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PUBLIC PARTICIPATION IN CONSTITUTION BUILDING;

AN EFFECTIVE STRATEGY FOR ENHANCING DEMOCRACY?

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Introduction

In the post-Cold War world, the view that liberal democracy is the main method through which sustainable peace can prosper has become a deeply rooted belief among governments, civil society organizations and numerous United Nations' member states. This position is informed as much by a normative view as it is by theoretical and empirical insights. The abundant literature pertaining to democratic peace theory has undoubtedly contributed to the common understanding of democracy as essential for sustainable peace. As Levy (1989: 88) expressed more than 15 years ago, the democratic peace is: "the closest thing we have to an empirical law in the study of international relations". Simply put, democratic states do not wage war against each other. Likewise they are presumed to act peacefully within their own borders (Hegre *et al.* 2001). In addition to democracy being a peace-enhancing good, democracy as a desirable form of government is also a core normative value in international conventions and declarations. "The will of the people shall be the basis of the authority of government", asserts the Universal Declaration of Human Rights (Universal Declaration of Human Rights, 1948, Article 21: 3). In 1999, the United Nations also fully acknowledged the existence of a *right to* democracy (UN Commission on Human Rights, Resolution 1999/57). This notion of democratic legitimacy has subsequently been endorsed by regional organizations around the globe – for example, the European and Inter-American Commission of Human Rights, The Organization of American States (OAS), and the Organization for Security and Cooperation in Europe (OSCE). The normative claim for democracy hence appears strong. But what do the peacebuilding literature and peacebuilding practitioners say about how this desirable form of government can be brought about and strengthened? On this point, a claim is made that links public participation in constitution building processes to democracy.

In fact, since the beginning of the 1990s, constitution building with the assistance of ordinary women and men has become a specific peacebuilding initiative that is held to promote democracy and thus lead to sustainable peace in countries recovering from war, countries transitioning from authoritarian rule and countries that have experienced severe institutional crisis. Although there are a few examples of citizen participation in constitution drafting processes prior to the advent of the peacebuilding agenda in the

early 1990s, an increase is what is referred to as "participatory constitution building" (e.g. Brandt *et al.* 2011, Ginsburg *et al.* 2009) has taken place since 1992. Despite this increase, however, scholarly work has first of all not attempted to analytically differentiate between different types of participation – rather the term "public participation" is currently being used in a very wide sense, and second, the proposed link between participatory constitution building processes and democracy has remained largely unexplored. In essence; while individual scholars (e.g. Ghai and Galli 2006, Wing 2008, Banks 2007, Banks 2008, Brahimi 2011, Samuels 2006) as well as influential international organizations such as the United States Institute of Peace (USIP), the International Institute for Democracy and Electoral Assistance (IDEA) and Interpeace argue that broad based public participation in constitution building, particularly in post-conflict contexts, ought to be endorsed because of its proposed positive effects on democratization, there has not been any systematic research that actually sets out to investigate whether or not this presumption finds empirical support. This gap between assumptions, expectations, "hopeful predictions" (Moehler 2008: 35) and empirical investigations, has during the past years been brought to attention by an increasing number of academics (e.g. Diamond *et al*. 2014, Moehler 2008, Ginsburg *et al.* 2009). These scholars stress the relevance of testing the argument put forth by proponents of public participation in constitution building so that policy recommendations are not issued based on a wrongful understanding of actual outcomes.

In this study a systematic analysis is conducted which sheds light on the research gap presented above. In order to understand if public participation in constitution building following war, following an institutional crisis or during a transition from authoritarian rule does lead to higher levels of democracy, 20 cases of participatory constitution building processes are compared to each other to i) illustrate how the practice of public participation has in fact varied extensively between the cases, and to understand ii) if more extensive forms of participation have led to higher levels of democracy. The 20 cases are presented in Table 1.

Table 1. Cases of participatory constitution building processes

Albania	Ethiopia	Nigeria
Afghanistan	Fiji	Rwanda
Bolivia	Guatemala	South Africa
Brazil	Iraq	Thailand
Colombia	Kenya	Uganda
East Timor	Kosovo	Zimbabwe
Eritrea	Nicaragua	

In the peacebuilding literature and scholarly work concerned with the study of constitution building processes, the cases in Table 1 are commonly referred to as cases of "participatory constitution building processes". This implies that even though there is no uniform definition that explicates what "participation" in constitution building actually means – other than that the public has taken part in the process in one way or the other – there is still a shared *usage* of the label in existing scholarly work. In order to analyse the argument of public participation in constitution building leading to higher levels of democracy, the study therefore includes cases that have been previously identified as such.[1] Having analysed the 20 cases presented above, the argument of public participation in constitution building leading to higher levels of democracy is further tested by adding 28 additional cases to the study; these are also post-conflict states, states that have experienced institutional crisis or transitioning states. In these countries, however, there was no public participation in the drafting of the constitution at all, rather constitution making was an exercise exclusively reserved for political elites and legal experts. The 28 cases[2], hereafter referred to as cases of "non-participation", are included as a point of reference – the democratic outcomes in this group is compared with the democratic outcome in the 20 participatory processes. The 28 cases are presented in Table 2.

Table 2. Cases of non-participation in constitution building

Angola	Ghana	Niger
Azerbaijan	Guinea	Panama
Bosnia-Herzegovina	Hungary	Paraguay
Burkina Faso	Laos	Romania
Cameroon	Lebanon	Serbia
Cambodia	Macedonia	Suriname
Comoros	Moldova	Togo
Croatia	Mozambique	Trinidad & Tobago
Democratic Republic of Congo (DRC)	Namibia	Venezuela
Georgia		

[1] For a more detailed description of the rationale behind selecting the 20 cases, please be referred to Saati (2015: 51-60).
[2] For a more detailed description of the rationale behind selecting the 28 cases, please be referred to Saati (2015: 51-60).

Public participation and constitution building

Why participation?

