# WORKSHOP REPORT

# Dilemmas and Opportunities of Public Participation in Constitution Building

**2 - 5 April, 2009**

**Co-Hosted by the International Alliance for Peacebuilding (Interpeace), International IDEA and the United States Institute of Peace**

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## I. Introduction

A. The Workshop

*Purpose of the workshop*

On 2-5 April 2009, Interpeace, the United States Institute of Peace and IDEA International hosted a workshop in Cape Town, South Africa. The meeting brought together a group of experts on constitution building from all over the world, to discuss the relationship between public participation and constitution making. The workshop was the seventh in a series of consultative workshops organized by Interpeace and International IDEA on key constitution building issues. The purpose of this particular gathering was to provide a forum for over 30 practitioners who played key roles in their own constitution building processes (including many former chairs of constitutional assemblies) or as advisors to discuss the role of participation in constitution-making, reflect on lessons learned and provide advice on knowledge resources and tools that could help future processes.

*Questions guiding the discussion*

The meeting aimed to answer three main questions:
- Does public participation in constitution building matter?
- Does the use of participatory mechanisms in the elaboration of the constitution make the result more effective?
- How do we measure or assess its impact in the overall constitution making process?

The methodology implemented in the meeting allowed participants to reflect on their own personal experiences and to examine other cases, presented by fellow analysts, through the lenses of their own expertise. In order to facilitate the conversation, the discussion was framed by the following hypothesis:

**The role and objectives of participation are shaped by the context, structure and design of the process; which itself is developed in response to the circumstances of the particular country.**

*Why is public participation important?*

Participants in the meeting discussed different roles that participation plays in a constitution building process. The following categories summarize the main issues analyzed during the workshop:

- Legitimacy

The most recurrent argument stated that participation confers legitimacy to constitution making processes. This is likely to result in widespread acceptance of the outcome, and

thereby contribute to stability. Participatory constitution building is seen by many as an effective tool to guarantee a more legitimate process and outcome. One argument that has gained ground in the literature of the so-called new constitutionalism is that, when it comes to constitution drafting, the process through which ideas and concepts are elaborated is as important as the text. According to authors such as Vivien Hart, the politics surrounding the drafting of a text will have as much impact on the implementation phase as the text itself. Thus, a process that is perceived as open and participatory will be likely to be more legitimate than one conducted behind closed doors, and result in a text that is embraced by the majority of the population. A participatory process, it was argued, encourages bigger ownership of both the process and the resulting text by the citizens,

Participation in processes of this sort is, in fact, becoming the standard: international norms and practices have shaped the general perception about this issue, thus motivating citizens to intervene in a more active way. Participation in constitution making is now considered to be a right, and in some cases –such as Ecuador- it is enshrined as such in the constitution. Some experts linked the levels of legitimacy of the process and the constitution's longevity. A well loved text, product of a respected process, they argued, will be more likely to be defended; and long standing constitutions contribute to the enhancing of governability and stability.

- Historical importance of participation

In the examination of several case studies, it became clear that participation of the public in constitution making had become a historical necessity. In countries where the new constitution was seen as part of a transition to democracy -as was the case in South Africa-, or as a mechanism to include previously excluded sectors -such as in the Andean nations-, the participation of wide sectors of the population was seen as an imperative aimed at correcting historical inequalities.

Participatory constitution building was particularly important in those countries where highly exclusionary political systems had allowed for domination of power by segments of society, and where decisions were often the result of pacts among elites. The participation of previously excluded social groups constituted, in addition to the fact of participation, symbolized in many places the birth of a new social pact, and the re-founding of the nation.

- Cultural impetus of participation

Some experts also referred to a 'culture of participation' that has progressively consolidated in many countries, particularly in those where there is a growing civil society. In places such as Papua New Guinea and Melanesia, for example, the proliferation of civil society organizations, the growing activity of political parties and other institutions of this sort has produced an extended interest in participation. One South African participant, in fact, stated that consultation is "in our DNA" to explain what he referred to as "an obsession" with participation.

B. Forms of participation

As this report shows, participation can happen through multiple channels - attending a meeting, giving a submission or influencing your member of parliament, for example-, and at different stages of the constitution making process. The discussions at the workshop signaled four main forms of public participation:

- *Civic education*: in order to maximize citizen's participation in the process, it is necessary to conduct an education campaign that allows people to understand the fundamentals of the issues being debated; relate the constitutional concerns to their daily life; allow them to articulate their preferences on both procedural and substantial questions; and gives them a correct understanding of the role the different actors play in the overall process.

- *Public consultations*: the administrators of a participatory constitution making process must organize different venues and mechanisms through which citizens' opinions can be gathered. Different methods of public consultations are face-to-face meetings; technology and print media; questionnaires and polling, and referendums.

- *Public debate and dialogue*: along with formal mechanisms to gather public input such as the ones mentioned above, constitution building usually triggers public debates in the media, the internet, social networks, and other spaces.

- *Street action:* referred by some as the actions of 'disorganized civil society', street action includes protests, marches, sit-ins and similar kinds of collective action. In some countries, such as Colombia, street action was prominent in the moments preceding the convening of Constitutional Assemblies. In other countries, such as Ecuador and Nepal, street protests were used as way of pressuring the drafting body to incorporate specific proposals into the final text. In some cases, such as Bolivia, street action was a way to promote public approval through a referendum.

This report will address in greater detail the first two forms of participations (civic education and public consultations), as they were the most broadly discussed during the workshop.

C. Moments of participation

Public participation can and does take place at the different stages of the constitution making process. Naturally, the nature of the participation is different depending both on the national context and the timing when it occurs. Participants in the workshop referred to the following distinct moments when participation can occur:

- Kick-starting the process
- Negotiations of the procedures

- Before drafting
- During the constitution writing
- After drafting
- After the draft has been adopted

**Kick-starting the process:** In some cases, the bulk of public participation takes place before the drafting process has started. In fact, in cases such as Colombia, Ecuador and Bolivia, it was public pressure demanding the convening of a constitution drafting body that triggered the entire process. Participation, then, takes the form of protests, street marches, and public statements. While in most of these cases there is a defined leadership convening these actions, it is the levels of participation that give the processes the political support they needs.

**Negotiations:** Public participation might also occur in the initial negotiations and planning of the process, but participants in the meeting noted that this stage is usually controlled by political parties and other actors. One of the most common ways of the public input in that stage is the publishing of open letters in newspapers, or similar strategies of opinion mobilization

**Before Drafting:** Participation is usually quite high in the phase between the moment when it is decided that a new constitution will be designed and the moment when the drafting process begins. It is usually then that the mechanisms to gather public input described above are put into place, and when civil society and others try to apply pressure to shape the reform agenda. This is also the stage when civic education campaigns are more intense.

**During the constitution writing:** In some cases, such as Fiji and the Solomon Islands, the process of input gathering ended once the drafting body started its work. However, in others such as South Africa, Ecuador and Kenya, the consultations continued throughout the drafting process. While pressures on the constitutional body can be channeled through the mechanisms designed to congregate the submissions, on occasion social organizations and others try to exert influence on the drafters by mobilizing people on the streets, convening strikes, etc. In some cases, such as Colombia and Iraq, actors used violence to make sure their interests were reflected in the charter. In South Africa, similarly, every person who had made a submission was sent a copy of the working draft, so they could see early on whether their views had been incorporated. According to a person closely involved in the process, a report was produced that clarified what inputs from civil society had been considered and which hadn't, in order to give transparency to the process.

**After Drafting:** In some places, the administrators of the constitutional assembly created mechanisms to disseminate the finalized text, and collect people's opinion on it. In the Puntland, for example, the administrators of the process organized a three day forum in which the constitutional text was explained to the people. By using color coding, they organized the suggestions received, which were passed along to the commission with the

recommendation that some of the suggested changes should be adopted. It was hoped that this process would strengthen the sense of ownership of the people.

In most countries, once the constitutional commission had finished the drafting stage, there was a big campaign to disseminate the resulting text and familiarize the people with the new constitution, usually through long multi-media campaigns. In some cases, there were creative mechanisms of dissemination, such as the South African strategies of designing a comic book that addressed different aspects of the Constitution and producing the constitution in Braille to guarantee its access to disabled people.

Participants explained how in South Africa politicians had been specifically targeted to act as disseminators of the results of the constitutional process. They were provided with information packs, and encouraged to go back to their regions to tell people about the new constitution. According to one analyst, "very soon politicians were talking about the constitution… they were advertising and legitimizing the constitution and taking it out of the area of dispute and contestation".

In some cases, such as the South Pacific, reports summarizing the public consultation process were used as means of disseminating results. The case of Fiji illustrates, however, the problems that can arise if these aren't properly done. In this nation, a huge report was not summarized in a manner accessible to people. Because of this, the report didn't receive sufficient media coverage or analysis. After the constitution was passed there was some awareness raising effort made by NGOs, but not by the government. Thus, in spite of the fact that the constitution had been unanimously passed with the support of all parties in parliament and endorsed by the Great Council of Chiefs, very soon after its approval it was being widely criticized from all sectors of the population. Experts pointed to the lack of proper dissemination and understanding of the people as the source of the lack of support for the text. In general, it was recommended that brief reports are produced, so they can be easily disseminated and read. It is difficult to assert that inadequate public participation was a factor in the coup d'état and the constitutional crisis that began in Fiji in 2000 and resulted in the suspension of the constitution. While certainly many other factors were triggers of the events in this nation, the lack of legitimacy of the constitution certainly contributed to these developments.

**After the draft has been adopted** The most common way to channel public participation after the adoption of the new constitution is through a referendum in which citizens vote to uphold or not the text. Although the question posed to the people in the referendum will naturally vary depending on the national context, it usually asks citizens to either accept or reject the new constitution in its entirety. In some cases, such as Bolivia, citizens might be asked also to vote on specific articles of the constitution. In those cases, the voter must choose between two different drafts of a particular article.

Participants referred to the need to conduct campaigns in preparation for the ratification of the constitution through a referendum, in those countries that decide to proceed in this fashion. A referendum is the mechanism that involves the wider levels of citizen participation.

## II. Who Participates?

A participant at the workshop warned against the tendency to look at the participating actors in isolation. Rather, it was argued, we should see this as a process of interaction in which a multitude of different claims are produced. This is particularly so in multi-ethnic societies.

Participants in the meeting emphasized the importance of actively engaging all stakeholders in constitution building; even those which might not normally be considered as actors in participatory processes. In Eritrea, for example, the administrators of the reform targeted the members of the armed forces, which in this particular case were highly politicized people and freedom fighters. In East Timor, similarly, there were specific efforts to involve those who had fought for the independence of the country.

In some cases, engaging the large Diaspora community was as important as securing internal support of the population. In Eritrea, the administrators of the reform travelled to Saudi Arabia and other countries where there were important numbers of expatriates living, to both explain the reform process and encourage their participation. While at first these emissaries were seen as representatives of an illegitimate government, with time they were able to transmit the message that it was important that Eritreans living abroad should be part of the process of building their new nation.

## A. Civil Society

A participant referred to the need to disaggregate the concept of civil society when talking about participation in constitution making, and suggested thinking about 'disorganized civil society' –e.g. street protests- and 'organized civil society', such as NGOs and other similar organizations. While acknowledging that referring to the former as disorganized is indeed inaccurate -as getting people on the streets requires a high level of coordination- participants wondered if the lack of available channels for public input during the constitutional debate would lead necessarily to street protests or other forms of expression. In some countries, it was argued, street presence is a normal and recurrent part of politics; while in others it symbolizes a strong demand to do a break with the past. The role of this type of input, thus, can only be appropriately measured when seen in its very specific context.

NGOs have arguably been the most important organizations to arrange and galvanize public participation during constitution making exercises. Their role in constitution building has grown in importance, both as partners of the administrators (such as in Venezuela, Fiji and Kenya, among other cases), who rely on them to access local population, give structure to the discussions and in some cases systematize the results for data analysis; and as independent actors who act as guardians of the process. Some of these NGOs, which are single issue focused, limit their input to try to bring forward their own agenda or interest issue into the constitutional debate. Others, which have broader mandates, have a more ample role trying to shape the public conversation and influence the drafters. Participants underscored the importance of NGOs in helping translate local realities to foreign actors who have a role in constitution building, and

even to national civil society organizations that are based in the capital and might not have a finger on the pulse of the regions.

The reputation of NGOs, however, has diminished due to the emerging plethora of civil society organizations that respond to personal interests rather than to a real commitment to do a public service (as is reflected in the humorously named BONGOs - business-organized NGOs-, PONGOs - political party-organized NGOs- and even MONGOs -my own NGOs). A participant explained, for example, how in Nepal many of the NGOs supposedly carrying on the civic education were fully unprepared for such a task; and some didn't even know what a constitution was. However, they were taking advantage of the political moment because donors were prepared to give them money and resources.

Another important sector of civil society is the churches and religious groups. These organizations have proven to be important catalyzing agents, as was the case in Fiji, where around one quarter of the submissions made was promoted by religious organizations. An important issue to be considered is how the restrictions imposed by these faith-based organizations affect the constitution building.

## B. Ethnic minorities

One of the roles sometimes assigned to constitution making is nation building. This occurs particularly in those places where different ethnicities and/or religions need a new framework to coexist as a nation. The literature on this issue usually presents two different models for this: one is the liberal framework which has its basic focus on citizenship, equal rights, and equal obligations. The multicultural approach, on the other hand, argues that these differences are so salient in the construction of identity that a model of equal rights will not suffice. In those cases where constitution making serves as a tool of nation building, these debates need to be addressed before and during the drafting stage; and it will be important for the legitimacy of the process if all communities feel that their voices have been well represented.

Participants argued that in some cases, such as the Andean countries, the history of exclusion of some social sectors resulted in an emphasis on a politics of presence; namely, the belief that only a seat in the drafting body will guarantee that these group's rights and needs will be considered properly. Thus, it would not have sufficed for these groups to participate actively in forums where their opinions were gathered and transmitted to the Constituent Assemblies. Representation in the drafting bodies was the only proper way of guaranteeing that their participation would result in a meaningful impact in the resulting constitution.

Precisely because a number of these previously excluded groups did have a presence in the Constituent Assemblies –especially indigenous peoples-, the perception in this region is that these processes were highly participatory; even if they didn't have a process of gathering input from society as sophisticated as in other areas. The diversity of the drafting bodies signified that these did represent, for the first time, the real social composition of the country, and thus a significant rupture with an exclusionary past.

## C. Political parties

Political parties were repeatedly mentioned as one of the most important actors in all stages of the constitution making process. They were described both as indispensable tools to promote public participation, and as possible obstacles to successful constitution building. In Somalia, for example, representatives of the political parties were central to the civic education campaign that preceded the drafting of the 1979 Constitution. Because of the institutional organization that existed at the time, where each governmental institution had a representative of the political parties, these were very useful in disseminating information to the different regions of the country. Nepal had a similar experience, given the capacity of the parties to access very remote areas of the country, which are usually isolated from the political processes. Political parties have the structures in place to reach every corner of the country, and while these are often used exclusively for electoral purposes, they should not be dismissed as they are very effective channels of communication. In the constitutional reform in Bougainville, the parties constantly informed their constituents about the proceedings, but they didn't address the nation as a whole. In spite of this, the process was seen as a legitimate one, given that the public accepted the need for a radical settlement.

