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Allocation of Time, Access to Information and Costs in the Constitution-Making Process – a Comparative Perspective

Czas, dostęp do informacji i koszty w procesie tworzenia konstytucji – perspektywa porównawcza

Abstract

Creating a new constitution is often a challenging task. When striving to produce a coherent document respected by the public, political decision-makers face numerous choices on how to recognise society's needs, emphasise values meaningful to the state, protect rights, legitimise institutions and distribute power within the state. This translates into a choice on the structure and scope of the process and affects what resources are needed to accomplish the goal – establishing the new constitution. This paper reviews the stages of the constitution-making process and proposes a framework for evaluating direct and indirect organisational costs, including time and access to information, associated with each stage. We select twelve post-Cold War constitution-making cases that represent four contexts of constitutional change we identify, which are soft unconstitutional transition, independence and integration, post-war transition, and post-internal conflict. We assess activities undertaken throughout the process and look for context-relevant patterns, while accounting for the impact of country-specific characteristics. We conclude with a few general context-specific patterns.

Keywords: Constitution-Making Process, Constitutional Political Economy, Constitutional Design.

JEL: K40, O57, P48

Streszczenie

Tworzenie nowej konstytucji jest wymagającym zadaniem. Starając się opracować spójny dokument, który będzie respektowany przez społeczeństwo, decydenci polityczni stają przed wieloma wyborami dotyczącymi sposobu uwzględnienia potrzeb społeczeństwa, podkreślenia wartości istotnych dla społeczeństwa, ochrony praw, legitymizacji instytucji i podziału władzy w państwie. Przekłada się to na wybór struktury i zakresu procesu oraz wpływa na zasoby potrzebne do osiągnięcia celu, jakim jest ustanowienie nowej konstytucji. Celem opracowania jest przegląd etapów procesu tworzenia konstytucji oraz propozycja sposobu oceny bezpośrednich i pośrednich kosztów (takich jak czas lub dostęp do informacji) związanych z każdą częścią tego procesu. Omawiamy 12 przykładów procesów tworzenia konstytucji w okresie po zakończeniu Zimnej Wojny, które reprezentują cztery konteksty: łagodną niekonstytucyjną zmianę, niepodległość i integrację terytorialną, transformację po wojnie oraz po konflikcie wewnętrznym. Analizujemy działania podjęte w trakcie procesu, poszukując powtarzalnych wzorców, mając na uwadze cechy każdego kraju. Podsumowujemy, pokazując kilka generalnych wzorców zależnych od kontekstu.

Słowa kluczowe: proces tworzenia konstytucji, konstytucyjna ekonomia polityczna, projekt konstytucji.

JEL: K40, O57, P48



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1. Introduction

Constitution-making is a process through which a nation can formally reflect on its values and translate them into legal frameworks, defining the distribution of power, political structures, and the protection of basic civil rights. Data from the Comparative Constitutions Project (CCP) show that 152 new constitutions were adopted between 1990 and 2023, a period corresponding to the post-Cold War era, when many new countries emerged and multiple replacements were implemented (Elkins & Ginsburg, 2023). While there may be different reasons to replace an existing constitution, Elster (1995) suggests that new constitutions are almost always created due to some form of crisis. In the modern era, constitution-making followed political or economic crises, revolutions, regime collapses, fear of regime collapse, defeat in war, post-war reconstruction, and liberation from colonial rule. Rarely, if ever, is a constitution replaced in completely peaceful circumstances. Given myriad triggers and limited longevity of constitutions (Elkins et al., 2009), constitution-making is an ongoing subject of attention for academics and policymakers. This paper adds to the literature on devising the constitution-making process (*CMP*) by proposing a framework for examining resource use during the *CMP* through clustering cases by context and looking for patterns.

Constitution-making is a costly endeavour. In most cases, it requires a constitutional assembly of varying sizes, to gather, negotiate, draft, and at some point vote on the new provisions or full document. The process requires physical space to host the sessions, time to conduct all activities, payment of salaries the assembly members, subsistence allowance, etc. Hosting the constitutional convention for the Rhode Island state constitution in 2026 was estimated to cost close to USD 4.6 million (Shea, 2024). In addition, if applicable, the costs of citizen participation and information campaigns must be considered. The five-year review process of the Kenyan constitution was estimated to cost 0.5% of the country's GDP in 2005 (Bannon, 2006). In Thailand, the costs of multiple constitutional drafting committee sessions amounted to around USD 2.35 million (Saiyasombut, 2015).

Apart from organisational costs, the process may involve social and political costs. Constitution-making often occurs when institutions are weak, or when there is no legal framework to constrain the groups in power. Political instability and corruption affect the future division of power and the appointment of heads of newly created institutions, for example, it may lead to quasi-authoritarian regimes (Landau, 2012), especially if charismatic figures exploit the constitutional momentum for their own gain (Partlett, 2012). The process will also affect society itself. For example, putting confrontational issues to public debate may cause destabilisation (this was a major concern in Afghanistan; Thier, 2010). Also, different capabilities to participate in the process across social groups may lead to polarisation (Saati, 2017). The neglect of certain groups' interests can lead to social exclusion, polarisation, and rising tensions, as seen in Sudan in spring 2003; it occurs both when groups are invited to voice concerns but do not have enough representation in the decision-making body and when those capable of ending the conflict dominate negotiations and exclude others, undermining their legitimacy in the eyes of unrepresented citizens (Banks, 2008).

