



# Interim Constitutions in Post-Conflict Settings

DISCUSSION REPORT  
4–5 December 2014

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# **INTERIM CONSTITUTIONS IN POST-CONFLICT SETTINGS**

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***4–5 DECEMBER 2014***

***OLD COLLEGE, EDINBURGH***

Hosted by

International IDEA and the Edinburgh Centre for Constitutional Law

in association with

the Global Justice Academy, University of Edinburgh

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# CONTENTS

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<b>INTRODUCTION</b> .....	3
<b>THEMATIC PRESENTATIONS</b> .....	5
PURPOSE .....	5
CONTEXT/TRENDS .....	5
DEFINITION .....	6
SCOPE .....	6
<b>CONCLUSIONS</b> .....	8
<b>CONTEXTUAL CONSIDERATIONS</b> .....	9
CONFLICT .....	9
POLITICAL LANDSCAPE .....	9
ROLE OF THE INTERNATIONAL COMMUNITY .....	9
<b>KEY ISSUES TO CONSIDER</b> .....	10
<b>ANNEX I: CASE STUDIES</b> .....	12
BOSNIA AND HERZEGOVINA .....	12
EAST TIMOR .....	13
CAMBODIA .....	14
EGYPT .....	14
KOSOVO .....	15
LATIN AMERICA .....	16
POLAND .....	17
IRAQ .....	18
AFGHANISTAN .....	19
NEPAL .....	20
SOMALIA .....	21
LIBYA .....	22
SOUTH SUDAN .....	22
SOUTH AFRICA .....	23
<b>ANNEX II: LIST OF PARTICIPANTS</b> .....	25

## INTRODUCTION

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As the inaugural event in a series of annual workshops to be known as the Post-Conflict Constitution Building Dialogues, this workshop was organized to explore the opportunities, challenges and experiences of 'Interim Constitutions in Post-Conflict Settings'. The series is designed to draw out the benefits of informed constitutional comparison and an interdisciplinary approach to constitutional substance and processes.

This newly launched series of workshops is jointly hosted by the Constitution Building Processes programme of International IDEA and the Edinburgh Centre for Constitutional Law (ECCL) at Edinburgh Law School. The Global Justice Academy (GJA) of the University of Edinburgh will also be associated with the partnership. The partnership between IDEA, ECCL and GJA will provide a meeting point for theory and practice, as well as for academics and field experts from the global north and south. Premised on the mutual benefits of regular and structured engagement between scholars and practitioners of constitution building, the initiative represents a conceptual and practical response to the need for an organized and systematic approach to post-conflict constitution building. The workshops are designed to engender rigorous but constructive debate, knowledge sharing and opportunities for networking.

The theme of this inaugural event was 'Interim Constitutions in Post-Conflict Settings', an issue of both enduring and topical interest in the field of constitution building. Constitution-building processes in post-conflict settings are exceedingly difficult undertakings. Actors that have hitherto engaged in violent confrontation become, at least notionally, responsible for the (re)framing and (re)building of the post-conflict state. Interim constitutions represent a form of 'political settlement' that seeks to disincentivise armed conflict as a means of pursuing political goals. The adoption of an 'interim' constitution and/or some form of transitional framework is one possible way of resolving the tension between fluidity and order, and contributing to sustainable peace.

The timeliness of analysing the role of interim constitutions or constitutional provisions as peace-building mechanisms is self-evident, given the increasing use of constitution building in peace-building processes. There is a clear need to establish linkages between the normative literatures on constitution making on the one hand, and conflict resolution and peace building on the other. There is also a need for more in-depth comparative research of case studies and lessons learned by diverse domestic and international actors engaged in these processes. Individual case studies, as well as a limited number of comparative studies, have been published on constitution-building processes, in particular on the role of public participation, or on specific substantive constitutional design issues, such as forms of government, court design or decentralization. But there is no similar comparative study of interim constitutions or collection of lessons learned. These gaps in the academic literature are replicated in policy practice.

The workshop used a qualitative comparative framework methodology based on relevant case studies. The case studies will help assess and contextualize the impact of interim constitutions on constitution-building processes, and potential lessons learned. Rather than giving formal papers or presentations, moderators and panellists responded to a set of potential issues related to the case studies in question, followed by a semi-open discussion with other participants to highlight similarities and differences between the different case studies. The event was organized in the format of a closed expert workshop, with local experts or policy makers representing all regions of the world and international experts on constitutional law and theory, conflict resolution and constitution-building processes. The full list of participants is annexed to this report.

The workshop comprised six separate sessions, in which participants discussed the emerging practice and theory around interim constitutions in order to clarify key challenges and potential solutions in navigating the post-conflict landscape. It began with an introductory thematic session that also included discussion of the South Africa experience. The first panel addressed the absence of an interim constitution, while the second and third dealt with contexts in which an interim constitution led to a final constitution, and the fourth panel discussed interim constitutions that are still in place. The final session addressed concluding thoughts and sought to find consensus over key issues which should be included in an eventual policy manual. Thirteen case studies were presented, which were selected to illustrate the nuances of post-conflict constitutional processes and generate discussion on common and distinct challenges, successes and lessons learned. The countries were grouped into clusters for the different sessions in order to explore particular common contexts and features:

- (1) *Peace Agreements and Interim Constitutional Arrangements*. This cluster included internationally led processes that generated peace agreements with constitutional arrangements or commitments to constitutions (but not interim constitutions) and final constitutions drafted through or shortly after peace agreements were signed: Bosnia and Herzegovina, East Timor, Cambodia.
- (2) *Opportunities and Challenges of Interim Constitutional Arrangements: Lessons Learned (I)*. This group of countries had interim constitutions that eventually gave way to final constitutions. The participants examined how the lack of inclusiveness affected both the process and the scope of the interim constitution, as well as the institutional legacy/permanence of the interim arrangements: Egypt, Kosovo, Latin America.
- (3) *Opportunities and Challenges of Interim Constitutional Arrangements: Lessons Learned (II)*. This grouping included interim constitutions that led to final constitutions, with a view to illuminating key pitfalls and opportunities in regard to current or future processes: Poland, Iraq, Afghanistan.
- (4) *Current Interim Constitutions and the Way Forward*. In these countries, existing interim constitutions have not yet managed to move toward the drafting of a final constitution. The discussions analysed the inclusiveness of the process, the extent to which the interim constitution was related to a peace agreement and whether any of the 'lessons learned' might be applied to these ongoing processes: Nepal, Somalia, Libya, South Sudan.

The workshop discussions raised a set of practical and normative questions; this report constitutes a starting point for their further exploration.

