



The Expert Group for Aid Studies

## **Invitation for proposals: Lessons learned from support to constitution-building processes**

The Expert Group for Aid Studies (EBA) is a government committee mandated to evaluate and analyse the direction, governance, and implementation of Sweden's official development assistance (ODA). EBA engages researchers and other experts to carry out studies of relevance for policymakers and practitioners.

**EBA hereby invites proposals for a study of lessons learned from support to constitution-building processes in partner countries. The aim of the study is to map, synthesise and analyse existing knowledge of support to constitution-building processes, including enabling and hindering factors and the role of citizen participation and inclusion.**

### **Background and motivation for the study**

The basis for a functional state is usually formulated in a legal constitution. Such constitutions also lay the ground for nation building and implicit social contracts. New constitutions are often formed as part of state building following civil wars or regime changes. On many of those occasions development cooperation partners support the processes leading up to adoption of constitutions. Sweden supports or has supported, to a limited extent, activities in the realm of changing constitutions in countries like Burkina Faso, Somalia, Zimbabwe, Turkey and Guatemala.

Within peacebuilding and statebuilding processes, shaping constitutions is a key component. This process entails broad agreements as to the future governance of a country. If stability is to be gained, several interests, social groups and fractions have to agree on a common set of rules and regulations, concerning i.a. the degree of decentralisation and the structure of the state. The norwegian filiosopher Jon Elster has expressed it this way:

“Constitutionalism stands for the rare moments in a nation's history when deep, principled discussion transcends the logrolling and horse-trading of everyday

majority politics, the object of these debates being the principles which are to constrain future majority decisions.”<sup>1</sup>

In forming the content of constitutions, there is need for deep disciplinary competence in law and political science. The way laws are shaped lays the basis for the ensuing character of governance. There is theoretically almost infinite numbers of possible combinations of legislative, executive and judicial bodies, functions and modes of power execution. Furthermore, there is no ideal way to form a constitution since political, historical, economic and social preconditions differ between countries.

Early constitutions, such as e.g. the one adopted in the USA in 1787, was shaped by a group of ‘founding fathers’. A total of 55 delegates took part in this *constitution-making*. In contrast, today’s constitutions seem almost impossible to shape without the active engagement of citizens. As constitutions are based on agreements between various vested interests it is essential how public participation is integrated and shaped within wider *constitution-building* processes.

Constitutions are at the intersection of peace, justice, and societal inclusion. They are the supreme laws with which all laws must comply, however, they are not just legal documents. Constitutions also provide the framework for politics and delineates the political community – whether and how societal groups have access to public power and resources. In short, constitution-building processes form the basis for the future social contract of a country and how the people of a specific political space manage their affairs.

Constitution-building aims at conflict resolution, stabilisation of societies and eventually democratisation, given the right preconditions. To achieve this, a set of elements are needed in the process. Public participation, including the mapping and inclusion of stakeholders and marginalised groups, elite political bargaining, and conflict mediation are some of these elements. How inclusive and extensive may citizen consultations be, and how should various interest groups be consulted? Are there financial and practical means to consult the diaspora? Is this opportune? How to deal with the role of the military in society, as their position might be very influential in e.g. fragile states? How to reconcile various positions, views and interests? What role should the history of the country play, if any?

Questions around constitution-building processes are legion. At the same time, considerable competence around constitutional processes has been gained by a community of constitutional advisers, active around the world. The Sweden-based International IDEA hosts and coordinates the international “Constitution Net”, which harbours considerable knowledge within this field. This network promotes learning around the design of constitution building processes. It also currently supports such processes in Chad, Chile, Mali, Myanmar, South Sudan and Sudan with financial support from donors like the EU and Sida.

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<sup>1</sup> Elster, J (1988, p.6) “Introduction”, in Jon Elster and Rune Slagstad (eds.), *Constitutionalism and Democracy*, Cambridge University Press, New York.

In such countries, processes of constitutional change are at the heart of the peace, security and rule of law agenda. Constitutions define access to political power, opportunity, services, justice, security and identity, and can provide mechanisms for accountability of public institutions. They are central to resolving and preventing societal conflict and promoting stability and economic development of nations. They can strengthen – or weaken - judicial independence and fundamental rights, and thus are foundational for the rule of law.

