Helpdesk Research Report: Constitutions and minorities
Date: 9/5/08

Query: Please provide resources on effective inclusion of minority groups in constitution writing processes. We are particularly interested in examples from countries with large numbers of minority populations.

Enquirer: DFID Nepal

Contents
  1. Overview
  2. Resources

1. Overview

Whilst there is a large body of literature that focuses generally on participation in constitution-making processes and handling diversity of opinion, no resources were found that exclusively discussed effective inclusion of minority groups. However, practical recommendations for promoting the inclusion of minority groups include the following:
  - Create an independent commission to handle the constitution-writing process;
  - Encourage civic education;
  - Provide multiple forums for debate;
  - Take practicalities into consideration e.g. location of venues, security for vulnerable groups;
  - Produce materials in local languages;
  - Be aware of illiteracy and use alternative methods where necessary; and
  - Involve and use the media for awareness raising

Other interesting key findings from the resources listed below are:
  - Widespread participation in constitution-writing presents dangers as well as opportunities.
  - Increased participation does not necessarily lead to greater constitutional legitimacy or longevity.
  - Increased participation in constitution-writing does not necessarily reduce the likelihood of conflict.
  - Even in situations where widespread participation has been undertaken, this can be undermined by political elites subverting the process.

2. Resources

Section IV of this publication covers participation and discusses the inclusion of multiple groups in constitution-making processes. The authors emphasise that there are numerous diverse interest groups in any and every context where a constitution is being written, for example, women, disabled people, youth, forest people, pastoralists, peasants, lawyers, doctors etc. There is no such thing as ‘the people’ whatever the context, and each group has clear personal interests. Groups that are well funded or highly organised are likely to do better in negotiations than other groups. However, the authors state that constitutions can play a role in overcoming difference and creating a national ideology. Still, there are dangers in promoting widespread participation across different interest groups in constitution making:

- Expectations are raised which are subsequently not satisfied;
- Culture is emphasised, leading to a focus on the past and a disconnect with current realities;
- Constitutions are more complex and ambitious as a result and the government is unable or unwilling to fulfil them;
- Reaching a consensus is harder the more groups are involved; and
- It can result in the involvement of people who do not have suitable technical expertise.

The authors demonstrate how some of the most ‘successful’ constitutions are the ones that have been the least participatory, and vice versa, for example in Thailand. “Perhaps when a consensus does emerge it is more legitimate and lasting than bargains among elites. On the other hand, a product emerging from a process that politicians cannot control is likely to be greatly resisted and in due course emasculated, and only selectively enforced” (p.15). Finally, the less democratically developed the state, the greater the need for direct participation as political parties are likely to be less mass-based and there will be fewer intermediary bodies to facilitate the process. The report suggests the following are important when engaging multiple groups in constitution writing:

- Use an independent commission to facilitate the participation;
- Engage in consciousness raising and civic education;
- Emphasise people as decision-makers rather than just people being ‘consulted’;
- Use methods that allow for continuous, rather than just one-off, engagement;
- Ensure that public views are submitted in narrative form rather than as technical recommendations; and
- Make the process as transparent as possible.


This short conference paper highlights that civil society groups and constitutional commissions are becoming more involved in representing the interests of diverse groups in constitution making processes, whereas political parties would have previously taken on that role. Participation can be encouraged via civic education, the provision of facilities for debate (including providing materials in multiple local languages) and the provision of physical security for participation. There is a relevant section on page 9 that discusses ‘Handling diversity of views and recommendations’. Two suggestions are made:

- Develop a mechanism to analyse, co-ordinate and harmonise recommendations submitted by individuals, groups and communities. This should be a competent and impartial body like an independent commission.
- Create a ‘deadlock-breaking mechanism’, for example a special committee of the decision making body.

- Bobst Center for Peace and Justice, 2007, ‘Proceedings from the Workshop on Constitution Building Processes’ held at Princeton University, May 17th-20th, Bobst
This report contains much material that is relevant to your query and uses examples from all over the world. As it reports the proceedings of a workshop, a variety of perspectives are presented on various issues, and a clear consensus view is not always given. There is also an emphasis on post-conflict constitution writing processes and Nepal features as a frequent example. The report includes a section on ‘cultural pluralism’ on p. 12 which notes that ethnic, religious or cultural fragmentation may shape the kinds of procedures used to develop the constitution, although no specific details are given. However, it is emphasised that constitutional development can be used as a method to foster debate and manage conflict. ‘Inclusiveness’ is addressed from p. 29 onwards. This section emphasises the difficulty of constitutional inclusiveness in a conflict environment, and raises transitional justice concerns. Many practical considerations that relate to this query are discussed throughout the paper, for example, creating spaces for debate, handling the media, different strategies for handling contentious issues, managing meetings, travel and choice of venues.


This case study considers Kenya’s highly participatory attempts to reform the constitution. The process was intended to be complete by 2002, but has still not concluded. It includes a section on ‘Participation in Action’ from page 10 onwards which discusses some of the practicalities of participation and particularly how to engage minorities and excluded groups through, for example, civic education, translation of materials, special groups for minorities, working through the media and holding workshops. After the process, the Commission received over 37,000 submissions, although the authors note that there was still low public expectation of change. Ultimately the article argues that constitution-making is highly political and in Kenya the views of civil society were frustrated by the vested interests of government.


These short guidelines include examples from various countries including Rwanda and South Africa. The report states that participation can be frustrated by political elites, as in Zimbabwe. “Genuine public participation requires social inclusion, personal security, and freedom of speech and assembly. A strong civil society, civic education and good channels of communication between all levels of society facilitate this process” (see summary section). Other findings relevant to your query are:

- Participation requires considerable time and resources;
- Modes of participation vary widely (the report offers some alternatives); and
- Literacy and language are major barriers that have led to the exclusion of minority groups in the past.


This case study research project tests the assumption that greater participation leads to greater legitimacy of the constitution amongst the population. Focusing on Uganda’s constitution-making process in 1995, Moehler’s research finds that those involved in the process were no more supportive of the constitution than those who did not participate. Instead, the article argues that local political leaders, rather than participatory methods, are instrumental in causing citizens to view the constitution as either legitimate or illegitimate, as citizens rely on political elites for information and opinions.

General good practice guidelines on constitution-writing emphasise consultation and inclusiveness, generally assuming that increased participation leads to reduced likelihood of conflict. This research attempts to empirically assess the impact of constitution-writing processes on levels of violence. A key finding is that “differences in the degree of participation in the drafting of constitutions has no major effect on post-ratification levels of violence in some parts of the world, such as Europe, but does make a difference in Africa, the Americas and the Pacific together”. Possible reasons given for increased participation not automatically reducing the risk of conflict are that it can slow the process down and delays can cause frustration amongst citizens. Also, it can lead to concerns about favouritism being shown to certain groups.

******

Authors and contributors

This query response was prepared by Zoë Scott zoe@gsdrc.org
Contributors were: Ben Reilly (Australian National University), Jennifer Widner (Princeton University), Goran Hyden (University of Florida), Donald Curtis (IDD, University of Birmingham), Andrew Nickson (IDD, University of Birmingham).

Several other experts were contacted but were unable to contribute in the time allowed to compile this query response.

Websites visited


Need help finding consultants?
If you need to commission more in-depth research, or need help finding and contracting consultants for additional work, please contact consultants@gsdrc.org (further details at www.gsdrc.org/go.cfm?path=/go/helpdesk/find-a-consultant&)