advance, but it also requires constant interaction with national counterparts to identify their specific advisory needs.
- **Effective operational support is crucial:** UNDP’s constitutional support projects often make a substantive contribution by providing substantial technical, logistical and administrative support in

very compressed time frames, for example, by providing support to a major national public outreach campaign or undertaking major procurements to set up the constitution-making body's secretariat. Where this support has been provided on time, it has usually garnered UNDP considerable good will from national counterparts. Conversely, however, UNDP has often been criticized by national and international partners for slow delivery in constitutional settings. To address this, country offices can consider solutions such as creating a dedicated operations team under the constitutional support project, developing a national constitutional experts roster to enable quick deployment, or setting up a small grants mechanism which quickly disburses funds to CSOs.

- **International development coordination should be prioritized:** Constitutional reform processes are high profile and, as a result, they often attract a large number of international agencies and development partners which are keen to be engaged. This is understandable, but it is important that donor coordination be prioritized at the outset of any process, to minimize the burden on national partners, but also to minimize confusion that can be created by mixed messages from the international community. Where a UN mission is in-country, the SRSG may be given a mandate for donor coordination; otherwise, the DSRSG/RC/RR will likely take the lead. This can be done through convening regular donor and technical working groups, as well as through the use of multidonor basket funding. Notably, UN coordination is also important; the UN family should also coordinate its advice and support to national counterparts, ideally through a joint programme.



*COPAC Constitution Referendum Vote Yes Outreach Programme.
Photo: UNDP Zimbabwe*

- **Increasing attention to monitoring and evaluation is needed, to consistently improve effective delivery and successful implementation of the Strategic Plan:** Constitution-making processes are highly complex and challenging, with politics, personalities and diverse interests all increasing the difficulty of ensuring that support is effective. Ongoing contact with key stakeholders and regular, periodic evaluations provide a way of ensuring that the support is meeting real needs. Because constitution-making processes are, ideally, short, a long time should not be allowed to elapse before assessing effectiveness and documenting impact. Evaluations of effectiveness of support should assess the views on UNDP assistance of all stakeholders, including those in the constitution-making body itself. UNDP's extensive experience in this area needs to be increasingly well documented, and its practices improved with knowledge and policy development, in order to ensure its added value can be demonstrated and brought effectively



to the table for the benefit of partner countries.

- **Constitutional implementation and application should not be forgotten:** Constitution-making is simply part of the larger equation of ensuring effective and democratic governance and peace-building in developing contexts. This is particularly true in situations where constitutional reform is a wholesale and wide-ranging process, which raises high expectations for a new future for the country and its people. Notably, many countries have technically solid constitutions and very poor implementation that does not fulfil the promise of a healthy

and vibrant social contract. Frank advice is also needed to avoid unrealistic time-frames for implementation, for example when ambitious decentralization/federalization clauses are included in the constitution without due consideration for the implications on financial, human and institutional capacity. UNDP support can be as critical in the follow-through in helping to ensure a new constitutional framework translates into tangible change that impacts positively on the lives of people, particularly the poorest and most marginalized, and improves the sustainable development pathway of the country over the long term.



ANNEX: RESOURCES AND FURTHER READING

UNITED NATIONS

Guidance Note of the Secretary-General: United Nations Assistance to Constitu- tion-making Processes [2009]

This note provides the guiding principles and framework for UN engagement in constitution-making processes. It sets out a policy framework for UN assistance derived from lessons learned from constitution-making experiences and UN engagement in these processes. http://www.unrol.org/doc.aspx?n=Guidance_Note_United_Nations_Assistance_to_Constitution-making_Processes_FINAL.pdf

United Nations Guidance for Effective Mediation [2012]

This guide draws on the experience of the international community. It aims to address several major issues, in particular the need for a more professional approach to mediation; the requirement for coordination, coherence and complementarity in a field that is becoming increasingly crowded; and the need for mediation efforts to be more inclusive. It identifies a number of key fundamentals that should be considered in a mediation effort: preparedness; consent; impartiality; inclusivity; national ownership; international law and normative frameworks; coherence, coordination and complementarity of the mediation effort; and quality peace agreements. It explains each fundamental, outlines some potential challenges and dilemmas facing mediators and offers some guidance. <http://www.un.org/wcm/webdav/site/undpa/shared/undpa/pdf/UN%20Guidance%20for%20Effective%20Mediation.pdf>