However, intensifying since 2020, African countries are facing an exceptional rise in the number of unconstitutional changes of governments. The past two years has seen a rapid rise in the number of unconstitutional transfers of power in Africa, including in Burkina Faso, Chad, Guinea Conakry, Tunisia, Mali, and Sudan. Countries like Burundi, the Gambia, Democratic Republic of Congo, South Sudan, and Somalia still remain fragile, while a previously stable country like Ethiopia is trapped in internal civil war. Unconstitutional transitions often come in reaction to factors such as authoritarian rule, uncertain political and social contexts, insecurity, poor governance and accountability, or weaknesses in social contracts between powerful ruling elites and citizens.

So, while much knowledge and experiences exist, challenges to constitution-building processes remain and even seem to be increasing in magnitude. Against this backdrop, it is opportune to study and analyse knowledge gained from professional experience as to how constitution-building should be supported in ways that contribute to success. Especially factors that may hinder success ought to also be in focus, for learning and re-thinking purposes.

## **Key elements of constitution-building**

As mentioned, there are several necessary building blocs when a constitution is to be shaped and adopted – legal and political content expertise, stakeholder identification and mapping, political bargaining amongst elites, public participation to name some of them. This study will focus on *processes of constitution-building* rather than the content of constitutions. While the two may not be mutually exclusive, the process elements are to be prioritized in this study.

A necessary element of constitution-building is the participation of citizens. Without a fair degree of public participation, the process will not be seen as legitimate, hence participatory approaches have become a generally accepted norm. Due to this, the forms, functions and merits of participation have been studied, and a fair consensus has emerged as to how participatory processes may be shaped (IIDEA, 2021).

At the level of preconditions, there seems to be consensus that well-planned civic education, awareness building and a certain level of trust in the process are among the factors needed for fruitful participation. General challenges to be clear about at the outset concern what precise purpose participation should serve, at what stage in the process it ought to be introduced, and what the expected outcomes from public participation are. Contextual factors to consider also include aspects like the levels of literacy, internet access and general security in the concerned society.

Contrary to a hypothesis discussed a decade ago, there is little evidence that participation has positive effects on conflict resolution or democratization. It may even have negative effects in terms of increased polarisation and marginalisation of certain groups. Hence, it is important to have realistic expectations about the effects from participation.

With such lessons learned, it becomes relevant to shift the perspective to further areas where constitution-building processes face challenges, and where there is less of consensus. A preliminary dialogue with actors in the field indicates that processes of inclusion into constitution-making bodies as well as processes of conflict mediation currently are particularly pertinent areas for further study.

International actors and donors often engage rather heavily in the issue of whom to include in the specific bodies that are charged with official constitution-making. In certain cases, such as Syria and Yemen, international actors have been decisive as to the composition of committees. Challenges are related to risks of over-inclusion or extensive use of quotas that make it harder than necessary to reach agreements. The role of international donors and actors would be important to investigate further.

Constitution-building has increasingly also become part of peacemaking efforts. This is where expertise both from the constitution-building community and from the conflict mediation community meet and are set to collaborate with local stakeholders in partner countries. However, there seem so far to be little progress made, and few results to point to. Are there difficulties in combining these different areas of expertise? Is there a lack of understanding of local contexts? Are there other hindrances or challenges that have not yet been overcome?

## Previous studies and evaluations

No evaluations of support to constitution-building processes have been found among Swedish evaluation actors, or on the OECD DeREC platform, where member countries' evaluations are published, or at the webpages of International IDEA and Constitution Net.

An extensive academic literature exists on constitutions and constitution-building generally. There is also a wide literature on public political participation in general, including theoretical approaches to explaining participation, as well as classifications of various forms of participation (Hooghe et al. 2014). A classification example differentiates between 'manifest' and 'latent' forms of participation, where 'manifest' participation captures participatory forms that may be seen as more traditional, whereas 'latent' participation contains some of the newer forms of participation (Ekman and Amnå, 2012). Others claim that classification may be almost elusive, as new forms of participation continuously emerge (Hooghe et al. 2014). Hence, using 'conceptual maps' may be more relevant than distinct categories, since it will not exclude future, hitherto unknown forms of participation (van Deth, 2016). Participation may also play out differently given characteristics of a regime or variety of democracy (Teorell, 2006).

The academic literature on constitution-building deals infrequently with issues around participation. One example is a DDB-report published by EBA (Saati, 2015). A substantive part of this literature is in various ways linked to the Constitution Net, and it has been useful in shaping the emerging consensus on participation referred to above.