## THEMATIC PRESENTATIONS

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(Presented by Hassen Ebrahim, Leena Grover, Tom Ginsburg and Cheryl Saunders)

The first session addressed issues and questions related to the history, substance, process and participation in interim constitutions in post-conflict settings to define the conceptual parameters of the workshop. The four thematic presentations and the subsequent discussions centred on questions of purpose, context/trends, definition and scope.

### **PURPOSE**

Interim constitutions are functionally and conceptually distinct from two similar types of arrangements—peace agreements and final constitutions. Within a limited period of time, they seek to fill a gap where there are no existing institutions, or no legitimate or effective ones. As such, they are intended to serve as a bridge between an illegitimate and a more legitimate regime, generally providing both a temporary institutional framework for government during the transition and a bargaining framework for negotiating a new structure of government and the procedural requirements for drafting the final constitution. Interim constitutions are a useful mechanism of deferral. Conflict parties can benefit from additional time, not only for negotiating, but also to allow the immediate conflict dynamics and enmities to subside somewhat. By balancing the dual requirements of (relative) durability and flexibility, interim arrangements attempt to contain the process of change within a negotiated and managed framework.

Interim constitutions provide a platform for negotiations in order to facilitate trust among parties. But they also ensure a legitimate transitional government, and institutionalize the arrangements between parties for the transition. The mid-/post-conflict interim constitutional process entails converting private, elite power into public power and public good. The final constitution requires moving beyond the limits of the specific political bargain of the moment to create a document that captures and reflects the public's hopes and fears.

### **CONTEXT/TRENDS**

An empirical analysis of the history of interim constitutions—there have been 89 since 1945—reveals huge variation in when, how and whether they are deployed. Compared to the 1945–90 period, when interim constitutions were deployed mainly after coups, 1990–2014 has witnessed a very marked increase in the use of interim constitutions in a variety of circumstances: post-occupation, union of previously divided jurisdictions, independence, secession, decolonization, entrenching or eradicating communism, ending violent conflict and, most often, after toppling authoritarian regimes.

Notwithstanding the difficulty of forming generalizations in such a varied context, a series of trends can be broadly mapped out in the post-1990 period. In terms of process, interim constitutions after conflict are increasingly used as mechanisms for compromise in the event of a military stalemate and amid political instability (as opposed to situations in which one clear victor is leading the process). International actors play an increasing role; drafting processes often take place outside the affected country via ‘shuttle diplomacy’. Negotiated interim constitutions have become the norm rather than the exception, and negotiations are more likely to take place in stages, marked by incremental agreements. This has expanded the diversity and number of legal instruments populating the post-conflict landscape. In substantive terms, national processes are increasingly orienting themselves toward the international community as well as the citizens of the country in order to seek legitimacy at both levels, for various reasons. International standards thus have a bigger part to play in national instruments, which is noticeable, for instance, in the incorporation of international instruments, definitions of emergency powers and human rights standards.

### **DEFINITION**

This procedural, contextual and substantive diversity puts pressure on the term ‘post-conflict interim constitution’. When broken down into its constituent elements—post-/conflict/interim/constitution—the term struggles to accurately capture the diverse range of instruments that features in the discourse. The definitional problem highlights not just how interim constitutions are distinct from other interim arrangements, peace agreements and final constitutions, but also *why* it is important to maintain these distinctions.

The use of interim constitutions creates a strong tension between the dual functions of peace making and state building. While they tend to be deployed fairly early on in the peace process between conflict parties, interim constitutions may also play a substantial role in creating final constitutions, in substantive as well as procedural terms. Inclusivity/participation is another potential distinction; the understanding of interim constitutions as political agreements aimed at achieving peace has shaped a view that public participation might not be required in the transitional period, only in the drafting of the final constitution. Yet an interim constitution’s legitimacy is likely to depend on a certain degree of inclusivity, even if this falls short of full public participation. Unless the real power brokers are present at the negotiating table, the process (and resulting settlement) will struggle to gain traction.

### **SCOPE**

A key question is the ‘thickness’ of the interim constitution, i.e., the breadth of issues it covers and the depth of detail it includes. The thematic presentations clearly articulated the danger of trying to decide everything at once. If the interim *constitution* attempts to deal with too many issues and in too great detail, it heightens the cost of decision-making for the drafters of the interim constitution. There is also the risk that a highly detailed interim constitution will ossify and become permanent, thereby establishing a complete system of government without (or with little) public participation. A shorter, more limited text lowers the stakes and potentially ensures a speedier peace process. The risk of this approach, though, is that the text is too thin, and perhaps too heavily reliant on a set of international norms. The potential consequence of this is that a failure to



adequately account for the specific features of the local context leads to weak national ownership, and the interim constitution will struggle to gain traction. One participant suggested that more detailed arrangements tend to be less flexible, because of higher ‘decision costs’ among parties, who have invested time and energy in negotiating the details of the settlement. Detailed arrangements are also likely to ensure benefits for particular and more prominent interest groups.

This in turn raises the question of how to account for rights provisions in an interim constitution. It is important to hedge the risk of possible permanence, and in practice it may be easier to enforce international law rather than design new national provisions. But this practical concern needs to be balanced against the similarly compelling reality that national ownership of a publicly defined value system is important for sustaining the settlement.

Some favour the more strictly defined notion of an interim constitution as a ‘moderately formal instrument promulgated for an interim period pending a final constitution’. The distinction between an interim constitution and any other interim arrangement should be maintained so that a declaration of (un)constitutionality of the final constitution against pre-established stipulations can be made. According to this view, interim constitutions should supersede all other national laws, and be subject to judicial enforcement.

The conceptual location of interim constitutions between a peace agreement and a permanent constitution, and between open conflict and final political settlement, complicates as well as refines attempts to define their scope and purpose. The question of whether it is possible to implement a transition during conflict featured strongly in this discussion. In recognizing the obvious overlaps between peace agreements and interim constitutions, it is also important to give weight to concerns about the specific limitations and functions of each type of instrument. Concerns about conflating interim constitutions with peace agreements centred on the different motivations behind the instruments; the urgency of ending bloodshed could lead to short-term deals that fail to reflect long-term interests or provide a considered and sustainable framework for institutional development. A related worry is that treating interim constitutions as peace treaties weakens their legal character. Interim constitutions are legal documents, not just political settlements, and as such can be interpreted by courts—unlike peace agreements. Discussions to conclude peace agreements may also include fewer participants and face more time pressures. The issue of deadlines emerged as a major difficulty; the urgency of ending hostilities may conflict with the need to have a real constitutional conversation among stakeholders. To what extent to respect agreed deadlines, and what to do when they are not met, was also cited as a problem.

