

GENDER BRIEFING SERIES

# WOMEN, CONSTITUTION- MAKING AND PEACE PROCESSES



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# WOMEN, CONSTITUTION- MAKING AND PEACE PROCESSES



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# THE PURPOSE OF THE GENDER BRIEFING SERIES

This brief is part of a Gender Briefing Series to support women's meaningful participation and the integration of gender perspectives in peace processes that aim to end violent intra-state conflict.

The key target audience is women, gender equality advocates and others engaged in peace processes, who wish to influence negotiations with a view to: (a) addressing the particular experiences of women during conflict, and (b) achieving lasting peace process outcomes that will improve women's lives and the lives of those around them.

Using a comparative approach, the briefs:

- Establish the importance of the issue from a gender equality perspective and the importance of women's meaningful engagement for effectively addressing it.
- Identify key issues with reference to the inclusion of women and their gender-related and gender-specific dimensions.
- Suggest ways of influencing change in peace processes, including identifying possible entry points and overcoming tensions with competing strategies.
- Highlight through examples how integrating gender perspectives in peace agreements not only benefits women, but also helps diversify perspectives and proposed solutions, thereby contributing more generally to progress in peace processes for all.
- Provide quantitative and qualitative data from peace agreements, using examples from across the world as evidence and inspiration for action.

- Offer analysis that provides for principled approaches to inclusion – grounded in international legal standards – with an indication of how these can be linked to pragmatic political arguments.

Too often, formal peace negotiations approach women's meaningful participation and gender equality as a secondary and apolitical concern to 'stopping the war'. Arguments are often made that the need for political pragmatism to end the conflict must singularly prevail. Yet both concerns are inextricably linked to one another for sustainable peace. The approach of these briefs supports engagement in peace processes rooted in the principle of gender equality, while recognizing that provisions designed to achieve equality in any context will be negotiated politically in practice. To influence change, women will need to influence a range of actors, including those who may not see gender equality as central. Women themselves will also have diverse political views and perspectives. The briefs therefore offer comparative analysis, examples and framing questions to support women and others to develop proposals suitable to their own context, rather than prescribing any one approach.

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# PART I: OVERVIEW

## Why are constitutions important for women?

Constitutions matter, and they matter in a specific way to women. As the fundamental legal text of the state, constitutions:

- Encapsulate the basic values and rules of government;
- Set up the key political and legal institutions; and
- Establish the fundamental rights and responsibilities of individuals, including women.

As such, new constitutions and constitutional reforms offer both opportunities and threats to the advancement of human rights and gender equality.

Constitutions form the fundamental legal document in states where they exist, and will usually have priority over ordinary legislation. They provide an interpretive lens through which legislation will be applied, and set the tone for law-making generally. Women and minorities can anchor rights claims and legal claims against discrimination in constitutional language.

Constitutions tend to be more difficult to amend than ordinary legislation, requiring special majorities in parliament and sometimes additional validation steps (such as popular referendums or court certification) for amendments to come into effect. **It is important, therefore, for women's rights to be enshrined in the constitution from the beginning.** The difficulty of changing constitutions once they are adopted means that inclusion of rights may be of enduring importance, and omission of rights may be very difficult to correct.

In post-conflict settings, constitutions are deeply intertwined with peacebuilding, good governance and the rule of law. Enshrining women's rights in societies emerging from conflict is, however, not easy: gender equality is often considered of low priority during constitutional negotiations as compared with issues such as the division of state power and resources, and the way that this should be translated into institutional design. Sometimes gender equality will be relegated to law-making *after* constitutional drafting. The fact that there are still constitutions in the world today which make no mention of equality generally, or gender equality specifically, is proof that insisting on engendering the constitution is important.

According to a study of constitutions adopted between 1980 and 2011, 5 per cent contained no equality guarantee, while 12 per cent contained no specific gender equality guarantee.

However, the trend is towards greater inclusion of principles of gender equality and non-discrimination in constitutions. During that same period, general equality or non-discrimination provisions were found to have been guaranteed in 81 per cent of constitutions; some aspects of political equality in 32 per cent; marital equality in 27 per cent; some aspects of work equality in 26 per cent; and equal educational rights in 9 per cent of constitutions.

(Source: Cassola et al., 2014, page 213)

Constitutions also play a deeply symbolic role. They embody a new social contract, whose terms will signal the inclusion or exclusion of particular segments of society. The numerous references to “founding fathers”, “Father of the Nation”, “brotherhood”, or “sons” in constitutions signal the male-dominated understanding of the political community and women's exclusion from it. Conversely, an explicit reference to “men and women” as part of “we, the people” – as the Tunisian constitution's preamble includes – can serve to clarify that the state takes women's contributions seriously and recognizes women as full members of society.

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**As the highest legal document of the state, constitutions play important practical and symbolic roles in the recognition of gender equality and must be engendered from the outset.**

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## Why is the inclusion of women important?

There are many reasons why women's participation in constitution-making is especially important in post-conflict situations, all of which can be used as arguments for inclusion.

### Women's participation is a matter of fairness and rights

Women's presence at the negotiating table, whether of peace agreements or constitutions, has been low throughout history. Yet, women are equally affected by conflict and oftentimes end up playing non-traditional roles during war, such as head-of-household or combatant. These patterns of exclusion, however, are changing.

A recent study of women's involvement in constitution-building between 1990 and 2015 shows that although the trend is towards greater participation, more work remains to be done. In the post-conflict constitutions analysed for that period, only 20 per cent of members of formal constitution-reform bodies had been women.

(Source: Inclusive Security, 2017)

### Women's participation ensures the protection of their interests and can promote sustainable political settlements

Women will be best placed to understand and pursue the legal protection of their interests, including for example, protection from domestic violence, and rights relating to reproduction.

In addition, the promotion of gender equality has been found to correlate with the possibility for peace, security, prosperity, health, and good governance (Hudson et al., 2016). There is some evidence that where women influenced constitutional negotiations, they played a variety of positive roles that enhanced the constitution-making process and the quality of resulting constitutional provisions. Not only did they advance more equal and inclusive substantive provisions, but women and women's rights organizations tended to pursue coalitions that bridged societal divisions, and to pursue outreach programmes that broadened overall participation in constitution-building processes (Inclusive Security, 2017).

### Examples of Women's Contribution to Gender Protections and Sustainable Constitution-making

In **Tunisia**, women contributed to ensuring that violence against women was addressed. The 2014 Tunisian Constitution states: "The state takes all necessary measures in order to eradicate violence against women." (Article 46)

In the deeply divided **Kenyan** constitutional reform process, women came together in the Women in the National Constitutional Conference to coordinate, strategize and offer a model for overcoming the political stalemate.

In **South Africa**, the Women's National Coalition engaged across communal divides, and mobilized and educated the population (especially women) during the country's constitutional reform process. They also used a nationwide consultation programme as the basis for the Women's Charter for Effective Equality, which then formed the basis for demands to engender the constitution (see African National Congress, 1994).

