When Somali leaders approved a new Constitution this summer for the war-torn, impoverished African nation, a handful of Chicago Law students felt particularly close to the process. Nathaniel Paynter, ’12, Alejandro Herrera, ’12, Emily Heasley, ’14, and Eric Alston, ’14, prepared analyses of the draft constitution through Professor Tom Ginsburg’s Constitutions Lab, a new initiative at the Law School that aims to introduce students to real-world constitutional design. Under Ginsburg’s guidance, the students compared Somalia’s 1960 Constitution, its 2004 Transitional Charter, and a Consultation Draft created in 2010. Ginsburg included the analysis in a report on the Consultation Draft to IDLO (the International Development Law Organization) which was passed on to Somali leaders. Ginsburg and his students don’t know for sure that the report was used, but the final draft was consistent with some of their recommendations.

Alston, ’14, who worked for the IDLO in Rome this summer, prepared another report that analyzed the final draft and the rights guaranteed therein as it headed into a vote by the National Constituent Assembly, a body formed for the constitutional process. The assembly approved the Constitution, which is provisional until a public referendum can be held. That’s not feasible in the troubled country right now, but the Constitution is at least a symbolic step toward a more stable government.

These benefits, for nations and for students, are what the Lab is all about. It’s a natural outgrowth of Ginsburg’s work with the Comparative Constitutions Project, which is producing a database on formal provisions of national constitutions for all countries since 1789.

“When we started the project, we had several academic goals in mind: to understand how constitutional ideas spread, to determine what makes constitutions endure, and to learn about what ultimately ensures that constitutions
are effective. But we also thought that the project might be useful to real-world constitution makers,” Ginsburg said.

In the past two years, data from the Comparative Constitutions Project has been used to inform reports on constitution-making not only in Somalia, but also in Kenya and South Sudan. Ginsburg’s research has shown that, in any given year, five to 10 countries are engaged in drafting new constitutions. And most of those involved in the process, he noted, have never done it before and will never do it again, at least if the effort is successful. This led to the creation of a website, www.constitutionmaking.org, addressed to the needs of constitution makers and those who advise them.

“Working with the constitutions lab has provided me with unprecedented access to the tools and techniques of comparative constitutional analysis,” Alston said. “From a library of every significant worldwide constitutional event in modern history, to projects offering input into both the process and substance of constitution building, the lab has proven immensely beneficial to my understanding of the foundational documents of societies around the world.”

Alston’s analysis of the Somali Constitution was covered by the Associated Press and other news outlets, and featured by the Huffington Post, Bloomberg, the Washington Post, ABC News, and BBC News. The analysis showed that Somalia’s draft constitution was fairly liberal in granting rights to citizens, compared with other Islamic countries.

While in Rome, Alston’s official position was Constitution Reform Associate, tasked with performing research for the Kenyan constitutional process. Part of his job was evaluating the impact of work that Ginsburg, Law School Professor Aziz Huq, and former Law School Professor Rosalind Dixon did for the Kenyan constitution-making process in 2009 and 2010. The faculty members were part of a team of eight international scholars, led by Ginsburg, who conducted a detailed analysis of the draft text. Alston identified 19 of the professors’ suggestions that were reflected in the final draft.

Sometimes, the Constitutions Lab provides opportunities for students they couldn’t have foreseen when they started Law School. Paynter, for example, enrolled in the Law School in 2009, before South Sudan was even a country. But by his third year of Law School, he was examining its constitutional process with Ginsburg. In July 2011, South Sudan won its independence from Sudan. Paynter and Ginsburg produced an extensive report on drafting processes and constitutional implementation commissions in other countries, to help inform the South Sudan drafters as they designed their own document. The country’s Constitutional Review Commission is currently working on a permanent Constitution, which is expected to be done next year.

Paynter said it was “ridiculously cool” to have real-world impact on a developing country’s framework. He appreciated the chance to do more than just study case law, he said.

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“It was the single most meaningful thing to my Law School experience,” he said. “It forced you to really think about things that had real-world implications. It really is a whole different type of work when you know it’s meaningful, it’s going to be used for something.”

Ginsburg’s own interest in constitutions started to develop when he was a young program officer for the Asia Foundation, a nonprofit founded in 1954 in the hopes of developing a “peaceful, prosperous, just, and open Asia-Pacific region.” In that role, Ginsburg was approached by the government of Mongolia to provide assistance for the drafting of a new democratic Constitution for the country in 1992. He identified a number of law professors to help with the effort, and he was so taken with their work that he decided he wanted to go to law school himself.

“Watching a constitution-making process up close was a very formative experience for me, and I wanted to provide our students with similar opportunities for hands-on work,” Ginsburg said. The Lab is the place for those opportunities, and they will only grow, as Ginsburg plans to increase the number of students, countries, and projects in the coming academic year. □