

# Civil Society Dialogue Network

## Discussion Paper No. 3

### National Dialogue Processes in Political Transitions

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## 1. Introduction

National dialogues are negotiating mechanisms intended to expand participation in political transitions beyond the political and military elites. Their ambition is to move away from elite-level deal making by allowing diverse interests to influence the transitional negotiations. At the same time, national dialogues are not purely democratic processes: their participants are not chosen through direct one-man-one-vote elections, but are either appointed or selected by caucus-type constituencies that are smaller than the total population of voting age. Also, in their deliberations, national dialogue processes do not usually follow parliamentary or other established procedures but design their own debating and decision-making rules. National dialogues, then, try to escape the elitism of peace negotiations, but do not provide for a full-fledged democratic process to carry out that negotiation.

National dialogue processes have taken place in a number of countries going through political transitions and have influenced the outcomes of these transitions. Several West African countries held national conferences in the early 1990s as they moved from authoritarian to democratic governments (Benin, Togo, Congo Brazzaville, Niger, Mali and Zaire, among others). Following the 2003 Bonn Agreement, the Emergency and Constitutional Loya Jirgas were held in Afghanistan and contributed to the design of the transitional process. Finally, the National Dialogue Conference was launched in Yemen in March 2013 as part of the November 2011 Implementation Mechanism of the Gulf Cooperation Council (GCC) Initiative, which put in place a two-year transitional process in an effort to end the conflict in the country. These processes have differed in their legal status and mandate, their independence from the government, their inclusiveness, and the role they played in the transition.

There are three inherent tensions in designing national dialogue processes, which influence their legitimacy and effectiveness:

1. The size and composition of national dialogues: how large should national dialogues be? How wide should the inclusion net be cast? What constituencies need to be included and how should their representatives be selected?
2. The power and mandate of national dialogues: what is their relationship to existing state institutions like parliaments and governments? What are their decision-making powers?
3. The question of the independence of national dialogues: should the decisions of national dialogues be ratified by existing institutions or should their decisions be final? In transitional periods, unelected interim governments are often in power and may lack legitimacy in the eyes of the public compared to large and inclusive national dialogues. In other cases, incumbent governments which may have been elected through processes of questionable fairness may also suffer from the same legitimacy deficit. It therefore sometimes proves difficult for governments to claim legitimate control over national dialogue processes.

These tensions are usually resolved through negotiations among the key political actors regarding the dialogue's powers and role in the transition. These negotiations are by definition messy and difficult, and do not follow a clearly defined path. Often, key political actors agree on a set of principles that should govern the transition, which they then seek to consolidate through an inclusive and participatory national dialogue. In other cases, the above tensions are resolved during the dialogue process itself, while yet in others they lead to the failure of the dialogue.

This paper attempts to shed light on these tensions by examining how different countries have approached national dialogues, how they have prepared them, and what mandates they have given to them. The goal of the paper is to inform practitioners who are engaged in designing

and preparing national dialogues to always bear in mind that political transitions are unique events and that transferring lessons across countries is a difficult enterprise. The paper focuses on countries where national dialogues played a key role in influencing decision-making during political transitions or were mandated to play such a role but ultimately failed. It does not discuss sub-national dialogue efforts or dialogues which were not mandated to influence the shape of the transition.

## **2. The mandate of national dialogue processes**

National dialogue processes have had a variety of mandates in transitional settings. In some cases, they kick-started political transitions: they appointed transitional governments, transitional constitutions and constituent assemblies. In other cases, they have themselves drafted constitutions while still in other cases they have drafted constitutional principles which were handed over to a constitution drafting body. In yet other cases, national dialogues have simply, but usefully, engaged all actors in a political process and designed future negotiation processes which took binding decisions. In these latter cases, the goal of the dialogue was to build enough trust and to design the process through which the country might resolve some of its most contentious problems.