## Using international norms

Women's participation at the negotiating table of both peace agreements and constitutions has become an obligation under international law (see further - Appendix A: Resources and Appendix B: International Norms). There is now a body of international instruments in this area, ranging from international conventions to United Nations treaty body resolutions and declarations. These norms provide an important tool for women asserting access to constitutional negotiations, particularly where constitution-making processes are internationally supported and funded.

**Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** affirms:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

The Convention further places positive obligations on states to protect women’s human rights, including their reproductive and citizenship rights, and their right to be protected from trafficking and exploitation. CEDAW places a duty upon states both to adopt the necessary legislation to guarantee and implement women’s rights, including temporary special measures (often referred to in constitutions as ‘affirmative action’, although this term goes further) such as electoral quotas, and to abolish legislation that discriminates against women. This duty extends to constitutions, which the Convention says should embody the principle of gender equality and should mandate for its implementation through law and other appropriate means (Article 2(a)). In its preamble, CEDAW makes clear that “a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women”.

Both the United Nations Security Council and the General Assembly have adopted resolutions demanding that states adopt and implement gender equality measures. **United Nations Security Council Resolution 1325 (2000)** calls on states “to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict”. The Resolution also recognizes that women’s full participation in the peace process “can significantly contribute to the maintenance and promotion of international peace and security”. It calls for: “all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia: . . . (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.”

In 2011, the United Nations General Assembly reaffirmed that “the active participation of women, on

equal terms with men, at all levels of decision-making is essential to the achievement of equality, sustainable development, peace and democracy” (UNGA Resolution on Women’s Political Participation, 2011). Moreover, states are now encouraged to adopt National Action Plans for the implementation of Resolution 1325 to ensure they fulfil its objectives. As of 2017, 63 countries had adopted such National Action Plans, and 16 more were developing them (see Inclusive Security, National Action Plan Resource Centre).

**The above instruments are not the only ones to now address states’ duties to provide for women, especially in post-conflict situations.** Security Council Resolutions 1820 (2008), 1888 (2009) and 1960 (2010) complement Resolution 1325 (2000) in recognizing gender-based violence as a tactic of war and demand the adoption of appropriate measures to protect victims. The General Assembly has also passed resolutions condemning gender-based violence (UNGA Resolution 58/147 of 2003; UNGA Resolution 62/134 of 2007), and regional instruments also exist (see Council of Europe Convention on preventing and combating violence against women and domestic violence). Similarly, international law condemns and requires states to protect women and girls against trafficking and to guarantee their rights without discrimination of any type.

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**It is incumbent upon constitution-makers to translate these obligations under international law into clear and enforceable domestic guarantees, including in the state’s fundamental law.**

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## What role does constitution-making play in peace processes?

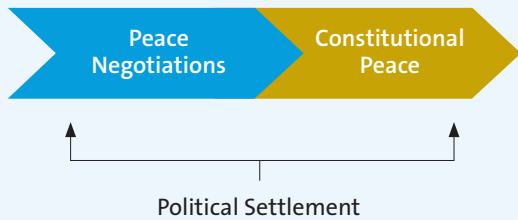
In societies exiting from conflict, constitution-making (the drafting of a new constitution) or constitutional reform (amending a pre-existing constitution) are not mere academic exercises to produce a ‘good constitution’. They often are bound up with peace process attempts to put in place a new, more inclusive political settlement, capable of addressing root causes of violence and ending it (see Bell and Zulueta-Fülscher, 2016, on which this section is based).

It is often assumed that there is a specific sequence to reaching a new constitutional and political settlement, as set out by the idealized trajectory in Diagram 1.



**DIAGRAM 1**

**Understanding peace negotiation, constitutional settlement and political settlement: Ideal trajectory**

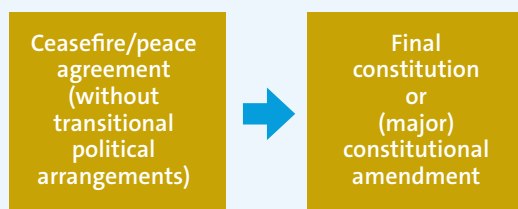


(Source: Bell and Zulueta-Fülscher, 2016)

In practice, matters tend not to move in a linear progression, but to have both forward and backward steps, and to become increasingly complicated. It may be useful to understand three inter-linked but separate processes to be at play, in order to understand the implications for women’s engagement. First, the attempt to reach a new political settlement between ‘elite’ political and military actors (in practice, mostly men). Second, the attempt to reach a peace agreement documenting the steps and commitments of military/political elites to change. Third, the attempt to produce a constitution. These three separate but intertwined processes should all point in the same direction, even as they often come apart from each other, as the following typical sequences illustrate. Each of these sequences poses different challenges for women seeking inclusion.

**DIAGRAM 2**

**Partial peace (or ceasefire) agreements (not including transitional political arrangements) lead to a final constitution or a fundamental review of the old constitution**

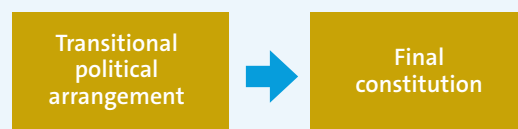


(Source: adapted from Bell and Zulueta-Fülscher, 2016)

This sequencing (Diagram 2) has tended to involve ceasefire agreements focused on demobilizing non-state actors and integrating them into the state’s political and legal structures, while providing commitments to broader democratization, social inclusion and constitutional reform (see for example Bosnia Herzegovina, where the Dayton Peace Agreement included the constitution).<sup>1</sup> Direct moves from a ceasefire agreement to a constitution have mostly been enabled by a political–military deal to end the conflict before starting constitutional negotiations, the pre-existence of a viable institutional framework to govern in the interim, and a conflict dynamic in which the state sought accommodation with armed opponents as well as broader progressive social movements. The risks of this sequencing for women include that powerful military actors, who are often exclusively male, will negotiate the political settlement and may have undue influence over the shape of the future constitution; or conversely, that the political settlement may only contain a broad commitment to constitutional reform which is then not forthcoming. Either way, a pathway will be created which already limits women’s participation in the constitution-making process.

**DIAGRAM 3**

**Transitional political arrangements (either in a peace agreement or a stand-alone document) lead to a final constitution**



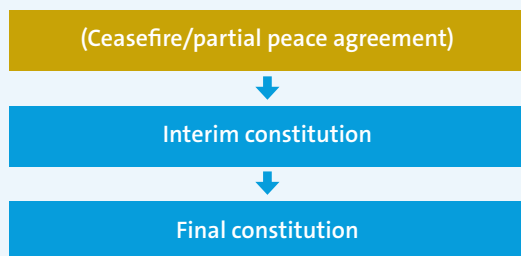
(Source: adapted from Bell and Zulueta-Fülscher, 2016)

In this sequence (Diagram 3), post-conflict political settlement processes, perhaps involving a ceasefire/peace agreement, either include or lead to some form of ‘transitional political arrangements’. Transitional political arrangements outline the next steps of the political settlement process, sometimes laying out the process of producing the final constitution. They often need the support of the international community as guarantors in absence of a strong legal framework.

