



Constitution Brief

February 2020

About the author

Cheryl Saunders is a Laureate Professor Emeritus and member of the Constitution Transformation Network at the University of Melbourne, a Senior Technical Advisor to the Constitution-Building Programme at International IDEA and a President Emeritus of the International Association of Constitutional Law. She has held visiting positions in law schools in many parts of the world and is an officer of the Order of Australia and a Chevalier dans l'Ordre National de la Legion d'Honneur of France.

About MyConstitution

The MyConstitution project works towards a home-grown and well-informed constitutional culture as an integral part of democratic transition and sustainable peace in Myanmar. Based on demand by Myanmar stakeholders, expert advisory services are provided to those involved in constitution-building efforts. This series of Constitution Briefs is produced as part of this effort.

The MyConstitution project also provides opportunities for learning and dialogue on relevant constitutional issues based on the history of Myanmar and comparative experience.

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide.

Constitutions and International Law

Cheryl Saunders

Introduction

This Constitution Brief was written initially for use in Myanmar, and it explains the nature of international law and explores how it relates to constitution-making. It then addresses four primary questions about international law that are raised when a constitution is being drafted or substantially changed:

- Should a constitution mention the relationship between international law and domestic law in the domestic legal system? If so, what are the options?
- Should a constitution specify how the state enters into binding commitments under international law?
- What are the implications, if any, of international law for the substance of a constitution?
- What are the implications, if any, of international law for the process of constitution-making?

1. What is international law?

International law is the body of law that applies largely between states, and between states and international institutions (Crawford 2014: 20). International law is typically binding, requiring compliance from those who are subject to it. Some international-level principles and standards are not formally binding and therefore represent a form of 'soft' law. These are also significant, not only as values that are widely acknowledged around the world but as standards that might be indirectly enforced through, for example, the disapproval of other states or as conditions for development assistance.

Binding international law

Binding international law takes two primary forms: international treaties and customary law.

International treaties

States may be party to bilateral and multilateral international treaties. For instance, Myanmar is a party to several multilateral treaties or conventions including the United Nations Charter; the Convention on the Elimination

of all Forms of Discrimination against Women (CEDAW); the International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child and its Optional Protocols; the Convention on the Rights of Persons with Disabilities; the Genocide Convention; and around 24 International Labour Organization conventions, including CO87, which deals with the Freedom of Association and the Protection of the Right to Organise.¹ Bilateral treaties include investment treaties between Myanmar and other individual states such as Japan.

Customary international law

This type of law is formed by general state practice accepted as law (Statute of the International Court of Justice, article 38(1)). Unlike treaties, states are bound by customary international law without actively opting in. As the definition suggests, customary law is formed by a combination of widespread state practice and a general belief among states that the practice is binding.

Treaty law and customary international law may overlap. Where this occurs, states may be bound by international law even if they are not subject to the treaty. The prohibition against torture is an example. Torture is the subject of an international convention (the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment), but is also contrary to customary international law (General Comment 2). In addition, because of the importance of the prohibition against torture, it is part of a special category of customary international law known as *ius cogens*, which prohibits derogation from the rule, even by entering into a treaty that purports to allow it.

Non-binding international law

Some principles and standards of international law may not be formally binding, because of the form they take or the general terms in which they are expressed. The Universal Declaration of Human Rights (UDHR) is a high-profile example. It is a declaration rather than a treaty. It might have attained the status of customary international law, but this is by no means clear (Hannum 1996). The UDHR is nevertheless highly important as ‘the primary source of global human rights standards’ (Hannum 1996: 290). Non-binding principles of international law also can be found in a host of other areas, such as the environment, sustainable development and international economic law. They may take a variety of forms, including resolutions of international organizations, recommendations of international conferences or interpretations of international instruments by the relevant monitoring bodies (Thurer 2009).