Reaching an inclusive agreement on the mandate of the dialogue through negotiations among all key stakeholders is not simple. In some cases, the mandate is negotiated among leaders representing the parties to a conflict and is included in a peace agreement (as for example in Afghanistan and Yemen), while in other cases it is agreed upon by relatively inclusive committees tasked to prepare dialogues to build national consensus on key issues (as for example in a number of West African countries as for example in Togo and Congo Brazzaville). In some cases, the mandate is negotiated among a narrow set of elites but the dialogue itself expands participation to a wider set of political actors (as for example in Yemen). In other cases, however, as for example in Iraq, it proves difficult to expand political participation when the mandate of the dialogue is disputed. In some cases, the agreed upon mandate is respected by the national dialogue although it continues to be interpreted as the dialogue progresses (Afghanistan, Yemen, Iraq). In other cases, the mandate evolves during the dialogue, as it happened in the West African national conferences some of which declared themselves sovereign and overthrew existing regimes. As will be discussed later, these latter cases can be destabilising as the incumbent regime may decide to not accept the decisions of the dialogue and may resort to violence.

In general, national dialogues benefit from a clear, manageable mandate and a well-defined relationship to ongoing political processes which is negotiated prior to the commencement of the dialogue. What is the dialogue trying to accomplish, what powers does it have and how does it relate to existing institutions? Clear answers to these questions are crucial for several reasons. First, it is easier to mobilise the public and civil society around a dialogue process which has a clear mandate and is expected to reach concrete outputs. In cases where a dialogue process does not have a clear goal, it is unlikely that society will become interested in it, seek to influence it and try to participate in it. Citizens and civil society groups decide to invest their time in a dialogue process which they perceive as worthwhile because it is mandated to reach important outputs.

Second, the participants of the dialogue are more likely to work productively when they understand the goal toward which they are working. Unclear mandates can cause confusion during a dialogue. Dialogue participants may lose focus and direction if they can easily lose sight of the goal of their work. Also, when the goal is unclear, disputes regarding the goal itself

may dominate the dialogue process and may take a long time to resolve given that dialogues usually include a large number of participants. Third, and related to the above, a clear relationship between the dialogue and the rest of the political process allows the various political actors to work based on an agreed upon framework. Inevitably, disputes will emerge during the dialogue process about the substance of the discussions. It is therefore useful for the goal of the dialogue to be agreed among political leaders prior to its commencement.

The negotiation of the dialogue's mandate can be crucial to its success. If certain powerful constituencies are excluded from the negotiations on the transitional process and the role of the dialogue in that process, they may refuse to participate in the dialogue. This was the case of the Iraqi National Conference of 15–18 August 2004.

#### **Mandate issues: the Iraqi National Conference 2004**

This Conference was part of the transitional framework put in place by the US-appointed Iraqi Governing Council (IGC) and the Coalition Provisional Authority (CPA). The Conference was envisaged as a forum of 1,000–1,500 persons representing all segments of Iraqi society and all regions of the country. It had a relatively weak mandate within the transitional framework to discuss a set of issues facing the country and to elect a National Council with limited powers overseeing the work of the unelected Interim Government until the first parliamentary elections were held in January 2005. That parliament would then draft the country's new constitution.

A political agreement on the transitional framework and the role of the Iraqi National Conference within that framework was lacking. On the one hand, the groups opposing the presence of foreign troops in Iraq and the appointment of the Interim Government, which followed the IGC, refused to participate in a Conference which had no mandate to amend the transitional arrangement. For these groups, the transitional agreement was illegitimate because it was designed by a US-appointed body without their participation. On the other hand, the political parties participating in the Interim Government did not seek an inclusive conference as it might challenge the transitional arrangement. This disagreement impeded a truly inclusive conference from taking place. As a result, the National Conference was not a major event in Iraq's transition: it did not serve as a forum for genuine dialogue and did not expand political participation in the National Council as it was composed mostly of the political parties participating in the Interim Government.<sup>1</sup>

In a few of the West African national conferences of the late 1980s, the mandate of the dialogue process evolved and was negotiated as the dialogue progressed. This proved a successful approach in some cases, while in others it led to violence and to the disbanding of the dialogues. At the end of the 1980s, the authoritarian governments in Benin, Congo and Niger faced economic collapse, defection of the army and loss of international support. Incumbent leaders agreed to convene national conferences in order to build some national consensus on the way forward, accepted the authority and conclusions of the national conferences and eschewed violence. The national conferences independently suspended the existing constitutions, dissolved the parliaments, and appointed the institutions of the transitional period, such as interim constitutions, legislatures and governments. Their decisions were final and did not require ratification by a separate body. The interim governments were typically caretaker governments and were responsible for organising elections and

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<sup>1</sup> Katia Papagianni, "National Conferences in Transitional Periods: The Case of Iraq," *International Peacekeeping*, vol 13, no 3, September 2006.

