

Preface

By Scott M. Weber

Improving the process of constitution-making and constitutional assistance is critical to peacebuilding efforts in the twenty-first century. We live in an era of constitution-making; more than half of the nearly two hundred national constitutions in existence have been either reformed or written in the last thirty years. Some twenty constitutional reforms or new constitutions are adopted each year, many as part of a peacebuilding process in a war-torn country or as a result of economic or social crises. Establishing the constitutional foundation in these cases is not business as usual. Conflicts over resources, rights, powers, identities, and past injustices are endemic, and mistrust runs deep. Every point of tension is potentially explosive, political, and urgent. Because of this urgency, the tendency—in particular within the international community—can be to focus on putting a constitution in place quickly as a way to reorder society and further the political transition. This is a common peacebuilding problem—a tendency to focus on the *what* rather than the *how*. However, it is precisely in such contexts that the constitution should develop through a *process* that encourages a durable consensus and allows democratic processes, principles, and values to take root.

There has been a critical dearth of practical guidance for national constitution-makers, their advisors, and the international community about how to design and implement a constitution-making process that supports a durable peace. Interpeace launched its constitution-making program, “Constitution-making for Peace,” to fill this gap because the *how* of making a constitution in today’s world is as important as the resulting content. Interpeace’s approach to building lasting peace is to reinforce the capacities of societies to overcome deep divisions and to address conflict in nonviolent ways.

This handbook has been prepared as a first step in providing critically needed guidance. It builds on the peacebuilding principles that underpin and guide Interpeace’s mission and work.

A peacebuilding process must be locally owned and led

Local ownership begins by ensuring that priorities are determined locally. It is crucial that time, space, and processes exist to promote dialogue that can lead to a consensus-based constitution. In a peacebuilding process, if local actors participate in defining the problem they are more likely to take ownership of the solutions. Similarly, if people feel a sense of ownership of the constitution they are more likely to protect it and exercise their duties under the new constitutional order. A constitution—like peace—cannot be imposed from outside.

All parties must be included in the process

When all relevant groups in society are involved in the dialogue and the priority-setting process is ensured, actors from each social group are instilled with a sense of responsibility for the rebuilding and reconciliation process. Our experience has shown that the exclusion or

marginalization of certain actors breeds resentment and sows the seeds for renewed violence. A constitution-making process can be one of the defining moments in a country in which, if key actors are excluded, the peace is more likely to collapse.

The heart of the challenge is building trust

Trust cannot be imposed, imported, or bought. It emerges slowly and sometimes reluctantly and is built through collective engagement on issues large and small, and through a consistent, daily commitment to and application of a common vision. Building trust is at the heart of peacebuilding, and it is the most difficult outcome to achieve. More than the revitalization of infrastructure or the presence of government, trust is the glue that keeps society together in intangible but crucial ways. It gives institutions their legitimacy and helps individuals and groups remain engaged on the long path toward lasting peace. Constitution-making, if it is to be a participatory and deliberative process, must be designed to allow for time to build trust.

Peacebuilding is a long-term commitment

There are no shortcuts. Recognizing that the process of overcoming mistrust and deep divisions can be a difficult one, we must empower local actors to establish independent institutions, which can continue to address root causes of conflict and promote peace over the long term. Through its constitution-making program, Interpeace is committed not only to improving the process of making a constitution, but also to implementing the constitution so that conflict is resolved by constitutional means.

For a constitution to be credible and durable, the voices of people from across society must be heard and incorporated in its creation. After all, a constitution should be a document that unites rather than divides. It is therefore vital that those designing, implementing, and supporting a process of constitution-making do not become so focused on arriving quickly at the destination that they overlook the importance of the journey. Bringing people together, building trust, and developing shared ownership takes time, but it is always time well spent.

This handbook does not propose a universal template—no single approach is applicable to all contexts. It is designed to provide a wide range of options for each phase of the constitution-making process, from deciding whether such a process is needed to choosing the type of body to lead the process, as well as how to implement the constitution. The handbook is also intended to be a planning tool that provides an overview of the variety of tasks and institutions that may be required.

Just as constitution-making should be viewed in terms of the process rather than simply the result, so too the creation of this handbook is an ongoing process. As we generate new expertise and lessons learned we will integrate them into the online version of this handbook or add additional guidance papers. The website can be found at www.interpeace.org/constitutionmaking. This will ensure that—like the best constitutions—it is a living document that will be relevant across the years. Other guidance materials on constitution-making can also be found at this site.

This handbook could not have been written without the wisdom, keen intellect, and unwavering commitment of the authors—Michele Brandt, Jill Cottrell, Yash Ghai, and Anthony Regan. They have drawn upon their scholarship and extensive practical experience not only to produce this handbook but also to provide valuable advice and support to Interpeace’s Constitution-making for Peace program. Creating a handbook that would cover the range of issues and dilemmas that may confront today’s constitution-makers was a pioneering and daunting task; we are grateful that the authors remained committed to meeting the challenge. Yash Ghai, in particular, has spent the last four decades both leading and advising constitution-making processes all over the world. His breadth of knowledge in this field is unprecedented. We are honored and grateful for his role as Senior Advisor to the Constitution-making for Peace program and the production of this handbook. We also owe a considerable debt of gratitude to Jill Cottrell for her extensive contributions and advice as the program progressed, as well as her devotion to editing and continually improving the handbook. Special thanks also go to Anthony Regan, who gave so freely of his time not only to the conception and development of Interpeace’s Constitution-making for Peace program but also for his contributions to, and extensive editing of, the handbook. Finally, we wish especially to thank Michele Brandt, who launched and directs the Constitution-making for Peace program. Her passionate and persistent efforts have driven the process of bringing this handbook to life and addressing this key peacebuilding gap. We are also grateful for her editing efforts to finalize the handbook.

We partnered with International IDEA, the United States Institute of Peace (USIP) and Princeton’s Bobst Center for Peace and Justice to organize several international dialogues with practitioners that explored constitution-making issues. The handbook has benefited from these partnerships and the considerable research and input from dozens of practitioners and academics from every region, particularly the global south.

We also wish to express our appreciation to Jane Lincoln Taylor and Rhonda Gibbes, who carefully copyedited the handbook as it progressed, and E. Ashley Fox-Jensen for the design of the handbook.

Finally, we are grateful to the donor governments of Australia, Denmark, the Netherlands, and Switzerland, and to the Canadian International Development Research Centre, which supported this pioneering effort. Thanks also go to the State, Society, and Governance in Melanesia Program at the Australian National University for the time it granted to allow Anthony Regan to contribute not only to the book but to launching our program, and to the law firm Cleary Gottlieb Steen & Hamilton LLB in New York, and to its senior partner Jeffrey Lewis, for their special contribution of staff time to help compile vast amounts of research for this handbook.

A handwritten signature in black ink, appearing to read "Scott M. Weber". The signature is fluid and cursive, with a long horizontal stroke at the end.

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