Enforcement of international law

Because there is no single ‘sovereign’ in the international sphere, the enforcement of international law differs from the enforcement of domestic law, even when it is formally binding. Like any legal system, international law relies to a very considerable extent on recognition that voluntary compliance is in everyone’s interest. Like any legal system, however, mechanisms are necessary to deal with situations in which voluntary compliance fails (Shany 2017).

In the case of international law, there are courts and tribunals to deal with claims of breaches, but their compulsory jurisdiction is limited by subject matter, by states parties or both. For example, only around 70 states accept

¹ For further references on treaties Myanmar may be a party to, please see the United Nations Treaty Body Database, <https://tbinetnet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN> and Myanmar’s country page on the International Labour Organization’s website, <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103159>.

the International Court of Justice's jurisdiction as compulsory, although disputes also may come before the court by agreement or under particular treaties (International Court of Justice 2019). Even once a decision is made, questions may arise about how to ensure compliance if the parties do not voluntarily obey the ruling. The Security Council has some authority for this purpose (UN Charter article 94(2)). Alternatively, other international institutions, or individual states, or groups of states, may take punitive action to encourage compliance. If no international court or tribunal has jurisdiction, domestic courts sometimes deal with complaints about breaches of international law if they fall within the sources of law that they can apply.

Some international legal regimes have their own built-in mechanisms to attempt to ensure compliance with international rules (Shany 2017). World Trade Organization dispute settlement procedures, for example, may authorize the suspension of concessions against a non-compliant state. Some regimes, including CEDAW, have 'optional protocols' to which states can become parties, which allow individuals to submit 'communications' about breaches of the convention to an international committee after domestic remedies have been exhausted. Conventions like CEDAW also require states to report regularly on compliance with the convention, and thus use transparency and potential shaming to encourage states to give it effect.

Soft law by definition is not formally enforceable. Informally, however, a range of mechanisms can be used to give principles and standards effect, ranging from UN General Assembly resolutions to economic and other pressures by individual states or groups of states (Shany 2017).

2. How is international law relevant to constitution-making?

Constitutions are usually the highest source of domestic law within a state. All other state laws and actions are required to comply with the constitution. Constitutions also can be a powerful symbol of the state, identifying shared values as a source of unity. These qualities have implications for how constitutions are made, and for what they contain. Constitutions are made through a process that distinguishes them from ordinary law and justifies the claim that they draw authority from the people. They also address some of the most fundamental issues related to a state's structure, including relations between state institutions; the rights of people vis-à-vis the state; and the powers and responsibilities of different levels of government.

Historically, constitutions have paid more attention to the internal (domestic) exercise of state sovereignty than its external exercise (how the state interacts with other states). As international law and international relations are becoming increasingly significant for all states, however, constitutions are beginning to deal with these issues as well. Many constitutions specify the status of international law in domestic law. Many also touch on the related issue of how the state enters into international legal commitments. During the course of constitution-making, it is common to consider whether any of the state's international legal commitments should be detailed in the constitution. It may also be the case that international legal norms should be considered in designing and implementing the process of constitution-making.

The aspects of the relationship between international and domestic law are examined in greater detail below. The Constitution Brief draws primarily on comparative examples found in member countries from the ASEAN, in which Myanmar is closely associated. Within ASEAN

countries, as elsewhere in the world, there is considerable diversity in how constitutions deal with international law.

3. Relationship between international and domestic law in domestic legal systems

Countries fall into two broad categories based on the relationship between international and domestic law (Feldman 1999):

- In *monist* countries, international law automatically takes effect in domestic law.
- In *dualist* countries such as Myanmar, international law must be implemented by domestic law before it is given domestic effect.