This sequencing pattern has been typically used in cases of post-election violence. It has also been used where a power vacuum needs to be immediately filled before a constitution-building process can start. It has some inclusion advantages: the participative processes that unfold between an often exclusive transitional political arrangement and the final constitution may create opportunities for women’s participation. The disadvantage is that the quick ‘fix’ of the transitional political arrangement has little traditional democratic legitimacy, and creates pressure to move quickly to elections rather than taking the time for constitutional deliberation and consensus-building which will facilitate an inclusive process.

**DIAGRAM 4**

**An interim constitution, sometimes preceded by a peace (or ceasefire) agreement, fulfils the role of a peace agreement and sets the stage for a final constitution**

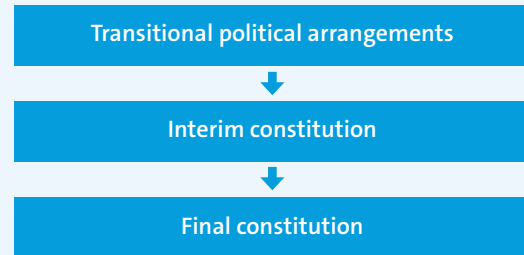


(Source: adapted from Bell and Zulueta-Fülscher, 2016)

In the model in Diagram 4, the interim constitution plays the leading role in the political settlement process, until the adoption of a final constitution. Peace or ceasefire agreements may precede the interim constitution, but do not include transitional political arrangements. The advantage of this sequencing is that it facilitates a pact between political and military actors regarding the broad parameters of a political settlement, thereby enabling some sort of elections prior to the final constitution-building process, and buying time for a broader participative process that may be more conducive to broader social participation, including that of women. The disadvantage is that many of the critical elements of the political settlement can be left to the constitution-building process, which creates difficulties if the participative process

**DIAGRAM 5**

**A combination of sequences 3 and 4, whereby transitional political arrangements are followed by an interim constitution, which moves to a final constitutional drafting stage**



(Source: adapted from Bell and Zulueta-Fülscher, 2016)

is unable to agree on difficult issues, or the major political actors are not kept on board. In other words, participation can come at a price of there being little underlying commitment from the key conflict parties to commit to the constitutional arrangements as a form of settlement of the conflict.

The sequencing pattern in Diagram 5 involves a peace agreement with transitional political arrangements, often preceded by earlier ceasefire/peace agreements, followed by an interim constitution and then a final constitution (on Interim Constitutions, see Zulueta-Fülscher, 2015). This sequence usually occurs in countries that have experienced prolonged conflict, where the institutional framework is weak or non-existent, and where incremental constitutional processes are used to reach a joint political and constitutional settlement. The advantages of this sequencing are that it enables an immediate form of government, and an ongoing incremental process that attempts to produce a constitutional text reflecting a political settlement. However, this model generally reflects the difficulty of forging a constitutional settlement in these settings, which are characterized by large-scale conflict and state failure. While the incremental process can be useful to women’s mobilization over time, it can still be difficult to make provisions on equality stick, and gains at one stage of a process are not necessarily sustained through later stages – drafts can move backwards as well as forwards in their commitments to equality.

As this account of sequencing indicates, it is not always easy to predict when constitutional reform is likely to take place. **Therefore, women should not wait**

**for formal processes to be set in motion before they define their agenda, prepare strategies and build alliances towards engendering the constitution.**

### The Coalition of Syrian Women for Democracy

Since the start of the country's conflict in 2011 – despite many unknowns, not least of which is the outcome of the conflict – Syrian women's rights advocates have organized and sought to define and promote a gender-sensitive agenda. They built alliances, such as with pro-democracy and human rights groups, harnessed international solidarity with their cause, and sought to learn the comparative lessons emerging from the experiences of other constitution-building processes, particularly those in the so-called 'Arab Spring'.

Their advocacy has included collaborative drafting of engendered pre-constitutional principles, designed to serve as minimum guarantees of the gender-sensitivity of any newly-adopted Syrian constitution. This level of mobilization is especially impressive given the severe constraints on Syrian civil society even before the war, which had significantly decreased the spaces available for women to push for change.

(See Syrian Women for Democracy and European Feminist Initiative IFE-EFI, 2014)

# PART II: GENDER, WOMEN'S RIGHTS AND CONSTITUTION-MAKING AND REFORM—WHAT TO ADDRESS?

Insofar as a new constitution is drafted in the aftermath of conflict, or the existing constitution is amended to reflect a new political settlement, the temptation for many political actors will be to relegate issues related to gender equality to a lower priority than that of sustaining the commitment of armed actors to the new settlement.

At the same time, civil society actors often play a crucial role in pressing for issues of equality to be addressed. The assumption that gender equality will be dealt with in the post-conflict reconstruction phase is a risky one: not only might political will for legal change subside, but once a new/revised constitution is in place, it may well be very difficult to change. **Consequently, women's rights advocates should seek to make the most of the opportunity to render both the drafting process, and the substance of the new/revised constitution, gender-sensitive.**

## **Process: Engendering constitutional negotiation and drafting bodies**

Constitutions can be negotiated and drafted by a variety of bodies. These include large elected bodies performing a variety of functions (typically constituent assemblies or national parliaments, or a body that acts as both) as well as more specialized bodies that are usually smaller, focused on the task of delivering a constitutional draft or proposals for reform (typically commissions, committees or roundtables) (Interpeace, 2011, page 230). It should be noted that the distinction between the different types of bodies is not always clear in practice – there may be mixed models, such as an expert committee informing the work of a

constituent assembly. Further, all these bodies may also perform additional tasks, such as civic education.

Often the choice of type of body will be predetermined by tradition or by existing law and practice in the area (assuming there is a desire to abide by the latter). For example, the United Kingdom is unlikely to break from its long tradition of relying on expert commissions in bringing about constitutional reform (Renwick, 2014, page 108), whereas conventions, assemblies and roundtables are more popular in countries influenced by the French and American traditions (Arato, 2012). The following explore different options.

## **Inclusion and elected constituent assemblies**

Constituent assemblies are either set up as separate institutions, or will be national parliaments doubling as constituent assemblies. The inclusion of women in both bodies is important. In both cases, membership is determined on the basis of elections – separate elections in the case of the former, and regular parliamentary elections in the case of the latter. Recent examples of elected constituent assemblies include Tunisia's and Nepal's, which prepared the countries' 2014 and 2015 constitutions, respectively. The resulting constituent assembly membership can be supplemented with special seats reserved for women.

**To maximize the presence and impact of women representatives in constituent assemblies, attention should be paid both to the design of elections for these bodies and to their internal procedures.**

Given the importance of the task of constitution-making – whose aim is to reach a political settlement for generations – equal representation of women will be important. Where women are under-represented, electoral quotas or reserved seats for women can be useful tools by which to ensure gender parity in the constituent assembly, depending on the electoral system. Given the temporary nature of their task bodies, special measures relating to the constitution-making body are by their nature also temporary as required by CEDAW.