The idea that ordinary citizens ought to participate in political decision making in general is a notion with a long historical tradition for which there is no space to elaborate the details of here. Suffice is to say that public participation in public affairs has been advocated during the course of centuries, primarily due to its educational merits (see e.g. Rousseau 1971, Mill 1862, Mill 1963). Taking part in public affairs is said to teach people how to work together and how to adjust and reflect upon their own wishes and concerns while taking into account the wishes and concerns of other members of society. Participation is also believed to promote the development of responsible and politically aware citizens who recognize that cooperation with other members of society is in their own self-interest, both in the long, and short run. In this sense, participation in public affairs is also seen as a cure for the individual's narrow and selfish tendency to consider only her/his own particular concerns.

As these ideas suggest, participation in political decision-making is first and foremost perceived to be beneficial for the *individual* who engages in it. However participation-theorists stress that democratic attitudes that individuals develop during the course of participation in political decision-making will also lead to democratic improvement at the macro-level (Moehler 2008, Radcliff and Wingenbach 2000).

Why participation in constitution building?

Due to its foundational status, a country's constitution is of fundamental importance for the journey upon which it embarks. This is, of course, true for all countries. However, according to supporters of public participation in constitution building, when the crafting of a constitution is carried out in the aftermath of violent conflict, after a severe institutional crisis or during a transition from authoritarian rule, then the significance of the constitution and particularly the process through which it comes into being is even more central (Hart 2003, Aucoin 2010, Jega 2010). Their argument is that in such circumstances, public participation in what has traditionally been a stronghold of power for political elites and lawyers is absolutely necessary for a number of reasons.

As brought to attention above, one of the prime reasons being advanced for public participation in constitution building processes is because of its perceived positive effect on democracy levels; there is an expectation that democracy levels will increase as a result of public participation in the making of the constitution. A second reason has to do with the educational merits of participation. Supporters of public participation in constitution building argue that involvement in the crafting of the constitution should be regarded as an education in democracy and an opportunity for participants to learn and understand their constitutional rights (Samuels 2006, Ghai and Galli 2006, Widner 2008). Furthermore, advocates of public participation in constitution building assert that involvement creates trust, which in turn contributes to the growth of social capital (Widner 2005). A self-enforcing loop of some sort is hence envisioned; participation in constitution building bolsters democratic attitudes, people become more open to listening to and respecting the views of others, a democratic political culture develops and state institutions are strengthened (Moehler 2008). A fourth reason for public participation in constitution building that is frequently stressed relates to the issue of legitimacy. If not allowed to have a say during the course of the drafting process, the public will not view the constitution as a legitimate document, in turn making the constitution difficult to implement (Hart 2003, Moehler 2008, Ihonvbere 2000). Public participation in constitution building is also advanced as a means through which former enemies in violent conflict can be reconciled, i.e. as participants in a process of social dialogue that includes a larger segment of the population than merely the political elites (Ghai and Galli 2006, Hart 2003, Samuels 2006). In addition to these normative claims about the benefits of participation in constitution building, a legal argument has also been put forth by supporters. In particular, the International Covenant on Civil and Political Rights (ICCPR), and more specifically, article 25, has been invoked. The article states that: "Every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives" (ICCPR, 1976, Article 25). Whether or not "public affairs" extends to the realm of constitution building is nevertheless a contested issue, wide open for interpretation. The law is far from clear on the matter (Hart 2010). And even if international law were unambiguous in supporting participation in constitution building, "take part" is a vague formulation providing little

guidance as to how it is or should be practiced. This undeniably ties into the question of what "participation" actually implies in the context of constitution building. This issue is addressed in the following section.

What does it mean to participate?

As established earlier, when it comes to differentiating participatory constitution building processes based on how participation in such processes has taken form, there is no previous research to lean on. In order to be able to provide an answer to whether or not participatory constitution building processes lead to higher levels of democracy, of course, one needs to understand what is implied by "participation". Since very little is elaborated concerning the nature of this participation in earlier work, it is easy to imagine that it is an issue of quantity, primarily defined as number of individuals active in the process, but also number of public hearings held, number of constitutional provisions received, etc. In a sense, this is a view that the greater the number of people engaged, the more participatory the constitution building process is. It is important to note, however, that even if a considerable number of individuals participate in their country's constitution building process, this does not reveal whether or not their participation has had an effect on the constitutional document or whether or not the constitutional draft enters into force. In order to be able to define "participation", a first step is to acknowledge that participation in constitution building is a *political* form of participation. Given that, this study, accepts the view that the concept of political participation includes the degree of *influence* participants have over decisions being made in relation to the constitutional document – both in terms of its content and in terms of its adoption.

"Participation" or rather different types of participation?

As stated above, the term "participatory constitution building" is presently being used in a very wide sense. This means that the cases listed in Table 1 are being referred to in manner which leads one to believe that the participation of the people has played out in a similar manner across all cases.[3] However, such is not the case. Actually, rather the

[3] Though the South African case is an exception in this sense as it is commonly referred to as an archetype for "successful" participatory constitution building.

opposite is the case – participatory constitution building processes are not homogenous; how public participation has been carried out in different constitution building processes varies, sometimes even quite extensively, across cases. These differences should be acknowledged, especially since one might be tempted to believe that if participation has an effect on democracy levels, then the extent of such participation might matter. Up until now however, scholarly research has not developed tools in order to be able to differentiate between cases and categorize them on a scale ranging from less to more extensive forms of participation. In this study a classification scheme and a new typology of participation is developed, making it possible to categorize cases on the basis of how much influence participants have been allowed to exert during the constitution building process.

How to categorize?

Four factors can be used to determine the extent of participation in constitution building processes. These factors are presented in the right column in Table 3. Each of these factors, in turn, take different forms, as described in the left column in the table.[4] Different mixes of these factors lead to different kinds of participation, in particular the five different types of participation described in Table 4.

Table 3: Framework for analysing public participation in constitution building processes

Factors that affect public participation in the constitution building process	Forms the factors can take
A. Initiators of the process	• Outside actors who influence constitutional content • Outside actors who determine how the process will be carried out • National elites (political or military elites) • Civil society organizations • Political elites from the ruling party, military elites, political parties in the opposition and civil society organizations
B. Forms of communication	• One-way model of communication • Two-way model of communication • Two-way model of communication with integrated proactive measures • Consultation

[4] For a comprehensive discussion about the four factors and their different forms, please see Saati (2015: 25-35).