Political parties can also be important tools to mobilize popular support. In South Africa, for example, the entire endeavor of re-writing the constitution was seen as a legitimate task because it was endorsed by the African National Congress (ANC). Given the first democratic elections that had just taken place, the role of the ANC in gathering support for the new constitution was key; so much, in fact, that a participant in the workshop argued that the importance of public participation in this particular case was less central because of the ANC's prominent role. The status of the ANC, in fact, was highlighted by several participants in the workshop as the source of legitimacy of the entire exercise. Interestingly, while the parties seemed to have been a very important part of the success of the process which resulted in the constitution of 1996, some argued that they did not do a particularly good job of disseminating the terms of the interim constitution to their members and serving as channels of input for their views, which produced some anger in the communities.

The complications of having a very strong political party, in particular in a post-conflict setting, can be seen in the case of East Timor. FREITLIN had a draft of their ideal constitution, and didn't allow for any significant changes during the drafting process. FREITLIN was more interested in raising public awareness than in any kind of public education, but there was an important effort of monitoring the process by civil society organizations that forced some degree of public participation.

Colombia was presented as an example of how political parties can become obstacles to the reform. The constitution making initiative was kick-started by a student movement, and strongly supported by civil society and the media. Because one of its goals was to use constitution building to transform the political culture and renovate the leadership of the country, the discourse of the conveners was openly anti-partisan. The members of the Constituent Assembly, who were in their majority not part of the traditional elites, designed the reform so as to strip the political parties and their

leadership of their power. The more conservative sectors of the parties, naturally, opposed the reform from its inception, and while they didn't succeed in derailing the process, once they were back in power in the Legislative, they actively attempted to sabotage the process by not passing the laws necessary to implement the constitution, and approving substantial reforms to the 1991 Constitution.

Finally, the lack of strong political parties and other strong organizations can have an influence on the way that the participatory mechanisms are designed. In Bougainville, for example, the drafters went to each village and small town, and had a very large number of meetings. This method is probably a reflection of the fact that this society didn't have well established political parties, or other groups such as trade unions or civil society organizations that have such a convening power. The process, thus, is purposefully designed in this way to appear to be highly participatory, but it is so because of the absence of other organizations that can be used for this purpose.

## D. Role of experts

Participants in the workshop discussed the role of experts in constitution building, and examined the pros and cons of their interventions. National experts were useful in aiding citizen participation, in particular in the effort to translate proposals and submissions into a legal language or constitutional logic. In Kenya, for example, the administrators of the drafting body used experts to translate the disputes and complaints presented by citizens into legal frameworks that would address the issues, such as supporting the decentralization of the administrative structure to allow the regions to have more autonomy and respond more efficiently to the regional needs. In Eritrea, similarly, experts on customary laws, with a rich knowledge of the communities, helped translate the every-day requests into larger propositions.

Many countries also had international experts aiding the drafting process. In some cases, their participation was minimal- in Eritrea, for example, they were merely a body to give feedback to the national commission. In other cases, such as Papua New Guinea and Bougainville, experts were very influential on the technical issues, but the political decisions were in the hands of the national actors. In some countries- such as South Africa and Bolivia- the international experts acted more as consultants to the drafters than as aids to the general process. While this can be of great help on finding comparable experiences in other parts of the world, it can also be problematic if there is the perception that the experts have undue influence on the results. In South Africa, for example, suspicion led to the constitution making body using these experts' input in a limited fashion. In Bolivia, on the contrary, there are claims that these international advisors were responsible for discrepancies between the draft approved by the Constituent Assembly and the one published officially some time thereafter. Some participants noted that the arrogance of some of these foreign experts, who saw the nationals as incompetent and ignorant, severely complicated a fruitful relation.

A participant noted that there's been a very interesting experience of South-South learning process during many of these constitution building moments, when experts from developing countries that have gone through similar exercises in their homeland come to

advice the nation undergoing the constitutional reform. While these experts are not the better known international experts, they bring an invaluable practical experience.

**E. International community**

The role of the international community in participatory constitution making naturally varies widely from case to case. As mentioned before, in some cases –such as the Solomon Islands- the participatory character of the process is imposed by multilateral organizations. Similarly, participants noted that in cases such as Iraq and Afghanistan the constitution making processes followed certain phases and steps, largely because the international community- which had the funds to promote the drafting- designed it in that way. This is not meant to imply, it was clarified, that there are not domestic constituents that would welcome this sort of approach. However, it seems clear that the population of these countries overall wasn't necessarily demanding or expecting such a multi-layered and complicated process.

A participant, thus, warned about the possibility that constitution building could end up being led by a foreign agenda. Nepal was cited as an example of this danger, as all sorts of international organizations descended on this nation once the drafting process started. According to participants with experience there, this resulted in a 'sort of disempowering effect' of the local grass roots organizations and even of the local elite. Even in cases such as Afghanistan, where there were real attempts at national ownership, the general perception is that the international actors were leading the decision-making to a large degree.

The involvement of the international community –and particularly of multilateral organizations- is often determined by very tight schedules that are spelled out in bilateral agreements, mandates produced by the UN Security Council and other arrangements. This has resulted, in cases such as Cambodia and Afghanistan, in a limited commitment to promote a true participatory experience. In East Timor, for example, the United Nations designed a process inspired by the Cambodia experience, which had 90 days in which to draft, debate and adopt its constitution. This was considered as a mistake by many participants, as it unnecessarily made the Timorese rush through a process that could have allowed for more significant public participation and have a more substantial debate. In fact, the NGO forum which conglomerated the most important civil society organizations protested this decision by sending a letter to the UN Security Council arguing that, if the constitution was to be a living document which reflected the needs and desires of the East Timorese, the people needed to be provided with the information on the choices that have to be made. Although UNTAET tried to appease civil society, issuing a directive soliciting the views of the people of East Timor, this too was protested by the coalition of civil society organizations, which claimed that time was too short to allow for sufficient participation of a broad spectrum of East Timorese society.

**F. Lessons learned, good practices and pitfalls to avoid:**

- **Ample involvement** Actively engage all stakeholders in the constitution making process; and pay particular attention to those that are not usually targeted for

participatory processes, such as the military, members of liberation militias or freedom fighters, Diaspora groups, etc.

- **Street actions** Citizen engagement through peaceful protests and mobilizations can take radically different meanings depending on the political and cultural context of the country.
- **Non for government organizations** The role of NGOs in supporting participatory constitution building has widened and grown exponentially. In general, NGOs are important partners to conduct civic education campaigns, organize channels for public input and support at many levels the participation of citizens in the reform. However, it is important to choose carefully which NGOs the administrators partner with, given the proliferation of organizations of ill repute.
- **Churches and religious organizations** Administrators of the reform process can engage churches and faith-based groups to aid them reach local population. However, they should be aware of what restrictions these groups might bring to both the process and the content of the reform- such as equal access to both genders, discrimination against sexual minorities, particular ideological agendas on thorny issues such as abortion and contraception.
- **Ethnic minorities** Different approaches towards nation building (i.e. multiculturalism and liberalism) that present distinct options on how to address the question of ethnic diversity in the nation should be openly discussed throughout the constitution making process. In many cases, the historical exclusion of ethnic minorities results in the need to guarantee their presence at the drafting body to guarantee its legitimacy.
- **Political parties** Politicians can be either a very effective tool to promote participation and disseminate the results of the reform, or possible obstacles to the successful completion of the process. If possible, administrators should take advantage of local partisan structures to engage local population, especially in remote areas where there is scarce presence of the state and/or civil society organizations. In cases where the political parties present themselves as the anti-reform coalition, it is likely that the constitutional reform will include a series of mechanisms to limit their power.
- **National experts** Specialist on constitution building can be useful in contributing to citizen participation, and especially in efforts to translate the abstract language of constitutional provisions into issues of daily life that would be of concern to the people, and vice versa.
- **International experts** Constitutional lawyers and other experts can play a variety of roles such as: provide advice to the drafting body, give guidance on technical issues and bring international experiences to national debates. Particularly valuable is the exchange of South-South experiences, as they share comparable contexts.
- **International community** The international community can be a great asset to encourage that constitution building has a participatory dimension. However, the imposition of participatory mechanisms without buy-in from the local administrators will probably result in a frustrated process. It is also important to guarantee that the involvement of the international community doesn't translate

into the imposition of a foreign agenda. On some occasions, a leading role of the international community will result in a process that is hurried and not properly developed given that their interventions are mandated by pacts, agreements and resolutions that set out unrealistic and hyper ambitious deadlines and don't provide enough resources.

## III. Methods for gathering input

As mentioned in the introduction, there are multiple forms of public participation that intersect across time. Participants at the meeting discussed the following channels to organize public participation:

## A.      Civic Education

*Purpose*

Participants generally agreed that a civic education process was nearly always an important feature of a process if it helped the population understand the process, how and when they could participate, prepared them to participate by holding debates and discussions on the issues, targeted marginalized sections of the population that may not otherwise participate.  What was heavily debated, however, was the role that civic education had played in constitution building processes to date.

Several participants emphasized that participatory constitution making should be seen, as a whole, as a process of civic education. Engaging wide sectors of the citizens in issues of government and public interest is, in itself, of enormous educational value. They lamented, however, that civic education campaigns often end when the constitution is drafted, and there is little follow-up during the implementation stages. Some South African participants, for example, complained that access to the constitution today is quite limited, and that currently there is no systematic constitutional education.  In countries like Fiji there was no effort to inform the public about the final contents of the constitution and some participants noted that this may have led to the coup because the citizens could be easily misled about the content.

*Timing and planning*

Ideally, a phase of civic education precedes the beginning of the gathering of public input from the citizens. However, short time frames and money constraints frequently preclude this stage. In many Latin American countries, for example, only 6 to 8 months passed between the moment the Constitutional Assemblies were convened and the text was finalized, giving no time for a proper effort of civic education.  Thus, in Colombia, Venezuela, Ecuador and Bolivia there were no organized and systematic campaigns of civic education that were developed before the public consultation phase.

Similarly, the constitution making processes in the Pacific –with the exception of Papua New Guinea- also lacked proper civic education campaigns prior to the conduction

of public consultations. In Fiji, for example, "a couple of NGOs held their own workshops to try and raise people's interest and provide people with information but there was no widespread public awareness campaign". In Nauru, where the size of the island allowed organizers of the civic education campaign to deliver a notice about the proceedings, only 15% of the adult population chose to participate.  In the Solomon Islands, where public participation was demanded by the United Nations Development Programme as a condition for funding the constitution building exercise, there was not a fully planned civic education campaign. This resulted in lack of awareness on the details of the reform, which were intimately tied to the Townsville Peace Agreement, and the implementation of federalism.

In Papua New Guinea, on the other hand, the Constitutional Planning Committee built an inclusive consultative process where 60 thousand people attended (out of a population of 6.6 million) about 100 public meetings; they produced discussion papers that were translated into Tok Pisin and other local languages to prepare the population to participate in the public consultations.

The African cases discussed at the meeting–South Africa, Eritrea and Kenya-,  all had effective civic education campaigns that preceded and overlapped with the constitutional drafting process and sometimes extended after the adoption of the constitution. In South Africa there was an outreach program to prepare the people to participate in the constitution making process: the education program ran 486 workshops, 259 briefings and 446 meetings. They also used the media to create an awareness campaign. In the words of one of them: "we created a real buzz in society. We bombarded them with lots of information saying here is the process… these are the issues". Using mass media –especially the radio- and a printed newsletter called Constitutional Talk, South Africa reached to wide sectors of its population that "could not be expected to have high levels of consciousness about constitution making". As the organizers saw it, this educational campaign was an indispensable way of empowering the constituencies before they were consulted, and to guarantee popular ownership of the process. The process of civic education was done in cooperation with civil society organizations, which participated in the forums and radio and television programs giving their own perspectives on the issues. According to one participant, "it was a free for all in the sense that there was no official line that was being pushed or toed. People were talking and exchanging views and it was important."

*Partnering with civil society*

Participants spoke about the importance and effectiveness of partnering with civil society organizations to conduct these civic education campaigns. In Kenya, as in a number of others countries, civil society was brought in as a key partner in conducting the civic education campaign. There, the leading NGOs were organized in a consortium to provide civic education on constitutions, good government, and governance, which resulted in set of quality papers that were disseminated throughout the country. Similar exercises were conducted in Nepal and Eritrea, which presented interesting examples of civic education. In the latter, the administrators produced issue papers on eight important constitutional

issues, from basics such as what is a constitution and why it is important, to what are human rights and gender equality. These issue papers were used as preparation for the wider debates, both inside and outside the country.

Eritrea had to conduct a civic education campaign that involved the wide sectors of the diaspora not living in the country at the time. Thus, forums and meetings with the organizers of the process were held in several countries where there is an extensive Eritrean presence, to try to engage them in the constitution building process. This country also paid particular attention to engaging local communities, thus translating the materials into native languages to guarantee that wide sectors of the population would have access to them.

*Risks and challenges*

Some participants argued that civic education had been the equivalent of propaganda, as it focuses on teaching citizens the values of a particular system instead of providing them with authentic information that would allow them to make informed decisions. These participants argued that the content of civic education frequently results in a way to propagate western notions of democracy, and ignores the specific cultural context and sets of social mores where each particular constitutional debate should be embedded in. Other participants, however, argued that while neutrality is impossible to achieve completely, civic education should be seen as a process that enables people to understand the basic options being discussed, without necessarily selling one particular proposal or perspective. Also, they underlined the importance of civic education when assisting in transition to democracy in post-conflict contexts.

In East Timor the United Nations mission UNTAET was in charge of leading the civic education process by preparing discussion papers and meetings to debate them. UNTAET, however, did not properly plan the civic education process and decided to do it for only 3 months. In partnership with some local actors, the UN held 205 open hearings throughout the country, which convened around 38, 000 people. Because of the time problems however, the sessions defeated the purpose of the civic education process which was to prepare the population to effectively participate in the process and give their views.  Also, the process conflated civic education and public consultation in one single stage. In each hearing, then, the commissioners presented the public with basic information on a number of constitutional issues, systems of government, official languages, electoral systems, etc., and then promptly gathered the views of the people on these issues. As in other cases, they prepared reports on these sessions which were submitted to the constituent assembly, but they were largely ignored during the debates.

*Lessons learned, good practices and pitfalls to avoid:*

- **Resources.**  Money, time, and human resources are indispensable for the implementation of an efficient civic education campaign.
- **Planning.**  An effective civic education campaign requires detailed planning. Decisions must be made early on about the objectives of the campaign, the

resources needed, the methodology chosen, how to train the facilitators, and how to monitor and evaluate the process.

