This newsletter is published by the Constitution Transformation Network (ConTransNet) based at Melbourne Law School. We are a network of expert scholars sharing our latest research and experiences regarding the development of constitution-making processes, content and implementation.

On the Radar

"Addressing climate change by harnessing local government"

In less than a month, the 51st session of the Intergovernmental Panel on Climate Change will be held in Monaco, from 20 to 23 September. On 23 September, UN Secretary General Guterres will also host the 2019 Climate Action Summit in New York. As countries come together to discuss options for more effectively tackling climate change, it is becoming increasingly clear that action requires the involvement of all levels of government. The UN Secretary General has already specifically observed that “We need clear moves not only by national Governments but also by other actors such as subnational governments, businesses and investors”.

As with most internationally driven projects, early action on climate change focused on national governments working together collectively to agree global benchmarks and strategies. However, over the last decade, climate change action increasingly has run into ideological difficulties at the national level, making it more difficult for many countries to develop nationwide climate change policies and programmes. This blog post reflects on the increasingly active involvement of sub-national governments in driving climate change action.

Projects

Summer School on "Constitution Building During Times of Change"

ConTransNet is pleased to announce that the 2019 Australia-ASEAN Women in Constitution-Building Capacity Development Program” will be
supported by the Australian Government through the Australia-ASEAN Council of the Department of Foreign Affairs and Trade. ConTransNet has been awarded a small grant to bring 8 women constitution-builders from four ASEAN countries (Indonesia, Myanmar, Philippines and Thailand) to Melbourne Law School (MLS).

Through the Summer School, we aim to facilitate sharing of experiences across jurisdictions as well as sharing the expertise of our own ConTransNet team. We anticipate that the Summer School will be a mix of workshops held at MLS run by our academics as well as practitioners from key institutions in our state, and will include a couple of field visits to some of these institutions as well. The Summer School is tentatively scheduled to run from Monday 25 November to Friday 29 November 2019. If you would like to suggest a participant for the Summer School from one of our target countries, please email our Coordinator, Ms Charmaine Rodrigues on charmaine.rodrigues@unimelb.edu.au.

### Analysing institutional approaches to implementing the referendum result in the Autonomous Region of Bougainville in Papua New Guinea

In November 2019, the Autonomous Region of Bougainville in Papua New Guinea (PNG) will vote in a referendum on whether to pursue “greater autonomy” within PNG or independence. In advance of the referendum, the PNG National Research Institute (NRI) has been commissioning research to assist the PNG and Bougainville Governments to better understand the implications of each referendum option and how they might be implemented through the NRI Bougainville Referendum Research Project.

NRI has now commissioned ConTransNet to examine institutional arrangements for “greater autonomy” and “independence” to identify options and issues to consider. This research will produce a Briefing Note for Ministers and policy-makers and a longer research report fleshing out these issues.

### Publications

In August, ConTransNet launched a new research report on “Constitutional Implementation for Sustainable Peace”. The research and report was funded by the Folke Bernadotte Academy. This report examined the connections between Peace Agreements and Constitutions. The Report developed a new analytical framework for understanding the connections between Peace Agreements and Constitutions in support of sustainable peace.
Dr Dinesha Samararatne published an analysis of the Chunnakam Power Plant Case, where the Sri Lankan Supreme Court recognised the right to be “free from unlawful, arbitrary or unreasonable executive or administrative acts or omissions which cause or permit the causing of pollution or degradation of the environment”. The judgement has been welcomed by environmental activists locally and globally.

Anna Dziedzic published a Lowy Interpreter blogpost, arguing that “Pacific courts need more women judges”. In the years since Pacific states became independent and established courts of their own, there have been 29 women judges. There have been no women judges in Kiribati or Tonga, one woman judge in Nauru and Tuvalu and only two in Solomon Islands, all foreign.

Will Partlett produced an I-CON blogpost on “Why Political Pluralism is Not Enough: Moldova’s Constitutional Crisis”. He examined a series of Moldovan Constitutional Court decisions, the first of which blocked the creation of a new coalition government and the replacement of the sitting president, and the second of which saw the same same Court annulled its own decisions. All six judges then resigned. Will’s analysis suggests that underlying problems of judicial weakness and weaponization of the judiciary by political interests are a more fundamental problem: A failure of law and judicial institutions to operate independently from ordinary politics.

Will Partlett published an article on “Criminal Law and Cooperative Federalism” in the most recent edition of the American Criminal Law Review. He argued that cooperative federalism presents new—and largely unexplored—
constitutional problems. In particular, unlike the civil regulatory context, cooperation threatens the constitutional rights of individual criminal defendants by allowing executives to circumvent local juries, judges, and laws.