This classification does not concern states' liability in international law, but merely the way in which international legal obligations are carried out within states. There are several variations within the two broad categories:

- Even where dualism generally applies, customary international law or particular rules of customary international law may have direct effect in domestic law.
- Even where monism generally applies, some treaties may be too general or vague to be given direct effect in domestic law; in other words, they are not 'self-executing'.
- In monist states, there is a further question about the position of international law in the hierarchy of legal sources. In some states at least some international law has constitutional status (typically, human rights treaties). In some states international law has the same status as ordinary legislation. In some states international law may be above legislation but below the constitution or below legislation (i.e. a statute can override it for domestic purposes).
- Some countries distinguish between different kinds of treaties, for example by accepting the direct effect of human rights treaties, but not others.
- Some countries accept the direct effect of treaties on the condition that other countries with which they are dealing do the same.
- Whether a country is primarily monist or dualist, courts will often consider international law when interpreting domestic law—sometimes including the constitution.

Constitutions do not always stipulate the status of international law in domestic law. Where they do not (as in Myanmar), the answer must be found in legal or political tradition, judicial decisions or political practice. In practice, Myanmar is a dualist state, requiring legislation to implement its international obligations before they are given domestic legal effect.

Other countries' constitutions handle the status of international law differently:

- Singapore's constitution does not refer to the status of international law in domestic law. In practice, however, treaties in Singapore do not have direct legal effect unless they are incorporated into domestic law through Singapore legislation (*Yong Vui Kong* 2015).
- In the Philippines, article II sec 2 of the constitution gives customary international law direct effect. Article VII sec 21 requires at least two-thirds of the Senate to concur in order for a treaty to be 'valid and effective'—that is, to take direct effect in domestic law.

- Section 232 of South Africa's constitution gives customary international law binding effect in domestic law, unless it is inconsistent with the constitution or an Act of Parliament. Under section 231, self-executing provisions of treaties that have been approved by Parliament also take effect as law unless they are inconsistent with the constitution or a statute. Section 233 requires the courts to prefer any 'reasonable' interpretation of legislation that is consistent with international law over any other interpretation that would be inconsistent with international law. Section 39 also requires courts to consider international law when interpreting the constitutional Bill of Rights.

4. How states enter into binding legal commitments under international law

One important function of government is to conduct relations with other states on behalf of the country as a whole. These functions include entering into and, sometimes, withdrawing from international treaties. Some treaties also commit a country to participating in regional arrangements, such as ASEAN.

Most modern constitutions provide procedures for treaty-making on behalf of the country as a whole. Some also limit what can be done by treaty without changing the constitution. Some Constitutions provide for parliamentary scrutiny of international relations or for consultation with constitutive units, states and regions in the case of Myanmar, before entering into treaties that would affect these units' responsibilities.

The executive branch of government always has a leading role in conducting international relations. Parliaments are also often involved in treaty-making and related issues. Some constitutions distinguish between different types of treaties for this purpose, providing for the involvement of parliament for more important treaties, or when treaties require altering domestic law.

There is a rough correlation between the involvement of the legislature in entering into treaties and the status of treaties in domestic law, driven by considerations of the separation of powers:

- In monist states, where self-executing treaties have direct effect in domestic law, the legislature is usually involved in some way at the point at which the state makes its commitment to the treaty in international law.
- In dualist states, where the legislature must implement a treaty before it has domestic effect, the legislature is less likely to be involved at the point when the state commits to the treaty. This is not always the case, however. Even in dualist states, the constitution sometimes provides for legislative involvement in decisions to commit the state to at least some treaties, to ensure greater democratic accountability and transparency for decisions of this kind.

Myanmar is presently a dualist state in which its constitution requires some legislative involvement in entering into treaties, at least in principle. Article 209 of the constitution gives the president authority to enter into treaties on behalf of the country as a whole. Article 209 assumes that some treaties require the approval of the Pyidaungsu Hluttaw (Assembly of the Union). Article 108, however, allows the Pyidaungsu Hluttaw to confer authority on the president to deal with treaties without its approval.