constitutional referenda. The incumbent presidents were allowed to retain their positions until elections were held. Due to the weakness of the incumbent authoritarian regimes, the interim transitional institutions established by the conferences were widely accepted and successfully prepared for competitive elections and transitions to democracy.<sup>2</sup>

### **Political leaders in national dialogue processes**

In Benin, President Kerekou accepted the decisions of the national conference including the one which stripped him of most of his powers. Although he initially described the decision as a 'civilian coup d'état,' he accepted it given his weak position which stemmed from the disastrous state of the economy, the strengthening of the opposition, the withdrawal of French support, and the ambiguous position of the army.<sup>3</sup> Similarly, in early 1991, in Congo (Brazzaville), Col. Sassou-Nguesso agreed with opposition demands that the national conference should not need government approval for its decisions.<sup>4</sup> Given his unwillingness to use the army to keep himself in power, Sassou-Nguesso became sidelined as the national conference took the lead in the transition. In Niger, the Seibou regime had lost its credibility through its repression of the student demonstrations and through its disastrous economic policies. Seibou lost his power within a month of the national conference. He decided to step down from the presidential nomination in order to avoid humiliation.<sup>5</sup>

In contrast to the above cases, in other countries where national dialogues assumed greater powers as they progressed they were not successful in bringing about a transition to democracy. In Togo, in July 1991, when the national conference stripped president Eyadema of most of his powers and established an interim government and legislature, Eyadema surrounded it with troops. He subsequently allowed the conference to proceed to a ceremonial ending, but used the army to harass his political opponents and maintain his grip on power. The difference between Togo and Benin is that the degree of collapse, which had characterised the regime in Benin, was not evident in Togo.<sup>6</sup>

The mandate of the Yemeni National Dialogue Conference (NDC) was negotiated in some detail before the Conference was launched on 18 March 2013. The NDC, which is still ongoing, was included in the transitional process put in place by the November 2011 Implementation Mechanism of the Gulf Cooperation Council (GCC) Initiative, which ended the conflict between the incumbent regime of former President Saleh and a wide opposition movement consisting of various political parties and a youth and civil society movement. The Mechanism was signed by the major political parties on both sides of the conflict, but not by representatives of other constituencies such as the youth, civil society women, the peaceful Southern Movement<sup>7</sup> or the Houthi rebellion<sup>8</sup>. However, with the exception of a large section

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<sup>2</sup> Peter Harris and Ben Reilly, eds, *Democracy and Deep-Rooted Conflict: Options for Negotiators* (Stockholm, Sweden: IDEA, 1998), 'Case Study: National Conferences in Francophone Africa.'

<sup>3</sup> Harris and Reilly, eds, 1998, 2 (electronic copy); Michael Bratton and Nicolas van de Walle, *Comparative Politics*, vol 24, no 4, July 1992, 424; Kathryn Nwajiaku, "The National Conferences in Benin and Togo Revisited," *The Journal of Modern African Studies*, vol 32, no 3, 1994, 438-440.

<sup>4</sup> Harris and Reilly, 1998, 3.

<sup>5</sup> Myriam Gervais, "Niger: Regime Change, Economic Crisis, and Perpetuation of Privilege," in John F. Clark and David E. Gardinier, *Political Reform in Francophone Africa* (Boulder, CO: Westview Press, 1997), 92.

<sup>6</sup> Nwajiaku, 1994, 431; John R. Heilbrunn, "Social Origins of National Conferences in Benin and Togo," *The Journal of Modern African Studies*, vol 31, no 2, 1993, 281.

<sup>7</sup> For analysis on the Yemen's Southern Question and the peaceful Southern Movement see: International Crisis Group, "Breaking Point? Yemen's Southern Question," Middle East Report No 114, October 20, 2011.

<sup>8</sup> For analysis on the Saada issue and the Houthi rebellion see: International Crisis Group, "Yemen: Defusing the Saada Time Bomb," Middle East Report No 86, May 27, 2009.

of the Southern Movement, these other constituencies welcomed the NDC as an opportunity to participate in and influence the transitional negotiations. As long as the NDC was prepared in a fair, inclusive and transparent manner, and allowed proper representation of all constituencies, these groups were willing to give it a chance.

