

Editorial: Shaping States through Constitutions

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Vidar Helgesen (Hires) 1MBFrom Nepal to Bolivia, from Bosnia and Herzegovina to Georgia, constitutions are increasingly becoming hot political issues. Obviously, they are no longer merely seen as rubber stamps to confer official dignity to established political power. More than half of the member states of the United Nations have undergone constitutional reforms since 1974. While individually unique, these processes reflect certain global trends.



First of all, more and more women and men are placing high hopes in, and mobilising their political fervour around, issues of constitutional change. Will the country continue to be governed centrally or will power be devolved to autonomous regions? Will the use of natural resources be under the control of the people's representatives or trans-national companies? Will armed insurgencies trade their guns for the opportunity to influence change by democratic means? Will a new or reformed constitution bring about a more inclusive and equitable society?

What is more, the limelight is no longer only on the text as such and its virtues or pitfalls. How a constitution is made appears to matter as much as what it says – this is the main lesson of constitution building today. Democratic constitution making holds the promise of a fundamental law that enjoys greater legitimacy for many post conflict and fragmented societies. In turn, legitimacy is more likely to catalyze the allocation of power to common institutions for the common interest and welfare, and away from factionalism and violence.

This in turn is what has motivated IDEA to launch a significantly up-scaled programme to support constitution building and render it one of the core activities of the Institute. IDEA's increased emphasis on constitution-building responds to trends we are witnessing across the globe. These trends are indicating that democracy is seen by millions, not only as a vital necessity, but also as an attainable goal, a promise worth being pursued with trust and perseverance.

The majority of constitution-building processes in modern periods have been based on broad negotiations and consultations within participatory mechanisms such as constituent assemblies, and have involved an ultimate popular validation. Yet, each case has been unique and nuanced by the local context. The current constitution-building processes in Nepal and Bolivia, each in its own way, reveal the high stakes and the challenges of such endeavours.

Nepal, a country torn by a decade of violence, has just made a significant, maybe historical step, on its road towards peace. Constitution-building, as in some other countries in the recent past (Bosnia and Herzegovina and East Timor, for example), has become a key tool for both peace-building and democracy-building. This confers a double challenge upon the process: on the one hand, it needs to maintain the commitment of the key political actors – primarily the seven-party alliance and the Maoist insurgency; on the other, it also has to allow for an ever broader participation of civil society organizations and ordinary citizens. Not all post-conflict constitution building processes in the recent past have managed to reconcile these two

challenges. Some of them have sacrificed inclusiveness and participation in favour of reaching an agreement between the key protagonists of the conflict. The 1995 so called “Dayton Constitution” of Bosnia and Herzegovina may be seen as falling within that group.

The process in Bolivia too, holds both promises of a more inclusive and therefore, more democratic society on the one hand, and risks of division and polarisation on the other. A norm-guided process launched by a national law and an elected constituent assembly is endangered by partisan politicisation and the pressure to speed up the decision-making and overrule conflicting views. Recently on a mission to the country, I met with President Evo Morales, and discussed the lessons learnt from processes carried out in situations of deep division and conflict. It was an opportunity to reflect on the competition between political demands and the need for participatory processes, while looking at the best interests of the country.

Both in Nepal and in Bolivia, International IDEA supports the current constitution-building process by promoting and facilitating inclusiveness, transparency, dialogue and participation.

Besides these country-level activities, IDEA’s new and more ambitious constitution-building programme, also envisages to promote the exchange of experiences among constitution building experts and practitioners, particularly those from the global South, and to organise constitution-building courses, primarily for office holders and senior students likely to engage in constitutional reform in their respective countries.

Constitution building also needs knowledge. Besides the classical institutions of democracy such as the protection of human rights, the choice of the electoral system, the regulation of political parties, provisions for the independence of the judiciary etc, new constitutions also offer some innovative features such as gender quotas, multiple official languages, reconciliation commissions, ombudsmen and other human rights supervision bodies etc.

I am confident that IDEA’s engagement with all those concerned – governments, political parties, scholars and ordinary citizens – will be intense and productive and will anchor the role of constitution-building as a key tool and building block of effective and sustainable democracy-building.



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