

REPRESENTATION: VIEWS FROM THE GROUND UP

The Seventh Melbourne Forum on Constitution Building in Asia and the Pacific

Jointly organised by International IDEA and the Constitution Transformation Network

Melbourne Law School and Online (hybrid format)

7-9 November 2022

CONCEPT NOTE

Representation is a core feature of democracies. It may be a factor in the composition and operation of many public institutions such as the executive, the bureaucracy, and the police, to name only a few. The one institution for which representation is critical, however, is the legislature. The legislature performs the all-important function of making new law and, in one way or another, scrutinizing the actions of the executive. Its legitimacy for these purposes depends on representation. All democracies provide for the election of members of the legislature, for periods that vary between three to five years, for most lower Houses. All democratic states have at least a central legislature and many also have legislatures at multiple levels of government.

The focus of the Seventh Melbourne Forum on Constitution Building in Asia and the Pacific is on the nature and quality of representation in legislatures from the perspective of those who are represented; in other words, representation from the ground up. The Forum will explore a range of questions:

- What do people want from their representatives?
- How do people get what they want from their representatives?
- Do people have different attitudes to representation and expectations of it, at the point of elections and in between elections?
- What prevents representation operating in a way that delivers on the needs and expectations of people?
- How can representation be enhanced so to work better, from the standpoint of people?
- How are the expectations of people and the responses of representatives shaped by the constitution and the institutional structure of government?

These aspects of democratic constitutions in action are rarely explored but are essential preconditions of democratic systems that work for the people from whom they draw their legitimacy. Examination of them is likely to be particularly productive in the diverse Asia-Pacific region, where assumptions about representation traditionally associated with parliamentary or presidential systems of government may be mixed with or modified by other understandings shaped by history, economic, social and political context, and the values and norms of customary law.

The theme of the Forum raises long overdue questions about the roles and responsibilities of states and their institutions in the conditions of the 21st century. Notwithstanding global interdependence, the world continues to be organised on the basis of states, through which representative democracy can be made a reality. The concept for the Forum assumes that the most fundamental responsibilities of representatives in democratic states are to enhance the wellbeing of their people, to care for their territory, and to act as responsible global citizens in a way that also reflects the interests of their people. If this is right, the people who are represented are entitled to expect that these responsibilities

are met or, at least, pursued, in the collective public interest. Where the balance lies between the broad public interest and the interests of individual voters or groups of voters varies within and between countries and over time and is another issue on which it is hoped that the Forum will cast light.

Developing principles and practices for effective representation are a key goal in the implementation of new Constitutions. However well this is achieved at the outset, the quality of representation can be affected, positively or negatively, by developments over time. These may be incremental, involving a form of state capture or sudden, as a result of a major upheaval or crisis. The challenges that representatives must face also vary over time, as the recent experience with the pandemic and the current threat of climate change show. The example of climate change also draws attention to the need for representatives also to take account of the interests of future generations, and the peoples of the world as a whole. These may always have been implicit in the idea of representation but are taking on new urgency now.

Themes and cases

The Melbourne Forum 2022 asks what representation means for the people who are represented; how those meanings are shaped by constitutional text and structure, culture, context and practice; and how the quality of representation can be enhanced to meet the needs and expectations of the people.

The Forum is organised around 4 themes, which are examined initially through selected case studies, presented by participants from the countries concerned.

Each speaker will briefly reflect on specific questions relevant to their case and to the theme of the session, before the session is opened up for discussion. There will be an introductory session to lay the groundwork and a final session designed to draw the themes together.

1. *Mapping the Issues*: Opening discussion designed to set the scene, drawing on the experience of all Forum participants.
2. *What do people want from their representatives, at the time of elections and between elections?* Bangsamoro, Philippines; Afghanistan; Papua New Guinea; Samoa.
3. *How do people pursue what they want/need/should get from representation?* Nepal; Solomon Islands; India; Korea.
4. *What are the principal impediments to representation that delivers on the needs and expectations of people? What are the solutions?* Sri Lanka; Philippines; Indonesia; Thailand; Pakistan.
5. *What can be learned from the challenges of representation in the complex, global and multi-generational issue of climate change and environmental protection?* Taiwan; New Zealand; Bhutan; Fiji.
6. *Conclusions*: Bringing the threads together.