C. Degree of inclusion	• Constitution building process ban certain groups/political parties from participation • Constitution building process open to all groups/political parties, some of whom voluntarily decided to boycott the process • Constitution building process open to all groups/political parties and all groups/political parties interested in participating do so
D. Final authority	• Final authority vested in the hands of an appointed or executive body • Final authority indirectly vested in the hands of the people (e.g. through a popularly elected constitutional assembly) • Final authority directly vested in the hands of the people (through a referendum)

Table 4 illustrates five different types of participation in constitution building: false, symbolic, limited, consultative and substantial. Moving from false to substantial involves an increasing level of influence for participants.

One main difference between false and symbolic participation is the identity of the initiators of the process. While outside actors are the primary initiators of the process in cases of false participation, this is not as common in cases of symbolic participation, where different types of inside actors typically perform the role of initiator. The second main difference between false and symbolic participation concerns degree of inclusion. Whereas some groups are banned from taking part in the constitution building process in cases of false participation, all segments of the population are allowed to participate in symbolic participation (although some voluntarily choose not to). False and symbolic forms of participation have similar forms of communication: the initiators of the process employ one-way models with no possibilities for feedback from participants. These two are also similar to each other as regards final authority over the constitutional document. Decision-making either rests with the executive or is indirectly in the hands of the public (through, for example, a popularly elected constitutional assembly).

Table 4. Typology of different forms of participation in constitution building

	False participation	Symbolic participation	Limited participation	Consultative participation	Substantial participation
Initiators of the process	Outside actor (determines the content of the constitution *or* the process)	Outside actor (determines the constitution building process), *or* different types of inside actors	National elites (political or military)	National elites (political or military)	Civil society organizations, *or* a broad array of national actors
Forms of communication	One-way model of communication	One-way model of communication	Two-way model of communication, *or* two-way model of communication with integrated proactive measures	Consultation	Two-way model of communication with integrated proactive measures
Degree of inclusion	Certain groups banned from participation	All segments of the population/political parties allowed to participate, but some choose to boycott the process	All segments of the population/political parties allowed to participate, but some choose to boycott the process	All segments of the population/political parties allowed to participate, and all interested in doing so participate	All segments of the population/political parties allowed to participate, but some choose to boycott the process
Final authority	Final authority rests with the executive *or* indirectly in the hands of the public	Final authority rests with the executive *or* indirectly in the hands of the public	Final authority indirectly vested in the hands of the people	Final authority indirectly vested in the hands of the people	Final authority directly vested in the hands of the people through a referendum

Limited participation, in turn, is different from false and symbolic participation mainly as regards the initiators of the process and also how the constitution building process is communicated to the public. Initiators in cases of limited participation are national elites (either political or military elites). They usually establish a two-way model of communication, or even a two-way model of communication with integrated proactive measures (e.g. constitutional education programs), thus making it possible for people to get engaged in the process and provide more feedback than in cases of false and symbolic participation. As regards degree of inclusion, cases of limited participation are similar to symbolic participation. All segments of the population are allowed to participate, but some groups (for various reasons) choose not to engage. Final authority over the constitutional document is indirectly vested in the hands of the public.

The two main features that distinguish consultative participation from the other four types are forms of communication and degree of inclusion. In consultative participation, the initiators of the process establish a more developed form of communication, providing not only avenues for feedback but also various types of mechanisms that enable constitution making bodies to contact individuals that have provided feedback in order to ask additional questions about their ideas on particular issues. Constitutional education programs are also taken more seriously than in any other type of participation. Here, much greater attention is devoted to understanding the degree of existing knowledge about constitutional issues among various segments of the population and to designing and implementing various strategies to prepare people, depending on what they already know about different issues. Degree of inclusion also sets this type of participation apart from the other four in the sense that not only are all segments of the population allowed to participate in the process, all segments actually take the opportunity to do so (i.e. no groups voluntarily choose to boycott the process).

The final type of participation is substantial participation. It differs from the other types of participation on the last factor – final authority. In addition to a two-way model with integrated proactive measures and full inclusion (i.e. no banned groups), final authority over the constitutional document is placed *directly* in the hands of the people through the use of a referendum.

Based on the description of the five different types of participation above, the 20 cases in Table 1 that are presently being referred to simply as "participatory constitution building processes", are categorized as seen in Table 5.

Table 5. Types of public participation in constitution building and cases

False participation	Symbolic participation	Limited participation	Consultative participation	Substantial participation
Afghanistan, Iraq, Kosovo, Nigeria	Colombia, East Timor, Fiji	Bolivia, Ethiopia, Nicaragua, Rwanda, Thailand, Uganda	Brazil, Eritrea, South Africa	Albania, Guatemala, Kenya, Zimbabwe

In accordance with the predictions of advocates of public participation in constitution building processes, we expect that cases in which there was public participation in the constitution building process will display greater improvements in their level of democracy when comparing levels prior to and after the process than cases of non-participation (the cases in Table 2). As regards cases of participatory processes that are identified as "types of participation", as seen in Table 5 above, but involve no real participation in terms of actual influence, we expect that they will reveal no improvement in levels of democracy prior and after the process – or at least much less – compared to cases of participation in which participants' influence has been extensive. In the following section we will see if these expectations are borne out.

Participation, better democracy? Evidence from 48 cases

Before revealing the results, a brief note on the topic of measuring democracy and the time intervals chosen is necessary.

In order to distinguish whether or not public participation in constitution building has had an effect on the state of democracy, a comparison that measures democracy levels *before* and *after* the process is necessary. Since the 20 cases of participatory constitution building processes and the 28 cases of non-participation did not take place on the exact same year(s), the specific years for comparison are different between them but the time interval is the same. To be precise; for each of the 48 cases, the level of democracy prior to the constitution building process is determined by measuring democracy in the country at a point in time that is set to five years before the initiation of the process. In

order to observe change, democracy levels are measured again in each of the individual cases at the time of the first general elections following the process. In addition to these two occasions, the study also investigates democracy levels in each of the individual cases on a third occasion – at the time of the second general elections following the process.

