



Constitution Building Training Programme

Constitution Building Programme
International IDEA

Constitution building for a human rights culture

A module of the Constitution Building Training Programme

Overview

Human rights are a means through which ordinary men, women and leaders measure a common purpose in constitution building. A key function of constitutions is to ensure that human rights are guaranteed and stipulate how to enforce them. Constitution builders use human rights language as an integral part of the solutions to change a society for the better. However, there is a risk that this language will catapult unresolved claims related to the conflict into the constitution and undermine its ability to catalyze societal transformation. Some leaders try to manipulate human rights language in order to stir controversy or moralize constitutions. How the constitution is ultimately framed around human rights language can either help to establish a broader social basis to support the constitution or give disappointed groups the reasons to reject it.

Knowledge of the norms and principles of human rights, many of which are contained in a rich catalogue of UN and regional human rights treaties, is important. But it is not adequate to the challenges of dealing with the human rights challenges mentioned above. Constitution builders will often need to go beyond this normative framework to devise innovative solutions that apply to their immediate context. Several lessons have emerged that can be shared to assist constitution builders facing this dilemma. This Module aims to assist constitution builders to consider some of these lessons as part of the process of seeking workable solutions in their own contexts. There are plentiful other resources to assist constitution builders who aim to increase their understanding of the first principles and normative aspects of human rights, some of which are referred to in the Module. This module focuses on using constitution building to establish and help shape a human rights culture. This Module highlights substantive information in a way that compliments the experiential learning of practitioners.

Learning outcomes

At the end of this Module participants should be able to:

1. Understand what is a culture of human rights and how constitutions can contribute to building one, especially in conflict-affected contexts.
2. Understand the different stages of constitution building and the associated rights of participation.
3. Understand the legal notions and implications of rights, liberties, power and immunities.
4. Understand how international human rights law is domesticated.
5. Describe the entities entitled to the protection of rights in the constitution and what kind of rights they are entitled to.
6. Describe mechanisms for the implementation of constitutionally protected human rights.

Module Structure

Executive summary	
Introduction & Learning outcomes	
Understanding human rights	<ul style="list-style-type: none">• Defining human rights• Defining a culture of human rights<ul style="list-style-type: none">• How can constitutions help to build a human rights culture?• Constitution building for a human rights culture in conflict-affected contexts<ul style="list-style-type: none">• Careful selection of issues and practices• Who shapes constitutional debate on human rights culture?• Tactics for an inclusive human rights culture
Human rights in the constitution building process	<ul style="list-style-type: none">• Constitution building as a process• Rights of participation and inclusion<ul style="list-style-type: none">• Case study: Right to participate in constitution making in Canada
Legal aspects of a human rights culture	<ul style="list-style-type: none">• Importance of legal aspects<ul style="list-style-type: none">• Right• Immunity• Constitution as supreme law• The role of international human rights law
Whose rights, which rights?	<ul style="list-style-type: none">• Group dynamics for constitutional recognition• Whose rights?<ul style="list-style-type: none">• 'Citizens' vs 'Persons'• 'Criminals' vs 'Non-criminals'• The 'Haves' and the 'Have-nots'• Women and men• Majority and minority groups• Which rights?<ul style="list-style-type: none">• Impact of international law• 'Struggle' rights• Equality and non-discrimination• Specific minority rights
Designing constitutions to implement rights	<ul style="list-style-type: none">• Defining the issues• Framework components for implementation of rights<ul style="list-style-type: none">• Institutional framework• Special measures
Conclusion	
Glossary	