A quota system was adopted in Tunisia’s elections for the constituent assembly, requiring a ‘zipper quota’ for party lists, which demanded the alternation of genders between candidates on electoral lists. This had only partial success, because not all parties complied with the rule; although interestingly, the religious conservative Ennahda Party did their best at complying with the quota, resulting in the greatest number of female representatives in Tunisia’s constituent assembly coming from this party (Suteu, 2017).

Attention should also be paid to the broader electoral design, and to identifying access points for women within it. For example, the use of proportional representation in South Africa’s first democratic elections, combined with quotas for women instituted at party-level, over time produced higher levels of gender representation both in parliament and in the government (Seidman, 1999).

The working procedures of constituent assemblies should be made as gender-sensitive as possible. For example, by ensuring adequate training for all representatives (with a view to women representatives being more likely to be new to the political process); having decision-making rules that facilitate consensus-building, including across party lines (in recognition of the cross-cutting nature of the gender equality agenda); and providing access to leadership positions and speaking time in a way that is inclusive of women (See *ABC for a Gender-Sensitive Constitution*, 2015, page 112; on procedural obstacles to women’s participation in constitution-making bodies, see Interpeace, 2011, page 198 and Katz, 2012, page 206; on gender-sensitive parliaments, see Inter-Parliamentary Union, 2012).

Measures may also need to be adopted to address more ‘day-to-day’ aspects of the operation of the constituent assembly, such as ensuring reasonable

working hours (so as not to discriminate against members with caregiving duties, who tend most often to be women) or providing special facilities, such as nurseries or additional restrooms. Doing so, without reinforcing gender stereotypes, will be important to create a working environment that can act as a model for future institutions – for instance, by emphasizing that caregiving facilities are open to all parents equally.

Constituent assemblies will typically have the final decision-making power regarding constitutional reform. For example, the Tunisian Constitution was adopted by vote in the assembly, albeit requiring a two-thirds majority to ensure wide agreement. However, sometimes the choice is made to resort to **ratification by referendum**. This will mean that the outcome of the assembly’s negotiations and drafting will be submitted to a national vote, with citizens invited to approve or reject the draft. The recourse to referendums is often made on the assumption that it will trigger higher legitimacy for the overall process. While this might occur under the right conditions, referendums can also be manipulated, especially in fragile and divided contexts, and they may well prove counter-productive for women’s rights if gains in constitutional negotiations are undone by a rejection at the polls.

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**Achieving gender-sensitive constituent assemblies will require elections designed to maximize the inclusion of women when determining membership; and ensuring that when designing their working methods, decision-making rules and facilities, women and family-friendly practices are used.**

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### **Inclusion and appointed bodies**

Appointed bodies, typically **expert commissions**, are usually selected by the executive and/or the political parties. Examples of the recent use of commissions in constitutional drafting include Kenya in 2010 and Fiji in 1997 and 2012. Both are also examples of commissions including international experts among their members.

The main advantage of such appointed bodies is their members’ expertise and independence. These bodies are also usually smaller, so the working dynamics are different and may be conducive to speedier drafting. However, there are risks involved in the recourse to expert commissions, including their potential manipulation by political forces, resulting in a perceived lack of independence of the process, which may undermine the legitimacy of the final constitution. Even if these

risks are avoided, there remains the possibility of such a commission being, or being perceived as, elitist and isolated from broader society and the political process, and lacking transparency (Interpeace, 2011, page 266).

For women, appointed bodies offer both opportunities and risks. On one hand, women may more easily gain access to these bodies if the appointing authorities accept the need for equal representation. Unlike the case of constituent assemblies, women can gain access more straightforwardly if political will is present. On the other hand, where gender balance is not on the agenda, women risk not being appointed to these commissions or not being selected in sufficient numbers to have an impact on their outcome. **Moreover, appointed bodies are usually not the final decision-makers — their recommendations require approval, whether in the legislature or in a referendum. This requirement again raises the prospect of gains for gender equality being undone subsequent to the commission's work, in the absence of continued vigilance by women's rights advocates.**

Expert commissions are not the only type of appointed constitution-drafting body. **Constitutional conventions** have members who are selected randomly but with a view to ensuring inclusive representation. An example of this are Ireland's two recent citizen assemblies: the first running between 2012-14 and the second in 2017. While the former was made up of two-thirds ordinary citizens and one-third politicians, the latter was made up entirely of regular citizens. These were selected randomly but effort was made to ensure the assemblies' gender balance, as well as representativeness according to age and residence. Both assemblies were tasked with making recommendations concerning constitutional reforms, some of which had been quite controversial among legislators (such as the recognition of same-sex marriage or the regulation of abortion). While these assemblies' recommendations were not final, and had to go through the political process and ultimately gain validation in national referendums, the Irish example may offer an alternative method for deliberating on matters for constitutional change (Suteu, 2017, pages 28-32).

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**Ensuring that appointed constitution-drafting bodies are inclusive of women may be more straightforward, insofar as women's rights advocates can target their pressure on the appointing authority and demand equal representation for women.**

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## **Inclusion, civic education and informal processes surrounding constitutional negotiations**

Irrespective of the type of body chosen to prepare the new/revised constitution, it will be important that the population-at-large be made aware of the process and its expected outcome, as well as given an opportunity to influence it. Civil society organizations can play a key role. Public consultations should seek to be inclusive of a variety of views, and to include both civil society actors and individual voices. Civic education campaigns are also important in this respect and need to be engendered, such as by choosing dissemination tools like radio or posters where literacy might be a problem — one that tends to affect women disproportionately (*ABC for a Gender-Sensitive Constitution*, 2015, page 114).

Public consultation can alleviate the impact of potentially weaker organization by women or the possible dominance of well-organized conservative civil society forces. However, **ensuring that such consultations offer meaningful avenues for women to speak up is critical.** For example, in Sudan, town hall meetings were set up to facilitate a consultative process surrounding the country's 2011 new constitution, but cultural norms meant that women often found it difficult to speak up at these events. To get around this, 'elite' women hosted small groups of women in their homes in what they called 'tea sessions' and then compiled the results and presented them to the decision-makers. Such innovative thinking is an example of how creative approaches geared to cultural contexts can help ensure that women of all backgrounds have a chance to influence the constitution-making process, including via informal means.

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**Informal processes surrounding constitutional negotiations that are designed with the participation of non-dominant groups in mind — including civic education campaigns and public consultations — will maximize the chances of women of all backgrounds having a voice in the process.**

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## Substance: Engendering constitutional content

Engendering constitutions will require the adoption of certain substantive issues, some of which will be directly perceived as ‘women’s issues’. It will also require paying attention to structural problems such as the very language the constitutional text uses. What follows is a list of the most immediate substantive provisions which women’s rights advocates are often concerned with. The list is not exhaustive, and what provisions are considered priorities will differ from context to context. Nevertheless, comparative lessons have shown the following tend to be sites of struggle for women in most constitution-making processes. Some issues may connect with the divisions that have generated the conflict. Hence, strategies for ensuring women’s rights are protected will often need to engage with how the divided parties to the negotiations understand women’s demands to impact on their own power struggles.