Elsewhere, there is considerable variation in constitutional arrangements for treaty-making and withdrawal:

- In Indonesia, section 11 of the constitution provides that ‘When creating international agreements that give rise to consequences that are broad and fundamental to the life of the people, create financial burdens for the State and/or require amendments to legislation or the enactment of new legislation, the President must obtain the agreement of the National Parliament.’ More detailed arrangements are left to be ‘regulated by statute’.
- Malaysia’s constitution is silent about the power to enter into treaties, which is covered by general executive power in article 80. The union list of legislative powers in the Ninth Schedule to the Constitution, however, covers many aspects of international relations including the ‘implementation of treaties’ and ‘participation in international bodies’. Article 76 also enables the union to make laws on matters in the state and region list for the purpose of ‘implementing any treaty’.
- Singapore’s constitution is also silent on the power to conclude treaties, which it leaves to the executive branch. To restrain the exercise of this executive power, section 6 of the constitution requires a two-thirds majority in a referendum to approve any surrender of the ‘sovereignty’ of Singapore. Section 7, however, provides that Section 6 should not be construed as precluding Singapore from entering into any treaty or international arrangement that is ‘beneficial or advantageous’ to the country.
- In Thailand, section 178 of the constitution recognizes the king’s power to conclude treaties but lists the kinds of treaties that also require National Assembly approval, which include those with ‘wide scale effects on the security of economy, society or trade or investment’. Section 178(3) refers to treaties ‘pertaining to free trade, common customs union, or the authorization of natural resource utilization’ that require public participation, under procedures prescribed by law, as well as National Assembly approval. Where National Assembly approval is required, it must be obtained at a joint sitting of the two houses (section 156(14)).

5. Implications of international law for the substance of constitutions

A state’s obligations under international law are often considered when deciding on the substance of constitutions. Particularly important international legal obligations may be incorporated directly into a constitution, giving them superior status in domestic law. It may also be relevant to consider whether the provisions of a constitution prevent a state from complying with its international legal obligations. Inclusion in a constitution is not necessary to ensure compliance with international law, as long as the country can comply in other ways.

States that are primarily monist or primarily dualist handle this issue differently. In countries that are primarily monist, many international legal commitments are already considered domestic law and can be enforced by domestic courts. In these countries, the principal legal effect of including international law principles in a constitution is to clarify their position in the hierarchy of domestic law. Since international law is not automatically part of domestic law in primarily dualist countries, their inclusion in a constitution brings international requirements into

domestic law, makes them applicable by domestic courts and clarifies their legal status in domestic law. In either case, inclusion in the constitution may have other less tangible effects, giving international legal obligations greater transparency and symbolizing a country's commitment to them.

Most countries have many hundreds of international legal obligations. Clearly, not all of them can be included in the constitution. Each country must decide which obligations are included, and how. In comparative practice, the issue arises mainly in relation to two sets of obligations—those that relate to aspects of the system of government and those that deal with human rights.

Two aspects of the system of government that are often claimed to be required by international law are democracy and an independent judiciary. Both are inferred from more particular human rights. In the case of democracy, these include the right to 'take part' in government as stipulated in article 21 of the UDHR and the right to vote in fair elections codified in article 25 of the International Covenant on Civil and Political Rights (ICCPR) (Charlesworth 2017: 36). The source of the independent judiciary requirement is in the right to a 'hearing by an independent and impartial tribunal' in article 10 of the UDHR and similar requirements in other international instruments, reinforced by various international statements of principle (International Commission of Jurists 2007).

Most countries seek both democracy and an independent judiciary, at least in general terms, through a variety of institutional arrangements. What is appropriate for each country will depend on the local context and the insights it draws from comparative experience. International law is not prescriptive about the forms that are adopted. In considering the implications of international law for democracy and an independent judiciary, it may be helpful to think in terms of the values that both are designed to protect. In the case of democracy, these include accountability, equality and the prevention of the arbitrary use of power (Charlesworth 2017: 41). For an independent judiciary, they include fair and impartial adjudication and, once again, equality and the prevention of the arbitrary use of power.