The NDC has a relatively strong mandate which includes “establishing the key substantive elements of constitutional reform” and “determining the process of drafting the Constitution, including the establishment of the Constitutional Drafting Commission and its membership”.<sup>9</sup> Additional elements in the mandate include the issue of the southern part of the country which contains a very strong secessionist movement, economic development, good governance and human rights. This mandate was stated in some detail in the Implementation Mechanism itself<sup>10</sup> and in the Presidential Decree appointing the Technical Committee which was tasked to make all preparations for the NDC.<sup>11</sup> During the NDC, disagreements have emerged regarding the exact interpretation of its mandate including, for example, the detail and extent to which the NDC is meant to define the key constitutional principles. However, the bigger question of the NDC’s power to influence the constitutional process has not been in doubt.

In Afghanistan, an Emergency Loya Jirga (ELJ) was provided for by the Bonn Agreement of December 2001<sup>12</sup> (“Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions”). According to the Agreement, “the Emergency Loya Jirga will elect a Head of the State for the Transitional Administration and will approve proposals for the structure and key personnel of the Transitional Administration.”<sup>13</sup> This ambiguity of the words “structure” and “key personnel” meant that the Agreement was open to wide interpretation which led to divisions within the Loya Jirga Commission between those who argued for defining in some detail the decisions to be made by the ELJ and others who believed the Loya Jirga Commission should only decide the procedures through which the ELJ would decide both its agenda and the outcome of its deliberations.<sup>14</sup> Within 18 months, a Constitutional Loya Jirga would be held to write a new constitution and within two years elections would be held for a new government.<sup>15</sup>

This discussion attempts to illustrate that the mandate of national dialogue processes has in the past been negotiated in several different ways. The lessons that emerge point to the fact that these negotiations should as much as possible include the main political forces in order to ensure their willingness to participate in the dialogue. If these negotiations are not inclusive, the dialogue process itself should as much as possible leave the door open for the participation of the excluded actors. In addition, in cases where the dialogue assumes greater powers than originally provided for, the risk of backlash is real. Therefore, as much as possible, agreement on the mandate should precede the commencement of the dialogue.

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<sup>9</sup> Article 3.2.a and 3.2.b, Presidential Decree No 30 (2012) on the Technical Committee for the National Dialogue Conference. Author’s files.

<sup>10</sup> Article 21, Agreement on the Implementation Mechanism for the Transition Process in Yemen in accordance with the Initiative of the Gulf Cooperation Council (GCC). Author’s files.

<sup>11</sup> Presidential Decree No 30 (2012) on the Technical Committee for the National Dialogue Conference (authors’ files).

<sup>12</sup> “Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions”.

<sup>13</sup> International Crisis Group, “The Loya Jirga: one small step forward?” Afghanistan Briefing, May 16, 2002, 11.

<sup>14</sup> ICG, May 2002, 11.

<sup>15</sup> ICG, May 2002, 1.

### 3. The preparatory process

The preparation of a national dialogue process can often be lengthy and is central to its success. Typically, in well-prepared dialogues, a diverse and widely representative committee is set up with the responsibility to prepare all aspects of the dialogue. The appointment of the preparatory committee can be highly contested and often results from extensive negotiations. The composition of such a committee and the process through which it is negotiated influences whether it is accepted as legitimate by the various political forces and the public.

Once in place, the work of the preparatory committee is also a negotiation process which can be lengthy and can lead to an agreement on a clear mandate for the dialogue, if such an agreement is not already in place. Typically, the preparatory committee is responsible for:

- i) defining the criteria for participation in the dialogue and the process through which the participants will be selected,
- ii) supervising the selection process,
- iii) drafting the outline of the dialogue agenda and preparing guidance to the dialogue participants on how to approach the various agenda items,
- iv) establishing a support structure for the duration of the dialogue, usually in the form of a secretariat,
- v) preparing all the administrative and logistics aspects of the dialogue including venue, security and other aspects.