- **Sufficient Time**. It is important to ensure that there is enough time set aside for the civic education campaign to prepare citizens to fully participate in the constitution building process, acquire a proper understanding of the options being considered, and why a process of review is taking place.
- **Civic education should take place throughout the process.** Civic education should occur at every stage of the process. The public must be informed and educated about the structure of the process, how they will participate, what is in the draft constitution and after the constitution is approved. This last phase is often overlooked. Many civic education campaigns end after the constitution is approved yet it is critical that the public understand the final contents of their constitution.
- **Inclusiveness.** It is important to reach the widest sectors of the population possible using as many different methods as needed, such as face-to-face meetings and use of mass media. The civic education campaign should be carefully designed to ensure that marginalized groups (e.g. women, minorities or the poor) are included in the civic education campaign so that they are empowered to participate in the public consultations.
- **Languages**. To ensure the process is inclusive, the materials and civic education session should be in all relevant languages.
- **Cultural considerations.** Organizers of civic education campaigns must be mindful of cultural considerations such as language, gender sensitivities, and local mores when designing the campaign to guarantee that it will be effective.
- **Neutrality**. Civic education should try to present, in the most neutral possible way, all the different options that are relevant for the constitutional debate, and avoid supporting one or another particular perspective.
- **Use of issue papers**. Issue papers are useful mechanisms to explain complicated institutional arrangements before public consultations.
- **Partnerships with civil society**. Civil society organizations that can maintain neutral positions can be effective partners in assisting the constitution making body to conduct effective civic education campaigns.
- **Civic education can have an impact on the process.** A well planned campaign usually leads to greater rates of participation in the overall constitution building process, greater understanding of the context of the reform and more support for democracy.
- **Participatory methodologies are the most effective.** The method through which civic education was implemented matters greatly. Non didactic sessions, where a lecture on democratic arrangements was simply presented to an audience, was deemed the least effective. On the other hand, sessions which involved role playing or greater levels of participation had a much greater effect.
- **Start with the issues of concern to your audience.** Civic education has proven to be more effective when it is presented in close connection to local issues that affect the citizen's daily life, rather than as abstract propositions.

- **One-off workshops are not effective.** Having just one session of civic education seems to have little impact on the citizen's interest and engagement with the process. Participants noted that 3 sessions seem to be the ideal minimum.
- **Monitoring and evaluation** - the process should be monitored and evaluated either internally or by independent evaluators to ensure that the methodology chosen is meeting the planned objectives of the process.

## B.      Public Consultations

There are multiple mechanisms through which participatory constitution making processes can gather public input. Public consultations can take place at different stages of the constitution making process: as a way of convening a reform body; in the process of selecting the members of the reform commission and choosing the themes to be included; as a way to send inputs during the drafting phase; during the process of approval of the resulting constitution; and finally in the implementation phase. The case studies varied regarding the level of transparency, inclusiveness, national ownership and effectiveness. Among the most frequently used types of public consultations are:

1. **Face-to-face meetings**, where either members of the constitutional commission drafting the text or its administrators meet directly with diverse constituencies to hear their opinions on constitutional issues.
2. **Questionnaires** were used in several countries to both help citizen's organize their input into the process, and to gather their views on specific issues.
3. **Media, websites and other technology** (telephone, blogs) are increasingly used as tools to both disseminate information on the process and collect citizen's opinions.
4. **Polling** was deemed to be an effective way of measuring public opinion on certain themes and constitutional matters, and while it doesn't allow for the level of detailed input that other methods do, it does permit have a wider number of people consulted.
5.  **Referendums** in which the population vote to uphold the new constitution are increasingly used around the world as a method to strengthen the text's legitimacy and rally public support.

Most constitution building processes that wanted to be as inclusive as possible used several methods. For example, Kosovo encouraged written submissions through the internet and newspapers but also held face to face meetings with citizens so that those that did not have access to the technology were not prevented from participating. Also, there were variations in the way that each case used each method, reminding us that the political national context is a key determinant on how participation can be implemented.

## 1. Face-to-face meetings

*Purpose*

All of the case studies provided for some form of face-to face meetings to gather public input. These meetings were used to consult on many different issues, including the structure of the process, the content of the constitution and, in fewer cases, on a final draft of the constitution.

Many countries organized hearings in which members of the body reforming the constitution met with different constituencies to listen to their opinions. One common way of doing this was to organize visits of the drafters to different communities across the country; these meetings, thus, would try to gather the input of a certain community on all the issues that needed to be discussed. In South Africa, for example, 'constitutional public meetings' were organized across the country to allow people to directly give their input. In Uganda, similarly, the constitutional commission held a range of seminars to gather peoples' views, which were then compiled, summarized and distributed to the drafters. In Bolivia, there were 21 different commissions, which spent a significant amount of time traveling throughout the country, meeting with different sectors of the population. In Ecuador, the Constituent Assembly created the Unit of Social Participation, which was in charge of organizing the coordination of all these events, and which channeled over 75,000 proposals into the Assembly, most of them through itinerant commissions.

In Fiji, the commission did public consultations in 24 locations and received 852 submissions in person. In the meetings, which were usually held in halls or court rooms, the three commissioners and their secretariat would sit up the front, and the public would sit facing them and take their turn to stand up and make their submission. Each person was given 15 minutes to make their submission, although many people submitted lengthy written submissions as well. A participant noted that the formality of these gatherings was intimidating for some people- particularly women and minorities- which resulted in an uneven representation of opinions. This format also resulted in a majority of submissions being made by organizations -such as local branches of political parties, women's organizations or NGOs- rather than by individuals, which were much fewer.

Another type of face-to-face meetings is the thematically-oriented consultations. South Africans, for example, organized 'national sector public hearings'. In these forums, the members of the Constituent Assembly met with national stakeholder groups, such as women, business and religious organizations to get their input on specific questions of interest to these groups. In many of the Andean countries, public gatherings were organized in a structured manner that mirrored the internal organization of the Constituent Assemblies, which was composed by commissions in charge of drafting different chapters of the constitutions. Members of these commissions convened public gatherings to discuss those specific topics, hoping that this would allow for a more targeted and organized participation of civil society.

A participant at the meeting noted that these face-to-face meetings are particularly useful in societies that don't have well established political parties, union movements or in general a vibrant civil society that can act as channels of participation for society.

*Planning*

Participants insisted in the importance of proper planning and organization in order to have effective face-to-face meetings. In South Africa, for example, the public participation program was organized in phases that mirrored the stages of the drafting process. The participatory component of the process started 4 months into the whole constitution making process, and the numbers speak about the magnitude of this endeavor: 807 constitutional public meetings were attended by 20,549 people, and 717 organizations participated.

In Kenya, which had a very effective participatory process, the administrators of the constitutional reform there established a Constituency Forum, to allow the drafters to interact with the 210 constituencies identified. In order to make these exchanges efficient and productive, they conducted preliminary constituency consultations before they engaged in the actual gathering of opinions. Participants familiar with the process emphasized the levels of effort and resources involved in this, and recommended incorporating this stage on the overall planning of the constitution making process.

The planning and administration of resources is particularly difficult and important in places such as Bolivia, South Africa, Kenya and other countries where the administrators of the constitutional reform body had to organize commissions of delegates to travel across the country to visit isolated communities. This meant a large investment of time and money, and a budget allotted exclusively for this purpose was indispensable.

Experts noted the importance of having an outstanding mediator and facilitator in the face-to-face components. Naturally, constraints of time and resources were frequently noted as key determinants on how broad public participation can be.

Participants recommended partnering with NGOs and other civil society organizations, which can help run intensive program of hearings with local groups. In several of the Andean nations –such as Bolivia and Venezuela- civil society organizations partnered with the Constituent Assemblies to organize the workshops and find other spaces for participation. In Colombia, for example, the Assembly partnered with women organizations that helped local leaders promote the process in their neighborhoods. In Venezuela, the Office of Attention to the Public and the Commission of Social Participation, which worked closely with the national government, coordinated the presentation of proposals, and the way in which these were passed along to the drafters.

For this coalition with NGOS to be effective, however, the state must be fully engaged in mobilizing the population to be engaged. In Fiji, for example, public consultations were held without as much preparation. In this island, some local NGOs

organized workshops to try to raise the people's interests and provide some basic information, but there wasn't a wide spread public awareness campaign. A participant noted that if there had been a public education and awareness program beforehand, there would have been a more structured format and informed discussion during the public consultations.

*Inclusiveness*

Participants noted the importance of guaranteeing that face-to face meetings -and the entire process of participation for that matter- was inclusive and targeted in particular previously excluded sectors. In South Africa a special effort was put in organizing gatherings in rural communities, which gave the opportunity to historically disadvantaged South Africans in the countryside to have a direct input into the constitution making process. In order to organize these 'constitutional public meetings', the administrators of the Constituent Assembly consulted with local grass roots groups and other civil society organizations to mobilize the local population. The materials were produced in 11 languages, and the administrators went through schools and post offices to guarantee proper distribution.

Inclusiveness is a particularly important issue in multi-cultural and multi-ethnic societies. In Fiji, for example, 50% of the population is indigenous Fijians, 45% is Indo-Fijians, and 5% is referred to politically as general voters. Because Fiji has a history of communal seats which are racially based and for much of its history there's been a combination in parliament of communal seats and open seats, politics tends to focus on racial lines. Indigenous Fijians are protective of their land interests and a very vocal and influential minority wants Fijian supremacy enshrined in the constitution at the expense of Indo-Fijian rights. A participant familiar with these proceedings explained that participation in face-to-face meetings was roughly half Fijians and half Indo-Fijians.

Participants also explained the importance of conducting face-to-face meetings in places where all members of society felt comfortable attending. In Afghanistan, for example, many of the meetings to gather public input took place in Mosques, which are spaces women traditionally don't have access to. This inhibited the participation of women in some of the public gatherings, and placed constrains on their participation.

In places such as Eritrea, where the constitution drafting body was not popularly elected but was instead designated by a governmental organ (in this case the National Assembly), there are two elements that are essential to its legitimacy: First, the body should have an ethnic, linguist and gender balance, and should represent the regional diversity of the country; and second, it should have made a concerted effort to encourage public participation.

Interestingly, in Ecuador the administrators of this process refused to characterize face-to-face meetings as 'consultations', because the word implies that one part (the Assembly) was actively seeking people's input. Instead, they always referred to it as 'participation', which they think more authentically describes the natural desire of the people to be engaged in the process.

As during the civic education stage, participants should be encouraged to discuss the key issues in terms that are related to their daily problems and concerns. The role of public participation, to a great extent, is to guarantee that the drafters have a high level of awareness of the needs and desires of the citizens of a country. While in some cases the decision making involves a high level of sophistication in understanding the political system, often public participation must work essentially as guidance as to the hopes and aspirations people have placed in constitution building. Participants agreed that direct contact between the drafters and the public was of crucial importance.

Participants also warned about the importance of countering misinformation both on the process and the content of the constitutional reform. A participant on the South Pacific processes noted how citizens who were largely unfamiliar with the topics being discussed quickly understood the issues at large if provided with the adequate tools, and she affirmed that people's input was often guided by their view of the public interest, not solely defending their own self interest.

*Legal and political commitment*

Public participation can be promoted either by a legal framework, or by the political commitment of the process' leaders. In general, cases where there was a political commitment from the leadership participation resulted in more genuine and effective public participation.

In South Africa, a participant narrated, at one of the first plenary sessions of the constitutional reform process a number of politicians stated that they wanted to ensure that there was some level of public participation. In that sense, the mandate was vague and the level of participation could have been much less than the resulting process. In words of one of the organizers of the process: "If I arranged for instance no more than a series of theme committee meetings or engagements with stakeholders throughout the country as would normally take place that would have been acceptable. I think it was our interpretation that decided to go to the extent and the length that we did to achieve that".

In Kenya there was a combination of the two elements: public participation was mandated by the Review Act, the legal framework of the entire process, which clearly stated that the drafters needed to listen to public input, were accountable to the people, and the constitution had to reflect the views gathered. However, the administrators did not limit themselves to follow the guidelines, but instead initiated an ambitious process which resulted in wide sectors of society giving their input.

In other cases, such as Papua New Guinea, the participatory aspect of the process came solely because of the political commitment of the organizers. There, although the terms of reference of the convening of the Constitutional Planning Committee did not mention consultations, they built an impressive participatory process which held numerous public meetings designed to address six discussion papers.

In other cases, popular participation was made a requirement by external actors such as the international community. While imposing this condition did result in making the reforms processes more inclusive than what they would have been, participants showed how these efforts were usually half-hearted. In the Solomon Islands, for example, public participation was mandated by the international community. Nine consultation teams were formed, composed in part of local islanders and in part of expatriates. These teams were told that their objective was not to consult with people on their preferred model of government but to listen to their issues of concern. However, the question of adopting a federalist system was at the heart of the Townsville Peace Agreement between Malaita and Guadalcanal, which had originated the constitutional reform. By restricting the terms of the public consultations, the leadership demonstrated a lack of commitment to an authentic process of gathering public input, and hampered the results of the efforts from the beginning.

In designing the public consultations, it is also important to consider limits imposed on the process by external factors, such as legal frameworks. In South Africa, for example, the interim constitution and the political process that had taken place to reach it determined to a large extent the general direction in which the new constitutional debate would go. So, according to some actors involved in that experience, it would have been dishonest to pretend the public had an "open platter of options". Participants underscored the importance of presenting participation in a way that accurately reflects the role it will have within the whole constitution making. In a similar situation, the consideration of a range of options during the debate regarding the new constitution in the Solomon Islands was prematurely curtailed by some issues incorporated into the Peace Agreement, such as the adoption of federalist system.

*Transparency and feedback*

While most of the case studies examined during the meeting organized face-to-face meetings and other ways of gather input, only a few went through the extra step of guaranteeing transparency with the way popular participation would be put to use, and asking feedback from the constituencies to guarantee that the administrators were faithfully transmitting the people's opinions to the drafters.

Kenya and South Africa were two of the cases that made important efforts in this regards. In Kenya, for example, citizens were encouraged to participate in 'constitutional language' and rather were asked to talk about their lives and concerns. According to one participant, "it was our task to translate that into legal text". These administrators then produced verbatim reports of what was said at these meetings, which in conjunction with some quantitative reports –which will be discussed further down- produced thematic reports for every constituency in the country. These reports were extraordinarily detailed, including names and addresses of those who attended, and what were their views on the different issues discussed. In an extraordinary effort on transparency, the administrators then reproduced one thousand copies of each of the 210 constituencies, and distributed to those people who had attended the f ace-to-face meetings to review them and comment if their perspectives had been faithfully recorded.  They also reproduced copies of thematic

reports produced based on the meetings, which were essential for the drafting of the Bill. The reports proved to be useful not only to guarantee inclusiveness and transparency, but also to aid the writing process, as the drafters were able to use them to sustain why they were presenting one view or another.

In South Africa the administrators gathered 250,000 submissions in the first stage. Even though the Constitutional Assembly had been praised for having involved the public in such manner, many citizens wondered whether those submissions would be treated seriously. The organizers, then, sent copies of the working draft of the constitution during the writing process to all of those people who made submissions. They also produced reports in which they noted if certain views were considered or ignored. Finally, the Constituent Assembly asked the politicians themselves to reporting at meetings with the constituencies where the debate was.

Although very different, the process in Nauru was transparent because the committee selected to debate every single clause of the proposed bill has its sessions aired on the radio. A surprising number of people followed those proceedings closely, and according to an analyst it was very positive for the public to listen to members of the committee disagreeing with each other on particular constitutional issues, as it reduced their skepticism and allowed them to see the complexities of the debate.

In many other countries, however, there were no efforts of such type. In Colombia, Venezuela, Ecuador and Bolivia, the process once the public opinions were gathered and passed to the constitutional commissions in charge of drafting each section of the constitution. There were no efforts made in following up with those citizens and organizations who had participated to check if their messages had been sent accurately or to examine if they had been taken into account during the debates.

In the Solomon Islands after the launch of the draft, each Member of Parliament was given 20,000 dollars to go and consult their constituents on the draft and gather input and feedback on the process. However, one participant at the meeting noted that she only knew of three of the fifty members of parliament that of armed themselves with some suitably qualified assistants, distributed copies of the draft and went to discuss with their constituents.