The goal of this paper is to provide a model framework for assessing the costs of constitution-making activities at different stages of the process and then to apply that to examine real-life examples. This could eventually enable us to observe context-dependent variations across our sample of countries. As this is primarily a theoretical endeavour based on a very limited sample of countries, we acknowledge that in some contexts no conclusions may be drawn. The analysis relies on available facts and draws conclusions or makes generalisations only where supported. We draw on the cost-effectiveness approach, designed to compare the costs of alternative ways of achieving the same goal, in our case, adopting a new constitution. A comparative angle is needed for developing the topic (Voigt, 2025) and adds to the literature which is mainly based on detailed case studies, such as Miller (2010). These case studies are invaluable sources of information on individual cases. Our analysis is timely, as we examine relatively recent examples where the expectations of the 21st century for transparency and public involvement in the process are evident (Martin, 2025; Saunders, 2012).

The remainder of the article is structured as follows: first, we briefly present the concepts behind constitution-making in section 2. In section 3, we provide methodology details and outline the selection criteria for the analysed countries. Section 4 covers the analysis, and section 5 concludes the paper.

2. Constitution-making: Concepts, theories, and contexts

Constitutions serve as foundational frameworks for a state's political and legal systems. They create an institutional environment which, in turn, fosters economic growth (Alesina et al., 1996), provides public goods, secures civil rights, and has important economic effects (Voigt, 2011, 2020). Constitutions typically define a state's organisation by establishing institutions, specifying their respective competencies and limitations, and enlisting individual rights and common values (Voigt, 2020).

Arguably, more important than having the provisions on paper is their actual implementation and enforcement. To measure the success of a constitution, one may look at its longevity and the degree to which it is followed in reality. A positive effect of constitutional compliance on GDP per capita is likely transmitted through the tax revenue channel in lower-income democratic countries and foreign direct investments in higher-income autocratic countries, such as oil-rich Middle Eastern countries (Lewczuk & Metelska-Szaniawska, 2025). Consequently, non-compliance with the written rules (larger *de jure de facto* gap) results in poorer economic outcomes, due to a less credible and less stable economic climate. Evaluating longevity of the constitution is more complex, while there is no clear evidence for one combination being better than the other. While it is necessary for the functioning and stability of the state, for example, by constraining short-term political interests, changes are inevitable as the social conditions evolve (Ginsburg, 2011).

New constitutions are created by different procedures, making it important to understand the consequences and priorities guiding a constitutional change process. Ginsburg et al. (2009) argue, showing data, that constitutional process design, actors

involved in the process, public participation, or involvement of foreign experts can influence the outcome although there is no clear evidence for one combination being better than the other. Additionally, certain constitutional issues may not be straightforward, creating high decision costs and increasing the likelihood that the new document will emerge with some issues left unresolved and deferred to post-constitutional decision-making. (Dixon & Ginsburg, 2011). The ultimate goal of a democratic process is to deliver a new document that will be respected and legitimised by the people and all political bodies. On the other hand, in post-conflict contexts, constitution-making is rather about bringing peace and reducing violence first, which can later provide foundations for more ideological deliberations and changes (Widner, 2007; Tushnet, 2012). However, establishing new sound political institutions could be part of peace-building in itself (Samuels, 2006).

Over time, expectations concerning the nature of the CMP evolve as well. Saunders (2012) has identified several features of constitution-making in the 21st century, including public participation, adherence to international standards, and consideration of diverse perspectives which are widely expected. Since public participation also legitimises power of the constitution-makers, it appears in both democracies and autocracies, even though the actual impact may differ (Martin, 2025). While global institutions and influential bodies set international standards and provide knowledge and expertise, they also run lobbying campaigns that may create tensions with domestic actors (Saunders, 2012).

2.1. What triggers the constitution-making process?

In addition to the substance of the constitution and the process through which it is produced, the broader context of constitutional change is crucial. Voigt (2020) has proposed two dimensions of change: legality and formality. Constitutions can change legally when the change occurs in full compliance with the existing constitutional setting, or illegally when at least one component of applicable rules is violated. Such a change may be made implicitly, when the official or the practised interpretation of the constitution changes, or explicitly when its text is modified. When a state is in the process of being created, there is usually a straightforward call to create an organising document which formalises the system of norms and rules (Tushnet, 2012). The CMP may be triggered by pivotal events that raise core structural issues that constitutions address and regulate (Elster, 1995).

2.1.1. Soft unconstitutional transition (context 1)

It is rare for a constitution to be replaced during peaceful, stable times. The need for change emerges from some level of dissatisfaction, likely accumulated over years, and follows the event that finally prompted change. In a country with institutions in place, there are procedures for amending laws deemed outdated or otherwise unfit for the current society's needs, so the change may happen with partial compliance with the existing *de jure* legal system. Even substantial changes can be gradually implemented instead of overhauling a whole document at once, as

happened in Luxembourg, where a multi-level intensive formal amendment process took place. To modernise its 19th century constitution, the parliament gradually adopted changes, resulting in 17 amendments between 1994 and 2023, as per the CCP database. Even though the process has been ongoing since the 1970s, only partial changes were made before 2009, when the latest revision procedure began (Gerkrath, 2013). Amendments may be even easier in countries such as the United Kingdom, where rules for changing the constitution are very flexible (Select Committee on the Constitution, 2011, pp. 12–13). Yet, multiple amendments pose risk of inconsistency, which might be avoided with a holistic approach.

2.1.2. Independence or integration (context 2)

Integration of two or more states, nations, or legal systems and the independence of a region from an existing country create a new political reality in which the adoption of a constitution reflects a new state of affairs. The post-Cold War era offers multiple examples of former socialist states gaining independence in the 1990s. Moreover, these territorial changes may lead to constitutional change (legal or illegal) in already existing but changed polities.

2.1.3. Post-war transition (context 3)

In war, the total or partial success of one side may lay the groundwork for constitutional change and constitution-making. This may happen when a state is occupied, and foreign forces want to deploy a new government for that state, like the Iraqi 2005 constitution, or when the state, in cooperation with the international bodies, aims to put an end to a long period of war, as in the case of Afghanistan in 2003, following the overthrow of the Taliban regime.