However, the difference between interim constitutions and peace agreements quickly becomes blurred, and a sharp distinction may not capture the reality that armed groups come to the negotiating table in order to gain more through talking than shooting. Parties’ leverage directly reflects their battlefield strength; groups are resistant to giving up their battlefield advantage for the sake of a dialogue with an uncertain outcome. Moreover, participants noted that people get involved in violent conflict not because they want political stability, but because they are willing to sacrifice it.

## CONCLUSIONS

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The workshop is a first step toward achieving the final objective of this initiative, which is to produce guidance for the use of interim constitutions as a possible policy option in the process between peace making and a stable democratic constitutional framework. The experiences and knowledge shared in the workshop will be built upon through additional research, with the objective of producing a policy paper. Here we summarize the conclusions of the discussions, which will be the basis for further research. The following are preliminary findings that recurred as common themes of general (although not universal) consensus during the workshop.

It is important here to reflect on one powerful reservation to this initiative, which arose during the discussions of how best to form policy advice from the lessons learned and experiences shared. This reservation centred on the premise that few countries *choose* to draft an interim constitution (or other form of interim constitutional arrangement) as a deliberate policy choice among several alternatives. Rather, the political circumstances—i.e., historical context and more immediate constraints—dictate the form of the constitutional process.

Thus the purpose of this project as it pertains to policymakers and advisers is:

- to increase awareness and knowledge of the variety of available interim constitutional arrangements, such that where there is flexibility, the use of interim constitutions is understood as a possible option; and
- where the situation is indeed one of negotiating an interim constitution, to increase knowledge and understanding of how such processes and documents have worked in other contexts.

## CONTEXTUAL CONSIDERATIONS

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‘Context matters’ is an oft-repeated maxim, but this is not very helpful unless one knows which elements of the local context need to be considered and how they might affect the constitution building process. The following is a list of contextual considerations that were recurrent in the discussions, and some questions worthy of consideration in each case.

### ***CONFLICT***

Constitutions in conflict-affected settings often deviate from those in non-violent settings, but the nature of the conflict is also a critical contextual consideration. What were the structural causes of the conflict? Has there been a complete cessation of hostilities, or does some conflict persist after the ceasefire agreement has been signed or after the constitution-making process has started? Are conditions stable enough to allow constitutional negotiations? Who are the actors in the conflict, and what are the demands—met and unmet—at the peace table? Why are people considering an interim constitution, and what functions do they expect it to provide?

### ***POLITICAL LANDSCAPE***

It is necessary to consider and understand the political landscape in order to appreciate the likely contentious issues, electoral expectations, opportunities for consensus, and possible alliances and coalitions on different issues, as well as the legitimacy of contending parties. If an interim constitution is written, how will these interests affect its ‘stickiness’ and content?

### ***ROLE OF THE INTERNATIONAL COMMUNITY***

Where the international community had a direct role in the conflict, its role in the constitution-building process is often more prominent, though riddled with legitimacy challenges. It is also important to consider what form of international involvement is likely: i.e., who is the international community and how can it engage? (For example, via the United Nations, specific country, former colonial power, neighbouring power, etc.) What constitution-building expertise does this party or institution bring to the table, and with what limitations?

## KEY ISSUES TO CONSIDER

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Bearing these contextual considerations in mind, some central issues that will need to be considered include:

- *Who will be involved in the negotiating/drafting process?* Generally, the participants agreed that developing the interim constitution usually involves narrower participation than ‘final’ constitutions due to their temporary nature, the constraints of power dynamics in the immediate post-conflict context and the promise of more participation to come during the drafting of the final constitution. In some cases, complete inclusivity/legitimacy was seen as detrimental to, rather than encouraging of, peace (e.g., inclusion of Al Shabab in Somalia).
- *‘Stickiness’ and scope.* In terms of substantive provisions, interim constitutions ought to reflect only the necessary minimum. Incorporating too much detail decreases incentives to negotiate a final constitution. Certain provisions of interim constitutions, or institutions created by them, can be ‘sticky’ if parties involved in drafting the interim constitution seek to protect their interests. These ‘sticky’ holdovers from the interim constitution can get included in the final constitution despite having been agreed in non-inclusive negotiations. However, the interim constitution would also outline the procedures for drafting the final constitution, which should be detailed and clear to avoid disagreements that could derail the process. Lastly, there was some debate on whether fundamental rights should be included in the interim constitution or whether—given time constraints and limited scope for broad-based participation—international human rights should be relied upon during the interim period.
- *Timing of elections.* The sequencing of elections is a crucial issue in two regards. First is the ‘chicken and egg’ question of whether elections are necessary in order to draft a constitution under a democratically elected leadership, or whether a constitution is necessary to create a consensual and legitimate basis for elections. In fact, an interim constitution may sometimes be used precisely because elections cannot be held without a new institutional framework. Yet a well-constructed interim constitution is an opportunity to create a consensual framework for elections, while leaving the final constitutional arrangements to be drafted by an elected body. Second, the timing of elections is an important driver of positions during the constitutional negotiations. Where elections are earlier, electoral expectations are generally stronger, leading to more self-interested negotiating positions based on each party’s view of how it will perform at the ballot.
- *Duration.* How long should the interim period be? As might be expected for such a context-specific question, there was no consensus on whether more time should be given to avoid the increasingly common phenomenon of missed deadlines,

or whether tighter deadlines would force an agreement. Key contextual factors to consider when determining the deadline include the scope and level of detail of substantive provisions agreed upon in the interim constitution, consequences of not meeting the deadline (for example, dissolving the constitution-making body and holding new elections), the likely scale of state restructuring, and the number and relative proportions of effective parties in negotiations.

- *Normative content.* Normative proclamations of a national vision and values have become an increasingly common feature of constitutions, but what role might/should such provisions play in interim constitutions? While the democratic deficit of interim constitutions might contribute to an argument against reaching conclusions regarding national values and sentiments, participants held that such provisions can in certain contexts provide a broad framework of principles for subsequent constitutional drafts and might be necessary to convince some parties to agree to the process.

These issues will provide the basis for further research in the publication of a policy paper on interim constitutions.

## ANNEX I: CASE STUDIES

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### ***BOSNIA AND HERZEGOVINA***

(Presented by David Feldman)

Drafted by a group of international lawyers while the conflict was still underway, the constitution is an Annex to the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina ('the Dayton Accords'). The goal of the Dayton Accords was to end the conflict, and the constitution-drafting process was entirely reactive to the peace negotiations. For the Dayton negotiators, the substance of the constitution was based on the conditions under which the parties were prepared to lay down their arms.

