



# Constitution-building

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KEY FINDINGS

Political Settlements Research Programme  
UNIVERSITY OF EDINBURGH

## Constitution-building

Constitution-building refers to processes for negotiating, drafting and implementing constitutions. This can be carried out as a tweaking and amending of the existing constitution, or by designing new constitutions.

In collaboration with our partner organisation International IDEA, The Political Settlements Research Programme has been working to understand how constitution-building is intertwined with peace processes.

For key PSRP publications related to constitution-building, visit our website at [www.politicalsettlements.org/key-findings](http://www.politicalsettlements.org/key-findings).

## Key Findings

The peace agreement itself may include a constitution, such as the Dayton Peace Agreement in Bosnia Herzegovina, which included the text of a new constitution for Bosnia in Annex 4 (see [Global Constitutionalism](#)).

Or the peace agreement can even *be* a constitution, such as the Interim Constitution in South Africa in 1993 (see [Global Constitutionalism](#)).

Even when a constitution is not drafted as part of the peace agreement, peace processes often require constitutional reform or constitution-building as a part of the peace process, and many peace agreements provide for constitutional reform.

However, issues of sequencing of constitution-making within peace processes vary with four main sequences (see [Bell & Zulueta-Fülscher](#)):

1. Partial peace (or ceasefire) agreements (not including transitional political arrangements) lead to a final constitution or a fundamental review of the old constitution
2. Transitional political arrangements (either in a peace agreement or a stand-alone document) lead to a final constitution
3. An interim constitution, perhaps preceded by a peace (or ceasefire) agreement, fulfils the role of a peace agreement and sets the stage for a final constitution
4. A combination of (2) and (3), whereby transitional political arrangements are followed by an interim constitution, which precedes the final constitutional drafting stage.

Other critical questions include the type of body which is established to draft the constitution (see [Zulueta-Fülscher & Bisarya](#)), and the timing of elections and referendums (see [Tierney](#) and [Ellis](#)).

Sometimes where a peace agreement provides for [territorial power-sharing](#), sub-state constitutions may be provided for. Our work on sub-state constitution-making noted the importance of 'constitutional space' as provided for in the central or federal constitution; and the substance of sub-state constitutions, including how they may protect 'new minorities' and account for local level governance (see [Zulueta-Fülscher & Welikala](#)).

It is important to understand and manage the ways in which constitution-making happens in an iterative process, incrementally over time, where interim arrangements can become 'sticky' and create pathway dependencies that are hard to break free from (see [Zulueta-Fülscher, Welikala, Bisarya & Bell](#), and [Global Constitutionalism](#)).

The constitution may have to be tweaked or replaced to establish interim governance arrangements, which itself form mini-constitutional frameworks to govern the transition. Our research in this area sets out how countries and mediators achieve this in a peace process (see [De Groof](#)).

Constitutions implicate the inclusion of groups well beyond the armed actors, and our work on women and gender and constitution-making has shown the different issues which require to be negotiated which can particularly affect women.

Constitution-making and transitional justice, are processes that have many aspects in common. Better attention to the relationship between the two can lead to better design of both (see [Cats-Baril](#)).

## PSRP Key Findings Series

This is part of PSRP's Key Findings Series. Key findings from all of our research themes are available at [www.politicalsettlements.org/key-findings](http://www.politicalsettlements.org/key-findings), including gender, constitution building, power-sharing, elections, and transitional justice.

For more information on the Political Settlements Research Programme, visit [www.politicalsettlements.org](http://www.politicalsettlements.org).

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