Outline of the sessions

Session 1: Mapping the Issues

The first session is an introductory discussion involving all participants on the purposes of this year's Melbourne Forum, how the themes of each session fit together and any other issues that have a bearing on how representation is or is not working in the countries of the region.

The first session will also outline the methodology of the Melbourne Forum and foreshadow the outcomes and how they will be captured and shared with a wider audience.

Session 2: What do people want from their representatives?

This session will examine what people want from their representatives, at the time of elections and in between elections. Peoples' expectations of their representatives will be affected by various aspects of the constitutional, social and political context. Relevant context includes the constitutional and institutional frameworks, such as the form of government (a parliamentary or presidential system); the type of electoral system (counting votes, defining constituencies, quotas or reserved seats); federal or multilevel government leading to representatives at more than one level of government; and the political party system.

Context also includes the ideas that people have about representation, which may vary with circumstances and culture. Do people expect their representatives to do as their voters direct them to? Or to act in the general public interest? Do they want representatives to provide them with material benefits (constituency development funds are one example)? Do they want their representatives to reflect certain characteristics and the diversity of the community? Do representatives represent a pre-defined political community or a place? Do customary Indigenous understandings of leadership affect what people want from their representatives? How do these (and other) factors affect the ways in which people cast their vote? How do they affect attitudes to representatives between elections?

Questions to guide discussion include:

- What do people vote for at the time of elections?
- What do people expect from their representatives between elections?
- Are the answers affected by constitutional and institutional context (eg parliamentary or presidential system, nature of electoral system, other)?
- What are the dominant assumptions about representation? For example, should representatives do what voters want/direct them to do; act in the broader public interest; follow the wishes of a political party; reflect the interests of a particular group; etc)?
- Are there historical and/or customary factors that affect the approach to representation?
- Are any of these expectations different during times of crisis, and how?
- In systems with multilevel government, are the answers different at different levels of government?

Case studies: Bangsamoro, Philippines; Afghanistan; Papua New Guinea; Samoa.

Session 3: How do people get what they want/need/should get from representation?

This session will examine how representation works between elections, when people act as citizens, rather than voters? It considers a wide range of mechanisms, formal and informal, by which people might seek to influence, persuade, or demand action from their representatives. It also considers other means by which people might try to ensure that their system of representative democracy

meets their needs and delivers on its promise to foster the wellbeing of its people. These means span a variety of options, including recourse to other institutions and the potential of protected social and economic rights.

Questions to guide discussion include:

- Why might people seek to have recourse to their democratically elected representatives between elections?
- How accessible are these representatives to ordinary people? What strategies, formal and informal, can people use to communicate with their representatives? Do these strategies change depending on what it is that people want from their representatives?
- Are there forms of direct action, authorised by law, that people might take to get action from their representatives? Are they used in practice (examples might include petitions, citizen's initiatives, recall)?
- Are there other public institutions through which people can pursue their expectations of/needs from representative democracy between elections? The bureaucracy? Fourth branch institutions? How well do these work for this purpose? Can the Constitution assist?
- To what extent do constitutionally-protected social and economic rights assist people to ensure that a system of representative democracy meets the needs and expectations of its people?
- Are the answers to any of these questions different for different levels of government?

Case studies: Nepal; Solomon Islands; India; Korea.

Session 4: What are the impediments to the capacity or willingness of representatives to meet the people's needs? What are solutions to these impediments?

Representative governments might fail to deliver what people need for any number of reasons. Institutions might be weak and lack capacity. Corruption may be endemic and permit powerful actors to manipulate government for their own personal gain. Governments and institutions may be captured by particular sectoral interests, dynasties or populist demands. There may be pressure from external forces (powerful states, international institutions, international obligations) that restrict what representatives can achieve. Times of crisis may expose or exacerbate these kinds of issues, but also generate new kinds of engagement between citizens and their representatives.

Questions to guide discussion include:

- What reasons might explain why representatives fail to support the wellbeing of the people, care for their territory, and act as responsible global citizens?
- What happens to the nature and quality of representation when constitutional government is under threat of erosion or decay?
- Can the constitution assist to prevent or remedy such shortfalls or failures of representation?
- Can more active citizenship help to protect constitutional governance and prevent its erosion/decay? What might active citizenship look like and how might that be reflected in the constitution?
- What is the role of external actors in addressing these issues?