**Seminar: "Climate Change Advocacy in Federal Systems"**

On 5 June 2019, Ms Jayani Nadarajalingam, CTN Co-Convenor, facilitated a session titled “Be the change: running for office” as part of The Climate Reality Project’s Leadership Corps in Brisbane. Amongst other issues, Jayanni spoke about Australia’s multi-level government structure and how it could be strategically utilised to undertake climate related action.

**Read more**

**Seminar: "The Future of Australian Law Reform - Constitutional and Immigration Issues"**

On 18 June, the Australian Law Reform Commission (ALRC) and Melbourne Law School co-hosted a panel discussion on the future of legal and constitutional reform in Australia. The discussion progressed the ALRC’s new project, which is seeking public input to assist in identifying areas of Australian law that may benefit from reform. ConTransNet Co-

**Seminar: "Gendering the 'Legal Complex' - Women in Sri Lanka's Legal Profession"**

In June 2019, Dr Dinesha Samararatne gave a presentation on ‘Gendering ‘the Legal Complex’: Women in Sri Lanka’s Legal Profession’ at the Women In Asia Conference. Dinesha presented her paper as part of a "Women in Law" panel, which explored questions regarding women’s inclusion, visibility and contribution in the judiciary and in the legal profession.

**Read more**

**Seminar: "Cities in Federal Theory Workshop 2019"**

From 20-21 June 2019, Dr. Erika Arban organised the "Cities in Federal Theory Workshop" at Melbourne Law School. The workshop aimed to gather scholars from around the world to engage in a broad discussion about the role and place of cities in federalism, including investigating whether metropolitan areas in federal and quasi-federal systems have the potential to become the new strategic level of governance.
Convenor, Cheryl Saunders, participated as a panel speaker exploring aspects of constitutional law that are ripe for future reform.

Seminar: "Annual Conference of the International Society of Public Law"
From 1-3 July, ConTrans Net Co-Convenor Tom Daly attended the annual conference of the International Society of Public Law (ICON-S), with the theme 'Public Law in Times of Change?'. He spoke and chaired a number of panels on the deterioration and health of democratic governance worldwide, including: 'Corruption's Corrupting of Liberal Democracy', 'Courts Against or in Favour of Democratic Decay?', 'The State of Constitutional Democracy: Directions', and a panel on Wojciech Sadurski's landmark new book on Poland's Constitutional Breakdown.

Seminar: "South Africa to Sri Lanka: Prospects of Travel for "Transformative Constitutionalism"
From 3-4 July, Dr Dinesha Samararatne, Co-Convenor of ConTransNet, participated in the Public Law in Four Jurisdictions Conference. This year, the conference was hosted by the University of Witwatersrand at the Wits Rural Facility in Limpopo Province. The conference provides an opportunity to discuss developments in public law in the four jurisdictions as well as more broadly. Dinesha presented a paper examining the use of South Africa's experience in constitution-making in the 1990s during the more recent attempt at constitution-making in Sri Lanka over the last few years.

Melbourne Forum

2019 Melbourne Forum on Constitution-Building in Asia and the Pacific: "Inclusion and Participation in Constitution Building Processes"
The 2019 Melbourne Forum will be held in Nai Py Taw in Myanmar in October 2019. The Melbourne Forum is an annual event co-hosted by International IDEA and ConTransNet. The theme for this year's event is “Inclusion and Participation in Constitution Building Processes”.

Inclusion and participation are familiar topics in constitution building. They can be interdependent - even the most broad-based participation, for example, may raise questions about who to include - but they also raise distinct issues as well. Inclusion typically raises questions about “who” is involved in constitution building processes. Often, these questions apply at key points in the processes of negotiation and decision-making. Participation, on the other hand, typically refers to processes of engaging a range of people from society at large at different points in a constitution-building process.

There remains some ambivalence, both in the literature and in practice, about both the inherent value of inclusion and participation and the ways in which they can be made effective. Concerns fall into at least five categories asking: why, who, when, how and to what effect? Experience offers insight into each of these questions, without finally resolving them. The many questions raised by inclusion and participation in constitution-building will be explored during the 2019 Melbourne Forum, drawing primarily on the experience of constitution-building in Asia and the Pacific. If you would like more information on the next Melbourne Forum, please email our Coordinator, Ms Charmaine Rodrigues on charmaine.rodrigues@unimelb.edu.au.

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