2.1.4. Post-internal conflict (context 4)

Revolutions, rebellions, and coups, when successful, end in government overthrow which is often accompanied by or may trigger an attempt to change the existing regime. The change in state establishment might be made, formalised, or legitimised through a change in or replacement of the constitution.

3. Methodology

This paper seeks to systematically review each stage of the CMP and evaluate three resource dimensions: time, access to information, and costs of organisation, relying on basic concepts and methods of law and economics. Accordingly, we look at twelve cases of constitution-making in the post-Cold War era through a comparative case study lens. Our analysis is broadly based on the cost-effectiveness framework, which compares the cost of alternatives with the same key outcome. Measuring the cost-effectiveness of institutions or government programmes is difficult, as no single outcome fully captures the desired effect. Applying cost-effectiveness methodology

can produce informed choices about educational programmes (e.g., number of students graduating; Levin, 1995), health interventions (e.g., potential lives saved; Sanders et al., 2019), or e-government adoption (e.g., comparing expenditures on alternative services; Nicholls, 2019). Following the methodology objectives, yet not deciding on specific numerical measures of the components, we comment on alternative resource use across the process.

Implementing the constitutional provisions and enforcing the law is the ultimate objective of the ongoing change. Without this, the constitution exists only on paper. However, assessing constitutional compliance requires a long-term perspective, as events, sometimes independent of the process design, might affect compliance. Coups d'état, sanctions, and civil conflict detrimentally affect compliance, but natural disasters or financial crises do not necessarily do so. (Choutagunta et al., 2024). Therefore, for this analysis, we treat ratification (or rejection) of the new constitution as the final outcome. Before we start the analysis, we define the stages of the CMP that will be evaluated, the three dimensions we will focus on, and the countries included in the analysis.

3.1. Evaluated stages of the process

There is no single approach to the design of the CMP; however, the general stages occur in a fixed order simply due to the activities involved. There are differences in what happens at each stage, but naturally, a first draft needs to appear before the final draft, etc. Inspired by the prior literature (Saunders, 2012; Toler, 2014) we divide the process into four phases: the starting phase, where society is being prepared for a change [1], the initial drafting phase, where the first outline of the new constitution is prepared [2], the subsequent drafting phase, which culminates in a proposal of the new legal document [3], and the approval and implementation phase, which mainly includes validation of the new constitution [4].

3.2. Evaluation criteria

3.2.1 Time

The time dimension in our analysis refers to the actual time each stage and the involved activities take. In some cases, allocating additional time to thorough preparation can make a given phase more effective, reduce the time required to execute it, and cause more efficient allocation of time overall. On the other hand, with a longer process, one risks losing constitutional momentum – people are likely to lose interest and confidence in the effectiveness of the constitution-makers' actions. Although there may be a tendency in post-conflict contexts to resolve conflict quickly with a new constitution, it may produce an inefficient solution in the longer term (as in Bosnia and Herzegovina¹). Time is also needed to build trust

¹ The Constitution of Bosnia and Herzegovina from 1995 was a part of the peace agreement and was drafted by international mediators and wartime leaders in Dayton, USA. The pressure to

and understand the tensions between groups, and reducing violence and instability is the principal goal, at least at the beginning of conflict resolution (Widner, 2007).

Political actors involved in the drafting process may have an incentive to finish a new constitution during their term to count it as their accomplishment. This may happen when members of the constitutional assembly are selected from parliament members. Also, to avoid parties stalling for their own benefit, the constituent assembly should work under a schedule (Elster, 2012). Based on some real-world cases, Saunders (2012) suggests that the process should last between two and five years to be most effective.

3.2.2. Access to information

Constitution-making is an information-intensive process, involving input from a range of stakeholders, including the public, politicians, and foreign experts. It sometimes draws on historical documents and international recommendations and, in modern times, often aims to incorporate direct citizen feedback. Managing the flow of different streams of information and synthesising it into the final document is a challenge. Yet another issue is communicating the process to the public.

In our analysis, we look at the openness and transparency of the process – how society is informed and involved at different stages of constitution-making. An open process is a way to legitimise new laws and to consolidate power. Both downstream and upstream input from people is possible, but recommendations regarding the openness of the whole process vary. Using modern technologies may be a way to facilitate broad public participation, provided there is sufficient internet penetration, literacy rates, freedom, and trust in the media.

3.2.3. Direct costs of organisation

The cost of constitution-making stems from a range of logistical and administrative matters. The costs range from the salaries of the people involved, including foreign experts, catering, and covering accommodation and travel expenses, to renting the venues and equipment. Holding a national referendum or elections for assembly delegates, which requires printing voting cards and arranging voting points, involves additional and substantial costs.

Further issues concern the source of funding. In general, one may expect the process to be publicly funded, which ideally calls for transparency and cost control. At times, some initiatives surrounding constitutional change may be carried out by international organisations or civil initiatives. For example, the cost of constitution-making in Uganda (1995), which amounted to around USD 20 million over six years, was mainly funded by foreign donors (58%), with Uganda's government

implement changes put forward by the new document resulted in suboptimal divisions of power and competencies, prolonging the country's reliance on leaders from recent war (O'Brien, 2010). In that sense, the attempt to end conflict faster, simultaneously drafting a constitution led to longer term inefficient allocations.

contributing 42% of the total costs (Tripp, 2010). Costs associated with implementing the changes must be considered, although they fall outside the scope of this article.

3.3. Evaluated countries

Twelve countries were included in the analysis. While the list is not exhaustive, we selected the examples based on the following criteria: constitution change is relatively recent (post-Cold War era), the examples are geographically diverse, and the examples are representative of the four contexts of constitutional change. Table 1 summarises the countries and contexts to which they were designated.

Table 1.