The settlement was based on securing peace, which defined the structure of the state, based on power sharing. The constitution established the central state of Bosnia and Herzegovina, with significant self-governing powers devolved to two entities—the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS). But while Serbs and Croats expected a weaker central state with stronger (and largely autonomous) entities, Bosniacs and international negotiators saw the central state as a means by which divisions would be progressively overcome. Likewise, the judges on the Constitutional Court were divided along ethnic lines: three internationals, six nationals, two from RS and four from FBiH (by convention, two Croats and two Serbs). These nine judges had very different views on what the constitution was, and what the role of the court was in relation to the constitution. For instance, the national judges initially expected the international judges merely to give effect to the will of the national community, rather than to function as lawyers in the service of the constitution.

Following a series of failed attempts at peace plans, parties were induced through shuttle diplomacy to participate in negotiations on a constitutional settlement prepared by international actors. This remains a source of tension; the Croats are unhappy with the two-entity solution, and believe that they are being discriminated against as the only people without self-government. In addition, there is the question of discrimination against the constitutionally defined 'Others' (children of mixed marriages, Jews, Roma, Albanians), believed to make up approximately 12–15 per cent of the population.

Although the Dayton Accords succeeded in ending the armed conflict, none of the three conflict parties was satisfied with the territorial and political arrangements. The legitimacy problem was magnified by the fact that the constitution is annexed to a treaty and is in English (with the exception of the single amendment enacted since). It has never been officially translated into any of the three local languages, which remain distinct, used by local leaders to emphasize divisions to strengthen their own positions. The settlement paid insufficient attention to the legal and constitutional systems of the former Yugoslavia and its republics (e.g., its well-functioning constitutional court was

ignored) and the deep historical roots of ethno-national divisions in the Balkans. Thus the Dayton Accords saw the creation of a fictional state that was recognized by powerful elements of the international community, for which it became a point of honour not to concede on further territorial breakup. Close to half the population does not want the country to exist now, 19 years later.

The European Court of Human Rights (ECHR) ruled in *Sejdi & Finci v. Bosnia and Herzegovina* (2009) that the ethnically based power-sharing model is no longer necessary to prevent conflict, and thereby violates the human rights provisions that the constitution promises to uphold. From the Constitutional Court's perspective, however, its authority came from the constitution, and its role was to give effect to the constitutional provisions. The ECHR case opened up a debate about the hierarchy of relevant legal provisions, and consequently, about the possibility of constitutional reform. The constitution's non-discrimination provision suggests an internal contradiction, and raises questions about whether one part of the constitution can be unconstitutional through inconsistency with another part. Furthermore, the constitution accords direct effect and priority over all other law to the ECHR (Article II.2), suggesting that it may be subordinate to a higher-order set of values. Yet Article VI of the constitution states that the Constitutional Court has jurisdiction over issues relating to the compatibility of national laws with the ECHR, and that its decisions are final and binding.

## **EAST TIMOR**

(Presented by Aderito de Jesús Soares)

Two years after a popular referendum on East Timor's independence from Indonesia, an elected 88-member Constituent Assembly drafted the country's first constitution within a very short time frame (60 working days). The UN Transitional Administration in East Timor provided an interim civil administration and peacekeeping mission during that time, and oversaw the drafting process. There had been different opinions on the best way to proceed; UN representatives supported using an elected Constituent Assembly (which would then become the Parliament), while some in East Timor wanted a Constitutional Convention. The desire for a speedy settlement led to the final decision. The interim constitution option was unpopular among nationals because there was a strong desire to consolidate independence from Indonesia, and there were fears that an interim constitution would imply an 'interim country'. Without the presence of the UN civil administration, however, an interim constitution might have been necessary, in order to provide time to build the capacity of national institutions.

While in retrospect the lack of public participation is certainly not ideal, at the time there was a strongly positive dynamic among the Constituent Assembly, and (notwithstanding the dominance of the main party, FREITILIN) some small parties contributed quite significantly to the process. Yet this dynamic was hard to see outside the drafting room. However, FREITILIN had strong public legitimacy at the time, which to an extent seemed to make up for the absence of public consultation. In the context of post-conflict East Timor, where civic education was largely lacking, civic consultation and constitutional dialogue should have been an ongoing process, not just an intensive pre-drafting process.

The 2002 constitution is already outdated in a number of key ways. There has been a reversion to customary courts instead of state courts because the state system is not fully developed in the constitution (for instance, the right to counsel is inadequately defined). Now, many national lawyers believe it would have been valuable to have an interim constitution with a two- or three-year mandate, in order to enable a more deliberative and complete process that would in turn shore up the legitimacy of the permanent text.

## **CAMBODIA**

(Presented by Christie Warren)

International actors were heavily involved in the long-running and slow-moving Cambodian peace process. After almost a decade of intermittent attempts to reach a negotiated settlement, the final peace process began with the UN-sponsored Paris Peace Conference. The Paris Agreements included a ceasefire agreement and a roadmap for political transition under the UN Transitional Authority in Cambodia. The constitution-drafting procedure was conducted within a 90-day period, during which the Constituent Assembly was elected and made responsible for drafting and enacting a permanent constitution, and finally transforming itself into a Parliamentary Assembly.

An annex of the Paris Peace Agreement set forth the Principles for a New Constitution, which included a commitment to create a pluralist liberal democracy with regular elections and a bill of rights. However, the Peace Agreement provided little detail regarding the constitutional process, and nothing on who the drafters would be, beyond an elected Constituent Assembly. The final constitution was rich in civil and political rights, but after decades of conflict, the country lacked the institutional capacity to implement it.

The constitution-drafting process was opaque and non-transparent, conducted by a 12-member committee appointed by the Constituent Assembly and led by the two dominant parties. In the absence of public consultation, the other major blow to legitimacy was ‘draft capture’. While a number of drafts were circulated initially, a draft by the king’s son was subsequently produced. As a consequence, the constitutional debate became both politicized and polarized, reduced to a question of being for or against the king. Under the political conditions of the time, opposition to the king was essentially sacrilegious.

## **EGYPT**

(Presented by Yussef Auf)

Two days after President Mubarak’s ouster, the Supreme Council of Armed Forces (SCAF) appointed an eight-member committee to draft amendments to the 1971 constitution. The Constitutional Declaration (30 March 2011) included a roadmap for presidential and parliamentary elections. Following elections, the constitution of the Arab Republic of Egypt (26 December 2012) was drafted by a 100-member Constituent Assembly in a process that was fraught with disagreement between Islamists and non-Islamists. After a military coup deposed President Morsi and suspended the 2012 constitution, an appointed committee drafted the current January 2014 constitution.