However, there seems to be less written on inclusion into constitution-making bodies or on constitution-building in relation to conflict mediation. Hence, this study may potentially fill a void in those areas.

In conducting this study, it may be fruitful to relate tentative findings about constitution-building processes to academic literature and situate knowledge mapped and gained within theoretical framework/s, even if this is not the primary task of the study.

## **Aim and questions**

The aim of this study is to map, synthesise, analyse and draw further lessons from knowledge based on professional experiences of support to constitution-building processes. The following questions shall guide the inquiry:

- a) What support to constitution-building is conducted with direct or indirect Swedish support, either bilaterally, through the EU or through multilateral organisations?
- b) What general knowledge exists concerning the function, form and purpose of support to constitution-building processes? What factors and approaches contribute to, or hinder, more stable constitutional systems?
- c) what specific knowledge based on professional experience has been gained concerning citizen participation in constitution-building, inclusion in constitution-making bodies and the role of constitution-building in conflict mediation? What are relevant gender dimensions in these areas?
- d) What lessons ought to, and can, be learned for future support to public participation in constitution-building?

To answer questions a) and b) mappings of knowledge are required, and for question b) this is expected to include some form of literature review. Questions c) and to some extent question b) will require interaction with such actors who have gained professional experiences in relevant fields. To conduct this, stakeholder analysis will be a starting point, followed by active interaction through the use of relevant method/s. Question d) will build on the previous steps in the study.

## **Study design**

The proposal should include a theoretical and methodological framework. It is up to the authors to further develop the study design, methods, and delimitations but the choices should be clearly justified.

However, the study shall in a thorough way discern knowledge and insights gained through professional experience. Such experiences rest with professional advisors to constitution-building processes, as well as with those professional conflict mediators who in their work relate to constitution-building. A participatory approach to the inquiry is required, whereby the authors will facilitate exchange and dialogue with mentioned professional groups – who are also the primary intended users of the study. Suitable methods for the interaction and synthesis of knowledge may be proposed by the authors. Various approaches and

methods are possible, and innovative designs are encouraged as long as they are well suited to the task.

The study has the objective to contribute to learning. This underlines the importance of attempting to understand work within the area of support to constitution-building, how it resonates with current knowledge, and its relevance, coherence, and expected impact in country contexts.

If needed, the author(s) may refine or adjust the formulation of the four questions after the award decision, in dialogue with EBA and the study's reference group.

## General structure and conditions

EBA works under what is termed "double independence". This means that EBA defines which questions and areas are to be studied, independently of the Ministry for Foreign Affairs (MFA). At the same time, analysis, conclusions, and potential recommendations in each study are the responsibility of the author(s).

For all studies, EBA sets up a reference group consisting of experts in the field of study (members are designated by EBA in dialogue with the authors). The overall purpose of the reference group is to strengthen the quality of the report. The group will be chaired by one of the EBA members. For more information about EBA's work with reference groups, and about our understanding of quality in conducting studies, see the reference group guidelines and the process quality policy at our website: [www.eba.se](http://www.eba.se)

The author(s) shall deliver a report (in English) presenting the results from the study to be published in the EBA report series ([All reports | EBA](#)). The length of the report should not exceed 25 000 words (about 50 A4-pages).

The author(s) shall present preliminary results at a pre-launch meeting/workshop with the MFA, Sida, and EBA, and present the final report at a public dissemination event, preliminary to be held in Stockholm (details to be specified in consultation with EBA at a later stage).

## Intended users

The primary target audience for this evaluation is professional advisors to constitution-building processes, and professional conflict mediators. The group also includes those who may work with constitution-building at the MFA, Sida, and Swedish missions abroad, especially in relation to fragile situations or democratization processes. The study is also expected to be of interest to other aid donors as well as civil society organisations and non-governmental organisations.

The target audiences (MFA and Sida) will be invited to participate in the study's reference group in order to ensure the opportunity for process learning and simultaneous feedback on the study process and results.

## Procurement procedure, budget, and timetable

The maximum cost for this study is SEK 1 300 000 excl. VAT. Since the procurement is under the EU threshold value, applicable law is Chapter 19 of the Swedish Public Procurement Act (2016:1145). The procedure will be a restricted procedure in two stages. At both stages, tenderers are expected to disclose potential conflicts of interest pertaining to members in the evaluation team, as this may be a ground for exclusion of a proposal.