As regards the issue of measuring democracy, there are quite a few indicators one can use. However, this study requires cross-national (with a broad geographical range), time-series (from at least 1980 until today) indicators of democracy that is based on a liberal understanding of the term and that measures it on a multipoint scale (not on a binary democracy/non-democracy scale). These requirements narrow the list of indicators of democracy down to two – the Gastil Index of political rights and civil liberties from Freedom House and the Polity project started by Ted Robert Gurr in the 1970s. Both of these indicators are used in the study, though the index from Freedom House constitutes the main source of data.[5] Freedom House measures democracy along two dimensions, *political rights* and *civil liberties*, and then averages the score to get a rating ranging from 1-7. Important to note is that the scale is reversed in the sense that a lower ranking (1) implies greater political rights and civil liberties than a higher ranking (7), which indicates an unfavorable situation as regards political rights and civil liberties.

Based on the democracy scores in Table 6 below, some general observations can be made. To begin with, taking into account all of the 48 cases, and the three separate measure points, four main tendencies are revealed. Specifically, one can observe:

- Cases that exhibit a *continuous democratic downturn* from the first point of measurement through the third point of measurement.
- Cases that exhibit a tendency that can be referred to as *"the first election effect"*. This means that democracy levels had improved at the time of the first elections following the finalization of the constitution building process of the new constitution, but then declined by the time of the second elections.
- Cases that exhibit a *continuous improvement* in democratic performance from the first point of measurement through the third point of measurement.

[5] As an additional note it should be mentioned that using these two measures to determine democracy levels has become standard in the comparative democratization literature, which is also a motivation for using them in this study as well (see e.g. Norris 2012: 14, Boogards 2012: 691, Hadenius & Teorell 2005: 26). In this dissertation brief however, only data from Freedom House is presented. If interested in data for the cases from the Polity IV project as well, please be referred to Appendix 3 in Saati (2015). For a more comprehensive discussion about measuring democracy, time-intervals and democratic indicators, please also be referred to Saati (2015: 61-68).

- Cases that exhibit *no change* in their democracy level on the three separate measure points.

Table 6. Freedom Houses designated ratings for all cases (1-7). Year of measurement in brackets

Cases	Years(s) constitution building process occurred[6]	Democracy rating pre-constitution building phase (year)	Democracy rating at the first time of elections (Year)	Democracy rating at
Continuous democratic downturn				
Azerbaijan	1995	5 (1991)[7]	5.5 (2000)	5.5 (2003)
Bolivia	2006-2009	2 (2001)	3 (2009)	-
Colombia	Dec. 1990 – July 1991	2.5 (1985)	3.5 (1994)	3.5 (1998)
Croatia	1990	3.5 (1991)[8]	4 (1992)	4 (1995)
Eritrea[9]	1994-1997	5.5 (1993)[10]	-	-
Lebanon	1990	4.5 (1985)	4.5 (1992)	5.5 (1996)
Namibia	1990	2 (1985)	2.5 (1994)	2.5 (1999)
Niger	2010	3 (2005)	3.5 (2011)	-
Trinidad & Tobago	2000	1.5 (1995)	3 (2001)	3 (2002)
(Uganda)[11]	1988-1995	4.5 (1983)	4 (1996)	5.5 (2001)
Zimbabwe	1999-2000, 2008-2013	5 (1994)	5.5 (2000)	6.5 (2005)
"The first election effect"				
Afghanistan	2002-2004	7 (1997)	5 (2005)	6 (2010)
Brazil	Feb.1987-Oct.1998	3.5 (1982)	2.5 (1990)	3 (1994)
DRC	2005	6.5 (2000)	5.5 (2006)	6 (2011)
East Timor	90 days in total, started in Aug. 2001	5 (1999)[12]	3 (2003)	3.5 (2007)
Ethiopia	1991-1994	7 (1986)	4.5 (1995)	5 (2000)
Fiji	1993-1997, 2012-2013	4.5 (1988)	2.5 (1999)	3.5 (2001)
Georgia	1995	5.5 (1991)[13]	3.5 (1999)	4 (2003)
Kenya	2001-2005, 2009-2010	6.5 (1996)	3.5 (2007)	4 (2013)
Paraguay	1992	6 (1987)	3 (1993)	3.5 (1998)
Thailand	Jan. 1997-Oct.1997	3.5 (1992)	2.5 (2001)	3 (2005)
Uganda	1988-1995	4.5 (1983)	4 (1996)	5.5 (2001)
Continuous democratic improvement				
Albania	1997-1998	3.5 (1992)	3.5 (2001)	3 (2005)
Bosnia-Herzegovina	1995	6 (1992)[14]	5 (1998)	4 (2002)
Burkina Faso	1991	6.5 (1986)	5 (1992)	4.5 (1997)
Cambodia	1993	7 (1988)	6 (1998)	5.5 (2003)
Cameroon	1984	6 (1979)	6 (1988)	5.5 (1992)
Comoros	2001	4 (1996)	4 (2004)	3.5 (2009)
Ghana	1992	6.5 (1987)	3.5 (1996)	2.5 (2000)

[6] For the 28 cases of non-participation, the year of enactment is reported, because there was no process of public participation that preceded the coming into effect of the new document.
[7] Year of independence. There is no data in Freedom House's "Freedom in the World" reports for Azerbaijan prior to 1991.
[8] Year of independence. There is no data in Freedom House's "Freedom in the World" reports for Croatia prior to 1991.
[9] Elections have not been held in Eritrea since 1993, thus, there is no data on measurement points two and three.
[10] There is no data in Freedom House's "Freedom in the World" reports for Eritrea prior to 1993.
[11] Uganda exhibits "the first election effect" as well as a democratic downturn (an even lower democracy level on the third measurement point compared to before the initiation of the constitution building process).
[12] There is no data in Freedom House's "Freedom in the World" reports for East Timor prior to 1999. The East Timorese voted for independence from Indonesia in 1999. In 2002, the country became the first new sovereign country of the 21st century.
[13] Year of independence. There is no data in Freedom House's "Freedom in the World" reports for Georgia prior to 1991.
[14] Year of independence. There is no data in Freedom House's "Freedom in the World" reports for Bosnia-Herzegovina prior to 1992.