International human rights obligations are generally highly influential in drafting the parts of constitutions that protect rights. The International Bill of Human Rights provides a handy source of the relevant rights. Incorporating international human rights commitments into a constitution enhances the likelihood of compliance in the ordinary course of interpreting and applying the constitution. Certain aspects of international human rights are also relevant to the structures of government, as described above. Human rights provisions may also be reflected in parts of a constitution, including the preamble, which are not necessarily enforceable but that set out a vision for the state and contribute to the symbolic character of the constitution.

It is not obligatory to include international human rights commitments in a constitution, however, even as a matter of international law. A country that is a party to a human rights instrument is obliged to comply with the rights, whether or not they are described in the country's constitution. Even where, as often is the case, international human rights commitments are included in a constitution, a host of associated decisions must be taken that will affect their operation in practice, including:

- which rights to include;
- how they are expressed;
- any limitations to which they are subject;

- which rights are ‘non-derogable’, including in conditions of emergency;
- by whom the rights are held, including the rights that are available to non-citizens;
- against whom the rights are held, including whether (and to what extent) rights are held against non-state actors; and
- the nature and procedures of the court or tribunal through which rights can be enforced.

International law may assist with some, but not all, of these matters.

Over time, questions will also arise about how to interpret rights that derive from international law. Courts with a constitutional jurisdiction often refer to international law and decisions of international bodies (such as the CEDAW Committee) on the meaning and effect of rights in order to resolve domestic constitutional cases. Usually, however, recourse to international decisions is voluntary and the decisions of international bodies are not binding on domestic courts. As mentioned earlier, some constitutions now specifically authorize or require courts to consider international law in interpreting relevant parts of the constitution (South African Constitution, section 39). Such provisions also generally specify whether an international legal decision is binding or merely persuasive.

6. Implications of international law for the process of constitution-making

Article 25 of the ICCPR declares the right ‘to take part in the conduct of public affairs, directly or through chosen representatives’, which some scholars interpret to mean that international law provides a right to participate in making a constitution (Hart 2010). This right is reflected in broadly similar terms in other international instruments. Article 7 of CEDAW, for example, requires states parties to ‘ensure to women, on equal terms with men, the right (2) to participate in the formulation of government policy and the implementation thereof’. While such provisions do not refer expressly to constitution-making, they have been interpreted to apply to the constitution-making process. A General Comment of the United Nations Commission on Human Rights described it in 1996 as involving the right of citizens to ‘participate directly in the conduct of public affairs when they choose or change their constitutions’ (General Comment 25). While a General Comment is not binding, it is an authoritative source for understanding the meaning of international law.

This somewhat slender formal legal basis in international law for the right to participate in making a constitution is reinforced by the practices of other countries and international organizations and by soft law. Since the development of South Africa’s constitution in the early 1990s, some form of public involvement has become a familiar component of constitution-making processes (Abbate, Bockenforde and Federico 2017). UN instruments also reflect and encourage such practice. For instance, the 2009 *Guidance Note on United Nations Assistance to Constitution-making Processes* exhorts UN agencies to ‘make every effort to support and promote inclusive, participatory and transparent constitution-making processes’. Other international instruments support participation indirectly. For example, UN Security Council Resolution 2122 (2013) recognizes the need to increase women’s participation in peacebuilding including, by inference, constitution-making in the context of peacebuilding (Samararatne 2018).

Even without international law and practice, however, a democratic constitution-making process in the 21st century is likely to involve broad-based inclusion. Constitutions are superior law and provide the framework within which decisions are taken in the public interest and other laws are made. Typically, as in Myanmar, their authority is attributed to the ‘sovereignty’ of the people. It is almost inevitable, in these circumstances, that a constitution will be made and changed via a process that differs from that for ordinary law and that recognizes the authority of the people.

In any constitution-making process, broad inclusion has at least symbolic significance, underpinning the legitimacy of the constitution and reinforcing the role of the people. Inclusion offers more tangible benefits as well, however. Broad-based inclusion in constitution-making might, for example, contribute to peacebuilding, democratization, understanding of the system of government and/or commitment to the country as a whole. Realizing these benefits requires paying attention to who is involved in the process of constitution-making (and how), as well as the points in the process at which they are involved.