In Yemen, a 25-member Technical Committee (TC) was established by Presidential Decree in July 2012 and worked for more than six months. The TC had the mandate to prepare all aspects of the NDC but “in no way anticipate or prejudice the substantive work and outcomes of the Conference”.<sup>16</sup> The November 2011 Implementation Mechanism had defined the constituencies to be represented in the NDC, which therefore had to be included in the TC. The TC included representatives of the political parties which signed the Implementation Mechanism as well as the other constituencies listed in the Implementation Mechanism, including the Houthi Movement, youth civil society and women. The TC was boycotted by the Southern Movement, although some persons linked to it accepted to join the TC. Prior to the establishment of the TC, a Liaison Committee was established also by Presidential Decree which reached out to the various constituencies and invited them to participate in the NDC and its preparation.<sup>17</sup>

The TC worked until February 2013 and published a detailed report which included records of its discussions on the key issues related to the preparation of the NDC.<sup>18</sup> The most important products of the TC’s work were the Rules of Procedure for the NDC, which included the NDC’s decision-making procedures and the relationship between the NDC’s plenary and its working groups. The TC also decided the division of the NDC’s 565 seats among the various constituencies. These decisions consumed several months of negotiation within the TC.

In Benin, president Kerekou appointed a diverse preparatory committee to decide the conference’s agenda and composition. The committee identified the groups which would be allowed to participate in the conference, and specified how many representatives they would each be allotted. Subsequently, each group chose their own delegates. The 500-member conference included both representatives of the government and the military as well as

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<sup>16</sup> Presidential Decree No 30 (2012) on the Technical Committee for the National Dialogue Conference (authors’s files).

<sup>17</sup> Presidential Decree No 13 (2012) on the formation of a Liaison Committee (author’s files).

<sup>18</sup> “Final Report of the Technical Committee to Prepare for a Comprehensive National Dialogue Conference” (author’s files).

Kerekou's enemies in political exile.<sup>19</sup> It also included representatives of all trade unions, religious leaders, voluntary associations, women's groups, several former heads of state, and a variety of public figures.<sup>20</sup> In Niger, in 1991, a 68-member preparatory commission was established in order to decide the mandate and composition of the national conference. The composition of both the preparatory commission and the national conference were debated extensively. The 1,204 delegates to the national conference represented political parties, trade unions, professional groups and civic associations. Both the conference and its elected presidium included many members of the trade unions and the student movement.<sup>21</sup> In Mali, the conference was appointed by the transitional government and was attended by 1,800 delegates including representatives of the newly created political parties, religious groups, trade unions, women's groups, students and peasant representatives.<sup>22</sup> In Congo, there was strong and lengthy disagreement between Sassou and the opposition regarding the composition of the national conference. Eventually, the opposition gained an absolute majority of both conference delegates and seats on the conference governing body.<sup>23</sup> The national conference comprised 30 political parties and 141 associations.

#### 4. The selection of participants

National dialogue processes face strong demands for inclusion from multiple social and political groups which are eager to influence national discussions. As a result, the method adopted for selecting participants is closely scrutinised. Given the fact that the committees charged with preparing national dialogues are appointed either by unelected interim governments or incumbent governments which often lack legitimacy, the selection process is fraught with disagreement.

Developing a selection method for participation in national dialogue processes is challenging: political affiliations are loose and shifting, memberships of civic organisations and political parties can be difficult to verify, and elections have not been held to measure the popularity of leaders and parties. In the absence of direct elections where every adult has the right to cast a vote, achieving a representative, fair, legitimate and efficient selection process is difficult. Also, questions inevitably arise about the authority and legitimacy of those developing the selection method. Ultimately, the composition of national dialogues has resulted from lengthy and detailed negotiations among the key political forces.

The selection method for the dialogue participants is usually developed through a several-step process, which is typically messy and contentious. First, a **political agreement** is reached, often through the work of the preparatory body, on the constituencies which are to be included in the dialogue. These constituencies might include political parties, civil society, regions, religious leaders, ethnic groups, minorities, and professional associations. This process may be relatively straightforward in some countries where the main social and political groups are easily identified. In other cases, though, introducing certain groups as constituencies with the right to be represented can be contentious. In Yemen, for example, some argued that independent youth, women and civil society were not separate constituencies but should rather be subsumed under political parties. However, these three groups were listed in the

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<sup>19</sup> Heilbrunn, 1992, 286.

<sup>20</sup> Nwajiaku, 1994, 429; John A. Wiseman, *The New Struggle for Democracy in Africa* (Aldershot: Avebury 1996), 86.

<sup>21</sup> "Niger national conference postponed," *BBC Summary of World Broadcasts*, May 27, 1991; "Niger further details on national conference," *BBC Summary of World Broadcasts*, July 23, 1991; Gervais, 1997, 93-4.

<sup>22</sup> Wiseman, 1996, 88.

<sup>23</sup> Clark, 1997, 68; 'Case Study: National Conferences in Francophone Africa,' 1998, 3.