Guatemala	1987-1999	6 (1982)	4 (2003)	3.5 (2007)
Guinea	2010	5.5 (2005)	5 (2013	-
Hungary	1989	5.5 (1984)	2 (1990)	1.5 (1994)
Iraq	Jan.2005-Oct. 2005	7 (2000)	5.5 (2005)	5.5 (2010)
Kosovo	Feb.2008-Jun.2008	5 (2002)[15]	4.5 (2010)	-
Laos	1991	7 (1986)	6.5 (1992)	6.5 (1997)
Macedonia	2001	3.5 (1996)	3 (2002)	3 (2006)
Moldova	1994	4.5 (1991)[16]	3 (1998)	3 (2001)
Nicaragua	1985-1987	5 (1980)	3 (1990)	3 (1996)
Nigeria	2 months during 1999	6.5 (1994)	4 (2003)	4 (2007)
Panama	1994	6.5 (1989)	1.5 (1999)	1.5 (2004)
Romania	1991	7 (1986)	4 (1992)	2.5 (1996)
Rwanda	2000-2003	6.5 (1995)	5.5 (2008)	5.5 (2010)
Serbia	2006	3 (2001)	2.5 (2007)	2.5 (2008)
Suriname	1987	6 (1982)	4 (1991)	3 (1996)
South Africa	1994-1996	5.5 (1989)	1.5 (1999)	1.5 (2004)
Togo	1991	6 (1986)	6 (1993)	5.5 (1994)
No change				
Angola	2010	5.5 (2005)	5.5 (2008)	5.5 (2012)
Mozambique	2004	3.5 (1999)	3.5 (2009)	3.5 (2014)
Venezuela	1999	4 (1994)	4 (2000)	4 (2005)

Of course, it is of interest to compare the two sets of cases – non-participation and participatory cases – in order to identify similarities and differences and draw conclusions. In Table 7, the data from Table 6 is organized on the basis of democratic outcome, which makes the differences easier to observe.

Some of the findings presented in Table 7 ought to be encouraging for supporters of public participation in constitution building processes. Considering that the seven participatory cases that display "the first election effect" nonetheless succeeded in improving their democracy scores after the process as compared to their pre-constitution building democracy level, means that the total number of participatory cases that were able to improve their democracy score is fifteen. Though this is a positive result, it must also be viewed in light of how democracy scores have developed in countries characterized by non-participation. Looking at these cases, it is worth noticing that more than half of the cases of non-participation were able to continuously improve their democracy scores. In addition to this, the three cases of non-participation that exhibit "the first election effect" (DRC, Paraguay and Georgia) also managed to improve their democracy levels compared to their pre-enactment scores, although there is a minor

[15] In their annual ratings, Freedom House designated Kosovo as a "territory" during 1993-2008, which explains why there is data for Kosovo during this period even though the country did not gain independence from Serbia until 2008.
[16] Year of independence. There is no data in Freedom House's "Freedom in the World" reports for Moldova prior to 1991.

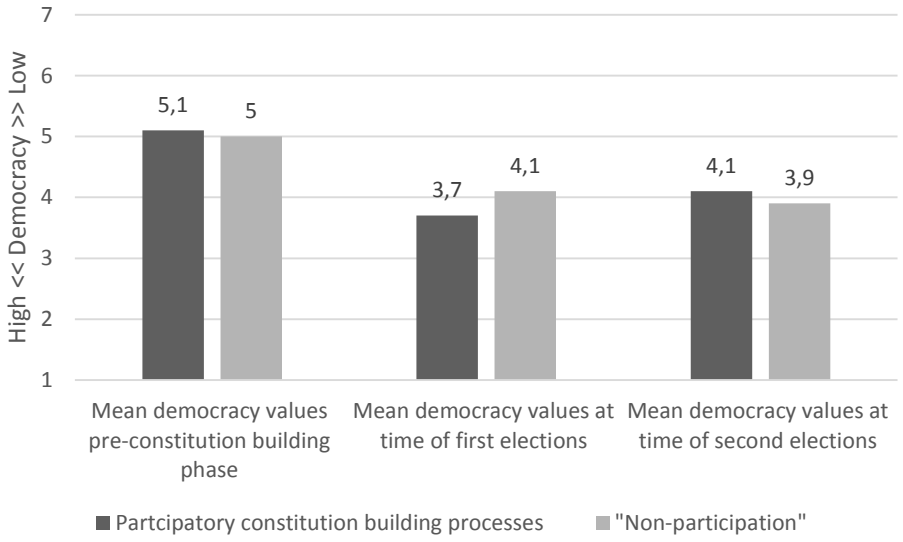
decline between the second and the third measurement point. This means that, in total, 19 out of 28 cases of non-participation show improvement in their democracy scores when ratings before the enactment of the new constitution are compared with ratings after enactment.

Table 7. Distinguishing participatory cases and cases of non-participation based on democratic outcome

	Continuous democratic downturn	"First election effect"	Continuous democratic improvement	No change
Participatory process	Bolivia Colombia Eritrea (Uganda) Zimbabwe	Afghanistan Brazil East Timor Ethiopia Fiji Kenya Thailand (Uganda)	Albania Guatemala Iraq Kosovo Nicaragua Nigeria Rwanda South Africa	
"Non-participation"	Croatia Namibia Niger Lebanon Azerbaijan Trinidad & Tobago	DRC Paraguay Georgia	Bosnia-Herzegovina Cambodia Cameroon Hungary Suriname Panama Togo Ghana Burkina Faso Comoros Guinea Macedonia Serbia Romania Moldova Laos	Venezuela Angola Mozambique

It is easier to compare the democracy levels between the two groups if the data is presented on an aggregate level. In Figure 1, the data in Table 7 is displayed in this way. The figure shows mean democracy levels on the three different measurement points for both the 20 cases of participatory constitution building processes and the 28 cases of non-participation. The graph reveals that, on an aggregate level, both of these groups improved their democracy levels between the pre-constitution building phase and the first elections after the finalization of the process/enactment of the new constitution. The aggregate democracy score for the participatory group actually declines between the second and the third measurement point (from a mean value of 3.7 to 4.1), while the aggregate score for the non-participation group improves somewhat (from 4.1 to 3.9).