A major point of contention was the sequencing of elections and constitution drafting; holding elections first was seen as destructive to the integrity of the constitutional process, because it meant that the discourse was hijacked by partisan politics. The elections were held first largely because the Muslim Brotherhood saw an opportunity to dominate Parliament, which would elect the Constituent Assembly.

Egypt's post-revolution debate has been about party allegiances rather than the content of the constitution, which makes it likely that the current constitution will have to be amended before long. The 2014 constitution eliminates the Shura Council and substantially increases the scope of presidential powers. Power remains heavily centralized, and procedures for appointing local government are largely undefined.

Despite the nature of the transition, brought about by massive—and repeated—public protests, the constitutional processes were not inclusive. For the current constitution, a ten-member expert committee had one month to draft constitutional amendments before a 50-member drafting committee took over, which had a deadline of two months. The latter committee was perceived as unrepresentative of Islamists. Though each of the three key texts was put to a public referendum, turnout was consistently less than 50 per cent.

In terms of legitimacy, SCAF had huge public support immediately after the revolution; the shared focus on deposing Mubarak created a sense of political unity. But splits emerged just a few weeks later and have continued since then. Many Egyptians are convinced that the constitution-drafting process should have preceded the elections, and holding elections first led to an overly politicized process that failed to address the issues that brought people out onto the streets in the first place. This feeling has led to a greater role for the judiciary; in the post-Mubarak political vacuum, successive governments have failed to meet public demands (e.g., increasing minimum wages and other key economic issues). As a result, people have sought relief from the courts. Further, the inability of political forces to manage their differences has required the involvement of a third party. The major example of this is the dissolution of the first elected Constituent Assembly for the drafting of the 2012 constitution, which was declared by the Administrative Judiciary Court to be unrepresentative of the Egyptian people.

## **Kosovo**

(Presented by Pieter Feith)

At the end of the armed conflict between the Kosovo Liberation Army against Serb security and the Yugoslav Army, UN Security Council Resolution 1244 (11 June 1999) set out a framework for the administration of Kosovo and authorized an international civil and military presence: the UN Interim Administration Mission in Kosovo (UNMIK) and NATO's Kosovo Force (KFOR). This marked the beginning of the transition. Before negotiating Kosovo's legal status, UNMIK focused on institution building to prepare it for self-government, with an emphasis on standards, leadership and civil society. From 2001, Kosovo operated under the UNMIK-enacted Constitutional Framework for Provisional Self-Government.

Negotiations led by UN Special Envoy for Kosovo Martti Ahtisaari concluded that Kosovo would gain supervised independence, having considered and rejected all other options, including returning to Serbian sovereignty or forming a union with Albania. When Kosovo unilaterally declared independence in 2008, it committed to implement the Ahtisaari Plan (rejected by Serbia in 2007), which included the appointment of an International Civilian Representative (ICR). Some of Ahtisaari's key provisions were incorporated into Kosovo's new constitution.

The thrust of the Ahtisaari Plan is the protection of minority rights and maintaining Kosovo as a multi-ethnic state. Three main pillars underpinned these efforts: (1) a strong Constitutional Court, which still has four international judges; (2) decentralization (with the dual aims of responding to best-practice models pursuant to the European Charter of Local Self-Government and providing space for the Serb community to maintain its identity without being able to secede) and (3) affirmative rights for the Serb community (e.g., guaranteed parliamentary seats).

The team of the ICR sought to take a different approach to the high representatives in Bosnia by shifting power to the political elite and the institutions as quickly as possible to help them familiarize themselves with day-to-day governance. The focus on the internal maturing of the political elite was also rooted in the view that many international interventions/presences lose credibility by outstaying their usefulness. Thus at the end of the transitional period all references to the ICR and any transitional measures linked to the international mandate were removed. An important development in relation to legitimacy was the 2010 Advisory Opinion of the International Court of Justice, which found that Kosovo's declaration had not violated international law.

Finally, it is important to note that the whole period of supervision took place in the very specific context of prospective EU membership, which gave Europe and the EU leverage to encourage the political elite to undertake the necessary reforms.

## **LATIN AMERICA**

(Presented by Javier Couso)

Notwithstanding the hugely varied political and economic conditions across these 23 states, the shared path from dictatorship to democracy makes it intelligible to talk in terms of the whole region. Also common to Latin American states is that for the most part, ideological divisions have been more important than ethnic or religious differences. The region faces major challenges to establishing good governance, including corruption, narcotics trafficking and the war on drugs, and controlling police forces and providing accountability, which in turn places a huge burden on the judiciary, as does reviewing the legality of government action.

The Latin American experience problematizes and expands the notion of what constitutes a conflict/'post-conflict' situation; many of the other case studies deal with a discrete type of armed conflict as the cause of the transition. But the war on drugs in Mexico has claimed over 100,000 lives in the past five years, which clearly seems to warrant classification as a conflict. With two exceptions (Nicaragua and Guatemala, both of which are deemed unrepresentative cases), Latin American countries have not used interim constitutions. Yet given the region's repeated states of crisis, it might be

more accurate to say that many of the permanent constitutions have in practice been interim measures.

The emphasis on elections as a means of consolidating democratic rule has in many cases led to a lack of accountability between elections; the rule of law is insufficiently developed to provide for proper accountability. This has started to change, however, in the past 10–15 years. A major development has been the articulation of a liberal constitutional discourse as part of political transition for the first time (e.g., in Bolivia, Venezuela and Ecuador).

The Latin American experience illustrates the distinction between national and international legitimacy, and highlights the fact that the metrics for each are different. Chile provides a useful example. After Pinochet was defeated in a constitutional plebiscite that prevented him from running as president again, he continued to serve as commander in chief of the Army. The constitution drafted under his government remained in place. But the more urgent matter had been Pinochet's removal from executive power, and so the legitimacy of the constitution was protected. Further, the post-Pinochet era has seen reductions in poverty and an increase in GDP, key national indications of good government, and so the need for an entirely new constitution (amendments have been passed) has not arisen until recently. Thus despite having undergone a major transition, Chile found legitimacy in its existing constitution, which was illegitimate in its origin but legitimate in its current exercise. In three other cases, the transition to democracy has taken place without changing the constitution of the dictatorship: Uruguay, Argentina and Peru. In this respect, a distinction can be drawn between the descriptive and normative functions of a constitution.

## **POLAND**

(Presented by Lech Garlicki)

Talks between the Soviet-backed government and the Solidarity opposition movement, mediated by the Catholic Church, led to a power-sharing agreement in Poland. The agreement entailed strong presidential powers, with a more limited role for Parliament. The clearly anti-democratic structure was necessary at the time, given the communist government's fear that it would lose its grip on power. The talks used working groups to negotiate the details of issues such as the economy, social policy and the status of trade unions.