United Nations Constitutionmaker website [2014]

Constitutionmaker is an internal UN website dedicated to providing guidance, resources and tools on constitution-making and constitutional assistance. It contains over 3000 documents related to constitution-making themes, presented as a searchable database. It is organized into substantive constitutional issues and procedural constitutional issues and tasks. It is also the repository of UN institutional memory in the area of constitutional assistance. www.constitutionmaker.un.org

UN Women: Constitutional Database [2013]

This 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: equality; non-discrimination; rights of women; public authorities, institutions and services; political participation and freedom of association; citizenship and nationality; education; employment; equality 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. The portal covers 195 countries and provisions are available in the language of origin as well as in English (currently, the database contains 62 languages). <http://constitutions.UN Women.org>



OHCHR: “Guidance on Human Rights and Constitution-making” [to be published]

This guide discusses the key principles and approaches which should guide efforts to entrench human rights in a constitution, to ensure that they can be effectively exercised, promoted, protected and enforced. It provides detailed technical guidance on both good practice constitutional process and content issues in the area of human rights.

UNITED NATIONS DEVELOPMENT PROGRAMME

Global Good Practices in Advancing Gender Equality and Women’s Empowerment in Constitutions [forthcoming 2014]

This policy guide provides a range of good-practice options for advancing gender equality in the content of constitutions. It contributes to, and complements, the capacity-building support that UNDP staff provide to national partners and stakeholders on different aspects of constitution-making (which includes, but is not limited to, support for the drafting of new constitutions and the revision of existing constitutions).

Institutional and Contextual analysis Guidance Note [2012]

The Institutional and Context Analysis Guidance Note is UNDP’s methodology for undertaking political economy analysis to support development programmes. It has emerged as a direct response to demand from country offices for a resource that helps UNDP staff understand the political and institutional context in which they operate in a way that is suited to the needs and mandate of the organization. It offers practical guidance to UNDP country offices on how to use

ICA to assess the enabling environment. http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/oslo_governance_centre/Institutional_and_Context_Analysis_Guidance_Note.html

Conflict-related Development Analysis (CDA) [2003]

CDA is an analytical tool for UNDP practitioners and other development agencies working in conflict-prone and affected situations. In particular, it was designed as a practical tool to improve understanding of the linkages between development and conflict, with a view to increasing the impact of development on conflict. It has also been developed with a view to contributing to the further mainstreaming of conflict prevention into UNDP’s strategy development and programming. In this sense, it aims to integrate conflict assessment into existing programming tools and procedures at all levels, including such planning cycles as the CCA/UNDAF. http://www.undp.org/content/dam/undp/documents/cpr/documents/prevention/CDA_complete.pdf

OTHER:

Interpeace: “Constitution-making and Reform: Options for the Process” [2011]

This handbook provides practical guidance on how to design transparent, nationally led and owned processes that are also participatory and inclusive. It identifies the myriad tasks that need to be carried out, the variety of institutions and procedures that can be used to carry out those tasks, and who can do them. It also discusses the opportunities and dilemmas sometimes involved in carrying out specific tasks or using particular institutions. In addition to English, the



handbook is also available in French, Arabic and Vietnamese, with support from UNDP. <http://www.constitutionmakingforpeace.org/>

International IDEA: “A Practical Guide to Constitution Building” [2011]

This guide provides a foundation for understanding constitutions and constitution building. It offers a wide range of examples of how constitutions develop and how their development can establish and entrench democratic values. Beyond comparative examples, it contains in-depth analysis of key components of constitutions and the forces of change that shape them. The Guide analyses the adoption of the substantive elements of a new constitution by looking at forces for the aggregation or dissemination of governmental power, and forces for greater legalization or politicization of governmental power, and examining how these forces influence the content of the constitution. <http://www.idea.int/publications/pgcb/>

The Comparative Constitution Project: Constitute database

Constitute is a searchable database of provisions from every constitution in the world. The Comparative Constitutions Project, with seed funding from Google Ideas, has digitized the constitutions of 160 countries, making them fully searchable. A user can browse the constitutions using nearly 350 curated tagged topics, such as religion, political parties or civil and political rights, or simply search by year or country. The database examines nearly 350 constitutional themes, organized into topics such as the duties of a citizen and the role of the executive. The result is a comprehensive view of how countries structure their governments and a powerful tool for any would-be constitution founder. <https://www.constituteproject.org/>



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