International instruments offer some insights into these issues as well. The 2009 Guidance Note, for example, urges the inclusion of groups representing ‘women, children, minorities, indigenous peoples, refugees, and stateless and displaced persons, and labour and business’ in a constitution-making process. It also draws attention to the need for public information and education, to make participation effective.

Inclusion is only one element of a constitution-making process. The overall goal of the process is to maximize the chances that the resulting constitution is based on a sufficient consensus, responsive to the needs and expectations of the country, and serves as an effective framework for peaceful coexistence and government in the public interest. Arrangements for inclusion and participation should be designed with this goal in mind.

Conclusion

International law is an increasingly relevant consideration in constitution-building. It is therefore helpful for a constitution to prescribe the effect of international law in domestic law. If all or some international law has automatic effect, it is helpful for the constitution to describe its position in the hierarchy of domestic law.

Entry into binding international legal commitments is an important function to be performed on behalf of a state. Constitutions usually stipulate who can take this action on behalf of the state and, at least in general terms, the procedures to be followed. International legal commitments that are (or might become) binding on a state often affect the substance of a constitution. Some may be given effect in the constitution. In any event, the constitution should help, and not hinder, a state in giving effect to its international legal commitments. International legal norms and standards may be useful in designing a constitution-building process, whether they are considered legally binding or not.

References

- Abbate, T., Böckenförde, M. and Federico, V., *Public Participation in African Constitutionalism* (London: Routledge, 2017), <<https://doi.org/10.4324/9781315180540>>
- Charlesworth, H., ‘International legal encounters with democracy’, *Global Policy*, 8/1 (2017), pp. 34–43, <<https://doi.org/10.1111/1758-5899.12488>>

- Charter of the United Nations, 26 June 1945, <<https://www.un.org/en/charter-united-nations/>>, accessed 4 November 2019
- Committee against Torture, 'Implementation of Article 2 by States Parties', General Comment 2, 24 January 2008, <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhskvE%2BTuw1mw%2FKU18dCyrYrZhDDP8yaSRi%2Fv43pYTgmQ5n7dAGFdDalfzYTJnWNYOXxeLRAIVgbwCsm2ZXH%2BcD%2B%2F6IT0pc7BkgqlATQUZPVhi>>, accessed 4 November 2019
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, <<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>>, accessed 4 November 2019
- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 18 December 1979, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en>, accessed 4 November 2019
- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW): Optional Protocol, 6 October 1999, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&clang=_en>, accessed 4 November 2019
- Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, <<https://www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx>>, accessed 4 November 2019
- Crawford, J., Chance, Order, *Change: The Course of International Law* (Leiden: Brill, 2014), <<https://doi.org/10.1163/9789004268098>>
- Feldman, D., 'Monism, dualism and constitutional legitimacy', *Australian Yearbook of International Law*, 20/105 (1999), <<https://doi.org/10.22145/aybil.20.5>>
- International Labour Organization, Convention 87, Freedom of Association and Protection of the Right to Organise, 1948., <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:INSTRUMENT_ID:312232:NO>, accessed 4 November 2019
- Hannum, H., 'The status of the Universal Declaration of Human Rights in national and international law', *Georgia Journal of International and Comparative Law*, 25/287 (1996), <<https://digitalcommons.law.uga.edu/gjicl/vol25/iss1/13>>, accessed 4 November 2019
- Hart, V., 'Constitution making and the right to take part in a public affair', in L. E. Miller and L. Aucoin (eds), *Framing the State in Times of Transition* (Washington, DC: US Institute of Peace, 2010), <https://www.usip.org/sites/default/files/Framing%20the%20State/Chapter2_Framing.pdf>, accessed 4 November 2019
- International Commission of Jurists, International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors – Practitioners' Guide, No. 1 (Geneva: ICJ, 2007), <<https://www.icj.org/no-1-international-principles-on-the-independence-and-accountability-of-judges-lawyers-and-prosecutors/>>, accessed 4 November 2019
- International Court of Justice, 'How the Court Works', n.d., <<https://www.icj-cij.org/en/how-the-court-works>>, accessed 4 November 2019
- International Covenant on Civil and Political Rights (ICCPR), 1966, <<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>>, accessed 4 November 2019