Although the power-sharing arrangement contained in the 1989 April Amendment to the 1952 constitution almost immediately became irrelevant with the fall of the Soviet Union and the ensuing loss of legitimacy for the communist government, the talks paved the way for a smooth transition in 1991. In October 1992, the Small Constitution (a form of interim constitution) was introduced, which removed the power-sharing features of the 1989 April Amendment. It replaced the 1952 constitution, but maintained some of its chapters.

The drafting process for the current 1997 constitution lasted almost eight years. The 56-member drafting committee was comprised of representatives from each of the two parliamentary chambers, and the right to submit drafts was extended to the president and any group of more than 56 MPs. An amendment in 1994 allowed for public

submissions by groups of 500,000 voters. During the transition, the country operated under two constitutional instruments, the first of which modified the 1952 Soviet-sponsored constitution, and the second of which replaced it (retaining some chapters). The interim 'arrangements' were referred to as such, given that they still contained elements of the authoritarian Soviet text. During this period, rights guarantees were mostly left to the courts, which creatively interpreted the rights included in the 1952 constitution and added others. The Constitutional Court stated that it was no longer bound by the original meaning of the 1952 text.

The decision to adopt the constitution by public referendum favoured some populist forces in the sense that the constitutional discourse was limited; politicians avoided mentioning, for example, the EU to avoid angering right-wing elements. In addition, the Catholic Church's capacity to mobilize voters meant that freedom of religion was strongly guaranteed. Finally, the public referendum had a low turnout (43 per cent) and was only just approved, by 53 per cent of voters. However, Poland has not encountered major constitutional legitimacy issues. Participants suggested that the key to the smoothness of the transition was the country's concurrent economic growth and the success of various economic reforms. When a comparison to Hungary—which adopted a regressive constitution in 2011—was offered, the conclusion was that Poland's exposure to similar risk would be the result of politics rather than constitutional architecture.

## **IRAQ**

(Presented by Asanga Welikala)

Following the US-led invasion in 2003, the Coalition Provisional Authority (CPA)—described as a 'quasi-colonial institution'—was set up to run the country. The CPA appointed the Iraqi Governing Council (IGC), which was tasked with drafting an interim constitution, the Transitional Administrative Law (TAL). The transitional period was extremely chaotic; the international actors had incoherent views on how to replace what they had taken away. Further, the process was held hostage to US domestic politics. The urgency of the timeframe was essentially dictated by President Bush's campaign promise that Iraq would have a constitution by the 2006 mid-term elections. The drafting committee was given six months to draft the permanent constitution, and due to internal sectarian divisions (along with continuing insecurity), this ended up being just two weeks. Due to the unrealistic timeline, the final days of the Iraqi process were messy and highly pressured.

For the TAL, the question of content was complicated by the presence of the occupying forces and the role of the law of occupation, and the bearing of relevant UN Security Council Resolutions.<sup>2</sup> Disputes over precisely when the occupation ended gave rise to a legally very complex situation. In the end, elements of the occupation law were incorporated into the UN Security Council Resolution to provide some space vis-à-vis the rights-based limitations imposed by the law of occupation (e.g., on administrative detention).

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<sup>2</sup> UNSC Res. 1511 (16 October 2003); 1500 (14 August 2003); 1490 (3 July 2003); 1483 (22 May 2003).

The Iraqi endeavour entailed a trilateral social contract between three dominant groups—the Kurds, Sunnis and Shia. But there were also further tribal/regional loyalties to account for. The TAL made two major changes. First, it established a parliamentary system of government in a country that had always had either a monarchy or a hyper-presidential system. Second, it transformed a highly centralized unitary state into a federal one, with autonomy for the Kurds. These changes were made in the absence of any proper discussion about federalism. The TAL was also the first Iraqi constitution to introduce Islam, which generated major debates due to differing interpretations of sharia law among the Sunni and Shia communities. Despite major criticisms of the legitimacy of the TAL, it served as the basis for the final constitution.

Participation was extremely limited for the drafting of the interim text. Despite attempts to achieve ethnic and religious representation across this pluralistic society, the IGC was criticized for its lack of independence from occupying forces (all political and social groups that were opposed to the US occupation were necessarily excluded, including independents, anti-US Shia religious leaders and former members of the now-illegal Ba'ath Party) and its heavy reliance on former exiles. Most of the political negotiations that took place in drafting the TAL were carried out by the CPA behind closed doors and did not involve direct negotiations between Iraqi parties.

In the drafting of the final constitution, Sunni boycotts of National Assembly elections led to their underrepresentation in the 55-member Constitutional Committee; partway through the process the IGC added 14 Sunni members, hoping to boost the legitimacy of the process and calm the Sunni insurgency. The final constitution was put to a public referendum. Although 79 per cent of voters approved it, it was rejected by the three Sunni-majority provinces.

While the TAL was perhaps the most coherent constitution Iraq had ever had, it was also considered illegitimate by large swathes of the population, as the drafting committees of neither the interim nor final constitutions were considered representative of the country's ethno-sectarian make-up. The process of writing a constitution for a society that has never been a constitutional state inevitably encounters the problem of legitimacy.

## **AFGHANISTAN**

(Presented by Barnett Rubin)

The transition did not begin with the US invasion in 2001, but rather in 1973 when the monarchy was overthrown and the constitution voided. Having moved from a people's republic to an Islamic state and then an Islamic emirate, it is now an Islamic republic fighting an Islamic emirate. With weak institutional capacity and a central government with very little reach beyond Kabul, a major issue was identifying the existing law (beyond low-level administrative law); the central role of tribal elders in dispute resolution meant that the role of the judiciary was essentially fictional. The post-invasion context—and the overriding counterterrorism function of the intervention— informed decisions about the transitional process. Because the military lacked full territorial control, an interim UN administration was off the table. This backdrop also led to disputes over how much power the commanders on the ground would give up. In more general terms, the Afghan experience led to a view that one should not worry

too much about what is (and is not) ‘interim’, and that international actors should avoid becoming embroiled in mythical narratives about where a country is going.

The purpose of the UN-sponsored 2001 Bonn Conference (comprised mainly of international actors) was to establish an interim constitution, or a roadmap to devise an interim constitution. It created an Interim Administration, the function of which was to convene an Emergency Loya Jirga (‘grand assembly’) to create a representative Transitional Authority within six months, then a Constitutional Loya Jirga and then to hold elections. During the transitional period, the provisions of the 1964 constitution were brought back into force. The question of legal and political continuity was a central part of the debate, i.e., whether a system of government was being established anew or re-established based on previous traditions. Under the final constitution, Islamic law is accorded supra-constitutional status, based on a more robust version of the 1964 provision, thereby weakening the effect of the commitment to the Universal Declaration of Human Rights.