Countries included in the analysis

Country	Year*	Context of constitutional change	Source	Context label
Iceland	2008**	Dissatisfaction with how the 2008 crisis was handled	Bergsson & Blokker (2014) Landemore (2015)	Soft unconstitutional transition
Ecuador	2008	A long period of presidential instability, with the new president promising a new constitution	The Carter Center (2008)	
Chile	2022**	Period of instability. The president won her second term by pledging to replace the dictator's constitution with a democratic constitution.	Larrain et al. (2023)	
South Africa	1996	Post-apartheid constitution	Ebrahim & Miller (2010)	Independence or integration
Namibia	1990	Transition from colonial rule to independence	Wiechers (2010)	
Eritrea	1997	Independence from Ethiopia	Saati (2017) Selassie (2010) Weldehaimanot (2008)	
Timor-Leste	2002	Transition from colonial rule, followed by foreign invasion and occupation, to independence	Aucoin & Brandt (2010) Goldstone (2004)	Post-war transition
Iraq	2005	Overthrow of the previous system	Feldman (2009) Morrow (2010)	
Afghanistan	2004	Overthrow of the Taliban by international forces	Thier (2010) Murtazashvili (2022)	
Uganda	1995	A long period of instability and an authoritarian regime	Tripp (2010)	Post-internal conflict
Cambodia	1993	Transition from civil war	Akashi (2012) Marks (2010)	
Thailand	2017	Triggered by another military coup	Head (2017) McCargo et al. (2017)	

Note: *The year corresponds to the CCP database (Elkins & Ginsburg, 2023). **A new constitution was ultimately not adopted. In Iceland, the bill was blocked by the Icelandic parliament in 2013. In Chile, the document was rejected in a popular referendum in December 2023.

Source: own elaboration.

In the analysis, we focus on constitution-making, meaning the process of replacing or creating the constitution, not amending it. In practice, however, a clear distinction between replacement and substantial amendments is not always possible. Constitutional amendments formally take place within existing constitutional settings (though not always in full compliance), thereby ensuring legal continuity. On the other hand, new documents also tend to largely borrow from the previous constitution, a phenomenon known as constitutional stickiness (Varol, 2016). For our theoretical deliberation, this is not an obstacle but a factor impacting the overall cost of the process, which must be recognised.

4. Analysis – stage by stage

4.1. Setting the scene (stage 1)

The preliminary stage includes activities happening before the official work on the new constitution starts. Its primary goal is to lay the right foundations for the drafting process. The initial stage is also crucial for managing expectations about what can be achieved with the new constitution. Preparing society for change requires a range of educational and informational activities, while appropriate communication channels depend on the society (literacy level, ethnic or religious fractionalisation, etc). Timelines should also allow for the time needed to gather citizens' feedback and consultations with foreign experts, if planned.

4.1.1. Time

The amount of time available for building the foundations of constitution-making largely depends on the context. In the case of peaceful replacement, there seems to be more time to deliberate on the nature of the process and topics that matter most to society than in a post-conflict setting, where a new constitution lays the grounds for rebuilding the state. On the other hand, time is needed to build trust and hold negotiations between opposing groups. This largely depends on the objectives of the group in power and its level of cooperation with international organisations.

However, when the soft transition is triggered as a pre-emptive measure against an imminent crisis, the whole process of constitution-making, especially the first stage², could be very time-sensitive. A good example of this scenario is the French Fifth Republic constitution, considered as a response to the May 1958 crisis in France, where the first stage was almost non-existent (Fenby, 2010). Likewise, public expectations that have been accumulating for the past few years, as in the case of presidential instability in Ecuador, cannot be satisfied with another lengthy discussion (The Carter Center, 2008). There appears to be a trade-off between the time

² Assuming the official start of the process at the second stage itself could alleviate the risk or imminence of crisis.

taken for deliberation and the level of public engagement and belief in the process, as public frustration with unfulfilled promises may grow. In the post-war scenario of Afghanistan, the constitution was drafted while fighting was still continuing in some places in the country (Thier, 2010). Preparations for constitution-making in post-internal conflict Uganda in 1989 started three years earlier with the establishment of the Ministry of Constitutional Affairs (Tripp, 2010).

As mentioned earlier, foreign actors may play critical roles in shaping CMPs. A prominent example of such an impact is the first stage of Namibia's CMP, which lasted for almost eleven years. According to Wiechers (2010), in 1978, the *Western contact group*³ brokered a peace and independence process supported by the South African government and all Namibia's political parties, leading to Security Council resolution 435, which prescribed the basis for the entire political transition and independence. However, the United States backed South Africa in refusing implementation of the resolution as long as Cuba maintained its presence in Angola. Further efforts at constitution-making failed until 1988, when Angola, Cuba, and South Africa made a trilateral agreement that led to the implementation of Resolution 435 in April 1989, followed by the constituent assembly elections in November. In Iraq, the initial stage lasted around a year and a half. Even though the occupiers were willing to start the drafting process quickly, this stage lasted much longer because the Iraqi people and influential leaders rejected successive proposals for their undemocratic, occupier-led nature (Feldman, 2009; Morrow, 2010).

4.1.2. Access to information

During the initial phase, informing society about the change and its implications is the key objective. The goal is to gain public support; otherwise, there is a risk of low interest and a low level of engagement in the process (in Iceland, only 37% of eligible voters turned out in the assembly election; Bergsson & Blokker, 2014). In the context of integration or independence, civic education and information efforts foster a stronger sense of ownership and inclusion when executed effectively. In Timor-Leste's case, the enthusiastic campaigning process was hindered by ill-prepared facilitation and a lack of methodology for gathering information about people's concerns and aspirations (Aucoin & Brandt, 2010). In Eritrea, it was successful - educational programmes were delivered in local languages, and interactive visual materials helped reach the illiterate (Saati, 2017).