Case studies: Sri Lanka, Philippines; Indonesia; Thailand; Pakistan.

Session 5: What can be learned from the challenges of representation in the complex, global and multi-generational issue of climate change and environmental protection?

Climate change is one of the most significant issues facing states and their peoples today. For some, it is an existential threat. It is an issue that significantly affects young people and future generations, who are not directly represented under current models of representation in legislatures. Action to address climate change requires the involvement of all levels of government, from the global to the very local.

There is international consensus on the need to address climate change, and plenty of evidence that failure to do so will be harmful to people all over the world. So far, however, governments, including those in democratic systems, have been slow to respond effectively to the threat. The situation is complicated by divisions within and between states. Larger economies, which have been responsible for the creation of the problem are reluctant to restructure too drastically. Developing economies, whose contribution to global warming often is slight, are torn between contributing to the global effort to respond to climate change and inhibiting their own opportunities for economic development. Some states are more immediately affected by climate change than others, in a way that presents an imminent existential threat. These challenges place significant pressure on representation. The interests of the people themselves are mixed. Representatives may be reluctant to act because of concerns about the political fallout. Representatives may be constrained in what they can do by state capacity, debt and international obligations.

The pressing nature of these issues has led to innovations, some of which concern representation as well. Three that will be explored in this session including the emergence of ideas about the representation of natural features; the growing acceptance of the need for representatives to consider future generations, and the development of constitutionally protected rights to a clean, healthy and sustainable environment, offering recourse to the courts as an alternative to democratically elected representatives.

In this session, the challenge of climate change is used as a form of case study, to better understand how representation works to meet the needs of the represented, how the constraints on representatives may be managed and the development of new and creative forms of representation to problems that are global but also intensely local.

Questions to guide discussion include:

- What do people want their representatives to do in relation to climate change? Is this different to what people want from the representatives in relation to other matters?
- What constraints – internal and external – exist that limit the capability of representatives to address climate change?
- How do these differ between states and at different levels of government within states?
- How do people and representatives navigate the constraints on their capacities to act to respond to climate change, on the domestic and international stage?
- Are entities other than the people (eg natural features such as rivers, or the environment itself) now acquiring a form of representation? How and why?
- To what extent are the interests of future generations taken into account by representatives? What are the implications of such a development for representative democracy?

Case studies: Taiwan; New Zealand; Bhutan; Fiji

Session 6: Bringing the threads together

The final session will draw out the significance of the insights on representation developed through the discussions in each of the four sessions, in relation to a range of significant issues, including elections, representative democracy, constitutional design, constitutional implementation, constitutional culture, the rationales for the state and the role of international institutions.

Methodology and logistics

In 2022, as in other years, the Melbourne Forum will examine these questions through experiences across the Asia and the Pacific. This vast and diverse region of the world represents a substantial component of global constitutional experience and offers new insights into the design and practice of representation.

The Forum is organised under the auspices of the [Asia and the Pacific and Constitution Building Programs of International IDEA](#) in collaboration with the [Constitution Transformation Network](#) at Melbourne Law School.

The Forum will take place over three days on 7-9 November 2022 in hybrid format, with the possibility for participants to attend person at Melbourne Law School in Melbourne Australia, or online if required.

The format follows past Melbourne Forums and is designed to encourage the interchange of ideas, leading to shared insights on themes of constitutional design, change and implementation. Presenters for each case study country will be asked to provide brief written responses to questions which will be circulated to them in advance of the Forum, based on the theme of each session. These written responses will be circulated to participants in advance of the Forum. Presenters will give a short oral presentation on the key insights offered by their case at the beginning of each session, for a maximum of five minutes, so that the majority of time in each session is devoted to questions and discussion.

Each theme is linked, and insights from each country experience will be relevant across all sessions. We hope that all the invited experts will join and participate actively in both sessions, together with the teams from the Constitution Transformation Network and International IDEA.

Visit the [Melbourne Forum webpage](#) to see the themes, materials and videos from the previous six Melbourne Forums.