The 2004 constitution has, however, failed to establish a peaceful political settlement. US counter-terrorism policies have meant that the Taliban have been excluded from all negotiations, which has weakened the representative nature of the settlement. While the interim elections were intended to give the Taliban an opportunity to participate, they fled and started fighting again, and consequently were excluded from the drafting process. The Taliban claim the constitution is illegitimate, but have not issued substantive complaints against particular provisions.

Notwithstanding the various problems and challenges identified, and the disputes regarding the most recent elections, the 2004 constitution is the country’s longest running and most successful to date.

## **NEPAL**

(Presented by Purna Man Shakya)

Since the abolition of Nepal’s absolute monarchy in 1959, the country has had six constitutions, all issued by royal decree. The 2007 interim constitution is currently in force. The final constitution will be the first without a royal decree, marking a total break in terms of constitutional history. The drafting process has been ongoing since the election of a 601-member Constituent Assembly in April 2008, tasked with drafting the permanent constitution. Delayed by continued instability and political infighting, the deadline has been extended multiple times. The case of Nepal is repeatedly cited to illustrate the difficulty of imposing meaningful deadlines without derailing the process. The fact that the Constituent Assembly also functions as the legislature is noted as a distraction from the constitutional process; the decision at the time was based on the East Timorese experience.

The interim constitution is very detailed and includes elements of the Comprehensive Peace Agreement as annexes. The rationale for this structure was to ensure that the drafters were bound by the whole package. Federalism and decentralization are key issues. There have been demands to codify federal restructuring and division of power in the constitution to ensure the empowerment of ethnic communities and regions, though the precise number of provinces to be created in the federal set-up remains

disputed, and the interim constitution does not specify exactly what kind of state is to be created.

The elected Constituent Assembly is seen to be inclusive in terms of representing women, tribal populations and southern border peoples. But although both are committed to peace, there remains a deadlock between the Maoists and the ruling parties; the main areas of contention include the devolution of central authority and the number of provinces that will be established. The ruling parties are resistant to changing the current set-up, while the Maoists want to see significant structural reform.

An important concern stems from the experience of the 1990 constitution, which was widely hailed as a very strong text. But it ran into difficulties, and within six years had become deeply unpopular; it was perceived as benefiting the elite while marginalizing indigenous communities.

## **SOMALIA**

(Presented by Adam-Shirwa Jama)

Following decades of civil war, Somalia now has a provisional constitution, but peace has not been achieved, and warlordism continues in the absence of real political parties or substantive civil society presence. Territorial unity is a major challenge in constitution making in Somalia, as is the rise of the al-Qaeda-affiliated al-Shabab. The international community was heavily involved in the 2000–12 constitutional process, both in guiding and financing attempts at inter-warlord reconciliation. The process originally intended to create a permanent constitution, but it was impossible to get all the relevant power brokers to the negotiating table and create a final text that could be endorsed by all of Somalia.

Federalism was seen as the only solution to the factionalization; certain clans control the nation's resources. An agreement between the four main clans and some smaller clans was reached, which is known as the 4.5 power-sharing agreement. One of the problems, however, has been that the provisional constitution does not precisely define the respective competences of the federal government and federal units; nor does it name the territories that are to gain these various degrees of autonomy. These decisions were deferred to future negotiations. Another issue is that Somaliland—which declared its independence in 1991—did not participate in the process. Mogadishu's rationale was that once a semblance of stability was achieved, Somaliland would be brought into discussions.

The provisional constitution did not include all parties, and it did not bring about peace. Even identifying the political power brokers can be challenging in the absence of clear ideological differences. The only clear political force is al-Shabab, which remains outside the process—and indeed, their inclusion might well have precluded any kind of political settlement. On the other hand, it is possible to reach a peace agreement without al-Shabab, because the peace agreement is based on federalism. Al-Shabab are global jihadists; they are not invested in sovereignty. Al-Shabab's role in Somalia complicates the constitutional process, particularly in terms of including all political actors.



The provisional constitution was seen as a way to approximate legitimacy in the absence of a final text. In 2012, the international community declared that the 12-year transition had ended and recognized the Somali government, despite the absence of legitimate institutions, and indeed ongoing conflict.

## **LIBYA**

(Presented by Mohamed Elghannam)

Almost immediately after the revolution, opponents of Gaddafi established the National Transitional Council (NTC) and gained international recognition. The NTC adopted the Draft Constitutional Charter for the Transitional Stage aimed at creating a multiparty democracy, which served as the interim constitution. Under the interim constitution, the NTC appointed a caretaker government and scheduled elections for a new legislative authority, the General National Congress (GNC). The GNC had one month to appoint a Cabinet, and a Constituent Assembly to draft a new constitution. Following protests about the composition of the Constituent Assembly, it was agreed that the 60-member body would have 20 representatives from each of the three regions, with reserved seats for women and ethnic minorities. The interim constitution has been amended seven times to address the continuing delays in the drafting process.

The poorly drafted interim text is one contributing factor to the current crisis. The 37-article constitutional declaration, a roadmap for the transition, was designed to reassure both national and international stakeholders of the NTC's good intentions. It recognized sharia as the main source of law, set out a bill of rights and protections for minority groups, and legalized political parties (which had been banned under Gaddafi). But despite this huge shift in policy, the NTC did not stipulate how to run the state. The text drew on the Middle East/North African regional experience in the shift from authoritarian to power-sharing regimes. But in the absence of any national political parties, a parliamentary system has no foundation upon which to build. Similarly, the assumption that elections are a panacea to political instability has proved deeply problematic. The transitional process has failed to engage with the country's political traditions.

The focus of the NTC—comprised mainly of exiles—was gaining international recognition; this took place at the expense of national legitimacy. The legitimacy problem was compounded by the massively compressed and unrealistic timeframe, which has caused the Parliament to lose legitimacy. The major problem is that Libya now has two rival governments and two rival parliaments, one in Tobruk (the NTC) and one in Benghazi, the Misurata alliance, which is linked to Islamists.

## **SOUTH SUDAN**

(Presented by Sumit Bisarya)

Following the vote to secede from Sudan in the scheduled referendum in 2011, the transitional constitution for South Sudan—an amended version of the 2005 interim constitution for Southern Sudan—was passed. The ruling Sudan People's Liberation Movement (SPLM) party declared the process merely a technical exercise, involving little substantive change beyond replacing Khartoum (the Sudanese capital) with Juba



(the South Sudanese capital). However, the transitional constitution contained more significant changes, including creating a second house of parliament in Juba, significantly expanding presidential powers and removing Arabic as an official language. Under the terms of the transitional constitution, the final version would be drafted by a National Constitutional Review Commission, appointed by the president. The draft is subject to review by the president (twice), a constitutional conference and the national legislature.