In Fiji, similarly, once the commission had produced its report on the suggested reforms, there were no follow-up consultations. In fact, the report –which was very long-, was not summarized in an accessible manner for people, and it didn't receive sufficient media coverage or analysis. Also, the joint parliamentary committee process which followed the consultation stage was not widely participatory or transparent. The meetings at which the real decisions were made were held behind closed doors, and once the draft had been produced it was essentially rushed through parliament. This meant that there was no time for people to debate, or to provide input into the draft constitution. After the constitution was passed there was very limited education on its contents, and in spite of the fact that it had been unanimously passed by all parties in parliament and endorsed by the Great Council of Chiefs, very soon after it began to be criticized from all quarters. How much weight did this inadequate public participation in the constitutional reform process have in the coup in this country? Participants noted that while it was probably a factor, this argument should not be overstated because the reasons for that coup were complex and that the ability of people to defend a constitution in the face of armed force should not be exaggerated.

*National Ownership*

Although participants across the board spoke about the importance of citizens' having a sense of ownership over the constitution making process, the question of national ownership is particularly important in cases where there is an important presence of the international community, an occupying force, or a question of national sovereignty is being decided.

In East Timor, for example, the United Nations Mission UNTAET was a key player in the promotion of the civic education campaign, as well of the constitution making process. The UN Mission appointed 77 commissioners to draft the new constitution, and it was closely involved in all stages- such as the preparation of discussion papers that would lead the debates. The Mission was also in charge of coordinating the public participation mechanisms and transmitting their results to the drafting body. Some of the members of the constituent assembly said that they did not trust the reports, because they were the product of UNTAET rather than a homegrown consultation process. Participants in the workshop explained that in its attempt to broker a peaceful negotiation, the UN accepted a constitutional draft that essentially represented the interests of one party –FREITLIN- and was not widely seen as legitimate. The issue of national ownership in East Timor was compounded by the UN's decision of conducting the entire process in 90 days; following the timing of the Cambodian process. There was widespread discontent regarding the short time frame allotted for such a complex endeavor, but the United Nations refused to change the terms.

The question of national ownership is naturally particularly salient in countries such as Afghanistan and Iraq, where an occupying force is determining the context in which the constitution building process takes places. In Afghanistan, for example, there were enormous efforts to ensure that civil society had a prominent role in the process.

*Lessons learned, good practices and pitfalls to avoid:*

- **Conditions for effective face-to-face meetings** To be effective, face-to-face meetings need to provide participants with enough advance notice of meetings; they should be held in a place where the people feel comfortable; and if necessary they should be organized with the local leaders to ensure attendance. A good mediator or facilitator will also be key in the success of the face-to-face meetings.
- **Constituency and theme based meetings** Itinerant commissions or other type of arrangements where drafters meet with constituencies across the country are important to guarantee a well distributed geographically-based participation. Theme-based meetings are effective ways to discuss specific issues with interested constituencies, in particular civil society organizations, unions, etc.
- **Preliminary constituency consultations** Administrators can meet with representatives from each constituency before having the face-to-face meetings, in order to choose more relevant topics for discussion, how to organize the meeting and other practical issues.
- **Special considerations for gender and minorities** Administrators should make special dispositions to encourage the participation of social groups such as women, rural sectors and ethnic minorities, which might have been historically marginalized and will not immediately come forward. In several countries, a successful strategy was to have the female members of the constitutional commission meet with groups of women, to allow for their direct input in a context in which they would feel more comfortable.
- **Inclusiveness of ethnic minorities** In multiethnic or multicultural societies administrators must ensure participation of all ethnic and cultural groups.
- **Design of a demographic model** To make sure that the administrators of the constituent assembly have the reliable statistics they might want to develop a demographic model, such as the one produced in South Africa.
- **Adequate background information** The participants in the face-to-face meetings should have access to any background documentation available in advance and in a relevant language.
- **Format of meetings should be flexible** In places where the formality of meetings might discourage the participation of minorities**,** a mixture of approaches to public consultation might be more appropriate. Good alternatives include smaller grass roots meetings conducted in more informal settings.
- **Cultural considerations** The cultural context must determine how the gathering of submissions should take place: in Eritrea, for example, where there is a strong oral tradition, most of the interactions were done face-to-face. Equally, administrators must design appropriate participatory mechanisms when societies are clan-based, rather than focused on the individual –as is the case of Somalia. The tension between the individual and the group, especially in communitarian societies, will not only have an impact on the way public input is introduced into the process, but also on the content of the text itself.
- **Participants should be encouraged to talk in simple terms** Given the level of complexity, and some time technicality, involved in many of the constitutional

arrangements being decided upon, it was recommended that the public be encouraged to submit its opinions "in the language of daily life".

- **Partnering with local organizations** Face-to-face gatherings can be better tailored to suit the local needs if the administrators of the process partner with NGOs and other civil society organizations that are well acquainted with the community and can help them design these events.
- **Political and legal commitment** Even in cases where public participation is mandated by law or demanded by external actors (such as the international community), the commitment of the national leadership to making it an integral part of the constitution making process is essential for its success.
- **Feedback** Countries that made the effort to get feedback from the participants in face-to-face meetings conducted more transparent processes, which contributed to their legitimacy. Participants recommended against producing long and complex reports from the gatherings, which are hard to digest by the population and difficult to disseminate.
- **National actors should lead the process** In processes where there is a wide presence of the international community or an occupying force, special efforts must be made so constitution building is led by national actors. National ownership is an indispensable condition for a successful process.

## 2. Use of questionnaire

*Purpose*

In some countries, those in charge of collecting public inputs used a questionnaire in order to organize the gathering of the views of citizens. Questionnaires can serve different purposes. In the first place, questionnaires can be an effective tool to help citizens organize their submissions or input to the constitution making process. Questionnaires, thus, can be used as a guide for citizens to organize their presentations at face-to-face meetings, or can be sent in as submissions for the administrators to be able to see where each individual stands on the outstanding questions. In Kenya, for example, the administrators designed a questionnaire that identified twenty central issues -including, among others, the Preamble, a Directive Principles of State and issues of citizenship- was put together. The administrators then created a book –which came to be known as the 'red book'- that included 199 specific questions to help citizens give inputs on those issues.

Questionnaires can also be used as a way to help the drafters make decisions when there isn't a consensus on specific questions. In Uganda, for example, the Commission drafted the new charter was divided on several salient points. In order to come to a decision on these issues, the drafters agreed to resolve them by reference to the views submitted from the people. The commission statistically analyzed the 25,000 submissions received, and produced an extensive report. According to a participant at the workshop, "the people's views being the basis for the final decision of the commission on each of these controversial issues."

*Development of questionnaires*

The design of the questionnaires and the way they will be used is very important to guarantee their success. In countries such as Kenya and Uganda, where the use of these lists was fairly effective, there were rounds of preliminary consultations with the population, civil society organizations and interests groups in order to choose a list of issues that genuinely responded to the priority issues for the citizens.

Although very useful as a way to organize and streamline input, the use of this type of questionnaire, however, is not without complications. In Kenya, commissioners debated if the questions were limiting the debate; and whether the submissions should come in a 'yes or no' format. Despite the complications that it brought to data analysis, the organizers of the process finally decided to choose a more flexible model that allowed for submissions in different formats. They believed, according to a participant, that limiting the questions to yes or no would artificially eliminate many complex considerations on these salient points.

*Use of questionnaires*

Questionnaires require that the citizen gives his or her input to very specific question; thus demanding at least a minimum understanding on the issues at hand. In countries where there hasn't been an extensive civic education campaign, the use of questionnaires can become more problematic than helpful. In Nepal, for example, citizens who attended a face-to-face meeting received a list of a 150 questions, which were sometimes in a language they didn't understand. In a sole session, the organizers explained the basic concepts of constitutionalism and then attempted to gather people's positions on these issues. There was not always even enough time after the session for individuals to fully answer the questionnaires with the necessary attention. This, naturally, generated quite a bit of confusion and citizens complained about the difficulty of answering those questions. A frequent complaint was, according to a participant familiar with this process, "you never told us what is a constitution is. Now you are asking us 150 questions about what should be in a new constitution!"

A participant also noted that in Nepal the thousand or so questionnaires filled weren't properly incorporated in the debates of the Constituent Assembly: "they put them in a big box in the ministry and then said they were state secret. It took us months to extract these documents from the ministry way after the interim constitution had been adopted."

*Lessons learned, good practices and pitfalls to avoid:*

- **Organizing citizen's input**: Questionnaires can be very useful in helping citizens streamline and organize their interventions in face-to-face meetings. It can also be an effective mechanism for administrators to gather answers to specific questions.
- **Support the decision making process during the drafting**: When there is a lack of consensus among the members of the constitution making body, questionnaires

can be an easy tool to review to give a glimpse of public opinion, and can help drafters make decisions that satisfy the majority of the population.

- **Question selection** It is important to conduct preliminary consultations in order to both choose questions that address the most salient topics in the constitutional debate.
- **Question design** Questions should be drafted in a clear and concise way. While yes or no answers facilitate the task of conducting statistical analysis, they also limit the subtleties of the answers.
- **Background and context** Questionnaires are useful if the population has a sufficient grasp of the topics being addressed. Civic education should be conducted previous to the distribution of the questionnaires.
- **Logistical arrangements** Citizens need to have enough time to properly consider the questions being posed to them. Ideally, the filling of questionnaires should not happen simultaneously with the sessions of civic education, or with the face-to-face meetings. Naturally, questionnaires should be drafted in a language and format that is comprehensible to each constituency.

### 3. Media, websites and other technology

Several participants recommended the use of formal and informal media in the process of obtaining a collective input from civil society. Following are some examples of methods successfully used to this end.

*Newsletters*

Newsletters produced by the administrators of the reform are useful ways of supporting civic education campaigns, distributing information to a wide audience, publish citizens' submissions and call for public participation. In South Africa, for example, the organizers of the reform had a widely distributed newsletter, which worked both as a way to disseminate information, and to invite submissions. Newsletters were also used in Kenya, both as a way for the drafters to share news about the process, and for NGOs playing a watch-dog role to air criticisms or suggestions.

Newsletters have proved to be useful ways of guaranteeing transparency during constitution making, by publishing summaries of the debates, working drafts of the constitution, and other up-to-date information of the process.

*Television, radio and newspapers*

Many countries used television as a channel to disseminate information on the constitution making process. In South Africa, for example, they produced a television program on constitutional issues. The first part was aired from April 1995 until October of that year; and then the second aired between February and May 1996. Each of these phases was associated a stage in the constitutional drafting process, and the format of these programs "allowed representatives from civil society organizations to engage a multi-party panel of constitutional assembly members in debate on important issues. So television was a very important thing, very stark, in your face". In some countries, such as the Andean cases, the airing on television of the sessions of the Constituent Assembly helped give the process more transparency. This method, however, has two main limitations: one, its format generally limits the possibility of interaction with the public; and two, in poor countries only few social sectors have access to a t.v. set.

Participants thus recommended using radio shows, which in several countries were of great importance to reach isolated rural communities and specific social groups. In South Africa it is estimated that the Constitutional Talk radio shows reached around 12 million people in the rural areas; while in Nepal there were efforts to broadcast programs that were intended to reach women at a time when they were listening. In Papua New Guinea, call-in radio shows helped the Commission gather a wide variety of opinions. In other places, such as was the case of Nauru, the radio was used as a tool to give transparency to the drafting process; with the debates being aired and closely followed by the population.

More formal media channels such as newspapers and news shows are particularly important actors in the dissemination of information and helping craft the debate. In Colombia, for example, two leading newspapers supported the student movement that demanded the convening of a Constituent Assembly and became leading voices in shaping public opinion in a favorable way to the pro-reform coalition. In other countries, such as Bolivia and Venezuela, the opposition has used the media as a way of trying to derail the reform process and turn the public against it.

*Internet*

In recent years there has been an increasing use of the internet as an interactive portal for constitution making. Kosovo is perhaps the most successful example of using a website to gather public input. In this country there was no process of civic education, mainly – according to a participant- due to the opposition of the European Union and the American government, as they thought this would consume too much time. Thus, in order to guarantee a comprehensive civic input, the administrators created a website (www.kosovoconstitution.info) which became a central meeting space for citizens interested in discussing constitutional issues. The website was an interactive page where citizens could read the constitution drafts as they were being produced, and weigh in immediately. The Constitution could be found in Albanian, Serbian, English, Bosnian, Turkish and Roma. This website had over two million seven hundred thousand hits,

which is impressive considering that the country only has one million people, and there were 1,015 online comments at the end of the process. As a result of these comments, a participant assured, 77 articles of the constitution were either wholly or partially amended. The website lists the articles that were influenced by public submissions. However, it was noted that around 64% of the comments left in the website by citizens could not be used as part of the constitutional debate because they violated either the Declaration of Independence, or they did not comply with the provisions of the Comprehensive Proposal for the Kosovo Status Settlement., which served as a blue print for the constitution. Other countries such as Ecuador, that have had constitution making process in recent years, also used websites to both gather public opinion and disseminate key information.

Using websites for these purposes have several advantages: administrators are able to reach large numbers of people that are geographically dispersed, allowing for engagement of Diaspora and other similar groups. Also, because it is available 24 hours a day, it doesn't present the limitations of other meetings that require venues and schedules. However, the use of internet to promote citizen participation has some inherent limitations: access to computers is not widespread in many countries undergoing these sorts of processes, thus giving advantage and a stronger voice to those elites that do have access to computers. Also, it is difficult for administrators to control multiple submissions by one individual, and requires the implementation of technical instruments to guarantee proper use of the site.

*Phones*

Some countries, such as South Africa, created constitutional talk-lines: essentially, a toll-free number that citizens could use to vent their views. The administrators then would transcribe these messages, and they would become part of the submissions.

*Lessons learned, good practices and pitfalls to avoid:*

- **Newsletters:** Bulletins that are published systematically and are widely distributed can become a useful tool of disseminating information and gathering input
- **Television:** TV shows are an effective way of engaging in on-depth debates on constitutional issues and give transparency to the process. However, it does not serve the purpose of collecting public submissions and reaches only limited parts of the population in many countries
- **Radio:** Radio shows are perhaps the best media channel to encourage public participation. If properly planned to be aired at times where target audiences are listening, they reach wide sectors of the population, allow for interaction as people can call in, and help gather opinions from people all over the country and abroad.
- **Internet:** The use of websites has become in recent years an important way of engaging citizens that are dispersed geographically and create a format for

submissions that isn't restricted by times, schedules and other logistical problems. It is also ideal for quick feedback and debating. However, only limited sectors of the population might have access to computers, thus giving the elites a more prominent voice in the debate.

## 4. Polling and campaigns

*The role of polling*

Participants in the workshop flagged the use of polling and opinion campaigns as delicate issues that raise important questions. Analysts discussed the role of polling vis-à-vis the public input process. If one of the purposes of the public input process is to rightly gauge what the public sense is on specific issues, it could be argued that having what essentially is a self-selecting group of people who write in their submissions is not necessarily the best way to get an accurate sense of the people's opinions. In a way, it was suggested, relying on citizen's participation can be equated with gathering information through a focus group. Polling, thus, could be a more effective way of getting an accurate depiction of the public perspectives on certain themes.

