

Constitution-Making Body Reports

[Constitution-making bodies](#) (CMBs) may produce many reports, including annual reports, financial reports, or the findings of working committees. This page focuses on *Explanatory Reports* – reports produced by a CMB to accompany the proposed draft constitution. Explanatory Reports are designed to explain the process employed to arrive at the draft and the reasons for recommendations on various constitutional issues. Explanatory Reports often explain how the draft/proposed constitution responds to the views of the public expressed during the process and explains why some views have been accepted and others not. Explanatory Reports are either written by the constitution making body or else by the [Secretariat](#) and then endorsed by the CMB.

This paper discusses the following topics:

1. Purposes of Explanatory Reports
2. Constitution-Making Bodies that Typically Create Explanatory Reports
3. Forms of Explanatory Reports
4. Content of Explanatory Reports

1. PURPOSES OF EXPLANATORY REPORTS

There are three central purposes to Explanatory Reports:

- to provide guidance to the body adopting/ratifying the constitution;
- to facilitate [civic education](#) and [public consultation](#); and
- to strengthen the legitimacy of the constitution-making process by providing transparency. Depending on the jurisprudential custom in a particular country, the report may also serve as evidence of drafters' intent for later constitutional court review.

First, in a two-stage process, where one body drafts and a separate body debates and adopts the constitution, an Explanatory Report can provide important clarification and guidance to the adopting body (usually a constituent assembly or parliament) on the reasons specific constitutional formulations were made and the process that went into making them (eg, [Zimbabwe](#), [Papua New Guinea](#)). The most common use of Explanatory Reports in Latin America is for this purpose; where a constitutional committee or commission presents a draft to a separate body that debates and adopts the constitution (usually the Legislature or Constituent Assembly). Similarly, if a proposed constitution is to be ratified in a referendum, an Explanatory Report can provide the same information to the public (eg, [Kenya 2010](#)).

Second, an Explanatory Report produced with a constitutional draft may be a tool for [civic education](#) and [public consultation](#). When the Report accompanies early constitutional drafts, by providing background, context, and explanation on the constitutional provisions the Report educates the public and facilitates their ability to comment on it (eg, [Somalia](#), see p. 3). For example, the [South African parliament circulated constitutional drafts](#) with annotations explaining the different parties' positions on important or contentious provisions through which they received public comment. When the

Report accompanies a final draft, it still serves an educational purpose though not a consultative one.

Third, Explanatory Reports explain to the public how their views were incorporated, including how differing views were taken into account (or not). This is intended to increase transparency and, by extension, the legitimacy of the constitution-making process and the draft constitution itself.

Finally, the importance of an Explanatory Report can be augmented if the new constitution provides for constitutional review mechanisms requiring courts to take into account the intention of the drafters. This is rare but, Article 24 of the 1975 constitution of Papua New Guinea provides that official records of debates and of votes and proceedings (and related reports/documents) of the pre-independence House of Assembly on the report of the Constitutional Planning Committee and the Constituent Assembly may be used as aids to constitutional interpretation. Explanatory Reports not only provide insight into the drafters' reasoning and intent, but, if the reports analyze and incorporate the views of the public, they ensure that such views remain relevant and part of the ongoing interpretation of the constitution. (Note: A similar purpose may be achieved through records of the ratification debates. Because most CMBs in Latin America have been Constituent Assemblies or Congresses, public debates in the drafting body (rather than a general report) have been considered the primary source of interpretation and explanation of the provisions adopted.)

2. CONSTITUTION-MAKING BODIES THAT TYPICALLY CREATE EXPLANATORY REPORTS

Explanatory Reports are most commonly published by the [body that drafts the constitution](#) (eg, a constitutional committee), or by the body that both drafts and adopts the constitution (eg, a constituent assembly), but usually not by a body that adopts a constitution prepared by another body. Most commonly, Explanatory Reports are prepared and published by constitutional commissions and committees of parliament that have completed draft constitutions to be debated and adopted by a plenary or executive body, and are used to explain what the drafting body was thinking (eg, [Sierra Leone](#)). The CMBs that receive the reports, such as constituent assemblies, parliaments, and constitutional conferences, then rely on the report in their own debate.