The government appointed 23 members to the commission responsible for drafting the transitional constitution: 22 SPLM members and one civil society representative, who boycotted the process. This was later expanded to 57 members; the SPLM retained a constitution-making supermajority, and the opposition left the process. International actors were excluded from the process; it is unclear why there was not more pushback on this.

Importantly, the National Constitutional Review Commission Chairman announced that the Commission's basis for work should be the Transitional Constitution, making changes only where there was consensus among the members. In this way, the provisions of the results of the non-inclusive Interim Constitution process were given extra 'stickiness'.

The SPLM based its legitimacy on the basis of military and parliamentary victories. However, they have significantly exceeded their mandate: (1) in terms of making appointments to the drafting committee, which was intended to be fully representative and (2) in regard to the timeline of the process. The deadline for completing a draft of the final constitution has been repeatedly extended and the process has stalled, following the outbreak of armed conflict as a result of splits in the SPLM.

### ***SOUTH AFRICA<sup>3</sup>***

Following decades of violence and oppression, negotiations on the transition from apartheid to democratic rule were formally opened within the Convention for a Democratic South Africa (CODESA) in December 1991, with a range of political parties plus several Bantustan leaders. Though CODESA collapsed in June 1992, private talks between the ruling National Party (NP) government and the African National Congress (ANC) produced a Record of Understanding, which set a timetable for establishing a democratically elected Constitutional Assembly and agreed on an interim Government of National Unity (GNU) to govern during the final constitution-making process. The five-year GNU included all parties gaining more than 5 per cent of the democratic vote, allowing for a gradual transition to majority rule via a coalition government. This provision assuaged the NP's concerns about its political marginalization as a newly disempowered minority. The ANC and the NP also agreed to reach bilateral consensus on issues before bringing them to the Multi-Party Negotiating Process.

The decision to adopt an interim constitution was a major sticking point in negotiations. The ANC initially opposed the use of an interim constitution, arguing instead for rule by decree during the interim period while a permanent constitution was drafted. The interim constitution was a grudging concession reached during secret talks to break a deadlock in negotiations.

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<sup>3</sup> Added here due to its inherent importance as an exemplary constitutional process that included the provision of an interim constitution.

The Multi-Party Negotiating Process produced the interim constitution in 1993, which as a political settlement was fundamentally a peace agreement. It set forth an agreed set of 34 constitutional principles for the final text, reached through a process of ‘sufficient consensus’ between the NP and ANC. The interim constitution also established a 490-member Constitutional Assembly (comprised of the new bicameral legislature), tasked with producing a permanent constitution within two years.

While the process lacked specific formal mechanisms for public inclusivity, the rolling mass action on the streets during the drafting process—a kind of continuous constitutional conversation—became a stand-in for formal participation. What could not be won at the negotiation table was fought for on the streets. Levels of violence increased and decreased during the drafting process. The interim constitution’s legitimacy depended on it being representative of the dominant political forces. Finally, the role of the Constitutional Court—required to certify the draft permanent constitution’s compliance with the 34 constitutional principles—was an important safeguard mechanism.

## ANNEX II: LIST OF PARTICIPANTS:

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- Youssef Auf – Egyptian Judge and non-resident fellow at the Atlantic Council Rafi Hariri Center for the Middle East
- Christine Bell – Professor of Constitutional Law at Edinburgh Law School
- Sumit Bisarya – Head of Mission and Senior Programme Manager of the Constitution Building Programme at International IDEA
- Markus Bökenförde – Executive Director and Senior Researcher at the Centre for Global Cooperation Research at Duisburg University
- Michele Brandt – Director of the Constitution-Making for Peace Programme at Interpeace
- Elliot Bulmer – Programme Officer of the Constitution Building Programme at International IDEA
- Javier Couso – Professor of Law and Director of the Constitutional Law Programme at Universidad Diego Portales - Chile
- Tom Gerald Daly, Associate Director of the Edinburgh Centre for Constitutional Law at Edinburgh Law School
- Celia Davies – Strategy and Development Manager at Meydan TV
- Hassen Ebrahim – Member of the Mediation Support Standby Team in the Mediation Support Unit of the United Nations Department of Political Affairs
- Mohamed Elghannam – Seconded Appellate Judge from the Egyptian judiciary to the United Nations and Constitutional Advisor for the United Nations Support Mission in Libya (UNSMIL)
- Annette Fath-Lihic – Senior Programme Manager of Electoral Processes at International IDEA
- Pieter Feith, former International Civilian Representative and EU Special Representative to Kosovo
- David Feldmann – Rouse Ball Professor of English Law at the University of Cambridge
- Lech Garlicki, former Judge at the European Court of Human Rights and Vice President of the International Association of Constitutional Law
- Tom Ginsburg, Leo Spitz Professor of International Law at Chicago University
- Jason Gluck – Constitutional Focal Point at the United Nations Department of Political Affairs

- Leena Grover – Swiss National Science Foundation research fellow
- Nicholas Haysom – Special Representative of the Secretary General and Head of the United Nations Assistance Mission in Afghanistan (UNAMA)
- Adam-Shirwa Jama – Legal and Governance Advisor at UNDP- Somalia
- Charmaine Rodrigues - Global Crisis Governance Specialist at UNDP Bureau for Crisis Prevention and Recovery
- Barnett Rubin – Director of the Center on International Cooperation at New York University
- Cheryl Saunders – Laureate Professor at the University of Melbourne and Director of Studies of the public and international law specialisation in the Melbourne Law Masters
- Purna Man Shakya – Senior advocate at Reliance Law Firm - Nepal
- Adérito J. Soares – former Commissioner at the Timor-Leste Anti-Corruption Commission and PhD candidate at the Australian National University
- Dejan Stjepanovic - Post-Doctoral Fellow at University College Dublin
- Silvia Suteu – Doctoral candidate at the University of Edinburgh and Associate Director for Research Engagement at the Edinburgh Centre for Constitutional Law
- Stephen Tierney – Professor of Constitutional Theory and Director of the Edinburgh Centre for Constitutional Law
- Christie S. Warren – Professor of the Practice of International and Comparative Law and Director of the Comparative Legal Studies and Post-Conflict Peacebuilding Program at William and Mary Law School
- Asanga Welikala - ESRC Teaching Fellow in Public Law at the School of Law, University of Edinburgh, and Associate Director of the Edinburgh Centre for Constitutional Law
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