### ***First stage: Application to submit tenders***

All suppliers have the right to apply to submit tenders (expression of interest). EBA will invite three (3) suppliers to submit tenders.

Applications to submit tenders shall be registered at the tender portal Kommers Annons eLite [www.kommersannons.se/elite](http://www.kommersannons.se/elite), no later than 24 October 2022. The application shall contain:

1. CV of the principal investigator.
2. A list of the principal investigator's most relevant publications (at most 10 studies from the last 10 years are to be listed).
3. Preliminary team (if more than one author. Described using at most 300 words.).
4. Three sample studies conducted by members of the proposed team. At least one shall have been authored by the principal investigator. Note that the studies should be sent in as files, not as links in a document.
5. A short account for how, according to the authors, respective study has contributed to new, reliable knowledge of relevance for this evaluation (at most 300 words, i.e. 100 words per study).

Applicants are kindly asked not to submit any unsolicited material.

Selection of applicants to invite to submit tenders will be based on the submitted material assessed against sub-criteria 1-4 of criterion 2 (see the table at the end of this document). Since the proposed team is preliminary, main weight will be put on the team leader/principal investigator's experience and competence.

Suppliers must submit a self-declaration in the form of a European Single Procurement Document (ESPD) by filling in the tender form at [www.kommersannons.se/elite](http://www.kommersannons.se/elite). Please make sure enough time is allocated for completing the ESPD form when submitting the expression of interest.

### ***Second stage: Submission of tenders***

Selected suppliers are invited to submit a full proposal. The proposal shall be written in English and no longer than 15 pages. The proposal shall include a detailed presentation of study design, methods used, and delimitations. Choices made shall be clearly justified. The proposal shall also include a presentation of the members of the evaluation team, a detailed schedule, allocation of time and tasks between the members of the group, and a budget (denominated in SEK, including price per hour for each team member).

Tenderers shall give an account of all potential conflicts of interest pertaining to members in the evaluation team, as this may be a ground for excluding tenders.

The budget shall enable three to four meetings with the study's reference group (to be appointed by EBA following dialogue with the authors), a workshop in Stockholm, and participation at the launching event. The reference group will meet in Stockholm, but one or two meetings may be conducted by video link.

As appendices to the proposal shall be included: (i) CVs; (ii) at most three sample studies (reports or articles) carried out by members of the proposed team. At least one shall have been authored by the principal investigator. These studies may be the same as or different from the ones in the first stage; (iii) A brief account for how, according to the authors, respective study has contributed to new, reliable, knowledge of relevance for this evaluation (at most 300 words, i.e. 100 words per study, may be the same as or different from the application to submit tenders ).

The proposal shall be registered at the tender portal Kommers Annons eLite [www.kommersannons.se/elite](http://www.kommersannons.se/elite), no later than 15 December 2022. Tenderers are advised to monitor the tender portal regularly, as it is not possible to guarantee the receipt of e-mails.

Proposals shall be valid until 31 March 2023.

### **Questions to EBA during the process**

During the procurement process, EBA is not permitted to discuss documentation, tenders, evaluation, or any such questions with tenderers in a way that selectively benefits one or more tenderers. All questions shall be sent to the Questions and Answers function on the procurement portal Kommers Annons eLite, [www.kommersannons.se/elite](http://www.kommersannons.se/elite). Questions and answers to questions are published anonymously and simultaneously to everyone registered for the procurement.

Questions related to the first stage may be posed until 17 October 2022.

Questions related to the second stage may be posed until 8 December 2022.

### **Preliminary timetable**

Last day to apply to submit tenders	24 October 2022
Invitation to (3) suppliers to submit tenders	9 November 2022 (at the latest)
Last day to submit tender	15 December 2022
Decision by EBA	February 2023
Contract signed	February-March 2023
Final report delivered	February 2024
Launch event	Q2 2024

### **Selection of proposals in the second stage**

An assessment group comprising members of EBA will assess proposals received based on the relationship between price and quality. The following criteria will be used when assessing proposals received:

- Quality of proposal, in terms of design, methods, and plan for implementation (weight: 50 per cent).
- Experiences and qualifications of team members in the areas of interest (weight: 40 per cent).



- Cost (weight: 10 per cent).

See the table at the end of this document for the factors that will be considered under each of these three criteria. The assessment of each proposal will be based on the material submitted by the tenderer by the end of the bidding period.