### Constitutional guarantees of women’s equality

Guarantees to equality before the law, and to equality more generally, are ones without which no constitution can truly be considered gender-sensitive or democratic. However, in conflict contexts the nature of the state and how it is to be ‘shared’ between divided groups is often closely related to root causes of the conflict, as well as attempts to reach a new political settlement capable of ending it. Equality between groups of different ethnicity or ideology is therefore a highly political issue and often controversial. Women can often mount their claims to equality on the back of commitments to other forms of group equality. However, they will need to understand the ways in which equality provisions re-allocate power between the main parties to the conflict. The relationship of equality to the power balance between other groups can affect how demands for women’s equality will be embraced and resisted by various ‘sides’ differently, depending on their strategic interests.

Constitutions around the world provide for gender equality in a variety of ways. The following offers several key sites of engagement in terms of women’s rights, providing examples from a variety of constitutional texts, not all of which are post-conflict constitutions. Although we single out some issues, it

is worth noting that every aspect of a constitution is of importance to women and a gender perspective implicates each provision. Further, women will have a range of matters they wish to affect, beyond making the constitution gender-sensitive.

- **Gender equality:** As regards the protection of the principle of gender equality, some remain very general. The Belgian Constitution, for example, provides in Article 21: “Equality between women and men is guaranteed.” Whether general or not, the most important matter is that the constitution explicitly guarantees gender equality and the enjoyment of rights without discrimination, such as by making it clear that it addresses “citizens, male and female” like for example, in the Tunisian Constitution of 2014, Article 21. Some constitutions go further in the level of detail they include in gender equality provisions, stipulating not only the general principle, but also the pursuit of equality in practice (*de facto*), not just in principle (*de jure*), and clearly indicating the constitutionality of affirmative action measures. One such constitution is Austria’s, whose Article 7(2) guarantees that all levels of government will respect and promote gender equality:

“The Federation, Laender and municipalitie subscribe to the de-facto equality of men and women. Measures to promote factual equality of women and men, particularly by eliminating existing inequalities, are admissible.”

Conversely, constitutions can pay lip service to the principle of gender equality while at the same time restricting its reach by subjecting it to limitations found in religion, tradition, or ordinary legislation. An example of this is the Yemeni Constitution, whose Article 31 states: “Women are the sisters of men. They have rights and duties, which are guaranteed and assigned by Shari’ah and stipulated by law.”

- **Non-discrimination:** When it comes to the protection of non-discrimination, constitutions again differ in the form of wording, and level of detail (see [Global Gender Equality Constitutional Database](#)). A positive example is the South African Constitution, which pays particularly close attention to equality and non-discrimination guarantees, including on grounds of gender (Article 9). Article 9(3) contains a list of grounds on which discrimination is prohibited:

“The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”

Importantly, the list is non-exhaustive, meaning other grounds could be added to it in time. Moreover, the provision is complemented by Article 9(4), which prohibits discrimination by private persons, and by Article 9(5), which permits affirmative action measures.

This comprehensive drafting can be contrasted with the Jordanian Constitution which, despite a 2016 revision, still fails to list gender or sex among the prohibited grounds of discrimination. Its Article 6(1) thus simply states: “Jordanians shall be equal before the law with no discrimination between them in rights and duties even if they differ in race, language or religion.”

Just as undesirable are so-called “clawback clauses”, whereby a commitment to non-discrimination in one part of the constitution is rendered ineffective by a provision elsewhere. For example, Botswana’s constitution bans discrimination in Article 15(1) but then immediately qualifies this prohibition, including “with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law.” (Article 15(4)(c)).

“All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.”

Constitution-makers can address the danger of any constitutional reference to religion, tradition or culture undermining women in different ways. The South African Constitution, for example, clearly states that, in the event of conflict, it is the constitution which prevails over any such additional source of law. Thus, the South African Constitution recognizes the rights of cultural, religious or linguistic communities, but at the same time stipulates that they “may not be exercised in a manner inconsistent with any provision of the Bill of Rights”. (Article 31). It strikes a similarly delicate balance when recognizing traditional leadership and customary law, but only “subject to the Constitution” (Article 211). This way of ensuring the constitution takes priority over potentially discriminatory laws and practices is also favoured by the Working Group on the Issue of Discrimination against Women in Law and Practice, which recommends that states:

“...recognize and enshrine, in their constitutions and laws, the right to equality, which should apply in all areas of life and have primacy over all religious, customary and indigenous laws, norms, codes and rules, with no possibility of exemption, waiver or circumvention (2015).”

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**Constitutions must explicitly and unequivocally protect the principles of gender equality and non-discrimination and not undermine them, whether by way of contradictory constitutional provisions or subsequent legislation.**

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**Gender equality, and individual rights more generally, should have constitutional priority over any reference to religion, tradition or custom; otherwise, the guarantee of women’s rights remains vulnerable to being undermined.**

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### The interplay between individual rights and religion, tradition and culture

Despite being constitutionally guaranteed, individual rights can be limited by references to religion, tradition or culture. This is especially true for women’s rights. Their restriction often comes indirectly, such as by the constitutional recognition of religious or traditional sources as sources of law. For example, the Iranian Constitution qualifies its equality guarantee by reference to Islamic law, stating in Article 20:

### The place of international law in the constitutional order

Another related avenue for women’s rights advocates concerns the status afforded by international law in the constitutional order. **Constitutions often clarify the relationship between international law and the domestic legal system, and sometimes explicitly make the former the benchmark for rights protection in the country.** For example, the Romanian Constitution states that the citizens’ rights and freedoms shall be interpreted and applied in accordance



with the Universal Declaration on Human Rights and other international human rights treaties to which the state is party (Article 20(1)). Moreover, in case of conflict, the higher standard of protection between domestic and international law will prevail:

“In case of an inconsistency between domestic law and the international obligations resulting from the covenants and treaties on fundamental human rights to which Romania is a party, the international obligations shall take precedence, unless the Constitution or the domestic laws contain more favourable provisions (Article 20(2)).”

This reference to international law can therefore help ensure that there will be no regression in rights protection and that the highest standard – be it domestic or international – will always apply.

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**Depending on its status in the constitutional order, international law can provide a baseline of rights protection, and a hook for appeals to international norms.**

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### Rights and political and territorial power-sharing

Peace agreement provisions that share or split power between parties to conflict, may include rights provisions. Here, rights can play an important role in ensuring that the dynamics of power-sharing do not impact negatively on women’s rights (see further, Wise, 2018 on Territorial Power-sharing). **Women’s rights protection is the duty of all levels of government, but this becomes an especially important consideration in states which are federal or have implemented a certain degree of decentralization of power.** In contexts where power is territorially divided, women’s fate may well depend on the governing institutions of the sub-divided areas as it does on the central government.