From a normative point of view, in post-conflict contexts, the exchange of information and negotiations between conflicting groups are necessary for longer-term resolution; otherwise, a slide back into conflict is inevitable (Samuels, 2006). One must find a way to integrate powerful players and encourage the general public to participate as well. However, in the post-war and post-internal conflict context, it is the group in power that can control the information flow. In Iraq, the interim constitution, which defined the process, was written secretly by an occupier-appointed authority without citizen participation, leading to the boycott

³ Consisting of the United States, France, the United Kingdom, Canada, and West Germany.

of the assembly elections by Sunni Arabs. This boycott, together with the chosen electoral system and the US' refusal to postpone the elections, led to the absence of Sunni Arab parties from constitutional negotiations and subsequent drafting. The overwhelming rejection of the new constitution by the Sunni Arab population in the referendum contributed to an escalation into violence and civil war (Morrow, 2010). In Thailand, access to information was heavily restricted, and all campaigning was banned after the military junta withdrew its first attempt to ratify a constitutional proposal, fearing poor public support. Offering no alternative and with threats of violence, it managed to secure popular support, but the draft was later altered by the new ruler (Head, 2017; McCargo et al., 2017).

4.1.3. Costs of organisation

Choosing representatives for the drafting stage may alleviate the current levels of dissatisfaction with the existing political regime and distrust in politicians. Holding popular voting to select delegates adds to the cost, but can mean that public expectations are incorporated. In Chile, the majority of delegates were non-party members (Larrain et al., 2023). In Iceland, initially only the regular citizens were supposed to form the constitutional assembly and be selected via popular voting (the parliament later appointed delegates; Bergsson & Blokker, 2014). Maintaining public participation and the delegates' diverse backgrounds carries a risk of additional costs in preparing them to draft the legal document. In some post-war and post-conflict contexts, the involvement of international organisations and their budgeting processes could be decisive. In war-torn and devastated Timor-Leste, a country with a population of approximately 745,000 and a total GDP of USD 833 million in 2000 (constant 2015 US dollars; World Bank, 2026), state-building and constitution-making would have been extremely difficult without UNTAET (United Nations Transitional Administration in East Timor) and the substantial budget allocated to it by the United Nations (Aucoin & Brandt, 2010). For example, USD 350 million was allocated for just the seven-month period from December 1999 to June 2000 (United Nations General Assembly, 2000). The situation in Cambodia after decades of war, armed conflict, and violence was even worse. In 1992, when UNTAC (United Nations Transitional Authority in Cambodia) began its 18-month peacekeeping and state-building mandate with a budget exceeding USD 1.8 billion, Cambodia, with a population of roughly eight million, had a GDP of almost USD 2.5 billion (constant 2026 US dollars; Akashi, 2012; Marks, 2010; World Bank, 2026).

4.2. Initial drafting (stage 2)

Once the process is formally launched, the goal is to produce a first draft of the document. This stage is characterised by intense negotiations, which may be closed to the public to be efficient (Saunders, 2012). The exact operating procedures vary, depending on the type of constituent assembly. There is no strong empirical evidence that one type is better than the other (Negretto, 2017). The key issue in drafting the first version of a constitution is whether the process is embedded within an existing

legal and institutional framework, allowing parts of the existing text to be reused, which would ease the process and reduce costs, or whether it is drafted anew.

4.2.1. Time

Lengthy deliberation over the initial draft is likely to cause a loss in the constitutional momentum and may be misused by interim rulers (to entrench themselves in power). An example in this regard happened in Uganda's CMP, where, while the entire process was planned to take two years, the second stage alone took five years. As Tripp (2010) explains, it is believed that the ruling party prolonged the process for its own benefit.

Conversely, tight time limits may force decision-makers to vote on drafts without due diligence and effective discussion, hindering the democratic process. In Namibia, stages 2 and 3 (which were integrated to some extent) took only three months in total, as the constituent assembly was mandated to adopt the constitution before the official independence target date (Wiechers, 2010). The constituent assembly of Namibia unanimously accepted one of the parties' previously prepared proposed drafts as a working document, and later when the assembly met at the end of the process, without major disagreement, they adopted the constitution in little more than a week, as the pre-set independence day *assuredly made drawn-out debates in the assembly impossible* (Wiechers, 2010). In Iraq, it is widely believed that the occupier's domestic politics shaped the timetable of the drafting process. The US government, driven by domestic political considerations, put pressure not to use the extension option provided for in the interim constitution. Failure to finish the draft in time led the US to dismantle the entire process and impose its draft without the involvement of elected representatives to hold the referendum (Morrow, 2010).

The time for gathering ideas also has to be balanced, but this period should not be too short, especially in a soft transition context where the aim is to have a "more suitable" constitution. In Iceland, the forum of citizen representatives met for one day only, and such a tight schedule was criticised by local political scientists for being insufficient and producing vague output (Kristinsson, 2012, as cited in Bergsson & Blokker, 2014). Later, citizens could provide feedback on an official social media forum. In Ecuador, members of thematic working groups first toured the country for two and a half months to collect issues to put on their agenda. Later, citizen demands could still be accommodated in different forms: in-person visits (approximately 70,000 over half a year) or written communications via letters and emails (The Carter Center, 2008).

4.2.2. Access to information

To produce an initial draft, a constitutional drafting body need not start from scratch. Even though, for the majority of its members, this will be the first and only time they engage in such activity, and thus they lack personal experience in the matter (Horowitz, 2006), comparative studies and international standards are available for inspiration and guidance. In post-conflict or independence contexts,

involvement of foreign advisers may be considered, although their viewpoints may be biased and out of the local context. The Afghanistan example shows how failure to recognise the distinctiveness of a country's peripheries undermines the effectiveness of changes made in its capital (Thier, 2010). In more inclusive processes, where the assembly is composed of non-politicians or non-legal experts, there is a question of their technical abilities and possible consequences of their limited expertise, which may affect the time needed for the assembly to produce the first draft. In the case of Chile, the collective capacity of the assembly was *reasonable*, even though it consisted of people in different professions (Larrain et al., 2023).