However, some participants counter argued, polls can be prejudiced due to design faults or sample bias. Also, in many occasions the questions designed by pollsters are unable to capture the complexities of the constitutional debate, thus rendering this method inadequate for the promotion of the rich discussion that should accompany the writing of a new constitution.

*Opinion campaigns*

Another issue that recurrently came up in the conversation was what weight to give to the submissions to the constitutional process that originate in campaigns promoted by NGOs or other similar organizations. One participant referred to this as the dilemma between a very open participation and a qualified participation.

In several countries, such as Kenya and Nepal, the administrators of the constitution making process found that many of the submissions had not been personally written by citizens, but were format letters designed by a civil society organization and distributed to their constituencies to be mailed. In the process of gathering and analyzing the submissions in Kenya, the administrators decided to not count each of these suggestions as one, but rather consolidate them. Facing a similar situation in places such as South Africa and Nepal, there was a debate among those responsible for systematizing the public contributions, as some argued that each signature should count as a submission. A meeting participant described how she had advised a local organization in Nepal against organizing a campaign to produce postcards that women could sign and submit to the constituent assembly to defend women's rights because of the experience of other countries, which have tended to disregard this sort of submissions. This approach is problematic, however, given that public campaigns of this sort have been historically an

effective and legitimate way of mobilizing public opinion- as is the case of Amnesty International, for example.

*Lessons learned, good practices and pitfalls to avoid:*

- **Polling**: Conducting wide N-sample polls can be an effective way to gather where the public stands on a certain issues, and it's a more efficient way to include ample sections of the population. However, polling can suffer of technical problems such as design faults or sample bias, and are an inappropriate tool to grasp nuanced positions or explore complex issues.
- **Opinion campaigns:** It has become common practice to make efforts to guarantee that a citizen's submission is not counted more than once. Thus, administrators of constitution making processes often disregard submissions that are the result of opinion campaigns. However, this decision disregards a long-established mechanism of mobilizing public opinion, and can work against achieving a wide and inclusive participation.
- **Demand-driven participation:** Constitution building proved to be truly participatory when citizens where the force and impetus behind their mobilization. Participation imposed by external actors usually doesn't work effectively, unless there is authentic buy-in from the national counterparts and the citizenry at large.

## 5. Referendums

*Purpose*

Referendums are the most effective way to have direct participation of a majority of citizens. Referendums can take place at different points during the constitution making process, and naturally will play a different role depending on this.

- *Referendums as mechanisms to convene a reform body*

In countries such as Colombia, where the previous constitution clearly outlined amendment procedures that prohibited any reform mechanism outside of the legislature, referendums have been used as tools to mobilize public opinion to convene constituent assemblies. In Colombia, supporters of the reform described this move as an extra-legal measure required to reform an antiquated institutional structure that did not respond to the needs of the country.

- *Referendums as legal frameworks for the reform*

In some countries, the result of binding referendums on other political issues becomes important terms of reference for the constitutional making process. In Eritrea, for example, the referendum organized by the provisional government gave legal effect to the independence that had been achieved by military means. The drafting of the constitution that followed the referendum had to respond to the political realities of this framework.

- *Referendums to ratify the constitution*

The most common way of using referendums during constitution making processes is to convene one after the draft was been finalized, and request that citizens approved its adoption and implementation. Referendums are used as ways of strengthening the legitimacy of a constitution, and rallying support of the political actors behind it. Naturally, having a referendum as a ratification mechanism means that the constitution can be voted down by the citizens, as was the case in Kenya and Zimbabwe. A participant argued that having a referendum also affects the drafting process, as the drafters are going to consider what clauses and issues will or will not be accepted by the general public, and maybe modify the contents of the constitution accordingly.

- *Referendums as consequences of the constitutional reform*

In Bougainville, a constitutional organic law includes a schedule on the conduct of a referendum on independence to be held 10 to 15 years after an autonomous government is established for Bougainville. This was described by a participant as "one of the most massive amendments to a national constitution", as it establishes an autonomous government and guarantees a part of the country the right to participate in a process towards separating from the rest of the nation.

*Lessons learned, good practices and pitfalls to avoid:*

- **Power to reach wide sectors of the population**: Referendums are useful ways to engage the majority of citizens in a country in a constitution making process

- **Legitimacy:** a majoritarian support of the population through a referendum vote strengthens the legitimacy of the constitution.

- **Risks**: In politically volatile environments, convening a referendum might result in citizens voting down the proposed draft and abruptly ending the process.

## Receipt and analysis of public views

Naturally, what happens with the public input, and in which ways it is used within the overall constitution making process is of great importance in deciding how useful, effective and relevant public participation is. The level of care and expertise with which public submissions were organized and systematized varied from country to country. While the intricately technical nature of this process meant that participants in the meeting didn't explain in detail the methodologies used, they did give general guidelines about how the different cases undertook this task, and how efficient were their approaches.

*Organizing the submissions*

In many of the cases considered during the workshop where participation was a relevant piece of the puzzle, the administrators took all the forms of public input- which had been sent through many different channels- and tried to organize them in a uniform way. In most countries, thus, oral submissions were recorded verbatim and transcribed, as to have

all input in the same form. That was true for the case of Kenya, where at the end of the process there were 35,413 submissions, many of them collected through oral presentations in the field. These oral presentations were transcribed, then compared with the questionnaires that had been received in order to identify double-counting, and coded. As was noted in the section above, administrators in Kenya, as in many other countries, tried to make sure that each submission by an individual was counted only once- thus trying to avoid giving more weight to a certain position than what it might really have among the population.

In many of the Andean countries, such as Colombia and Ecuador, given that the public participation process had been organized around thematic axes, the administrators had an easier task. They collected all the different submissions entered on one specific issue, and passed them along to the specific commission within the Constitutional Assembly in charge of drafting that section of the constitution.

The role that ideology can play in this type of process was highlighted by the examination of the Venezuelan case, where studies show that public submissions which sympathized with the 'Bolivarian' ideology of the government were overwhelmingly incorporated into the constitution, while all other proposals were dismissed. A participant described this as an example of 'constitutional populism', namely the attempt to use constitution building as a tool to strengthen a particular political agenda, using participation as a way to mobilize its supporters, but not as a genuine attempt to measure public opinion.

Administrators of the processes differentiated often between general petitions and specific submissions. In South Africa, for example, there were 1.7 million proposals. However, according to a participant, most of them were general petitions dealing with a wide variety of issues ranging from animal rights to abortion, pornography and the death penalty. Of these, the administrators only considered 11,000 to be substantive proposals that should be considered by the debaters. In Fiji, similarly, many of the more extreme submissions were disregarded when it came to formulating recommendations because the Constitutional Commission understood its mission to find the middle path.

*Statistical analysis*

The countries that had the most thorough analysis and use of public input did statistical analysis of the submissions, which was shared not only with the drafters of the new constitution but also with the public, in an effort to demonstrate transparency. While the objective and way of using statistics varied according to the case, the idea behind them was to summarize in a clear way what the public preferences were on key issues. In Uganda, for example, the Commission analyzed the 25,000 submissions received by dividing them into key issues, in a sort of questionnaire that included around 800 topics; mainly the most important - and divisive- issues. The Commission then employed 150 researchers to go through each submission, identifying the closest view, if any, on each of the main questions expressed in that submission. Once they had organized all the citizens' input into categories, the submissions were statistically analyzed. The commission, according to a participant, went to the most extreme lengths to make sure that every submission was examined and was cross-checked to make sure that there was

no inaccuracy. In fact, three different people looked at every submission and every form to guarantee no mistakes.

In Kenya, after the inputs were organized, the second step was to code each and every issue or opinion that was raised. There was a specific code for each and every issue which was discussed, which was then incorporated into a database that was managed with processing software such as SPSS and APN4. This database did not only include the content of the submissions, but also all the information of the person who had submitted it, including name, the age, the telephone number, and gender. A participant familiar with the process explained that the most difficult part of the process was entering the qualitative views that were more nuanced than a yes or no answer.

In cases where a statistical analysis of this type was developed, administrators were careful of making sure that each submission was counted only once. Some participants in the meeting warned that this type of approach could mislead the population into thinking that the drafters would necessarily adopt whatever the majoritarian opinion on a specific issue was- which proved to be often not the case. The wider question of what should be the role for public participation on constitution making is addressed further down in this report.

*Reports*

There are two main types of reports produced to summarize the public submissions: first, those aimed directly to the drafters and, second, those that are widely distributed to the public. In many countries, such as Colombia and Bolivia, the only reports produced by the administrators were those that were directly sent to the members of the Constituent Assembly. In some of those reports, such as the ones produced in Kenya, the submissions were transcribed verbatim. In others, such as in the Solomon Islands, they were rather summarized, which opened the door for inaccuracies and possible manipulation. As will be discussed later in further detail, the way in which these reports were incorporated and used within the debates varied from case to case. A participant at the workshop who was a member of the South Africa Constituent Assembly acknowledged never opening the reports. Similarly, participants familiar with other cases stated that the same had occurred in places such as Ecuador and East Timor.

In contrast, in some other cases the reports were careful analyses of the public submissions, and they were accessible to not to the drafters, but also to the interested public. In Uganda, for example, the Commission produced two reports. The first one discussed how the constitution should be adopted, a topic on which the Commission wasn't supposed to comment, as the reform was supposed to be adopted by the legislature. However, given that many of the citizen's submissions had included strong opinions against continuing the amendment process through the legislative, the Commission felt the need to transmit these views to the government. The second report is an extensive document of more than 900 pages, which included a very detailed discussion and analysis of the peoples' views on each of these controversial issues that had been identified previously.

In Kenya, the administrators produced reports by topic, and also by constituency, with more than 210,000 local reports distributed. They were also able to produce interest

group reports, in which the views of specific groups (such as political parties or NGOs) in which they summarized these group's proposals. They also produced a general national report, which distilled all the information contained in their database; while originally they had identified only 20 topics on which they were going to report submissions, at the end they included 43 issues. According to a participant in the workshop who was part of this process, the report was the "first basic point of reference" for citizens looking to understand how public participation had been incorporated in the reform.

In an effort to promote transparency about the process, the 210 constituency reports were distributed back to the constituencies during the public dissemination of the Bill, so that people were able to identify both what they said and what the commissioners actually wrote in the draft Bill. This resulted in a direct engagement between the commissioners and their constituencies, where the drafters were pressed to explain what happened and why the Bill resulted different from the proposals included in the report. Additionally, during the National Constitutional Conference these reports became very handy for the commissioners as a way for them, to explain how they had reached each decision.

Another important use of the report is in the process of interpretation and implementation of the new constitution. In Papua New Guinea, for example, the Constitutional Planning Committee produced a report that was seen as the result of a highly legitimate process as it had, for the first time, truly engaged the population. While the constitution making process ended up in hands of the legislature, which declared itself a Constituent Assembly, and the recommendations of the report were only partially incorporated, the report stands as a valuable document by itself: the Papua New Guinea constitution provides that this Report, plus the records of debate in the legislation and the Constituent Assembly must be considered by the Courts and other bodies when interpreting and applying the constitution.

*Political will*

Participants noted that political will on the part of the organizers of the reform is very important if there is going to be an efficient analysis of the collected public input, that can be incorporated into the drafting process. East Timor presents an example where the absence of such will truncated the process at each stage. In this country, civil society organizations presented a proposal to UNTAET, the United Nations mission that was responsible for organizing the process, to guarantee that the voice of the people would be considered during the debates. While the proposal was denied, the United Nations felt compelled to respond to the demand for popular consultations. It then organized a harried process through which civic education and consultations happened simultaneously and without allowing for the proper time. The result of this exercises were summarized into 13 reports that UNTAET presented to the Constituent Assembly, accompanied by a regulation that guided the drafters to incorporate them. However, according to a participant, the assembly ignored the reports, which were considered to be an UNTAET product, and not a faithful representation of the opinion of the East Timorese.

*Lessons learned, good practices and pitfalls to avoid:*

- Rigorous, well-organized and methodical organization and analysis of the submissions by citizens is indispensable to facilitate their incorporation on the drafting debates.
- Transcribing all submissions is a recommended way of organizing public input to facilitate its analysis and reporting
- There are multiples axes that can be used as parameters for organizing the inputs:
  - Geographical classification, depending on where the input was done
  - By theme or issue
  - According to the interest group producing the submission
  - Ideologically, regarding how much they support or not an already proposed constitutional draft
- Statistical analysis was recommended for cases where there is an interest in gauging how much support there is among the population on very specific issues (e.g. the establishment of a presidential or parliamentary system; federalism or centralism)
- Production of reports for both the constitution drafting body and the general public was recommended as a way to streamline and organize public input, facilitating the drafter's access to these opinions, and giving the process transparency.
- Disseminating the reports among the population encourages accountability and often results in direct feedback to the commissioners.
- Reports can become part of the constitutional literature used by the Courts and others in interpreting and implementing the constitution.
- The lack of political will to do a genuine process of analysis of public submissions can be fatal for the participatory process, and will result in the under-utilization of these inputs.

## IV. The impact of participation

Participants at the workshop identified two main areas in which public participation has an impact during constitution building. The first, naturally, is the resulting text itself. The second is the political dynamics of civil society, as participation was deemed to be a process of civic education in itself. Evaluating with precision how much impact it has, however, proves to be difficult without detailed case studies and sets of data that are currently unavailable.

### A. The influence of participation on the constitutional text

Participatory processes usually lead to longer constitutions, as it brings into the debate issues which are usually not part of the constitutional tradition and would result in a more ample agenda than the one a group of participants would design. There are several problems that come attached to long constitutions. First, it is said that such texts don't allow for enough flexibility, and it makes it inaccessible to the common people. Second,

a longer text implies that the reform agenda might be overburdened, and can result in a process full of complicated debates that will not allow for consensus building. Third, longer constitutions can be seen as unworkable and difficult to implement, as they become a vessel for an expression of all national aspirations. While this can be useful in certain moments of national crisis, constitutions that stick rigorously to those provisions which are enforceable, both legally and politically, gather more legitimacy because they are perceived as effective. Some have argued that the rule of law suffers when you have a constitution with too many aspirations and too many compromises that are not sustainable politically. However, some countered that argument by stating that in some cases constitutions need to reflect the complexity of society –including the disagreements within society-, and they might need to make a large number of very specific arrangements that you probably wouldn't need to make in a more homogenous society.

Determining how much weight the public input has and should have on the drafter's decision making is perhaps the most difficult question to answer. On the one hand, a participant described the process as a choreographed dance between what the people and the leaders want. However, even if the process is designed to be participatory, there are some inherent limits to how much can public opinion affect the decision making of the drafters. A South African politician admitted at the workshop, for example, that he had never opened the reports given to him summarizing public input; and according to interviews in other countries, this was not an isolated case. In a contrary example, participants affirmed that at times, institutional arrangements designed by the drafting body can take unusual forms, so that they conform to the wishes of the people. In Bougainville, for example, the system of government is a strange mix of presidentialism and parliamentarism, because of people's input.

Participants argued that the administrators of the constitution making process should avoid giving the impression that citizen's input will immediately translate into constitutional policy. This is not an easy task, as was revealed by the exchange between two South African participants, where one assured that it was made very clear from the beginning that the drafters would make the final decisions about the constitution; while another argued that the type of symbolism used during the campaign to promote the process was misleading.