Disclaimer

International IDEA publications are independent of specific national or political interests. Views expressed in this publication do not necessarily represent the views of International IDEA, or those of its Board or Council members.

References to the names of countries and regions in this publication do not represent the official position of International IDEA with regard to the legal status or policy of the entities mentioned.

The views expressed in this Constitution Brief do not necessarily reflect those of the Ministry for Foreign Affairs of Finland, the Grand Duchy of Luxembourg, the Ministry of Foreign Affairs of Norway or the Government of Sweden.

Colophon

© 2020 International Institute for Democracy and Electoral Assistance

The electronic version of this publication is available under a Creative Commons Attribution-NonCommercial-ShareAlike 3.0 (CC BY-NC-SA 3.0) licence. You are free to copy, distribute and transmit the publication, and to remix and adapt it, provided it is only for non-commercial purposes, that you appropriately attribute the publication, and that you distribute it under an identical licence.

For more information visit the Creative Commons website:
<<http://creativecommons.org/licenses/by-nc-sa/3.0/>>

Contact us

International IDEA
Strömsborg
SE-103 34 Stockholm
Sweden
Email: info@idea.int
Website: <<http://www.idea.int>>

Myanmar-Japan Bilateral Investment Treaty, 15 December 2013, <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3113/download>>, accessed 4 November 2019

Samararatne, D., 'Direct public participation in constitution-making', Policy Brief 001 (Melbourne: Constitution Transformation Network, 2018), <<https://doi.org/10.2139/ssrn.3368056>>

Shany, Y., 'Sources and the enforcement of international law: what norms international law-enforcement bodies actually invoke?', in S. Besson and J. d'Aspremont (eds), *Oxford Handbook on the Sources of International Law* (Oxford: Oxford University Press, 2017), <<https://doi.org/10.1093/law/9780198745365.003.0038>>

Statute of the International Court of Justice, 1945, <<https://www.icj-cij.org/en/statute>>, accessed 4 November 2019

Thurer, D., 'Soft law', in *Max Planck Encyclopedia of Public International Law*, 2009, <<https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1469>>

United Nations Committee on Human Rights, CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, 12 July 1996, <<https://www.refworld.org/docid/453883fc22.html>>, accessed 4 November 2019

United Nations, *United Nations Assistance to Constitution-making Processes*, Guidance Note of the Secretary-General, 2009, <<https://www.un.org/ruleoflaw/blog/document/guidance-note-of-the-secretary-general-united-nations-assistance-to-constitution-making-processes/>>, accessed 4 November 2019

Universal Declaration of Human Rights (UDHR), 1948, <<https://www.un.org/en/universal-declaration-human-rights/>>, accessed 4 November 2019

Yong Vui Kong v Public Prosecutor [2015] SGCA 11, <<https://archive.crin.org/en/library/legal-database/yong-vui-kong-v-public-prosecutor.html>>, accessed 4 November 2019

Project office

International IDEA Myanmar
68 (B) Sayar San Road,
Bahan Township Yangon,
Myanmar
Email: info-myanmar@idea.int
Website: <<http://constitutionnet.org/myconstitution-myanmar>>
Tel: +95 9 263128104

Acknowledgements

This publication has been supported by the Ministry for Foreign Affairs of Finland, the Government of Luxembourg, the Ministry of Foreign Affairs of Norway and the Government of Sweden.



Ministry for Foreign
Affairs of Finland



GRAND DUCHY OF
LUXEMBOURG



Norwegian Embassy



Sweden
Sverige