Implementation Mechanism of the GCC Initiative and ultimately it proved difficult to prevent them from participating in the dialogue as separate constituencies.

As a second step, the preparatory body agrees on the **sub-categories** belonging to each constituency. For example, a number of decisions need to be taken on how to sub-divide the constituency of “political parties”: does it include only parliamentary parties or also extra-parliamentary parties, does it include older parties or also newly-established ones? In Iraq, the debate over the representation of political parties in the National Conference was vigorous. Out of the estimated 1,200-1,400 participants in the Conference, 144 seats were given to political party representatives according to a formula which placed parties in three categories based on the number of years since their establishment. The oldest parties received six delegates, the other categories three and one. This was understandably disputed. Leaders of new parties argued that, in the absence of elections, it was impossible to evaluate party strength and that the criterion was arbitrary. Furthermore, choosing which of the more than 150 Iraqi parties to include was a formidable challenge.<sup>24</sup>

The third step in determining the composition of a dialogue process is to decide its **size**. In some cases, political actors prefer large dialogues of several thousand persons. In general, such large dialogues tend to have few decision-making powers as it is difficult to discuss in detail the key issues facing a country within a gathering of thousands of persons. In other cases, political actors propose very small dialogues of 100 or 200 persons in order to ensure that they engage in detailed discussions, including on constitutional principles. This option usually makes it difficult for the dialogue to be inclusive and to serve as a negotiation vehicle that differs from the elite-dominated negotiations. The size of the dialogue then is a balance between the needs imposed by inclusion and efficiency.

The fourth step in selecting the participants is to design the actual **selection methodology of the dialogue participants**. There are several methodologies to be considered which may be grouped under three categories:

- i) appointment of the dialogue participants by the preparatory body and/or the executive or parliament of the country (in cases where they are involved in the process);
- ii) self-selection by the identified constituencies of their representatives to the dialogue;
- iii) regional/local selection processes through caucus-type gatherings.

In some cases two or even three of the above were adopted. The difficulties with the first methodology are of course linked to legitimacy. Even if the preparatory body is well-respected, appointing the dialogue participants might be perceived as over-stepping its powers. It is however worth noting that, in some cases, it is useful for a number of participants to be appointed in order to ensure that certain groups are represented, as for example very small minority groups, which do not fit in the agreed upon categories.

The second approach of self-selection by the constituencies themselves carries the benefit of stronger legitimacy as well as the potential of real representation for the chosen constituencies. Constituencies which are well-organised may be able to agree on their representatives to the dialogue relatively easily. Such constituencies might include established political parties, professional associations and trade unions which may have well-established internal decision-making rules and procedures. However, this method also faces several risks: it may be perceived as illegitimate if some constituencies fail to consult widely and transparently within

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<sup>24</sup> Papagianni, 2006, 326.

their ranks and if, as a result, their representatives are effectively handpicked by group leaders; secondly, the method may not work efficiently in the case of deeply divided constituencies or of constituencies which are not well-organised and may not manage to conclude the selection process. Constituencies such as “civil society”, “women”, “religious leaders” or “regions” may not be able to easily agree on their representatives. In these cases, the risk is that one faction within the constituency or a handful of individuals select the representatives for the whole constituency. An additional risk is that divided constituencies may take a long time to reach internal agreement on their representatives.

It is important, therefore, that the preparatory body defines certain parameters that all constituencies have to respect as for example:

- i) a timeframe; conduct of inclusive and transparent consultations within the constituency;
- ii) inclusion of women and minorities both in the consultations and in the chosen representatives; and
- iii) methodology for the election (as for example, whether the selection is by consensus or by secret ballot).

It is also important that the preparatory body follows closely the deliberation within each constituency and assists them in developing their own, internal selection process. For example, for some constituencies, it may be appropriate to hold regional caucuses while for others it may not be.

#### **‘Participants’ selection in Yemen**

In the case of the Yemeni National Dialogue Conference, the well-organised constituencies including the main political parties and the Houthi Movement selected their representatives to the NDC relatively easily. However, the Technical Committee (TC) responsible for preparing the NDC was divided on how to go about selecting the representatives of the youth, women and civil society constituencies. Some argued that self-selection would be manipulated by the major political parties which would be able to mobilise their supporters easily and would dominate any self-selection process within these constituencies. Others argued that, despite these limitations, self-selection was imperative in order to preserve the legitimacy of the NDC. While still others said, as mentioned earlier, that these three constituencies should be incorporated within the political parties. Ultimately, the TC tried to combine the self-selection with the appointment approach: it called for applications from these three constituencies for membership to the NDC and selected among the thousands of applicants the 40 representatives per constituency.