Figure 1. Comparing mean democracy levels of participatory constitution building cases and cases of non-participation



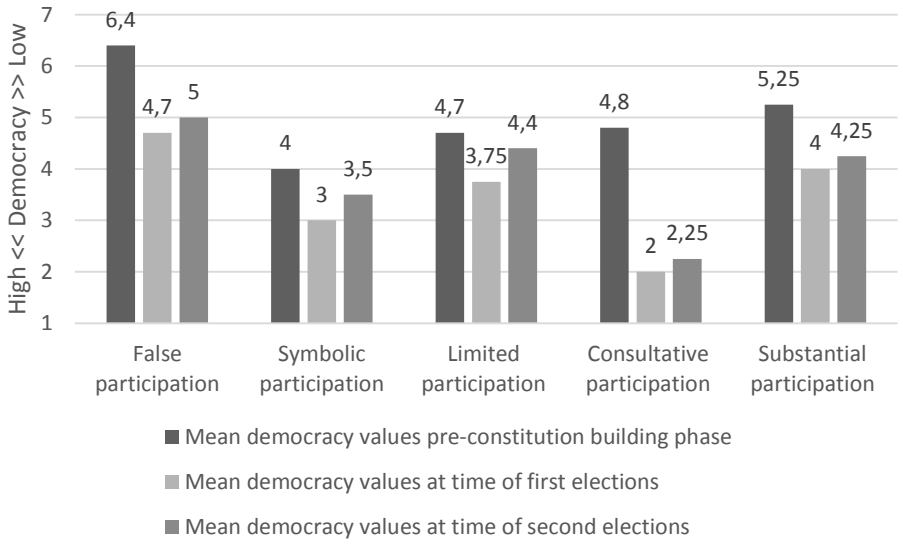
Perhaps it could be argued that since 15 out of 20 participatory cases have shown increases in their individual democracy scores, there is sufficiently strong indication that public participation in constitution building processes indeed contributes to increased democracy levels, and therefore, that it ought to be endorsed regardless of how democracy levels have fared in cases of non-participation. At this point, however, one should recall that "participation" in constitution building processes actually differs from one case to the other, and one should also bear in mind that the results presented above have been reached without separating the participatory cases into different types of participation. In the next section, the different types of participation – false, symbolic, limited, consultative and substantial, are therefore brought into the analysis. By making use of these participation-types, we will be able to determine whether or not cases that are characterized by greater levels of influence for participants have shown greater improvements in their democracy levels than cases characterized by less participant influence.

Below, aggregate mean democracy levels for each of the five types of participation that were categorized in Table 5 are presented. The presentation will start with the participation-type on the far left of Table 5, i.e. "false participation", and move to the right, discussing each type in turn. The purpose of doing this is because we want to find out if cases categorized in the participation-types on the left side of the table reveal no (or

at least much smaller) improvements in their democracy levels as compared to cases found in the categories on the far right of the table.

Figure 2 provides a good overview of how mean democracy ratings on an aggregate level have changed over time for each of the five types, and it will serve as a point of departure in presenting and discussing the results of the analysis.

Figure 2. Mean democracy values for different types of participation in constitution building processes



Comparing mean democracy levels: false participation

In all four cases of false participation – Kosovo, Afghanistan, Iraq and Nigeria – public participation in the constitution building process was nothing but an empty ritual. Figure 2 shows that mean democracy scores on an aggregate level have improved for the cases in this group. It is worthwhile to consider the cases individually as well.

Looking at the four cases individually, Afghanistan is the only country in which the "first election effect" can be observed – i.e. that democracy levels improved in time for the first elections, but this was followed by a decline in the level of democracy by the time of the second elections after the process. In Nigeria and Iraq, democracy levels have improved in the aftermath of the process (see Table 6) and in Kosovo democracy levels have also improved when comparing levels before the process with levels after.[17] Hence, what we see here is that in cases of false participation – where public participation in the

[17] Kosovo's next elections (presidential) are scheduled for 2015, Freedom House's rankings for 2015 will be available in 2016.

constitution building process did not lead to influence over the final document and where the process was designed more as an information campaign than as an avenue for active participation – individual democracy scores have actually improved, i.e. democracy scores after the process are higher compared to levels prior to the process.

Comparing mean democracy levels: symbolic participation

On an aggregate level, Figure 2 illustrates the same tendency for cases of symbolic participation – Colombia, East Timor and Fiji – as the cases of false participation, namely the "first election effect". Here as well, it is valuable to look at the cases individually.

Colombia stands out from the two other cases of symbolic participation. In Colombia, democracy levels deteriorated in the aftermath of the process compared to the country's pre-constitution building democracy rate (see Table 6). Fiji and East Timor, in turn, both exhibit the "first election effect", with a democratic upturn observable at the time of the first elections after the process, but both then experienced a democratic downturn by the time of the second elections. Hence, in cases of symbolic participation, the results as regards the strengthening of democracy are mixed. Given that symbolic participation does not imply actual influence, the results of the Colombian case is perhaps unsurprising. It might be possible to argue that democracy levels have deteriorated *because* public participation did not develop into actual influence. Undeniably, however, it would be very difficult to prove this argument. It is perhaps more interesting to note that East Timor has succeeded in improving its level of democracy from 5 to 3.5 at the time of the second elections (see Table 6), despite the fact that public participation was kept to a bare minimum. Because of this, it appears highly unlikely that the democratic upturn in East Timor can be attributed to the "participatory" constitution building process – participation was just too limited and the possibility for influence was just too circumscribed.

Comparing mean democracy levels: limited participation

As revealed by Figure 2, the cases of limited participation – Bolivia, Ethiopia, Rwanda, Thailand, Uganda and Nicaragua – on an aggregate level also display the "first election effect". Again, it is useful to look at the cases individually. In Bolivia, just as was the case with Colombia, democracy levels at the time of the first elections following the process

declined in comparison to the pre-constitution building level. Ethiopia and Thailand demonstrate the "first election effect", but still exhibit improvements in their democracy levels at the time of the second elections after the process compared to their pre-constitution building process levels. Uganda, on the other hand, is the one case in this group in which the democratic downturn after the second elections was so steep that democracy in the country declined to levels even lower than those that existed in the period before the constitution building process started.