Kenya undertook a very ambitious process of consultations, which included the production of a National Report that distilled the views gathered there. As has been explained earlier, there was a report on each of the 210 constituencies, which were distributed back to the communities, and which specifically noted what suggestions had been put into the text and which hadn't. The drafters then held community meetings in which they explained why they had arrived to each decision. In spite of this ample process, Kenya was also presented as an example of what can happen when people's expectations are frustrated. Throughout the public hearing, citizens recurrently expressed their desire to have Section 2A of the Constitution- which declares Kenya to be a one party state- repealed. This clause was perceived as many Kenyans as the origins of much violence, instability and chaos in the country. Although many of the commissioners had agreed to support its abolishment in the public hearings, they ended up supporting

upholding this measure. According to a participant at the workshop, this single decision broke the trust of the people in the drafters.

It is recommendable, then, that administrators explain clearly where and how public participation fits in the overall process of constitution making, and to have clarity about who defines the constitutional. In Papua New Guinea, for example, there were radio programs and posters stating that the Constitutional Planning Commission (CPC) had made their recommendations after they considered the views of a broad cross section of the people. In the report produced by the CPC, the drafters said they believed that the proposals reflected the ideas and opinions of many of their countrymen and women, as well as their own assessment of the shape and direction that our institution should take and what is relevant and meaningful to their evolving nation.

How much public participation actually affects the text of the draft constitution or the final outcome depends naturally on the objective behind the implementation of the participatory mechanism. Referring to the South Pacific islands, for example, a participant noted that in Fiji the objective of participation was to make people feel involved, and to give them the sense of having been included, which was successfully achieved by the process. In the Solomon Islands, where participation was imposed by the international community, the input had a more limited influence, because it was never conceived as an authentic effort to channel public input. However, given that the materials reporting on the submissions were given to the lawyers drafting the initial version, there was an attempt to reflect some of the key concerns in the text. In Nauru, on the other hand, there was a real commitment on behalf of the politicians who initiated the process to foster genuine participation, and so there was a significant overlap between community inputs and the constitutional arrangements.

In most constitution making episodes, then, there is a tension between, on the one hand, the fact that any constitution is negotiated; and on the other, the ideal that perceives that the constitution could be totally based on the views of the people. In the latter model, the drafters are not conceived as negotiators, but rather as distillers of views, helping the text mirror the public opinions, and whose basic task is helping to aggregate and accumulate information.

The main problem with raising expectations among the population regarding their direct impact on the constitution is that at times, and in particular with high profile issues, there might be a difference of opinions between the drafters and the public. In South Africa, for example, the public consultations showed a majority of people who were against making abortion legal, enshrining gay rights and abolishing the death penalty. However, the ideological conviction of the drafters led them to include these issues in the constitution. If the overall process has enough legitimacy, as it did in South Africa, these types of discrepancies might not affect the stability of the process.

In an opposite example, a participant at the workshop warned about the polarizing effects that public demonstrations might have. In El Salvador, women right movements convened street marches to protest the illegality of abortion. This public display

galvanized the pro-life sectors of society, which were able to influence the drafters to enshrine in the constitution that life starts at conception.

Another challenge that arises when trying to determine the influence of participation is that there is a possibility that, after extensive consultations with civil society, so many different views have been gathered, that the drafters can find support for any position they choose. A participant at the workshop wondered if politicians might feel more empowered to make certain decisions or support specific articles that they might not have before, if they feel that the public is behind them. The impossibility of finding consensus on specific issues, especially in diverse societies and those in post-conflict situations means that the consultation process needs to be seen as an exercise to take the pulse of the nation, but not some magic strategy to find all answers. Rather that focusing too much on a categorization of opinions that measures how many peopled supported one option or another, it was suggested that participation is particularly valuable as a consensus building mechanism.

## B. Participation and civil society

The second level of impact of public participation is on the democratic system as a whole, and on the citizens who participate in particular. Some scholars have tried to identify the impact of the participatory experience on individuals by measuring if there was an increase of civic engagement, and evaluate changes in attitudes towards democratic engagement. Others have taken a different route, trying to examine instead aggregated data to identify changes in political behavior among the community. In any case, these efforts are complicated by the fact that, even if countries such as South Africa or Uganda, where comparatively large sectors of the population were engaged in the process, these numbers rarely amount to a significant proportion of the population.

The difficulty of consulting with large numbers of people means that we should try to understand how participatory constitution making creates an overall level of support. In words of one participant, does participation make society more civil over time? Is it more participatory, less violent, and with a greater support of rule of law? These important questions are difficult to answer with the studies currently available. Data gather by Afrobarometer seems to indicate that the impact of participation on the levels of support for a constitution is negligible. More comparative work is needed, however, to be able to reach a final answer to this question.

## C. Lessons learned, good practices and pitfalls to avoid:

- Conducting a participatory constitution making exercise has some unintended impacts in the resulting text, such as:
    - Constitutions tend to be longer
    - Constitutions can be less flexible
    - Texts can be more complex and thus less accessible to the people
    - The agenda of the constitution making process might be overloaded , which might make consensus building difficult
    - Implementation of longer, more complex texts can be more difficult

- o Constitutions might turn into a wishful perspective of the future, rather than enforceable provisions.
- Administrators should be clear in explaining to the people what role will public participation have in the overall drafting exercise. They should refrain from promising that every, or even most, of the public positions will be reflected in the final text.
- There is a danger that the drafting body will produce overly complicated or incoherent institutional arrangements in its efforts to respond to public input.
- Administrators should prepare the public when they anticipate that the drafters will not follow the majority's opinion on particularly salient and difficult issues such as abortion, death penalty and other similar themes.
- Civil society groups should be aware that raising the public profile of a contentious issue might result in the galvanization of the opposition's forces, and make a quiet negotiation difficult or impossible.
- The impact of conducting a participatory constitution building exercise on the overall level of civic engagement of society is difficult to ascertain with the available data.

## V. Other dilemmas and opportunities

*Does participation guarantee a more democratic outcome?*

Although there was consistent emphasis on the importance of participation in constitution making, throughout the workshop some participants warned against establishing a direct correlation between a participatory process and a democratic outcome. There is a tendency, it was argued, to assume that a more participatory process is per se a more democratic one, and thus it will result in a more democratic constitution. The impact of public participation in different stages of the process –from consultations to implementation of the constitution- was seen as a valuable and central part of current constitution building, that allows national ownership, citizenship empowerment and might lead to a greater legitimacy of the resulting constitution.  However, several experts warned that the association in principle of participation and democracy is a risky one.

A South African participant, for example, acknowledged a big gap between the country's elites and the rest of the population in their appreciation and understanding of the constitution, and what it stands for. He argued that, while the process was indeed a critical moment for the political development of his country, many common citizens were not committed to defend the resulting text. Another South African participant countered that according to surveys done at the time, over 80% of the adult population of the country had in one way or another engaged with the constitution making process, and were by large interested in learning more about this issue. While there was an agreement that participatory constitution making is, to be sure, more in tune with democracy's principles than closed-door procedures, participants warned against assuming –or promising- that participatory processes would necessarily lead to more democracy.

*The risks of imposed participation*

The examination of different cases studies raised the question if the participation on the constitution building process was driven by demand or supply. In the majority of the cases, although participation was channeled by the administrators of the drafting bodies, experts agreed that citizens were the driving force behind the impetus to be an active part. The case of the Solomon Islands, however, raises an interesting question regarding participation, as this was essentially imposed in the process by the international community, when UNDP conditioned their support of the process to the realization of public hearings. According to experts at the workshop, the method of consultation there hampered effective participation. As is to be expected, there was also a failure to distribute and debate the finalized draft; and the process, which was and led by the Executive, was overall perceived to be rather exclusionary.

*Strategies and challenges*

Some participants suggested that administrators bring forward first those topics where it's likely that there'll be agreement of opinions, rather than those that will be divisive. In that way, an expert argued, people get to see that what you agree on is bigger and more important than what you don't agree on, and it makes it easier to get over the difficulties. Some analysts disagreed, arguing that by pushing the controversial issues the back burner you might be faced at the end of the process with a pressure cooker, when you have to come to agreements within a fast approaching deadline.

Another complication that can arise is when constitution building ends up being tied to another political process. In Bolivia, for example, the voting for the reform took place simultaneously with the decision to grant local authorities wider autonomy. The polarization of the country around this topic necessarily had an impact on the constitution making process.

**Dilemmas and Opportunities of Public Participation
in Constitution Building**


2 April – 5 April 2009
The Commodore Hotel
(All workshop sessions will be held in the America's Cup Room)


| **Day One: 2 April 2009, Thursday** |
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**Arrival and registration**

**19:00 – 22:00**   **Welcome dinner at Hotel Restaurant**

**Welcome from Interpeace, USIP and International IDEA**

**Keynote address:** Professor Yash Pal Ghai
Yash Ghai will introduce the topic of the workshop, highlighting the
benefits of participation, the critiques and the dilemmas, drawing on
the work of various writers, and on his own experience including
that as chair of the Kenyan process 2000-2004.


| *Day Two: 3 April 2009, Friday* |
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| *The first day of discussion is focused on examining country specific cases (some grouped by geographical region). Presenters will describe and analyse the role, objectives, modalities and impact of participation in their country/region of interest. This structure reflects an hypothesis: That the role and objectives of participation are shaped by the context, structure and design of the process, which itself is developed in response to the circumstances of the particular country. In addition to drawing on their own experiences, participants will hopefully also be able to draw out issues from these case studies for the comparative discussion, most of which will take place on Day 3. Although there will be participants with experience of many countries, only a few countries will be covered, so that various aspects can be studied.  It is anticipated that, in discussions following the presentations, participants will bring to bear their own experience and suggest that what applies in one country may or may not work elsewhere.* |

**8:45 – 09:15**   **Opening: Workshop Goals**

Michele Brandt, Interpeace
Alex Thier, US Institute of Peace

**09:15 – 10:45**     **Session 1:  South Africa**

  **Chair:**  Hugh Corder
  **Panel:**
  Hassen Ebrahim
  Edward Shalala
  Richard Sizani
  Christina Murray

**10:45 –11:00**     **Tea break**

**11:00 -13:00**     **Session 2 The Pacific:**  *Specifically the cases of Bougainville and Nauru will be discussed, but presenters will also draw out any regional trends/generalizations.*

  **Chair:**  Jill Cottrell
  **Panel:**
  Katy Le Roy
  Anthony Regan

**13:00 – 14:00**     **Lunch break**

**14:00 – 15:30**     **Session 3: Kenya**

  **Chair:**  Winluck Wahiu
  **Panel:**
  Yash Ghai
  Walter Owuor

**15:30 – 15:45**     **Tea break**

**15:45 – 17:30**     **Session 4: Latin America** *Specifically the cases of Bolivia and Colombia but panelists will also draw out any regional trends/generalizations*

  **Chair:** Ruben Zamora
  **Panel:**
  Fernando Carrillo
  Renata Segura
  Andres Torrez

*Day Three: 4 April 2009, Saturday*

*Discussion this day will aim to further examine issues from the previous day's case studies (and from the contributions of participants. If participants feel, following Day 2, that some adjustments/additions should be made to Day 3's programme, we will revise the programme)*

**08:45-09:00**       **Session 5: Threads for Today's Discussion**
*We will briefly reflect on yesterday's discussion and draw out some of the major themes that seem to have emerged, and perhaps point to issues that had been expected to emerge but did not, and try to provoke participants into thinking about the deliberations ahead today.*

**Chair:** Anthony Regan

**09:00 – 10:45**        **Session 6:  Civic Education**

*This session will explore the role and most effective methods of civic education in the constitution-building process, including issues related to:*

- o *The role and objectives of civic education in a constitution building programme as distinguished from public consultations*
- o *Most effective or innovative methodologies depending on the objectives (e.g., schools, workshops, discussion groups, training sessions, street theatre, etc.)*
- o *Timing and sequencing – when should civic education occur?*
- o *Who should be targeted and for what result?*
- o *Who should manage/facilitate the civic education process?*
- o *What factors are likely to undermine civic education efforts and public information campaigns and how can they be avoided or overcome?*

**Chair:**  Anthony Regan
**Panel:**
Robert Mattes
Michele Brandt
Paulos Tesfagiorgis

**10.45 - 12.30**        **Session 7:  Public Inputs**

*How are the views of the public gathered, collated, analyzed, and reported upon and whether in fact they are taken account of in the*

*process. We will look at the cases of Puntland and call on the experience of participants in other cases.*

**Chair:** Jason Gluck
**Panel:**
Abdirahman Raghe
Ahmed Abbas Ahmed

**12:30 – 13:30**          **Lunch**

**13:30 – 15:15**          **Session 8:  The "Who?" of participation**
*Probably in the earlier sessions the role of official bodies, civil society etc will have dominated. On that assumption, this session will focus on the role and importance of other actors on the participation process, particularly political parties; religious groups; international actors (the donors, the UN, INGOs etc). Perhaps also it is an opportunity to look at the excluded (or the often overlooked) (women, indigenous peoples, disabled, etc).  If time permits, and the topic has not arisen earlier, the role of the media could also be included.*

**Chair:**  Yash Ghai
**Panel:**
Edward Shalala
Jill Cottrell

**15:15 – 15:30**          **Tea Break**

**15:30 – 17.30**          **Session 9: The Politics and the Dilemmas of Participation**

At the beginning of the Workshop we raised some of the controversies about and the dilemmas of public participation on constitution making. This session will return to these – or those that participants consider merit further discussion – in the light of the sessions on days 2 and 3. It is anticipated that these might include:
- Risks of the political forces generated by participation undermining consensus-building;
- Potential for divisiveness of participation in deeply divided situations;
- Risks of hijacking or manipulation of participatory processes by elite groups, narrow interest groups or outsiders;
- Participation as a façade behind which key actors negotiate
- Unrealistic expectations of the people;
- Do we expect too much of participation?
- The inevitability of participation; and

- Strategies for CB bodies in managing political dynamics.

**Chair:** Anthony Regan
**Panelist:** Ruben Zamora

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*Day Four: 5 April 2009, Sunday*

*The last day of the workshop will conclude by examining the impact of participation and trying to apply the lessons we have learned to the case of Somalia. The day will end by assessing what is key to further examine in the area of public participation in constitution building.*

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**08:45 – 10:00**   **Session 10:   The Impact of Participation**
*This session will review the preceding two days of discussion and attempt to draw out generalizations about the impact of participation and also challenge some of the more common hypothesis/assumptions put forward about the value of participation in constitution building.*

**Chair:**  Alex Thier
**Panelist:**
Robert Mattes
Yash Ghai

**10:00 – 10:45**   **Session 11:   Applying the "Lessons Learnt": Somalia**

Somalia is embarking on a constitution making process, but outside Somaliland and Puntland there is no government though there are people who wish to be consulted**.** This session will try to bring to bear on this situation the experience of other countries, and address the question of how public consultation can be carried out (and whether experience suggests that task is worth the effort). The session will fall into two parts:
1. Purpose of the Session (**Jill Cottrell**)
2. Introduction to the issues that face Somalia (**Mohammad Jawari, Abdirhaman Raghe, Ahmed Abbas Ahmed**)

**10:45- 11:00**   **Tea Break**

**11:00 – 12:30**   **Session 11:  Somalia discussion continued**

**12:30 – 13:15**   **Next steps and farewells**

**Chairs: Alex Thier and Michele Brandt**

**Raghe Abdirahman**

Raghe Abdirahman's early career contained a variety of interesting work experiences: working at the Ministry of Public Works (1970-5 Somalia), being a student at the Political Institute (1975-6 Mogadishu), a trade unionist (1977-9), a BA student in History/Geography, Lafole College of Education (1980-1 Somalia), working at the Somali Unit for Research and Development-OXFAM-US/ Ministry of Local Government and Rural Development (1981-6 Mogadishu), at the Ministry of Interior as a senior official and later Permanent Secretary (1986-9), and an afternoon student MBA SIDAM/Sunny Albany NY program (1986-9 Mogadishu). After he was relieved from the position of Permanent Secretary in the Ministry of Interior in 1989, he worked as a National Officer UNDP (1989-December 1990), and was appointed as Minister of Water/ Mineral Resources by one of the early arrangements after the fall of the Barre regime (Somalia).  He was a member of the Somali diaspora (Canada) and returned to Nairobi/ Somali region as one of the co-founders of the WSP Somali program, first as the deputy director and later as senior program officer for Interpeace (1998-2009).