#### **‘Participants’ selection in Afghanistan**

The selection of the participants of the Emergency Loya Jirga (ELJ), which took place in Kabul on June 10-16, 2002, combined two of the above approaches, appointments and regional selection processes. A Special Independent Commission for the Convening of the Emergency Loya Jirga (Loya Jirga Commission) was established and tasked with all preparations including the selection of participants. The Commission published in April 2011 the “Procedures for the Election of the Members of the Emergency Loya Jirga” establishing “a two-track approach wherein approximately two-thirds of the

representatives [were] to be selected indirectly at the district level, and the remaining one-third [were] to be appointed by the Loya Jirga Commission.”<sup>25</sup> Existing administrative units were recognised as electoral constituencies in proportion to their population.<sup>26</sup> The indirect district elections took place in two stages. In stage one, representatives of the local communities chose by consensus in a public meeting a group of electors under the observation of a constituency observation team. Prior to this public meeting, local leaders were expected to hold a *shura* or *jirga* meeting to choose their nominees, “thus exerting a strong degree of social control on the nomination of the electors”.<sup>27</sup> In stage two of the process, the electors chose the delegates to the ELJ among themselves under the observation of a constituency observation team using “secret, direct, free ballot based on a table of seat allocations”.<sup>28</sup> The lists of electors were to be disseminated to the public at least five days before the second stage.<sup>29</sup> This two-stage process chose 1,051 representatives from about 390 electoral districts in 32 provinces.<sup>30</sup>

In addition to this indirect election procedure, a selection procedure was established for about 400 to 500 seats in the ELJ. Consultations and in some cases elections were held among nomads, refugees in Pakistan, Iran and Western countries, professional and scientific organisations and universities.<sup>31</sup> Based on the recommendations of these consultations, the representatives of these groups were ultimately appointed by the Loya Jirga Commission. The representatives of civil society organisations were nominated by their organisations and confirmed by the Special Independent Commission with the co-operation of the United Nations (UN). Women delegates were introduced by community members, women’s educational institutions and associations, and confirmed by the Special Independent Commission with the co-operation of the UN.<sup>32</sup>

#### **‘Participants’ selection in Iraq**

The delegates to the Iraqi national conference were chosen through two selection processes. About 548 of the delegates were selected through a provincial, caucus-like process designed by the High Preparatory Committee (HPC), while the rest were appointed by the HPC. In each of Iraq’s 18 provinces, the HPC appointed a provincial supervisory committee responsible for selecting the participants of a provincial meeting, which would elect the province’s delegates to the conference. Each seven-member provincial supervisory committee consisted of three HPC members (one from the province), two senior judges from the province, two members of the provincial council (the oldest man and the youngest woman). Persons interested in participating in the provincial meeting submitted applications to the committee. Each provincial meeting consisted of 20 times more persons than the number of delegates elected by that province. Twenty-five per cent of the delegates of each province had to be women. The committees had three to four days to carry out their task: one or two days to inform the public and to receive applications to attend the meeting, and a similar time for deliberations and choosing participants.<sup>33</sup>

<sup>25</sup> ICG May 2002, p. 7.

<sup>26</sup> Article 5&6, Procedures for the Elections of the Members of the Emergency Loya Jirga. Author’s files.

<sup>27</sup> ICG, May 2002, p. 8.

<sup>28</sup> Article 11, *ibid.* See also: ICG, May 2002.

<sup>29</sup> ICG, May 2002, p. 8.

<sup>30</sup> ICG, May 2002.

<sup>31</sup> ICG, May 2002, p. 8.

<sup>32</sup> Article 7&8, *ibid.*

<sup>33</sup> Papagianni, 2006, p. 325-326.

The rest of the Iraqi national conference delegates were appointed by the HPC, whose 100 members automatically got seats in the conference. Initially, another 360 national, appointed delegates were planned, of whom 144 would be members of political parties, 72 representatives of civic organisations, 70 tribal leaders and 74 other personalities.