Recent studies of Western federations and decentralized states indicate that they may afford more access points and greater opportunities for local decision-making, thus allowing for more women’s input in government (Vickers, 2011). To the extent that women find it easier to become involved in local and regional politics, decentralization may offer increased avenues for political participation. However, the same studies also demonstrate that women’s experiences of federalism and decentralization differ depending on

context, with a variety of factors at play in determining the gendered impact of any arrangements. Obstacles are likely at this level as well. Rwanda is a case in point. Despite electoral quotas at the local level, Rwandan women, while achieving strong representation in the legislative body, have still faced hurdles in influencing change (such as local rules, traditions and customs of authority), and they lack capacity and training (Inclusive Security, 2008).

Additional considerations inform the territorial division of power in post-conflict states. Territorial decentralization may have been resorted to in the hope that it would aid conflict resolution, despite the absence of any prior state tradition in this regard, as was the case in Iraq in 2005. The Iraqi example also shows how constitutional choices are often made in ways which will impact different women differently. Thus, while federalization was seen as a solution to Kurdish claims in the country, little thought was given to the fact that it would likely also bring about the differentiated treatment of women to their detriment, across all other regions (for instance, by enabling differentiating family law rules with negative impact on women in conservative regions). Such fears were at the root of many Iraqi women’s rights activists opposing the federalization of the country: Ghareba Ghareb of Iraqi Women’s Association was quoted as stating: “We’re against federalism because we are against sharia. That is our fear.” (Carroll, 2005).

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**In federations and decentralized states, the implementation of women’s rights will also depend on sub-divided authorities, which is why constitution negotiations should seek to engender all levels of government.**

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### Citizenship

Equal citizenship goes hand in hand with general guarantees of gender equality, but oftentimes constitutions – and even more so ordinary legislation – will provide for discriminatory rules in this area. Peace processes often deal centrally with issues of ‘belonging’ in the state and citizenship, and so constitutional provisions in this area may have a heightened relationship to the question of inclusion in the newly re-worked state project. On top of long being denied basic rights such as the right to vote and stand for elections, women have historically had their citizenship rights more

restricted than men's. Examples include women being denied the right to pass on their citizenship to their offspring or losing their citizenship upon marriage. For example, Nepal's 2014 Constitution maintained gender-differentiated rules for the acquisition and passing on of citizenship (Article 11), thereby continuing the state's discriminatory practice in this area.

Discriminatory practices are also often grounded in post-constitution citizenship legislation. One project has found that 25 countries maintain citizenship rules which discriminate against mothers in passing on their nationality to their children, and that roughly 50 countries deny female citizens equal rights with male citizens in their ability to acquire, change and retain their nationality, and to confer nationality to non-national spouses (See [Global Campaign for Equal Nationality Rights](#)).

Constitutions can play an important role in promoting gender equality in this area. **They can not only explicitly guarantee equal citizenship rights, but especially where the latter have historically been denied in ways that have affected women in particular, the constitutional text can specifically prohibit a different citizenship regime for women. This can include stipulating that women can retain their citizenship upon marriage or divorce and can pass it onto their children.** For example, Kenya's 2010 Constitution (Article 13(3)) stipulates that: "Citizenship is not lost through marriage or the dissolution of marriage." Uganda's citizenship provisions (Chapter 3 in its constitution) are drafted in gender-neutral language throughout (making reference to 'citizens' and 'person' and using both the masculine and feminine pronouns, 'his or her').

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**Constitutions as well as legislation should be based on gender equality and not discriminate between women and men in the rules for acquiring, maintaining and the passing of citizenship.**

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### **Affirmative action and temporary special measures**

Related to general equality guarantees are provisions explicitly addressing affirmative action. Some have already been noted above (e.g. Austria and South Africa). Others include, for example, the Sudanese Constitution's brief reference in Article 32(2): "The State shall promote woman (sic) rights through affirmative

action." They also include the more elaborate constitutional commitment to affirmative action measures in the Ugandan Constitution. The latter mentions such measures vis-à-vis women first in a general clause, Article 32 titled 'Affirmative Action in Favour of Marginalised Groups', whose first paragraph states:

"Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them."

Thereafter, Article 33(5) also explicitly mentions affirmative action measures in favour of women, aimed at redressing the historical and traditional discrimination to which they have been subjected:

"Without prejudice to article 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom."

CEDAW permits and encourages "general social policies adopted and implemented in order to improve the situation of women and the girl child." (Committee on the Elimination of Discrimination against Women, 2004, paragraphs 26 and 31), and considers that these should not be understood as temporary special measures. Some affirmative action provisions in constitutions fall into this category.

In some Constitutions, however, affirmative action is provided for more clearly in the form of a temporary special measure as contemplated in CEDAW. The Rwandan Constitution for example, stipulates a 30 per cent electoral quota for women (Article 10(4)). As CEDAW makes clear in Article 4, temporary special measures aimed at accelerating the *de facto* or substantive equality between women and men should not be considered discriminatory, as long as the disparity exists. State parties to the Convention are encouraged to adopt constitutional provisions and legislation allowing for such temporary special measures.

One key issue for new constitutions in conflict-affected societies is a particular form of temporary special measure – quotas. Increasing the representation of women in any new political institution is often a key matter for women's groups. Quotas come in many different varieties: they can be instituted for political parties, candidate lists or specific institutions; they can set numerical objectives (such as a certain percentage);

or promote practices likely to yield more women representatives (such as alternate genders on candidate lists); and they can be gender-specific or gender-neutral (such as requiring that no more than 60 per cent of candidates are of one gender or the other) (See [International IDEA Gender Quotas database](#)).

**What is certain is that a constitutional commitment to affirmative action measures will not suffice to make them a reality. There will also need to be implementing legislation to iron out the details of such measures, where they are deemed appropriate.** Moreover, the success of quotas where appropriate, will depend on their interplay with other features of the political and legal system, which can either reinforce or undermine women's participation in public life. For example, the type of electoral system will also have an impact on women's access, with some evidence that systems adopting versions of proportional representation are likely to result in the higher representation of women (European Parliament, 1997; on the interplay between quotas and proportional representation systems, see [International IDEA Gender Quotas database](#)). **The key takeaway for women's rights advocates, however, is that they should adopt holistic strategies and not look at quotas in isolation.**

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**Affirmative action measures and 'temporary special measures' (CEDAW) can be effective in promoting women's representation. They are to be viewed as ways of promoting the actual equality of women, rather than just protection from discrimination, and can include temporary correctives for historical injustice such as in the form of temporary quotas.**

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### **Protecting against any 'new consensus' on social conservatism**

There are often broad shifts in gender roles during and after conflict, with women taking on traditionally male-dominated roles and thereby disrupting gender relations (Tripp, 2016). However, peace process constitutional reform processes do not just see mobilization of women to influence constitutional texts. Other groups outside of the main conflict dynamic, or even linked to it, may also seek to imprint the constitution with their own vision, notably churches and religious leaders. Sometimes, socially conservative retrenchment of women's rights can result, and even be supported as something which builds consensus

between parties to the conflict, where they are all socially conservative to a degree.