## Confidentiality

After the communication of EBA's selection, all submitted proposals will become official documents, meaning that the Swedish principle of public access to official records applies. Sentences, sections, or paragraphs in a document may be masked in the public version if "good reasons" (thorough motivations in terms of causing economic damage to the company) can be provided and deemed valid. The tenderers are fully responsible for making their claims of confidentiality.

## About the Expert Group for Aid Studies (EBA)

The Expert Group for Aid Studies (EBA) is a government committee mandated to evaluate and analyse the direction, governance, and implementation of Sweden's official development assistance. The aim is to contribute to an efficient implementation of well-designed aid. EBA focuses primarily on overarching issues within Swedish development assistance, not on individual projects. EBA consists of an expert group of ten members, an expert from the MFA, and a secretariat placed in Stockholm.

In 2022, the Expert Group consists of: Helena Lindholm (chair), Johan Schaar (vice chair), Kim Forss, Torgny Holmgren, Sara Johansson De Silva, Staffan I. Lindberg, Magnus Lindell, Joakim Molander, Julia Schalk, Janet Vähämäki and Anders Trojenborg (adjunct expert from the Swedish MFA).

## References

- Ekman, J., Amnå, E. Political participation and civic engagement: Towards a new typology. *Humaff* 22, 283–300 (2012). <https://doi.org/10.2478/s13374-012-0024-1>
- Hooghe, M., Hosch-Dayican, B., & Van Deth, J. W. (2014). Conceptualizing political participation. *Acta Politica*, 49(3), 337-348.
- International IDEA (2021). *Practical Considerations for Public Participation in Constitution-Building: What, When, How and Why?* Policy Paper 24, I-IDEA, Stockholm, Sweden.
- Teorell, J. (2006). Political participation and three theories of democracy: A research inventory and agenda. *European Journal of Political Research*, 45(5), 787-810.
- Van Deth, J. W. (2016). What is political participation?. In *Oxford research encyclopedia of politics*.

## Appendix 1 – Assessment criteria

Criteria	1. Quality of proposal in terms of design, methods, and plan for implementation. (Weight: 50 per cent)	2. Experiences and qualifications of team members in the areas of interest. (Weight: 40 per cent)	3. Cost. (Weight: 10 per cent)
Scale	Criteria 1 and 2 are graded on a scale of 0–5 where: 5=Extraordinary or exceeds all expectation; 4=Very good; 3=Good; 2=Fair, reasonable, in line with what can be expected; 1=Sub-standard; 0=Not applicable/not possible to assess. Sub-criteria are assessed in falling importance according to number but are not graded numerically.		Continuous grade [0,5] as a share of the lowest bid offer, where the lowest bid is graded 5.
	Each criterion is finally weighted (0.50*Criterion 1+ 0,40*Criterion 2 + 0,10*Criterion 3) to obtain a total grade in the interval [0, 5].		
Specifications <i>(numbered in order of importance)</i>	<p>1. Does the study design, i.e. suggested methodological approach and plan for implementation, make it possible to fulfill the study's purpose?*</p> <p>2. Have the approach and method(s) been described in a specific and transparent manner?</p> <p>3. Have important or pertinent limitations with the method been described and discussed clearly?</p> <p>4. Will the study design enable conclusions that can be expected to form the basis of use, learning, and reflection among the study's target groups?</p> <p>5. Does the proposal have a thorough and realistic workplan and timeline?</p> <p>* An overall assessment that the evaluation is feasible to implement and that it can be implemented without any ethical breaches occurring is presupposed. While such an appraisal is required, it is not included as a separate sub-criterion.</p>	<p>The team participants' experience of:*</p> <p>1) Evaluation or research in areas related to the topic, i.e. constitution-building; state fragility; political participation; political institutions and governance;</p> <p>2) Advanced evaluation or research methodology;</p> <p>3) Development cooperation, especially related to constitution-building;</p> <p>4) Quality of previous evaluations/studies conducted by team members (based on studies attached to the proposal);</p> <p>5) Academic merits of the team members;</p> <p>6) The team members' engagement in the evaluation as specified in the proposal's work and time plan and as shares of proposed budget</p> <p>* Sufficient language skills in relation to the needs of the assignment are required to be shown and are therefore not specified as a separate sub-criterion.</p>	Total price in SEK (VAT excl.)