## 5. Effectiveness of national dialogues

Whether a national dialogue has actually succeeded is often a contentious question. The outcomes of national dialogues are sometimes intangible and may include: the strengthening of a culture of debate and free speech; the breaking of taboo issues which after the dialogue may be more openly discussed; the entrenchment of certain norms of inclusion and representation in politics of marginalised groups, including women and minorities; and, the ability to keep all the political actors inside the political process. In some cases, the dialogue processes may not reach their formal goals but may still manage to avert conflict and to convince political actors to continue engaging with the political process. In other cases, national dialogue may reach all their formal goals but essentially fail because they have not included the major political forces of the country and to maintain a level of support for the political process among the public.

To the extent that it is possible to draw general conclusions, one may say that the national dialogue processes that contributed to peaceful transitions were usually underpinned by a shared understanding among key political actors on principles, which they then sought to consolidate through an inclusive and participatory conference. In cases where an elite agreement was missing, national dialogue processes could not independently alter existing power balances and lead to peaceful transitions.

In the cases where a minimum elite agreement on the way forward was present, national dialogues have had clear outcomes and have brought about a new political and constitutional order such as Benin, Mali, Niger and Congo (Brazzaville) between 1991-1993. In other cases, however, where an elite agreement on the way forward was missing, the dialogue processes could not independently alter existing power balances and lead to peaceful transitions. In these cases, incumbent presidents and governments attempted to use national dialogue to give limited participation to the opposition, while keeping control of the political process. In Togo and Zaire, national conferences failed to have a significant impact on the struggle between incumbents and oppositions. Zaire (now the Democratic Republic of Congo) held a national conference, which former president Mobutu Sese Keko managed to control and neutralise. The conference was frequently suspended due to regular clashes between the government and opposition forces. The conference did not succeed as an instrument of democratic transition, although it contributed to opening the political space.<sup>34</sup>

In addition to the formal outcomes of national dialogue processes, there may be intangible ones which are difficult to study and quantify. Although the Yemeni National Dialogue Conference (NDC) has not concluded at the time of writing and it is therefore not possible to pronounce on its influence on the country's political transition, one may say with some confidence that it has contributed to the strengthening of certain norms. The NDC has included a separate constituency of independent women and almost 30 per cent of its delegates are women. Throughout the NDC, female delegates have vociferously argued for 30 per cent representation in all structure and all decision-making processes of the NDC. Although they have not always

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<sup>34</sup> Bruce Baker, "The class of 1990: how have the autocratic leaders of sub-Saharan Africa fared under democratization?" *Third World Quarterly*, March 1998, vol 19, no 1, 121; 'Case Study: National Conferences in Francophone Africa,' 1998, 6.

succeeded, they have nevertheless made it more and more difficult to “break” the norm. Draft conclusions of the some of the NDC’s Working Groups recommend 30 per cent female representation in the highest political offices of the country under the new constitution. The months ahead will test whether this “soft” contribution of the NDC to strengthening the norm of women’s participation in political life will endure.

Ultimately, it may only be possible to judge the contribution of a national dialogue to a country’s political transition a few years after the dialogue has concluded. Political transitions are tumultuous processes that celebrate advances and suffer setbacks several times before they can conclude with a new, widely-accepted constitutional order. The support of all major political forces for the new constitutional reality is a key requirement for its stability and durability. Therefore, a national dialogue which manages to expand participation in the political process, to keep the various stakeholders engaged in the process, and to design the next stage of the transition may be deemed as effective.

## **6. Key Reflections**

1. National dialogue processes are inclusive negotiating mechanisms utilised to influence or shape the decisions taken during periods of political transition.
2. National dialogue processes tend to face three tensions: the extent of inclusivity, their powers and mandate, and their relationship with existing institutions.
3. National dialogues require extensive preparation which is often in itself a highly political and contentious process.
4. As far as is possible, the role of national dialogues in transitional processes and their relationship to existing institutions needs to be clear in order to reduce disputes during the dialogue.
5. As far as is possible, the agenda of the dialogue needs to be manageable, realistic and well communicated.
6. The selection of the dialogue’s participants will always be closely scrutinised and contentious.
7. Participants are usually selected through a combination of methods, including appointment, indirect regional elections, and indirect elections by nationwide constituencies.
8. The design of the dialogue and the methodology for participant selection may provide a fast-tracking effect for the participation of marginalised voices such as those of women (although the longevity of this depends on numerous factors going beyond the dialogue itself).