The second issue is collecting and recognising the topics that should be addressed in the new constitutional draft. Recent events, such as internal conflicts, are likely to influence what matters will be the constitution-makers' primary focus (Horowitz, 2006) and consequently reflect short-term perspectives rather than long-term objectives. Nevertheless, a constitution needs to be suited to the society in its given circumstances, and thus this does not necessarily lead to suboptimal content. To elicit relevant topics and the *will of the people*, during the initial drafting phase, there is a potential for upstream public input. For example, a forum was organised in Iceland to collect ideas in the form of word clouds, which were later used to submit information to the constitutional council (Bergsson & Blokker, 2014). In Uganda, the level of public engagement is quoted as *unprecedented*, with more than 25,000 submissions collected by the constitutional commission working on the draft (Tripp, 2010). There is a critique of this picture, as shown by the author, because of political objectives of the government-led exercise and the fact that educational activities of the NGOs and other political actors were restricted. This poses the question of whether this was an attempt to collect citizens' views or convince them of the government's views (Tripp, 2010).

Means of exchanging information should be suited to the country's infrastructure and social capacities. Communication via the Internet was possible in a well-developed country like Iceland in the year 2008, but in Timor-Leste and South Africa, information was predominantly provided on the radio (Aucoin & Brandt, 2010; Ebrahim & Miller, 2010). In Eritrea, the commission tried to tackle the country's low literacy rate (20%) by focusing on non-print media, including songs, poetry, stories, and plays (Selassie, 2010).

4.2.3. Costs of organisation

At the initial drafting stage, costs are mainly logistical and associated with carrying out the drafting works, including organising expert consultations and acquiring know-how. Additional expenses may be incurred due to training provided for the members of the constituent assembly, who may not be experts in, for example, negotiations (Horowitz, 2006).

There may be some public input at the initial drafting stage, and this also adds to the bill. For example, in Ecuador, ten thematic working groups processed citizens' suggestions across different domains with varying public engagement. Information flow was coordinated by the Social Participation Unit, which distributed proposals

between topic groups to manage the overall workload (The Carter Center, 2008). Striving for the broadest participation, Iceland held a one-day forum where a quasi-randomly selected subset of the Icelandic population gathered to brainstorm values and main ideas to be included in the new constitution. The cost of that endeavour exceeded EUR 550,000 (Landemore, 2015). In Eritrea, in a relatively novel initiative, a special place was set aside for Eritreans living abroad. Of the 173 public meetings and debates held during the second stage, sixteen took place abroad, accounting for approximately 10% of all participants. The widespread distribution of the approved drafts in three languages was also extended to diaspora communities before the debates of the third stage began. Most importantly, one-third of the constituent assembly members, and the only elected ones, were representatives of Eritreans living abroad. Selassie (2010) suggests that they were included due to *the critical role they played during the armed struggle in providing intellectual, diplomatic, and financial resources*.

In post-war contexts, particularly when the occupying authorities assume control, securing funding for various aspects of constitution-making often presents significant challenges and obtaining financial support for outreach campaigns may prove difficult. In Iraq, the chairman of the drafting committee took the initiative and established an outreach unit, but they could not secure any resources or even office space. At the time, funding for salaries and security relied on the US. It took almost two months to receive some support from the UN and a few NGOs, after many issues had already been settled (Morrow, 2010). Similarly, in the case of Afghanistan, the UN insisted on drafting and concluding negotiations (stage 2 and stage 3 according to our classification) more quickly, threatening to stop funding (Thier, 2010). On the other hand, a questionable use of public resources was observed in Uganda, where government ministers used official tours to *de facto* campaign for election to the constituent assembly. As further described by Tripp (2010), they used government vehicles to attend events boosting their visibility and public support.

4.3. From draft to final version (stage 3)

Once the initial draft has been produced, the next phase is typically dedicated to deliberations and revisions of the document. At this point, consultations with the public are likely to be conducted to allow different groups to voice concerns, suggest changes, and build legitimacy around the future constitution.

4.3.1. Time

The time required to finalise the drafting process is difficult to estimate; however, a realistic timeframe is approximately six months, to ensure all necessary elements are addressed (Toler, 2014). If the process is too long, it becomes costly and increases the risk of stagnation. In the South Africa case, a strict deadline was imposed for producing the final draft, leaving no time for a popular referendum. This was of no interest to any party involved, as it could signal political weakness, so the deadline proved an effective motivator (Ebrahim & Miller, 2010). A different political

motivation is a government's need to claim success in creating a new constitution during the current term. Constitution-making can be a window to achieve goals that were not possible under the previous political system. This can lead to abuse, because the institutions are already weaker. Discussing examples of Venezuela and Bolivia, Landau (2012) argues that the moment and a sense of hope were exploited for short-term political interests. Limited time was spent on the text itself (three months in Venezuela), and more on constructing mechanisms to expand and legally consolidate power.

The issue of time limits and pressure to quickly conclude the CMP played an important role in the formation of Cambodia's constitution in 1993. According to Marks (2010), the main concern of the five permanent members of the Security Council and powerful Western nations was to complete the UNTAC mission quickly. This pressure is more evident in the third stage (this stage lasted only two months), in which the constituent assembly adopted the draft proposed by one of the parties with minor changes, without debate or discussion, and it came into effect three days later as the new constitution. Similarly, pressure from international actors to expedite the costly, delayed drafting process in Afghanistan meant the subcommittees' work had to be done faster and in a less representative manner than they initially hoped (Thier, 2010). This external pressure to quickly conclude the process is also evident in the Timor-Leste case, as discussed in more detail in section 4.3.3.