Mr. Abdirahman has taken a lead role in supporting the work of Interpeace's Somali program over the past decade in peacebuilding throughout the Somali region and democratization with the local communities in both Somaliland and Puntland, including intensive support for the electoral processes in Somaliland as well as the constitutional review in Puntland. His current focus with Interpeace is on democratization and reconciliation as well as managing the overall context of the Interpeace Somali program with their local partners, including advising on and oversight for the development of a series of reports and publications (e.g. the forthcoming Somali Peace Mapping study).

His long service with different institutions, and particularly over ten years with WSP/Interpeace in peacebuilding, has given him many opportunities for further experience, training, and exposure to both community participatory processes and research in different parts of the world.

**Ahmed Abbas Ahmed**

Ahmed Abbas Ahmed is an economist, lecturer of History of Economic Thought and Economic History at the faculty of Economy of Somali National University (1979 -1981) and author of many research papers on the economy of Puntland during post state collapse. Special experiences on constitution making efforts include member of the drafting committee of the Charter of North East Somalia (1991) and Fifth Congress of Somali Salvation Front (1992); Resource Person for the drafting committee of the transitional Charter of Puntland (1998); Head of Civil Society Program of AAH (German NGO) in South Sudan (2004 -5); Consultant for Independent Federal Constitution Commission of Somalia (2006); Program officer of Participatory Integrated Community Development (PICD) in Puntland Supported AAH (2006);  and currently Interpeace Program officer of the Democratization Program of Puntland including constitutional Review process.

**Melanie Allen**
Melanie Allen is an Assistant Programme Officer in the Constitution Building Processes programme of International IDEA. Her work focuses on policy development for international partnerships and constitution building. Prior to joining the CBP programme, she worked in the Political Parties programme on issues related to the internal functioning of political parties and on the South Asia region component. She later joined the Electoral Processes programme. She has held internships with IFES and the International Labour Organization. She holds an A.B. in Government from Smith College, Northampton, Massachusetts and completed coursework at the University of Geneva and the Graduate Institute of International and Development Studies, Geneva, Switzerland.

**Ekuru Aukot**
Dr. Ekuru Aukot is currently the Director of the Committee of Participants on Constitutional Review in Kenya; he recently joined the Editorial Board of, and developed the current 'African Section' of The Refugee Law Reader; he teaches on consultancy basis the Law on Refugees & IDPs at postgraduate level at the School of Law, University of Nairobi; and he is a regular lecturer on the Law, Policy & Practice on Refugees and IDPs Protection in Kenya at the East Africa School on Refugees & Humanitarian Affairs (EASRHA). He is a co-convener on the theme of Group Rights in the on-going National Action Plan & Policy for Human Rights in Kenya as well.

He completed his PhD in International Refugee Law from the University of Warwick, UK and holds an LLM in Law in Development. As an advocate of the High Court of Kenya Dr. Aukot litigates on access to justice by the poor/marginalized/the vulnerable groups/communities who cannot afford legal representation/court fees under the auspices of Kituo Cha Sheria (the Centre for Legal Empowerment). He is the supervisor of the Urban Refugee Intervention Project under Kituo that provides specialized legal aid to refugees. In addition, Dr. Aukot has published in peer reviewed journals on refugee law, rights & protection, governance and human rights, constitutional law, on internally displaced persons (IDPs) and is interested on gender issues. He also teaches Constitutional Law, Legal systems of Kenya on part-time basis at the Kenya School of Law. He is an astute enthusiast of positive political, social and economic change for the Kenyan nation. He hails from Turkana district, one of the former Northern Frontier Districts under British Colonial rule, a region he critically analyses and refers to in his recent research, as 'The Kenya of the North: A Legal-political Scar in the Creation of the Kenya post-colony'.

**Markus Böckenförde**
Markus Böckenförde is a Programme Officer for the Constitution Building Programme at International IDEA, Stockholm, Sweden. Before joining IDEA, he was the Head of the Africa Projects and a Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law (MPIL) in Heidelberg for several years. In 2006 to 2007, he was seconded by the German Foreign Office to the Assessment and Evaluation Commission (AEC) in Sudan as its Legal Participant. The AEC has been mandated to support and supervise the implementation of the Sudanese Comprehensive

Peace Agreement. Dr. Böckenförde holds a law degree and a doctor degree from the University of Minnesota. He also holds the equivalent of a Bachelor degree in political science. He has published widely in the area of constitution building and is the co-author on several Max Planck Manuals used as training materials for Max Planck projects. He has worked as a consultant for UNDP, GTZ, the German Foreign Office, the Konrad Adenauer Foundation and the Friedrich Ebert Foundation.

**Michele Brandt**
Michele Brandt is a constitutional lawyer and developed and currently directs Interpeace's Constitution Building Programme. Interpeace works with local partners in divided societies to build lasting peace.  Its Constitution Building Programme develops tools and resources for constitution builders, including: a handbook on the process of constitution building, research papers, website, network of practitioners as well as providing advisory services to international advisors and national actors designing and implementing constitution building processes.  Michele has over a dozen years of peace-building/constitutional development experience in the field.  In Afghanistan she was the only full-time constitutional advisor on the constitutional process to UNAMA and to the Constitutional Commission of Afghanistan.  In East Timor she served with UNTAET as a Judicial Affairs Officer and was a member of the Transitional Judicial Service Commission as well as the Cabinet Legislative Committee.  She also served as Director of Asia Foundation's Constitutional Development Programme which provided direct support and assistance to the Secretariat, Constituent Assembly, and each political party as well as NGOs and the media observing and monitoring the process.  In Cambodia, she co-founded the Cambodian Women's Crisis Center and directed an 11 office legal aid association.  She has also published numerous articles on human rights, peacebuilding and constitution building.

**Fernando Carrillo-Florez**
Fernando Carrillo-Florez is the Principle Advisor, Office in Europe, of the Inter-American Development Bank. He has under his responsibility, among other activities, the Program of Cooperation of the Bank with 16 European countries, the European Union, the OECD and other international organizations working in the matter of democratic governance, social reform, human rights and social development.  He has also been a Professor of Political Institutions at the Institute of Political Studies of Paris since 2003. From 1994 to 2002 he was the Coordinator of the Programs of Governability, Reform of the State and Rule of Law of the I.D.B. in Washington D.C. He has participated in more than a dozen programs and projects of the Bank in the matter of the Judicial Reform, Human Rights and fortification of the Rule of Law in different countries from Latin America. He has also advised several processes of Constitutional Reform in Latin America. He is a Visiting Professor at the American University School of Law in Washington D.C, the Center for Constitutional Studies, Madrid, Spain; and University El Rosario, Bogotá, Colombia.  He was also the representative and spokesman of the I.D.B. in the processes of approval of the Inter-American Convention against Corruption, the Inter-American Democratic Charter and the Summits of the Américas in Miami, Santiago of Chile and Quebec from 1996-2003.  Mr. Carrillo-Florez holds a Master Degree in Law and Public Finances from Harvard Law School and a Master Degree in Public

Administration, John F. Kennedy of Government, Harvard University. Mr. Carrillo-Florez has also published a variety of books, most recently: *Governance and Political Reform in Europe and Latin America* (2007), *Latin America and the International Criminal Court* (2006), and *Democracy with Inequality* (2004).

**Hugh Corder**
Hugh Corder is currently Dean of the Faculty of Law at UCT. He has been Professor of Public Law at UCT since 1987. A graduate of the universities of Cape Town, Cambridge and Oxford, his main teaching and research interests fall within the field of Constitutional and Administrative Law, particularly judicial appointment and accountability and mechanisms to further administrative accountability. Professor Corder has been widely involved in community work since his student days, concentrating on popular legal education, race relations, human rights and the abolition of the death penalty. He served as a technical adviser in the drafting of the transitional Bill of Rights for South Africa. He has written two books and edited a further three, and has contributed many articles and chapters in books.

**Jill Cottrell**
Jill Cottrell retired in 2006 after teaching law for 40 years at universities in Nigeria, the UK and Hong Kong. She was educated at the University of London and Yale Law School. She has been a consultant in East Timor, Maldives and Iraq on constitution making. From 2006-8 she was a consultant with the Constitution Advisory Support Unit (CASU), UNDP, Kathmandu, Nepal. She did much of the work on preparing the CASU website: [www.undp.org.np/constitutionbuilding](www.undp.org.np/constitutionbuilding). She is currently involved with International IDEA on a project for women members of the Constituent Assembly.

**Hassen Ebrahim**
Hassen Ebrahim spent 12 years in exile as a member of the African National Congress. In addition to his political assignments, he obtained a degree in law at the University of Edinburgh and Botswana. He returned from exile in 1991 to assist the ANC in establishing its legal structures within the country. Later in 1991, he joined the ANC's National negotiations team as its National Coordinator to facilitate the constitutional negotiations at Codesa and the Multi-Party Negotiations.

After the interim constitution was adopted, Hassen was elected to the Gauteng Legislature in the first democratic elections in 1994 but asked to resign and assume the post of CEO of the Constitutional Assembly. After successfully managing the process of negotiation of the country's first democratic constitution, Hassen joined the Department of Justice and Constitutional Development as a Deputy-Director General. In the Department of Justice, Hassen assumed several different assignments including responsibility as the fist CIO, establishment of the Department Corporate Services component, and finally appointment as the country's first Chief Master.

After a short spell in the private sector where he became a member of the executive team of T-Systems, he was lured back into the public sector in January 2009 to assume responsibility as one of the special advisors to the National Minister of Health.

**Yash Ghai**

Yash Ghai studied at Oxford and Harvard. He held positions at a number of universities, including the Universities of Dar es Salaam, Warwick, Uppsala, and Hong Kong, and visiting appointments at Harvard, Yale, the Universities of the South Pacific, Wisconsin, Toronto and Melbourne and the National University of Singapore. He retired from university teaching in 2006. He has published extensively on public law, sociology of law, ethnic relations, comparative law, and law and development. One of his earliest books was Public Law and Political Change in Kenya (Nairobi: Oxford University Press, 1971) (co-authored with Patrick McAuslan).

He has advised a number of countries on constitutional matters, including making or reviews of constitutions (from Papua New Guinea in 1974-5 to Afghanistan 2002-3 and Iraq in 2005). He was the chair of the Constitution of Kenya Review Commission and of the Kenya National Constitutional Conference [Constituent Assembly] (2000-04). From 2006-8 he headed the Constitution Advisory Unit of UNDP, Nepal which advised on the constitution making process in Nepal.

**Jason Gluck**

Jason Gluck, Senior Rule of Law Advisor, joined USIP in January 2008. His focus is on constitution-building and rule of law issues relating to Iraq. Previously, Gluck was a legal officer and constitutional advisor with the United Nations Assistance Mission in Iraq, where he advised the Council of Representatives during the 2007 constitutional review. He was also a senior program officer with the National Democratic Institute in Iraq, where he worked with the Iraqi Parliament to develop parliamentary institutional and legislative capacity.

In 2006 he was a visiting fellow at the Center for Strategic and International Studies where he analyzed U.S. and European policies to promote economic and political reform in the Middle East and North Africa, and examined the extent to which those policies have promoted democratization in Morocco. From 1999 to 2005, Gluck practiced law with the Washington, D.C.-based firm Covington & Burling. He also clerked for the Honorable Roger B. Andewelt of the United States Court of Federal Claims.

**Peter Hislaire**

Peter Hislaire is the Head of Programme Support at Interpeace and is based in Geneva, Switzerland where he was born and raised. Prior to joining Interpeace in September 2008, Peter acted as Director of Operations of ICMC, where he oversaw refugee and internally displaced persons assistance programmes. He has also worked as a free-lance consultant providing planning, evaluation, coaching and facilitation services in the context of development cooperation programmes for Switzerland, agencies of the United Nations System, and prominent NGOs.  From 1987 to 1998 Peter held various positions with the International Union for the Conservation of Nature (IUCN) and notably led the establishment and initial development of IUCN's programmes in West Africa and Asia. Peter earned a first degree in history in 1975.

**Jenny Isberg**
Jenny Isberg is Administrative Assistant in the Constitution Building Processes Programme at International IDEA. Prior to joining IDEA, she was a translator in the Embassy of Tanzania in Stockholm for nearly six years. Ms Isberg's experiences in the Philippines include Market Research Supervisor in Duty Free Philippines (1994-1997); Community Development Officer in an NGO which was providing livelihood projects to the victims of the Mt. Pinatubo eruption in 1993; PR representative and newsletter contributor (later editor) in the Canadian-Filipino owned Marcopper Mining Company in 1991-1993; and Development Management Officer for a UNDP-funded project on poverty alleviation at the National Economic and Development Agency (NEDA). Ms Isberg holds a Masters degree in Swedish Social Studies under the International Graduate Program of Stockholm University, 2000 and a Bachelor's degree in Agricultural Economics from the University of the Philippines. She also attended the MBA Program at Ateneo de Manila University and has a Diploma in Journalism and Professional Writing.

**Mohammad Jawari**
Mr. Mohammad Osman Jawari is currently serving as Senior Consultant on the Somali Constitution-Making support Project (SCMSP) of UNDP-Somalia. Mr. Jawari had a distinguish carrier as a Somali civil servant. During his career he had the distinguished privilege of serving in a committee established to produced the Somali Labour Code of 1972 and the Somali Civil Service Law – 1973, and latter he served as a Member of Parliament 1984-1990 with the Somali Government during which he has held the two portfolios of Minister of Air and Land Transport and Minister of Labour and Social Affairs. He also served in a seven member independent constitution Commission who drafted the 1990 Somali Constitution adopted in October 1990 by the then Peoples Assembly of the Somali Democratic Republic. Unfortunately events associated with the civil war have overtaken its implementation, what will otherwise have been a significantly important constitution of Somalia. Mr. Mohammad Jawari is now a Somali/Norwegian resident in Norway and Canada since 1991.

**Pat Johnson**
Dr. Pat Johnson has a background in research on conflict resolution, social psychology, and psychotherapy, and has been closely connected with the Interpeace Somali program, formally or informally, since 1998. She has been a senior program officer with the Interpeace Somali program since 2005, after working with Oxfam-GB and the UN in Puntland, and the EC Delegation in Nairobi during the peace talks that led to development of the transitional federal charter and formation of the Somali Transitional Federal Government. She is currently preparing for publication a peace-mapping study undertaken by the three Somali partner institutions, which reviews Somali-led peace initiatives and lessons learned from national-level peace processes. She has limited experience of constitutional processes and is keen to deepen her understanding, in particular how constitution-building can provide the basis for reconciliation from a peacebuilding perspective and issues relating to public participation, including women.

