

Constitution-making

The constitution-making process usually includes the following elements:

- **High-level negotiation between key constituencies leading to an agreement on how constitution-making is to proceed** (establishing a structure and blueprint for the process, including who will be involved in preparing a draft, how they will be selected, how consensus will be built, how the constitution will be adopted, what the timeline will be, and how disputes will be resolved).
- **Establishment of a representative body** (e.g. constitutional commission) to lead public education and consultation campaigns, and to prepare a draft of the Constitution.
- **Establishment of a secretariat or other body to support**

Quick Facts:

The UN provided technical advice in the preparation of the state constitutions to ensure compatibility with the INC. The UN also furnished guidance in the interpretation of constitutional provisions and monitoring of compliance, as well as support in education and awareness-raising on the Constitution.

the mandate of the constitutional bodies, in particular with the logistics involved in carrying out public education and consultation campaigns.

- **A public information and civic education campaign** on the constitution-making process, and the role and

implications of the draft constitution.

- **A public consultation process** led by the drafting body to gather views and ensure input of the public on the draft constitution.
- **Submission of the draft constitution to a representative forum** (e.g. constituent assembly, constitutional convention, parliament) to debate it and make any amendments.
- **Final adoption procedures** (e.g., qualified majority in the representative forum, referendum).
- **Post constitution-making education on the newly adopted constitution and development of a strategy for its implementation.**

THE INTERIM NATIONAL CONSTITUTION OF THE REPUBLIC OF THE SUDAN, 2005

Article 4 of the Interim National Constitution provides that the constitution “is predicated upon and guided by the following principles:

- (a) the unity of the Sudan is based on the free will of its people, supremacy of the rule of law, decentralized democratic governance, accountability, equality, respect and justice,*
- (b) religions, beliefs, traditions and customs are the source of moral strength and inspiration for the Sudanese people,*
- (c) the cultural and social diversity of the Sudanese people is the foundation of national cohesion and shall not be used for causing division,*
- (d) the authority and powers of government emanate from the sovereign will of the people exercised by them through referenda and in free, direct and periodic elections conducted through universal adult suffrage, using secret ballot.”*





At various stages throughout this process national authorities may choose to engage international assistance, both in terms of the process and on substantive constitutional law.

UN Support to Constitution-making

The kind of assistance the UN provides is not limited to high-level political facilitation or technical legal expertise, and includes political and strategic, legal and human rights, capacity building and institution development, and financial, logistic and administrative support. The UN's engagement in constitution-making is guided by the following principles:

1. Seize the opportunity for peace building

The UN gives priority attention to situations in which its assistance will likely strengthen the rule of law and democratic institutions and practices.

2. Encourage compliance with international standards

The UN advocates the standards it has helped to develop. In particular, the Organization addresses the rights that have been established under international law for groups that may be subjected to marginalization and discrimination in the country, including women, children, minorities, indigenous peoples, refugees, and stateless and displaced persons.

3. Ensure national ownership

Constitution-making is a sovereign national process, and to be successful, the process must be nationally owned and led. National ownership should include official actors, political parties, civil society and the general public. Any assistance provided by the UN will need to stem from national and transitional authorities' requests.

4. Support inclusivity, participation and transparency

Inclusive and participatory processes are more likely to engender consensus around a constitutional framework agreeable to all. The UN must encourage outreach to all groups in society, and support public education and consultation campaigns.

5. Mobilize and coordinate a wide range of expertise

Best practice can contribute to expanding national actors' knowledge of options and help them explore solutions that are technically sound and likely conducive to long-term stability. While national authorities should play the main coordination role, the UN encourages partnerships with national and international actors, regional organizations and other expert networks.

6. Promote adequate follow-up

Follow-up can include outreach and education on the adopted constitution, development of subsidiary legislation, and the full range of capacity building and institutional development. Where adequate implementation of new constitutional provisions is lacking, it can undermine the achievements of the constitution-making process.