



Working Session on ‘Constitution Building and Revision Processes in Transitional, Fragile, Post-Conflict and Conflict Environments’.

Dakar, 20-21 November 2017.

Concept Note

I- Background.

a- As part of its Technical Assistance Programme to Constitution-Building/Revision Processes and Respect of Constitutionalism and Rule of Law in African Countries, **International IDEA is organizing in Dakar, from 20 to 21 November 2017, a Working Session on ‘Constitution Building and Revision Processes in Transitional, Fragile, Post-Conflict and Conflict Environments’.**

II- The Problem.

b- Some form of constitutional reforms has often accompanied regime changes in African states. This is particularly true in countries emerging from conflict or violent regime change (e.g. Somalia, South Sudan, and Burkina Faso). It is also true in countries that have witnessed changes of government through elections (e.g. The Gambia). Constitution reform efforts may also follow peace agreements (e.g. Mali) or political crisis (e.g. Guinea Bissau). Considering their critical importance in setting the terms of ascension to, exercise of and constraints on power, and the (re)distribution of resources, constitution-making processes are contested and should ideally be conducted under serene circumstances allowing for robust debate and public engagement. In reality, the exigency of constitution-making is felt more in crisis and conflict situations. In particular, transitional, fragile and conflict-affected countries must juggle the seemingly intractable task of (re) defining and/or (re)establishing the social contract between power and citizens, trust in institutions, stabilizing the nation, revitalizing the economy and infrastructure, and (re)launching basic public services and state institutions. Simultaneously, such states also embark on debating, drafting and endorsing a new constitutional framework. The need and desire to pursue in parallel these complex and intersecting tasks competing for time, resources and attention makes constitution-building in fragile and conflict-affected states uniquely demanding.

c- Constitution-making processes in transitional, fragile and conflict-affected states are integral to the overall political settlement process and interact with peace negotiations/agreements and transitional political arrangements, sometimes defined in interim/provisional constitutions, in complex ways¹. Rather than setting the country to a peaceful course, delays in or disagreements over the proposed constitutional framework may strain interim arrangements and undermine consensus necessary for conducting day-to-day governance, or vice-versa, potentially triggering or exacerbating political instability and even violence. Such states must also interact with a wide range of international actors, often with competing interests.²

¹ Christine Bell and Kimana Zulueta-Fülscher, ‘Sequencing peace agreements and constitutions in the political settlement process’, (International IDEA, 2016).

² International IDEA, Constitution building after conflict: External support to a sovereign process’ (International IDEA 2011).



d- Constitutions are often expected to lay the foundation for a democratic system of governance based on principles of the rule of law, fundamental rights and constitutionalism. Nevertheless, they cannot on their own lead to democratization or constitutionalism, particularly in circumstances where a country has had no or limited heritage of democratic constitutionalism and institutional infrastructure to draw on. *Constitution-building*, referring broadly to ‘the process whereby a political entity commits itself to the establishment and observance of a system of values and government’,³ is an ongoing project that precedes and continues long after the finalization of the actual *constitution-making* process, which focuses on the drafting and adoption of a constitution. Specifically, constitution-building includes the implementation of constitutions, and the emergence, stabilization and sustained consolidation of a culture of constitutionalism and the rule of law, both among the public and crucially among socio-political elites. In particular, the issue of implementation raises unique challenges and a number of recent constitutions have included detailed provisions outlining mechanisms for the operationalization of constitutional imperatives.

e- In spite of the critical importance of constitution-building and revision processes in laying the foundation for sustainable democracy, the level of support from democracy assistance providers for technical assistance to constitutional reform efforts in countries embarking on these processes in Africa has been minimal at best. It is to fill this gap that **International IDEA is organizing in Dakar, from 20 to 21 November 2017, a Working Session on ‘Constitution Building and Revision Processes in Transitional, Fragile, Post-Conflict and Conflict Environments’**. In organizing this Working Session, International IDEA will draw on years of accumulated first-hand knowledge and expertise in providing support to constitutional design and reform processes worldwide.

III- Objectives of the Meeting.

f- The Dakar Working Session on ‘Constitution Building and Revision Processes in Transitional, Fragile, Post-Conflict and Conflict Environments’ will target three countries: The Gambia, Mali and South Sudan. The objectives of the Working Session will be to:

- Take stock of the constitutional-building/revision processes in the targeted countries;
- Discuss and share the experiences among relevant stakeholders of constitution-building/revision processes in targeted countries on common critical challenges and opportunities such as the timing of constitution-building/revision; modalities of constitution-building/revision; constitution-building/revision and state restructuring; constitution building-revision and peace agreements; ensuring broad support and legitimacy for the constitution-building process;
- Identify areas where International IDEA could provide technical assistance to the constitution-building/revision processes of the targeted countries.

IV- Expected Results

g- The Dakar Working Session should contribute to a better understanding of the challenges and opportunities of the constitution-building/revision processes in the targeted countries. The knowledge sharing and the exchange of ideas about the specific situation and contexts in different countries will

³ Yash Ghai and Guidi Galli, ‘Constitution building processes and democratization’, (International IDEA, 2006).



contribute to a better, nuanced assessment of the overall situation, and will allow the participants to define a plan that could serve as the basis for future collaboration with International IDEA. A Report will capture the principal outcomes of the working session.

V- Participation

h- The Dakar Focus Group will bring together close to 25 participants including:

- The officials in charge of Constitution-Building/Revisions processes in targeted countries;
- Representatives of Political Parties;
- Representative of AUC and Regional Organisations;
- Experts.

VI- Format and working languages

i- The working session will be conducted through interactive panels. The working languages will be French and English. Simultaneous Translation will be provided.