

1N//718318(039)

HUMAN RIGHTS AND CONSTITUTION MAKING



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

CONTENTS

INTRODUCTION	1
I. CONSTITUTIONAL REFORMS AND HUMAN RIGHTS	2
A. Why a rights-based approach to constitutional reform?.....	3
1. Framing the issue	3
2. The constitutional State.....	6
3. Functions of the constitution in the contemporary world	7
4. The constitution and democratic governance.....	8
5. Constitutional guarantees of fundamental rights.....	10
B. Human rights and the process of constitutional reform	11
1. Ownership of constitutional reforms.....	12
2. Public participation in constitutional reforms.....	14
3. The human rights framework for constitutional reforms	16
II. CONSTITUTIONAL BILL OF RIGHTS.....	20
A. The constitutional bill of rights and international human rights standards.....	21
1. International human rights law	21
2. Domestic law and its relationship to international human rights law.....	23
B. Drafting a constitutional bill of rights: General requirements.....	31
1. Conformity with assessments dominating in the society.....	31
2. Compliance with international human rights standards.....	33
3. Scope of the constitutional language.....	35
4. Internal coherence	36
5. Normative content	36
6. Implementation and limitations	40
7. Communicativeness	43

C. Content of the constitutional bill of rights	44
1. The rights holder	44
2. Duty bearers	51
3. Fundamental principles	57
4. Categories of rights and freedoms	68
5. Permissibility of limitations	83
6. Protection of rights and state of emergency	87
7. Legal duties of the individual.....	90
D. Institutional and procedural guarantees of rights.....	96
1. Implementation of the constitution and human rights.....	96
2. Institutional safeguards	98
3. Specific guarantees	105
4. Access to bodies and procedures established under international law	121
III. OHCHR AND HUMAN RIGHTS MECHANISMS	124
A. Contribution of human rights mechanisms.....	125
1. Application of international human rights law by States.....	125
2. Protection of substantive human rights	128
B. Objectives, forms and methodology of assistance programmes	134
C. Partnerships	138
SOURCES AND REFERENCES	139