- **References to marriage and/or family:** Constitutional references to marriage and/or family can have both a positive and a negative impact on women's rights, depending on whether such provisions are drafted to guarantee women's equality in marriage and/or family, or whether they seek to limit women's freedom within these institutions. In societies where women have traditionally experienced discrimination within their marriage and/or family, clear constitutional language guaranteeing their rights in this regard can be important, for example: the right to choose a partner (or not); their equality with their spouse; equal entitlements to benefits deriving from marriage and/or family bonds (such as property and inheritance rights). At the very least, provisions which reinforce traditional roles for women and their submission within the family should be avoided.

Examples of concise constitutional provisions in this area which still weave in gender equality include Kosovo's Constitution, whose Article 37 states: "Marriage and divorce are regulated by law and are based on the equality of spouses." Another example is the East Timorese Constitution, which stipulates, in Article 39: "Marriage is based upon free consent by the parties and on terms of full equality of rights between spouses, in accordance with the law." It is also important that the law not discriminate between individuals on the grounds of their marital status, which some constitutions make explicit. (See, for example, the South African non-discrimination clause cited above.)

Constitutional provisions on marriage and family will be especially vulnerable to being emptied of their content via ordinary legislation. Thus, while a constitution may formally declare the equality of spouses or women's equal rights within the family, the reality may be rather different on the ground. **Because there is only so much detail that a constitution will be able to include, marriage and family tend to be regulated in depth by ordinary legislation, with potentially detrimental effects on women.** An example is the Kenyan Constitution of 2010. Initially heralded as a progressive document, it included a provision guaranteeing equality within marriage: "Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage." (Article 45(3)).

However, the Kenyan legislature later adopted a new Marriage Act (2014), criticized by women's rights advocates for recognizing polygamy for men but not women, not recognizing marital rape as a crime, and not doing enough to guarantee women's property rights within marriage. At the same time, certain women's rights advocates welcomed the fact that polygamous marriages, a long-standing practice in Kenya, would at last be recognized and placed on equal footing to other marriages (Karimi & Leposo, 2014).

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**If marriage and/or family are mentioned in the constitution, the latter must explicitly guarantee the full equality of the spouses and prohibit any discrimination on the basis of gender before, during and after marriage, as well as within the family.**

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- **Sexual and reproductive rights:** Sexual and reproductive rights cut across a variety of rights, many of which are likely to be protected constitutionally. The latter include the right to health, the right to the security and/or integrity of the person, the right to privacy, the right to life, the right to freedom from torture, the right to education, and freedom from discrimination. **While ideally, reproductive rights will be recognized explicitly in the constitution, where this is proving difficult, women's rights advocates can seek to ensure that these connected rights are included in the bill of rights.** This can provide a textual hook for subsequent advocacy for the recognition of reproductive rights.

The United Nations has for some time now recognized sexual and reproductive rights as human rights (see for example, paragraph 6, 1995 Beijing Platform for Action<sup>2</sup>). Moreover, the UN has recognized that the legal protection of sexual and reproductive rights will be more important for women, as women's access to such rights tends to be limited by stereotypical gender roles, and women's status in society more generally (Office of

the UN High Commissioner for Human Rights, UN Population Fund and Danish Institute for Human Rights, 2014, page 26). The UN has also emphasized that access to sexual and reproductive health services is important for all members of society, especially women and girls, and has linked it directly to that society's development (UN Population Fund, 2014). Despite such recognition at the international level, however, few states constitutionalize sexual and reproductive rights. The box below sets out some exceptions.

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### Examples of States that Constitutionalize Sexual and Reproductive Rights

Article 27(1) of the 1996 **South African** Constitution guarantees to everyone "the right to have access to health care services, including reproductive health care" and in Article 12(2), stipulates that the right to bodily and psychological integrity includes the rights "to make decisions concerning reproduction" and "to security in and control over their body".

The **Ecuadorian** Constitution 2008 also explicitly recognizes the state's duty to "[e]nsur[e] sexual and reproductive health actions and services and guaranteeing the integral healthcare and the life of women, especially during pregnancy, childbirth and postpartum" (Article 363(4)). However, here the constitutional recognition of reproductive rights coexists with the constitutional protection of life from the time of conception (Article 45) and with the criminalization of abortion, except in very restricted circumstances.

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**Whether explicitly guaranteed as such, or subsumed to other rights, the sexual and reproductive rights of women should be protected.**

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# PART III: STRATEGIES OF ENGAGEMENT

To influence constitution-making or constitutional reform discussions, women will have to engage with the peace negotiations and the peace agreement which will lay out the road-map towards constitutional reform.

## Early mobilization and agenda-setting

It will be important to question when and how women will be involved in these processes. Women will then need to anticipate the key issues which they would like to influence in any constitution-making process. Often, it can be effective to make a combination of principled and strategic arguments as to why the constitution should address women's rights. Sometimes

### Examples of women's rights advocates' early mobilization and agenda-setting initiatives

**Women for Afghan Women**, a grassroots organization composed of ethnically diverse and both literate and illiterate women, worked towards engendering Afghanistan's 2004 constitution. During the constitution-making process, the group prepared a Women's Bill of Rights meant to ensure that women's political representation and socio-economic well-being would be reflected in the final draft. The Bill, which was distributed throughout the country and to key political players, specifically referred to "mandatory education through secondary school, equal pay for equal work, modern health services, and equal representation in government" (Katz, 2012, page 206).

Similarly, in 2014, the **Tanzanian Network of Women and the Constitution**, a coalition of more than 50 women's groups, identified 12 key issues for women's rights as part of the new constitution, as well as the need for an independent commission to oversee the implementation of these rights (Allen, 2014).

the inclusion of women and gender issues may facilitate other parties to broaden discussion on issues such as equality, beyond the social divisions at the heart of the conflict, in ways that are constructive to resolving those divisions. On other occasions, the parties to the conflict will view broadening of these issues as part of their opponent's agenda, or as disruptive of dealing with 'the main' issues.

## Alliance-building

It is important to create alliances around issues such as equality, and to brainstorm and understand which issues will be particularly contentious between the political-military parties to the conflict, and whether inclusion of which women's rights will help resolve or exacerbate those tensions. It is also important to recognize that just as post-peace agreement constitution-making processes are moments of opportunity for women's rights, they are also moments of opportunity for socially conservative forces, for example religious leaders or churches, to retrench women's rights, and this may even be a consensus point across the parties to the conflict.

### Examples of women's alliance-building

**South African** women's rights activists forged a wide range of alliances with both local and international human rights groups, youth groups and traditional leaders to advance their agenda during the constitution-making process (International IDEA, 2013).

Women's rights organizations in **Morocco** engaged in long-term advocacy, in coalition with trade unions, to improve working conditions for women, ban sexual harassment in the workplace, recognize domestic work, and increase maternity leave (Naciri, 2005, page 194).