**Katy Le Roy**

Katy is a constitutional lawyer and has been an associate of the Centre for Comparative Constitutional Studies at the Melbourne Law School for over ten years. She is completing her doctoral thesis in the Melbourne Law School on the subject of public participation in constitution making, with a focus on Fiji and the Solomon Islands. Her principal research interests are Pacific constitutions, constitution making process, and comparative federalism. Katy previously worked as UNDP consultant advisor to the Nauru Constitutional Review Committee, and as counsel to Nauru's Constitutional Review Commission and Constitutional Convention. Katy designed and conducted the public awareness and public consultation programs during Nauru's constitutional review process. She recently completed a translation from German to English of Thomas Fleiner and Lidiija Basta-Fleiner's *General Theory of State: Constitutional Democracy in a Multicultural and Globalised World*, published by Springer in January 2009, and currently works as Parliamentary Counsel in Nauru – the world's smallest independent republic, located in the middle of the Pacific Ocean.

**Robert Mattes**

Robert Mattes is Professor of Political Studies and Director of the Centre for Social Science Research at the University of Cape Town. He is also a co-founder and co-Director of the Afrobarometer, a regular survey of public opinion in 18 African countries. His research has focused on the development of democratic attitudes and practices in South Africa and across the continent. He is the co-author author (with Michael Bratton and E. Gyimah-Boadi) of Public Opinion, Democracy and Markets In Africa (Cambridge University Press, 2004) and has authored or co-authored articles in journals such as the American Journal of Political Science, British Journal of Political Science, World Development, Journal of Democracy, Democratization, and Party Politics. He holds a Ph.D. in Political Science from the University of Illinois, Urbana-Champaign (1992).

**Christina Murray**

Christina Murray is Professor of Human Rights and Constitutional Law at the University of Cape Town. Between 1994 and 1996 she served on a panel of seven participants advising the South African Constitutional Assembly. Since then her work has focused on constitution making, constitutional design and the implementation of constitutions. Work elsewhere includes Kenya, Indonesia, Kyrgyzstan, Southern Sudan and Bolivia. Amongst her most recent published work is a book, edited with Michelle O'Sullivan: Advancing Women's Rights: the first decade of democracy (2005) and papers on traditional leadership, ethnicity in South Africa's constitutional design, and government and opposition. She is currently serving on the Kenyan Committee of Participants which has been established to facilitate the completion of the review of the Constitution of Kenya.

**Walter Odero**

Walter Odero is an economist and a statistician. He is married with three children aged between 17 and 11. He has worked for the government, international NGOs and various Development Partners. Walter is also involved in constitution data management for Kenya and Afghanistan. His key areas of interest currently include macroeconomic

management, policy planning and statistical analysis including qualitative data management.

**Sakuntala Rajasingham**
Sakuntala Kadirgamar-Rajasingham holds degrees in Law (University of Colombo) and Social Sciences (University of Reading), and a PhDin Law (University of Sydney). She is presently working as UNDP's Senior Advisor in Support to Participatory Constitution Building in Nepal. Previously she has been: UNDP Project Manager, Constitution Building Program, Somalia; Senior Advisor to the Constitution Building Project with International IDEA; and Head of the South Asia Program also for International IDEA. She has also served as Programme Officer with the Law and Development Studies Division, Marga Institute for Research and Development, in Sri Lanka. She has worked as a consultant for the Law and Society Trust, Sri Lanka, developing human rights training manuals. She has also worked for the World Bank on the legal status of women and labor standards in several African countries. She is a former board member of a Washington based international NGO – Women, Law and Development – that promotes women's legal rights. She is a regular contributor to publications on legal literacy for women, domestic violence, and democratization.

**Varsha Redkar-Palepu**
Ms. Varsha Redkar-Palepu is a South Asian, Canadian. Her academic qualifications are in International Development and a Post-Graduate in Education. She has an International Masters of Public Administration from the Wagner School of Public Service, New York University. She has worked from the United Nations for the past 7 years, with UNDP learning and capacity development at head quarters for four years, followed by two years with the Resident Coordinator and UN Reform support team to country offices with UNSSC in Italy. Varsha joined UNDP Somalia through a leadership programme and now serves as the acting Project Manager of the Somalia Constitution-Making Support Project under the political leadership of the UN Political Office for Somalia and the SRSG.

Varsha has worked in towards gender equality programmes in UNDP, and with CIDA in Sri Lanka and in Romania for small to medium enterprises. She has worked in Canada with International Development and local community development NGOs.

**Anthony Regan**
Anthony Regan is constitutional lawyer and a Fellow in the State, Society and Governance in Melanesia Program at the ANU. His main field of research is the law and politics of constitutions, conflict and reconciliation, and the design of the state as part of post-conflict political settlements. He has been a constitutional adviser to the governments of Papua New Guinea and Uganda, living and working in in Papua New Guinea (1981-91 and 1994-97) and Uganda (1991-94). In Uganda he was a full-time advisor in the constitution making process. He has worked in the Autonomous Region of Bougainville (Papua New Guinea) at various points since 1981, and has been adviser to the Bougainville parties in the Bougainville peace process, 1997 to present. He worked full-time as an adviser on constitutional development in Bougainville from August 2002

to October 2004. He has undertaken work in relation to the Solomon Islands and Sri Lankan peace processes and constitution-making processes in Uganda (1991-1996), East Timor (2001-2002) and Solomon Islands, and advises the leadership of Nagaland (northeast India) in negotiations with the Government of India. He has written extensively on decentralization and autonomy in PNG, peace-building and constitution-making in various contexts, and related subjects.

**Renata Segura**
Renata Segura is the Associate Director of the Conflict Prevention and Peace Forum, a program of the Social Science Research Council, where she leads the work in Latin America and the Caribbean. CPPF strengthens the knowledge base and analytical capacity of the United Nations system in the fields of conflict prevention and management, peacemaking and peacebuilding by providing UN staff with a systematic channel to outside participants in order to deepen the national, regional, or thematic analysis on which the United Nations bases its work on conflict.

Renata received her Ph.D. from the political science department, New School for Social Research; her dissertation focuses on constitution-making as a mechanism for inclusion and conflict resolution in Colombia and Ecuador. The dissertation does a comparative analysis of these two cases to examine how effective constitution making is as a mechanism to promote the institutionalization of inclusion. At the New School, she was a Louis Fischer Fellow, an Inter-American Foundation Fellow, and a Colfuturo grant recipient. She holds an M.A. in comparative politics from the New School for Social Research and a B.A. in political science from the Universidad de los Andes in Bogotá. Renata has been an instructor at Parsons School of Design, and served as Program Officer for the Janey Program in Latin American Studies at the Graduate Faculty of the New School for Social Research for several years. Prior to coming to the United States, she worked for the NGO and research center CINEP in Bogotá, where she was a researcher on several projects related to civil society, conflict and political crisis. In addition to her academic background, Renata worked for several years as a reporter for a nationally televised news program and a widely-read news magazine. She is currently working on a book manuscript comparing constitution-making processes in Venezuela, Colombia, Ecuador, Bolivia and Peru.

**Edward Shalala**
Edward Shalala is the Head of the Design of Democratic Institutions and Processes (DDIP) Programme at International IDEA. DDIP comprises the Constitution Building, Political Parties and Electoral Processes thematic components, as well as the ACE Project on electoral processes. Previously, he was the Sector Advisor for Resource Based Industries in the Department of Economic Development and Tourism of the Provincial Government of the Western Cape in South Africa. Mr Shalala served as Election Manager for the African National Congress in the central Cape Town area for the first democratic election in South Africa (1994). He was also the Head of the Community Liaison Department of the country's Constitutional Assembly (1994-1996). Mr Shalala developed the communication strategy of the Truth and Reconciliation Commission of the Republic of South Africa. He also conceptualised and implemented the national

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As a Research Fellow at the Institute of Defence Studies in Oslo in 2004 and 2005, he wrote a paper titled "Peace and Security in Africa: Basic Structural Changes in the Governance of Peace and Security on the African Continent". Mr Shalala has also co-written a chapter called 'A People's Constitution' about the Public Participation Programme of the Constitutional Assembly for the Danish publication Festskrift om Menneskerettigeher til Carl Aage Norgaard. He has a Bachelors Degree in Law, an Honours Degree in Political Science and a Masters Degree in Public Law.

**Richard Khalipile Sizani**
Richard Khalipile Sizani has over twenty years of experience in a variety of fields. He is an admitted advocate of the South African Supreme Court, and holds LLM degrees in Public Law and International Law from the London School of Economics and Australian National University. He has taught constitutional law at a variety of universities, including Australian National University, Waikato Law School in New Zealand, and the University of Transkei. Other positions include the Chief Director of Traditional Affairs for the Department of Constitutional Development, the Deputy Director General for the Department of Provincial and Local Government, and the Director General of the Kwazulu-Natal Provincial Administration. Mr. Sizani is currently the Executive Chairman of Prodigy, a mining consulting Company. As executive chairman, Mr. Sizani brings oversight to the executive in respect to legal and statutory compliance. At Prodigy, he also leads projects in the field of public and constitutional law.

**Paulos Tesfagiorgis**
Paulos Tesfagiorgis is the Senior Advisor for Democracy and Constitution Building of International IDEA, based in the IDEA Pretoria Office. He has extensive teaching experience in family law, public international law and constitutional law at the University of Asmara, Eritrea (1993-200) and was involved in the drafting of the Eritrean Constitution as a member of the Constitution Commission of Eritrea (Executive Committee) in 1994-1997. Subsequently, he chaired/coordinated the Law Reform Programme (1997-1998) which was tasked with reviewing, revising and reforming all Eritrean laws inherited from Ethiopia and harmonize them with the new Eritrean Constitution. He was also involved in drafting the first election laws for Eritrea as a member of the Committee to Draft Election Laws for Eritrea (1997-2001). In 2004-2006, he was involved in the Iraqi constitution making process in Baghdad as a Senior Legal Officer with the UNDPA and UNAMI.

He graduated from Haile Sellassie I University in Addis Ababa, Ethiopia with LL.B.; received his LL.M. from McGill University, Montreal, Canada; completed course work towards MLI (Master of Legal Institutions) at the University of Wisconsin, Madison, Wisconsin, USA.

**J Alexander Their**
J Alexander Thier is senior adviser at the US Institute of Peace, director of the project on Constitution Making, Peacebuilding, and National Reconciliation, participant group lead for the Genocide Prevention Task Force and director of the Future of Afghanistan Project. He is also responsible for several rule of law programs in Afghanistan, including a project on constitutional interpretation and implementation. Before joining USIP in 2005, Thier was the director of the Project on Failed States at Stanford University's Center on Democracy, Development, and the Rule of Law. From 2002 to 2004, Thier was legal adviser to Afghanistan's Constitutional and Judicial Reform Commissions in Kabul, where he assisted in the development of a new constitution and judicial system. He has also provided advice to the Constitutional Review Commission of Iraq and the Constitutional Commission of Southern Sudan.

**Andres Torrez**
Andres Torrez is founder and Chairman of Andean Consulting Group – ACG Bolivia. He has been national advisor for Club of Madrid and served as Executive Director of the National Constituent and Autonomy Council of Bolivia, as well as on various commissions and study groups on issues such as Democracy building process, Democratic Governance in Bolivia, Constitutional Design, Inclusion, Minority Rights and Autonomy, and Corporate Social Responsibility.

Mr. Torrez is a regular collaborator as a political analyst at several newspapers, Radio and Television News Programs in Bolivia and abroad such as CNN, VOA (Voice of America – USA), Bolivian media networks: ATB, Unitel, RED UNO, Panamaricana among others.

He is Professor of Strategic Management in Government, Public Policy, and Constitutional Design at Maestrías para el Desarrollo, a Graduate Program at the Bolivian Catholic University - UCB. He is also an associate professor of Public management and Political Science at CIDES-UMSA, a graduate program at the largest Bolivian Public University, Universidad Mayor de San Andres. He has finished his Doctorate Thesis and is waiting for a formal dissertation at the Universidad Autónoma de Madrid. Has a Masters degree on Constitutional Law from the Centro de Altos Estudios Constitucionales de España, a second Masters on International Diplomacy in Madrid Spain, and obtained his bachelors degree on Economics at Texas State University, USA.

He has also been Director of the Public Policy Programme, at Maestrías para el Desarrollo, UCB. He has published on Democracy building values, Constituent process of Bolivia, and contemporary issues of popular democracy, decentralization and autonomy in Bolivia. Among his publications are: "Simulación de Asamblea Constituyente en Bolivia" - 2004 (Simulation of the Constituent Assembly of Bolivia), "Actores Políticos y Sociales en Bolivia" - 2005 (Political and Social actors in Bolivia), "El proceso Autonómico en Bolivia" – 2006 (The Process of Autonomy in Bolivia), "Participación Ciudadana, Generador de Valor Público" – 2007 (Citizen Participation, Creating Public Value).

**Winluck Wahiu**

Winluck Wahiu is a Kenyan constitutional lawyer who joined International IDEA in 2006 and became the Project Manager for the Constitutional Building Processes Programme in October 2008. He has worked with the design of constitution making processes in Nepal and Kenya, where he also advised the bi partisan parliamentary committee on governance structures, executive-legislature coordination and human rights. He has practical experience of comparative constitutional law having worked between 2001 and 2005 as the Programme Officer of the African Human Rights and Access to Justice Programme. This was a regional initiative of the Kenyan and Swedish Sections of the International Commission of Jurists that funded litigation and advised national legal teams on options for implementing international and constitutional human rights norms. He has also advised civil society organizations involved in reforms of the constitutions of Uganda and Swaziland.

**Christie S. Warren**

Christie S. Warren is Senior Lecturer in Law and Director of the Comparative Legal Studies and Post-Conflict Justice Program at William and Mary Law School. Warren's courses include Comparative Law, Comparative Constitutional Systems, Post-Conflict Justice and the Rule of Law, International Human Rights Law, Litigation in Civil Code Systems, Islamic Law, Introduction to Common Law Methodologies, Special Problems in Post-Conflict Justice and Advanced Appellate Brief Writing.

Warren has designed, implemented, monitored and assessed constitutional, judicial and legal development and training projects in 34 countries throughout Africa, Central and East Asia, Latin America and the Caribbean, Central and Eastern Europe, Russia and the Newly Independent States, the Balkans and East Timor. She was named the 1998 – 1999 Supreme Court Fellow at the Supreme Court of the United States and received the Supreme Court Fellows Alumni Association's Administration of Justice Award for "significant contributions to the international administration of justice." She has authored articles and chapters on women and Islam, polygyny, Islamic commercial and criminal law, the international administration of justice, and ethical considerations involved in the delivery of legal services to the poor in developing countries.

Warren serves as the Curriculum Development Advisor for the Constitution-Building Processes program at the International Institute for Democracy and Electoral Assistance in Stockholm, Sweden and was an advisor to the Constitution Drafting Committee during the 2007 - 8 constitutional process in Kosovo.

**Ruben Zamora Rivas**

Ruben Zamora Rivas is one of the most prominent leaders on the democratic left in El Salvador, and is perhaps most well-known for his presidential candidacy in El Salvador's 1994 elections. He is a professor of political science at the National University of El Salvador and also holds a post at the Central American University as well as at the San Carlos University in Guatemala. He holds a law degree from the University of El

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