4.3.2. Access to information

Regarding sharing and gathering information during the drafting stage, Elster (2012) proposed an *hourglass process*. He advocated for public input at the beginning (stage 2), but no public input in the middle (stage 3), reserved only for assembly members to deliberate on subsequent drafts, and then public input on the draft at the end of the process (stage 4). The reason for structuring the process in this way is to limit the amount of information and noise, which may hamper the effectiveness of the debates. Similarly, Elster (1995) noted that openly working politicians are inclined to stick with their prior claims even if they are no longer desirable, to signal consistency to the public. In post-conflict contexts, lack of transparency and secret voting may be necessary to reach difficult compromises between publicly opposing groups, which would not be possible otherwise (Widner, 2007), as was the case in Afghanistan (Thier, 2010). The case of Thailand suggests that in contexts of ongoing internal tensions, referendum outcomes may not fully reflect the genuine will of the population if they are affected by those in power. As described by McCargo et al. (2017), the ruling junta actively constrained critical public discussion, failed to widely distribute draft copies, despite claims of doing so, and exerted pressure on citizens to vote in favour of the draft constitution.

Public participation in drafting is becoming a transnational norm, and is especially expected in post-conflict contexts and in cases of transition from autocracy. This concept should align with existing legal and social norms, as well as society's capabilities to participate; otherwise, there is a risk of societal polarisation and expectations not being fulfilled, which may result in frustration (Saati, 2017). Landau

(2012) shows another risk posed by broad participation. Even if, in theory, it is supposed to reflect the interests of more groups, it will likely be dominated by the largest one. In Latin America, the largest group were essentially populist autocrats who claimed power in a seemingly *popular* way.

In Iceland, the entire drafting process was transparent to the public, with new versions published online and open to citizens' suggestions (Bergsson & Blokker, 2014). This broad inclusiveness may lead to contradictory views on the same matter. Also, legal documents consist of interconnected parts, and sound legal knowledge is needed to produce a coherent final draft. It may, however, be useful for measuring society's sentiment on certain issues. Iceland is a relatively homogeneous case, while in more diverse, less technologically advanced countries with lower literacy rates, integrating the entire society into the process is unlikely. In Timor-Leste, for example, despite efforts to broadcast debates over the radio, they were difficult for the public to follow (Aucoin & Brandt, 2010), especially since participation required knowledge of Portuguese, which not all citizens possess (Saati, 2017). In South Africa, over 4.5 million draft copies were distributed, and people could provide feedback; Anyone who submitted a proposal subsequently also received a revised draft (Saati, 2017). In Afghanistan's case, there was an illusion of participation, as feedback came too late to be considered, and the main points were discussed behind closed doors (Thier, 2010). In Iraq, the occupiers exercised tight control over the flow of information, a fact that was evident at all stages of the CMP. For instance, during the secret negotiations, public knowledge of the process was limited to a few draft texts leaked in the Iraqi press.

4.3.3. Costs of organisation

Managing and integrating all input during the drafting phase entails logistical costs of organising public hearings, official debates, expert consultations, etc. Allowing public input at this stage also requires a mechanism to gather the feedback. In South Africa, in line with its principle of accessibility and its concern to produce a legitimate constitution through a credible process, the assembly invested significant resources and effort to make the process as open as possible (Ebrahim & Miller, 2010). Technology can reduce costs, provided there is wide Internet coverage and sufficient levels of digital literacy. Dedicated websites and social media channels may be used to collect comments and suggestions for subsequent draft versions (as in the Iceland case).

Given all the costs involved in realising those tasks and programmes, falling short of the budget could endanger the democratic process and negatively affect institutional quality. Marks (2010) points out that due to the end of the Cold War, Cambodia lost most of the strategic interests it had once had for the West, and in this situation, powerful nations wanted the UNTAC mission to be completed *on time and within budget, even if the constitution—its principal product—was not as good as it might have been*, for example with longer negotiations on the draft. The case of Cambodia mirrors the risks of foreign-administered constitution-making, although it remains unclear whether the country could have created a constitution

at all without international funding and administration. Timor-Leste had a similar experience in this regard, as the rushed timetable of the UN, along with the financial concerns of some member states of the Security Council over the extension of the UNTAET mandate and the heavy involvement of the UN in the CMP, contributed to a process that was not as participatory, inclusive, representative, and transparent as expected (Aucoin & Brandt, 2010; Goldstone, 2004).

4.4. Approval and implementation (stage 4)

In the final stage of the process, the newly created document is put to a vote, whether in the constituent assembly (or an institution with the same competence) or in a popular referendum. Following approval (or rejection), this particular constitutional process ends, and the new constitution is formally announced in accordance with relevant procedures and timeframes (or the process starts again). Implementation of the new provisions is the culmination of the whole process and, inherently, the most determinative part. Failing to fulfil the new stipulations creates a gap that undermines the constitution's legitimacy and the government's coordination, and negatively impacts the country's future economic prospects. The ability to enforce the new legislation depends on the capacity of the institutions and cultural and social capital.

4.4.1. Time

The exact timing of the approval process is dictated by the procedures decided upon before it begins. In most of the cases we explored, the time between the approval of the constituent assembly (or a similar institution) and the constitution's entry into force was very short, ranging from three days in the case of Cambodia and sixteen days in Uganda, to forty days and two months respectively in Namibia and Timor-Leste (Aucoin & Brandt, 2010; Marks, 2010; Tripp, 2010; Wiechers, 2010). The outliers were Eritrea, where the constitution was yet to be implemented as of 2025 (Selassie, 2010), and South Africa, with nine months (Ebrahim & Miller, 2010). The case of South Africa is particularly noteworthy because of the *unique role of the constitutional court in certifying the final document's compliance with the constitutional principles, as required by the interim constitution* (Ebrahim & Miller, 2010). However, depending on the interpretation and specific definitions one might provide, this judicial review and revision process, which prolonged South Africa's CMP, might not be considered part of what we described as the approval and implementation stage of constitution-making.