The only two cases that have continuously improved their democracy scores after the process compared to democracy ratings prior to it are Rwanda and Nicaragua (see Table 6). Thus, among the cases of limited participation, we also find mixed results. If participatory constitution building processes are supposed to improve the level of democracy in a country, it is somewhat of a conundrum as to why Uganda displays a continuous democratic downturn. As conveyed in Table 6, the Ugandan process is a case in which substantial time was set aside for the carrying out of the process (1988-1995), and there was much consideration of the issue of how to prepare the people to participate. Why, then, has democratic performance in Uganda not only *not* improved, but actually deteriorated to levels even lower than before the constitution building process was embarked upon? If, as described above, democracy levels improved in East Timor despite the fact that participants had almost no influence in the process, why has this not happened in Uganda, where public participation and influence was extensive in comparison? Observations like these challenge the general legitimacy of the argument of public participation in constitution building leading to higher levels of democracy and indicates that this proposition needs to be informed by additional insights.

Comparing mean democracy levels: consultative participation

When observing Figure 2, the cases of consultative participation – Brazil, Eritrea and South Africa – appear to have improved their democracy scores considerably on an aggregate level. Again, some words of caution are warranted. When looking at the individual cases, one soon discovers that the results shown in Figure 2 are caused by somewhat special circumstances.

Eritrea is something of a special case. Even though the country carried out a very participatory constitution building process, the document that emerged from the process was never enacted. Nor has the country organized any elections since 1993, which means that there is no data for Eritrea other than the level of democracy before the constitution building process was initiated (see Table 6).[18] As far as Brazil is concerned, as in so many other cases, the "first election effect" can be observed here as well. The notable improvement in the mean level of democracy from the pre-constitution building phase to the first and second elections after the completion of the process observed in Figure 2 is almost exclusively explained by the case of South Africa which has indeed shown remarkable achievements as to democratic performance when comparing the country's democracy score from the period before the initiation of the constitution building process with scores after the completion of it.

Comparing mean democracy levels: substantial participation

We have now reached cases of substantial participation; cases in which participation has been broad based, where individuals and organizations have been invited to participate through various innovative avenues, and where they have been allowed to exert influence, most significantly through a final referendum in which the fate of the constitution has been decided. In accordance with the proposition put forth by advocates of public participation in constitution building processes, we should expect that, if any group, the cases categorized as instances of substantial participation will show improved democracy levels when democracy scores before the completion of the process are compared with those after it. In this group we find cases: Albania, Guatemala, Kenya and Zimbabwe. Here as well, however, the results are mixed.

In Albania and Guatemala, democracy levels have improved – however, in the former the improvement is quite small (from 3.5 on the 7 point scale before the commencement of the process to a score of 3 at the time of the second elections following completion) while improvement in Guatemala is more noticeable. The Guatemalan case is however something of a special case among the bulk of the 20 participatory cases since its constitution building process lasted for an unusually long period of time (12 years). This,

[18] It should nevertheless be noted that democracy ratings in Eritrea have plummeted during the first fourteen years of the new century, which clearly indicates a democratic downturn in the country after the finalization of the constitution building process.

in turn, implies that the time span between the first and second measurement point of democratic performance is also quite long compared to the other cases (21 years). Hence, in the case of Guatemala, it is even more difficult than with the other cases in the study to attribute improvement in democratic performance exclusively to the constitution building process. In Zimbabwe, despite the substantial nature of public participation in the constitution building process, democracy ratings have continuously deteriorated in the aftermath of the completion of the process in comparison to the pre-constitution building democracy score while in Kenya the "first election effect" has been a fact, though a complete regression to the pre-constitution building democracy level has not occurred.

Although it appears that cases of substantial participation conform to the proposition of public participation leading to higher levels of democracy to a greater degree than cases of other types pf participation, the Zimbabwean case disturbs this picture and indicates that if a country wants to secure high democratic performance, then there is more to the story than merely enabling public participation in constitution building processes.

What to make of it?

Does participation in constitution building processes lead to higher levels of democracy? Based on the research conducted in this study, the answer is, "not necessarily". What the preceding inquiry has shown is that how "participation" in the context of building a constitution is defined *determines* whether or not we perceive this notion to be valid. When all cases of participatory constitution building processes were treated equally, and their individual democracy scores were not viewed in light of the democracy levels of the cases of non-participation, it did indeed appear as if the proposition put forth by advocates of public participation in constitution building had empirical support. In 15 out of 20 cases we observed improvements in countries' democracy ratings after the finalization of the process. Even though some of these cases saw their democracy scores decline somewhat during the period between the first and second elections following the process, they have still been able to maintain a democracy score which is higher than their pre-constitution building democracy level. However, the fact that more than half of the cases of non-participation also displayed improved democracy ratings after the second elections following the enactment of the new constitution reveals that, when it comes to

strengthening democracy, there is more to the story than public participation in constitution building. To be sure, the proposition concerning participatory constitution building processes as democracy enhancing endeavors has been further challenged by the results presented in the second part of this study. How is it that all cases of false participation have seen increases in their democracy levels, while at the same time, some cases of limited participation (e.g. Uganda), consultative participation (Eritrea) and substantial participation (Zimbabwe) have not only *not* been able to do so, but have instead seen their democracy scores *decrease* after the finalization of the process? How are we to interpret these results? Undeniably, to attribute democratic progress in Nigeria, Afghanistan, Kosovo, Iraq and also East Timor to the "participatory" constitution building processes in these cases seems quite suspect in light of the fact that participation implied minimal or no influence for the public.

One conclusion that can be drawn on the basis of the analysis presented in this study is that, evidently, public participation in constitution building does not need to include any influence over decisions for it to have a positive impact on advancing the country's democratization. Even if participation is used an empty catch phrase, democratic performance is strengthened. At the same time, we also see a strengthening of democracy in cases that have involved a lot of influence, and based on the results, we cannot say that democratic upturns have been *more* dramatic in these cases compared to cases that involved no actual participation (except for the case of South Africa). As far as democratization is concerned, the pieces of the puzzle simply do not add up – the results are inconclusive and beg further inquiry.