**Alliance-building will continue to be important in the fight for gender equality after constitutional negotiations have finished.** For example, a recent study on 50 African countries has found that governments are more likely to adopt quotas and do so more quickly when domestic women's organizations form a coalition demanding this (Kang and Tripp, 2018). The same

study found that women's coalitions have been able to push for quotas at different points: during peace talks (Burundi), during constitution-making (Kenya, Somalia, Uganda), but also during legislative (Senegal) and constitutional (Zimbabwe) reform processes.

# CONCLUSION

This short Brief has not been able to address all the matters which women will want to affect during constitution-making processes. Clearly, women will want to provide inputs to all aspects of the constitution, and the resource sections below are intended to be helpful in this regard. At the same time, it is important to note some of the key areas where a gender influence is often brought to bear, or where there are significant risks for women if issues of gender are ignored.

In conclusion, we set out some guiding questions for women seeking to brainstorm and engage in constitutional reform processes.

## Guiding questions for women seeking to engage in the constitution-making process

- Are women mobilizing early, and preparing for constitutional discussions and processes?
  - Agenda-setting and coalition-building should begin as early as possible and should not wait for formal processes to already be in place. By the time the latter happens, it may well be that important decisions have already been made and opportunities to influence the process may have been lost.
- Are women seeking to also engender the peace negotiations?
  - Peace negotiations will have important gendered dimensions and often set the tone for subsequent peacebuilding in a society. It is therefore imperative for women's rights advocates to seek to engender the peace-making process itself.
  - Constitution-building does not always follow peace negotiations, but the two are often intertwined and can both reinforce and undermine each other. Women should thus be aware of the interplay between the two and adopt holistic strategies for seeking to influence them.
- Have women and women's rights coalitions set out a clear agenda for engendering the constitution-making process?
- Do women have clear strategies for how to engage in and influence the process of constitutional reform?
  - This should include engendering the composition of the negotiating/drafting body, whether a constituent assembly or an appointed body, including moving beyond tokenism.
  - It should also include engendering the working methods of the negotiating/drafting body.
- Does the agenda promoted by women and women's rights coalitions set out clear substantive goals for the constitution?
  - This should include, at a minimum, clear constitutional guarantees of the principles of gender equality and non-discrimination.
  - It should also include the broadest possible protection of rights and guarantees which affect women's status, including:
    - The interplay between individual rights (especially women's rights) and religion, tradition and culture;
    - Citizenship rules;
    - Affirmative action measures and temporary special measures;
    - References to marriage and/or family;
    - Sexual and reproductive rights; and
    - Rights in territorial sub-divided areas.
- Have women's rights advocates adapted their strategies and goals to their respective contexts? Context will dictate different priorities for women in different settings.
- Do women have strategies and objectives for advancing gender equality beyond the constitution? While important in both practical and symbolic terms, the constitution must go hand in hand with gender-sensitive legislation which both implements and takes further the fight for women's rights.

# APPENDIX A: RESOURCES

## Constitution-making handbooks

Euromed Feminist Initiative IFE-EFI, 2015. *ABC for a Gender-Sensitive Constitution: Handbook for Engendering Constitution-making*. Available at: <http://www.efi-ife.org/sites/default/files/ABC%20for%20a%20Gender%20Sensitive%20Constitution.pdf>

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International IDEA, 2013. *Journeys from Exclusion to Inclusion: Marginalized Women's Successes in Overcoming Political Exclusion*. Available at: <http://www.idea.int/publications/catalogue/journeys-exclusion-inclusion-marginalized-womens-successes-overcoming>

Inclusive Security, 2017. *How Women Influence Constitution Making after Conflict or Unrest: Lessons from Eight Case Studies*. Available at: <https://www.inclusivesecurity.org/publication/women-influence-constitution-making-conflict-unrest/>

UN Women, 2015. *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325*. Available at: <http://wps.unwomen.org/>

UN Women, 2012. *Women's Participation in Peace Negotiations: Connections between Presence and Influence*, 2nd ed. Available at: <http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2012/10/wpsourcebook-03a-womenpeace negotiations-en.pdf>

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## Online databases and resources

- Global Campaign for Equal Nationality Rights, <http://equalnationalityrights.org/the-issue/the-problem>
- Inclusive Security, National Action Plan Resource Center, <https://www.inclusivesecurity.org/action-plans/>
- International IDEA, Gender Quota Database, <http://www.idea.int/data-tools/data/gender-quotas/quotas>
- Language of Peace Tool <https://www.languageofpeace.org/#/>
- The Constitute Project, <https://constituteproject.org/>
- UN Women, Global Gender Equality Constitutional Database, <http://constitutions.unwomen.org/>
- UN Constitutionmaker, <https://constitutionmaker.un.org/>
- Inclusive Security, National Action Plan Resource Center, <https://actionplans.inclusivesecurity.org/>
- International IDEA, Gender Quota Database, <http://www.idea.int/data-tools/data/gender-quotas/quotas>
- PAM Peace Agreement Matrix <https://peaceaccords.nd.edu/>
- PA-X Peace Agreements Database [www.peaceagreements.org](http://www.peaceagreements.org)
- Political Settlements Research Programme, <http://www.politicalsettlements.org/>

# APPENDIX B: INTERNATIONAL NORMS

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ('Istanbul Convention'), 2011. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979. <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

UN General Assembly Resolution 66/130 on Women and Political Participation, 2011, A/RES/66/130. <https://undocs.org/A/RES/66/130>

UN General Assembly Resolution 58/147 on the Elimination of Domestic Violence Against Women, 2003, A/RES/58/147. <http://undocs.org/A/RES/58/147>

UN General Assembly Resolution 62/134 on Eliminating Rape and Other Forms of Sexual Violence in All Their Manifestations, Including in Conflict and Related Situations, 2007, A/RES/62/134. <http://undocs.org/A/RES/62/134>

UN Human Rights Council, Report of the Working Group on the Issue of Discrimination against Women in Law and Practice, 2015, A/HRC/29/40. <http://undocs.org/A/HRC/29/40>

UN Security Council Resolution 1325 on Women, Peace and Security, 2000, S/RES/1325. <http://www.un-documents.net/sr1325.htm>

UN Security Council Resolution 1820, 2008, S/RES/1820. [https://undocs.org/S/RES/1820\(2008\)](https://undocs.org/S/RES/1820(2008))

UN Security Council 1888, 2009, S/RES/1888. [https://undocs.org/S/RES/1888\(2009\)](https://undocs.org/S/RES/1888(2009))

UN Security Council 1960, 2010, S/RES/1960. [https://undocs.org/S/RES/1960\(2010\)](https://undocs.org/S/RES/1960(2010))

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# ENDNOTES

- 1 See Annex 4, General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement), 1995, available at <https://www.peaceagreements.org/masterdocument/389>.
- 2 The Beijing Declaration and Platform for Action, a blueprint for advancing women's rights, was adopted at the Fourth World Conference on Women in Beijing in September 1995. Although non-binding, the international agreement, which includes comprehensive commitments under 12 critical areas of concern, remains a powerful source of guidance and inspiration. See <http://beijing20.unwomen.org/en/about>.





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