Another issue is the time needed to implement the changes stipulated by the new constitution and legal harmonisation that allows the effective functioning of new institutions. Widner (2007) suggested that one way to measure a new constitution's success is to assess whether its provisions are implemented within the five years following ratification, but this is just one way of defining success. A notable case for the implementation issue of new constitutions is the 1997 Eritrean constitution. The CMP in Eritrea took almost six years, and included large-scale public

involvement and educational campaigns, but the transitional government that oversaw the process and remained supportive at various stages has since declined to implement the ratified constitution (Selassie, 2010; Weldehaimanot, 2008). In Afghanistan, many provisions of the 2004 constitution were not implemented, largely due to the mismatch between what was planned in the text and reality, with consequences visible even years later, with the eventual collapse of the state in 2021 (Murtazashvili, 2022). The cases of post-internal conflict in Uganda and Thailand illustrate that numerous amendments, including substantial changes to key issues, may soon follow the adoption of a constitutional text. In Uganda, 119 amendments were made to the 1995 Constitution within a decade (Tripp, 2010). In Thailand, important provisions related to the monarchy were altered prior to ratification by the monarch (McCargo, 2017).

4.4.2. Access to information

The first and major type of information gathered in this stage relates to approval of all the information processed so far. Whether by the appointed assembly or popular voting, a new proposal is being tested. In Chile, a draft proposal was rejected in the mandatory popular referendum, where even those who did not participate in earlier stages of the process were required to vote. One reason for this constitution's failure is a mismatch between the preferences of the population subset that contributed to the draft and the whole population that eventually decided whether to approve it (Larrain et al., 2023). In our sample, in addition to Chile, referenda were held only in Iraq and Thailand. In all other cases, including all the countries gaining independence, the process was concluded without a public referendum.

If a new constitution is accepted, the issue of its promulgation remains. Ginsburg et al. (2009) show that the majority of modern constitutions include some provisions for their promulgation, so the text of the new constitution will be made available to all citizens. In the case of South Africa, the constitutional assembly continued its public engagement - millions of copies were distributed in all eleven official languages, being available in schools and post offices, to civil servants as well as prisoners, and materials were available in illustrative forms and in Braille (Ebrahim & Miller, 2010), all to preserve the inclusive and participatory nature of the process. In another instance of the occupier's extensive control over the flow of information in Iraq, after the distribution of five million final draft copies by the UN before the referendum, the text was altered again just three days before the vote, without any formal public notification (Morrow, 2010).

4.4.3. Costs of organisation

The apparent cost is associated with organising the popular referendum: printing voting cards and coordinating the referendum commission's work. Once the new document is accepted, there is a cost of its dissemination, whether through printed copies or mass media campaigns. Also, in multilingual countries, translation costs

have to be considered and, in view of greater accessibility, especially in the least educated nations, plain-language summaries.

A final, often overlooked cost is the cost of implementing the changes. Regardless of how ambitious and promising the provisions may be on paper, they need to be translated into reality. To illustrate this, a country striving for greater representation of minority groups in the legislative body can expand the number of members in the parliament guaranteed by a new constitution. While retaining this idea, society will need to cover the additional public spending required for the salaries of the additional public officials. For example, Article 51 of Uganda's 1995 constitution provides for the establishment of the Human Rights Commission, funded with the state budget. Similarly, newly established institutions would require personnel and buildings to carry out their operations, as expected upon their creation, for the benefit of the people. Although constitutions more often include provisions on social rights, such as education or healthcare, in the majority of countries, those provisions are not followed by increased government spending in those areas (Chilton & Versteeg, 2017). In South Africa, as mentioned in section 4.4.1, the procedure of judicial certification by the constitutional court, which took almost nine months, was a very costly endeavour in comparison to the fast and straightforward approaches adopted by other countries, particularly considering the court's directions in inviting both the general public and political parties to participate in the certification process, accepting written arguments and objections, and holding public hearings. The judicial certification process and the court approach are believed to be among the reasons for the widespread support of the outcome in South Africa (Ebrahim & Miller, 2010). In Eritrea's case, as explained above, the ratified constitution has not yet been implemented. In the troubled case of Afghanistan, the constitution on paper was an important step forward for the country, yet the inability to integrate the country (centre and peripheries), lack of respect from local power holders, and distrust of rural society towards the capital proved detrimental (Thier, 2010).

5. Conclusions

Constitution-making is a deliberative process that must take into account each country's specific circumstances. There has been a growing debate about how the process itself should be designed to ensure legitimacy, inclusiveness, and long-term stability. This includes the broader context in which constitutional change occurs, but also the capacity and structure of the society undergoing change. In participatory processes, decision-makers must consider literacy levels, linguistic diversity, and ethnic composition of the society, which directly influence the effectiveness of educational and informational efforts.

We reviewed four stages of the CMP and evaluated examples against the proposed framework, focusing on the context in which the change was taking place and three types of resource: time, access to information, and organisational costs.

While our analysis is constrained by the cases examined and limited by the information available in external sources, it nonetheless reveals certain patterns across diverse contexts.

In post-conflict contexts involving foreign actors and states (the cases of Iraq, Afghanistan, Cambodia, and Timor-Leste), we could observe pressure from foreign governments to effect a swift, low-cost conclusion to the CMP. In all these cases, these were factors contributing to restricting public outreach and engagement. In all cases of a soft transition context, we observed a tendency to maximise public input. However, this approach may backfire if the process becomes overly complex or participation remains incomplete, as was the case in Iceland and Chile.

We restrict our observations to a few conclusions to avoid unwarranted generalisations. In our sample, in some cases we refrained from making judgements and instead focused on presenting the facts according to our proposed framework. As a final observation, we note that the expectations of the process should be carefully balanced with considerations of feasibility and practicality. Experiences of other countries may provide valuable insight into the consequences of a mismatch for future constitution-making exercises.

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