Two conclusions indicate that other factors are relevant to consider if the objective is to improve democratic performance. The first is that participation, with or without influence, renders the same result: democratic improvement. The second is that public participation in constitution building, even when exercised in the same manner in different cases, can be followed by diametrically different developments: democratic improvement as well as democratic decline. Two such cases are Kenya and Zimbabwe; both of which are cases of substantial participation in their respective constitution building processes. But while democracy ratings have improved in Kenya following the process, they have steadily declined in Zimbabwe. In the second part of *The Participation*

Myth: Outcomes of participatory constitution building processes (Saati 2015), the focus of attention shifts to these two cases exclusively and to exploring factors beyond participation in constitution building that help explain their different trajectories of democracy.

If not participation, then what?

Much can be said about the determinants of democratization, and, accordingly, much has been said. We are here dealing with a vast theoretical field of study which, in turn, means that the explanations that have been offered are wide-ranging.[19] While searching for an answer as to why Kenya and Zimbabwe display such diametrically opposed trajectories of democracy even though their constitution building processes were very similar to each other, the second part of the study (see Saati 2015: 180-226) is rather quickly able to exclude many of the conventional explanations that political scientists turn to when they aim to explain democratization, e.g. socioeconomic factors, political cultural traits, trust in public institutions, relations with outside countries. Kenya is *not* democratizing because it is more economically advanced than Zimbabwe – their GDP/capita income is almost the same and Zimbabwe's industrial sector is comparatively far more advanced. Kenya is *not* democratizing because it is more ethnically homogenous – it is one of the most ethnically heterogeneous countries in the world. Kenya is *not* democratizing because Kenyans in general have more trust in public institutions: survey answers from the Afrobarometer for Kenya and for Zimbabwe show that as regards level of trust, the two countries rank equally. Rather, it appears to be the actions of political actors, in particular their ability to cooperate with each other, which best explains why Kenya is presently democratizing while the Zimbabwean democratization process stagnated after the finalization of the constitution building process in 2000 and has degenerated in the years since. While political elite cooperation has historically been, and still is, present in Kenya, it is by and large non-existent in Zimbabwe where Robert Mugabe has ruled the country since independence and consistently used the state apparatus and its coercive capacities to cause injury to its opponents. Hence, theories that focus on political actors and political elite relationships have a lot to offer us when it comes to understanding

[19] Please be referred to Chapter 7 in *The Participation Myth: Outcomes of participatory constitution building processes on democracy* (Saati 2015) for a discussion about different schools of thought in the democratization literature.

democratization in Kenya (and the lack of it in Zimbabwe). Many prominent democratization scholars, not least Dankwart Rustow (1970), have argued that political change (from any type of political regime to another) hinges on political elite transformations and that the key factor that distinguishes consolidated from unconsolidated democracies is the presence of elite consensual unity. Simply put, strong democracies require elites who are willing and able to consensually agree on the democratic rules of the game and who have formal as well as informal channels through which they can influence decision-making.

This, and other, insights, from the democratization literature should inform the thoughts of proponents of public participation in constitution building processes. Democratization is not a one-piece jigsaw, and this study shows that public participation alone does not result in higher levels of democracy. But rather than being discouraged by this finding, we should use it to trigger our thinking about during which circumstances public participation in constitution building can actually contribute to democratization. The research presented in Saati (2015) indicates that certain inquiries ought to be further studied in order to shed light on this specific matter. To begin with, what may intuitively appear to be a contradiction can provide us with an avenue by which participation can strengthen democracy at the macro level. That is, when political elite cooperation and consensus precedes public participation, it is possible that the prospects for strengthening democracy may be enhanced. The Kenyan and South African cases indicate this, although the Kenyan elites – in contrast to their South African counterparts did not specifically sit down to negotiate the fundamentals of the constitution; rather, a history of cooperation had already been established long prior to the 2001-2005 constitution building process.

The significant role of political elites inevitably raises the question about sequencing. The South African case[20] indicates that there is a rational for gradually opening up the process for public participation, rather than designing a process which is fully inclusive from the very beginning. Allowing political elites to agree on some of the most pressing/sensitive issues before engaging the public might also lead to a more focused discussion once people are invited into the process, and it can also serve to manage

[20] For more in-depth reading about the South African constitution building process, please be referred to Saati (2015: 315-317).

people's expectations and direct them towards areas of the document that they are actually allowed to influence through participation.

However, when considering elite negotiations as a first step in a participatory constitution building process, the circumstances that characterize particularly post-conflict and transitioning states must be kept in mind. In these societies, the level of trust towards political elites is generally low. If political pacts on contentious constitutional issues are to be regarded as legitimate by the people, then those who strike the deals must be seen as legitimate players in the first place. Hence, it is worthwhile to explore different kinds of constitution making bodies that can ensure the representation of a majority of political factions. This is necessary to at least mitigate the risk that a few powerful players dominate the constitutional negotiations, which can lead to a loss of legitimacy in the eyes of the public.

Second, for participation to work in favor of any positive outcome, certain circumstances in the country where the process is taking place appear to be important. In some of the post-conflict states included in this study, e.g. Afghanistan and Iraq, the process of writing a new constitution commenced while violence was still ongoing and widespread. Thus, the environment was not safe, which made it difficult, and perhaps even life-threatening, for people to engage in the process in any meaningful way. Also, even if impediments to participation due to the threat of physical violence are absent, some institutional fundamentals seem to be necessary. Clearly, it must be legal for people to express their opinions. Interestingly, this signals that some democratic standards must already exist if participation is to lead to any positive outcome, whether it is increasing levels of democracy, reconciliation, conflict resolution or something else. This seems to lead us back to the issue of sequencing again. If transitions from war and authoritarian rule can be regarded as continuous processes, it is worthwhile to further investigate whether public participation is more likely to work if it is introduced somewhere along the continuum when conditions are more favorable.

To be sure, some will argue that since there is evidently no relationship between public participation in constitution building processes and higher levels of democracy, the practice of it should be abandoned altogether. This study however argues that, at this point in time, such a suggestion would be too rash. Participation has the potential to lead

to a number of other positive outcomes, not least for the individual participant and, as hinted above, it is well worth further investigating the *circumstances* under which participation can work in favor of democratization.

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