Explanatory Reports can also be prepared primarily or secondarily as a report to the public for the same purpose — explaining what the drafting body was thinking. In this way, a CMB that both drafts and adopts a constitution may still see the benefit of a report to the people, explaining how the process occurred, the reasons behind the choices made (particularly on divisive issues), and discussing how public inputs and other sources (eg, international treaties) were used (eg, [Kenya 2010](#)).

3. FORMS OF EXPLANATORY REPORTS

Explanatory Reports have taken numerous forms. The most common is a discrete report consisting of an introduction to the constitution-making process and a description of the content of a proposed draft constitution, with commentary on how the text was reached (eg, [Sierra Leone](#), [Uganda](#)). A second and similar form of Report was produced in [Somalia](#), where the provisions of the draft constitution were described, rather presented in the form the text of a constitution, and where specific questions for public consultation on each topic were also included in the discussion. [South Africa](#) used yet another form, where the Report consisted primarily of a constitutional draft with annotations of points of contention and discussion in footnotes, intended to inform future discussion.

Explanatory Reports directed at adopting bodies (to explain to the adopting body the reasons specific constitutional formulations were made and the process that went into making them) are often extremely long and detailed (for example, the [Uganda Constitutional Commission's final report](#) contained three volumes, one of which was over 900 pages, and Fiji's 1997 report was over 800 pages). Long reports can be extremely important and useful, but are less likely to be read by all members of the constituent assembly or parliament. Moreover, even if the most active participants read some part of the report, the length and detail of the reports usually make them inaccessible to most ordinary citizens, impeding the civic education function of the documents as discussed above.

At the same time, Explanatory Reports must consider a great deal of complicated material and may be long by necessity. Accordingly, some constitution-making processes have developed techniques to make long reports more accessible without sacrificing important content. The Constitution of Kenya Review Commission (in addition to its Explanatory Report) published shorter reports giving feedback on views received in each constituency, as well as an [abridged version](#) of the final report containing all of the constitutional recommendations. Other processes have also produced shorter reports (eg, [Afghanistan](#), [Somalia](#)). As an alternative, executive summaries providing detailed accounts can also be used to present key findings; the [Zimbabwe](#) report (produced for Parliament rather than intended for civic education) contains such a summary, roughly 10 pages in length (in comparison to the 65 page main report).

4. CONTENT OF EXPLANATORY REPORTS

Explanatory Reports typically cover core issue areas such as:

- Historical background and relevant political developments which led to the current constitutional process.
- A chronology of the process and/or a detailed description of the steps of the constitution-making process, including how and by whom the draft will be considered
- The underlying principles or objectives of the process (eg, [Papua New Guinea](#), see p.73; [Uganda](#), see pp. 3-4).
- A discussion of the role of the public in the development of the constitution, of how the outreach process was conducted (including in some cases, statistical breakdowns of submissions, eg, [Zimbabwe](#) (see p. 14)), and a summary of views of the people (eg, [Sierra Leone](#) (see para. 20))
- Issues or areas of contention both before and after the drafting process (eg, [Uganda](#), see p. 10).
- A discussion of the content of the proposed constitution, including the systems of government set up, and the structure and values of the constitutional regime, sometimes in the context of an ongoing constitution-making process (eg, [South Africa Summary](#), see p. 14); [South Africa Drafts](#)).
 - most reports go through sections of the constitution or subject areas, often making comparisons to other constitutions or noting the options considered, sometimes referring again to the views of the people (eg, [Uganda](#), see p. 401; [Kenya 2005](#), see eg, p. 102), and stating the recommendations made (eg, [Somalia](#)).

Some Explanatory Reports cover other areas as well, for example:

- A discussion of the purpose and content of constitutions more generally (eg, [Afghanistan](#), see pp. 1-2); [South Africa Summary](#), see p. 4).
- A discussion of civic education programs undertaken with respect to the proposed draft (eg, [Kenya 2010](#), see p. 140).
- A record of specific questions used for public consultation (eg, [Zimbabwe](#), see p. 23).
- The next steps, including plans for consideration and promulgation of the draft, and transitional measures (eg, [Afghanistan](#), see p. 40).

- More intricate details on the process of forming the draft, and in particular discussions of the work of sub-committees or the outcome of specific thematic consultations (eg, [Zimbabwe](#), see p. 44).

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