

A GUIDANCE NOTE ON  
THE MAKING AND SHAPING OF  
**CONSTITUTIONS**  
FROM A GENDER  
PERSPECTIVE





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# CONTENTS

List of acronyms.....	6
Definitions.....	7
Executive Summary.....	9

## INTRODUCTION.....13

## CONSTITUTIONS: A VEHICLE FOR ADVANCING WOMEN'S RIGHTS.....17

2.1 Global Trends Prioritize Gender Equality.....	18
2.2 The Role of Constitutions in Sustainable Development and Long-Term Peace and Stability.....	23

## ADVANCING GENDER EQUALITY BEGINS WITH WOMEN'S PARTICIPATION IN CONSTITUTIONAL REVIEW PROCESSES.....24

3.1 Making the Case for Women's Participation .....	26
3.2 Overview of Constitutional Review Processes.....	27
3.3 Entry Points for Gender Equality Advocates .....	30
3.4 Gender Bias and Discrimination in Constitutional Review Processes.....	43

## ADVANCING WOMEN'S RIGHTS AND GENDER EQUALITY THROUGH CONSTITUTIONAL DESIGN..... 45

4.1 Equality and Non-Discrimination .....	48
4.2 Women's Rights.....	51
4.3 Affirmative Action, Political Participation and Participation in Public Life and Institutions...	53
4.4 Citizenship and Nationality.....	57
4.5 Marriage and Family Life.....	59
4.6 Property, Inheritance and Land Tenure.....	61
4.7 Status of International Law.....	63
4.8 Gender Equality Mechanisms.....	64

## KEY TAKEAWAYS: GUIDANCE FOR GENDER EQUALITY ADVOCATES..... 67

5.1 Guidance for Gender Equality Advocates in Constitutional Review Bodies.....	68
5.2 Guidance for Women Leaders and Gender Equality Advocates Outside of the Formal Constitutional Process.....	70
5.3 Guidance for UN Women Staff .....	71

References.....	79
ANNEX 1: Additional Resources.....	83
Endnotes.....	85

## LIST OF FIGURES

Figure 1 - Guarantees of gender equality by year of constitutional adoption.....	19
Figure 2 - Percentage of countries with constitutional provisions to advance equality, by type .....	20
Figure 3 - Guarantees of women's equality in marriage by year of constitutional adoption.....	20
Figure 4 - Constitutional evolution in Zimbabwe .....	21
Figure 5 - Overview of 2008 constitutional process in Kenya.....	29
Figure 6 - Overview of 2011 constitutional process in Tunisia.....	29
Figure 7 - A range of possible approaches to affirmative action .....	54

## LIST OF BOXES

Box 1 - Practical Tools and Guidance for Constitutional Review and Advocacy.....	26
Box 2 - What is a Constitutional Review Body?.....	28
Box 3 - Advocacy and Mobilization Strategies for Gender Equality and Women's Rights.....	31
Box 4 - Post-Conflict Constitutions and Links to Inclusive Peace Processes .....	32
Box 5 - Women's Intersectional Identities and the Challenges of Platform Creation.....	36
Box 6 - Key Takeaways for Influencing Constitutional Review Processes.....	44
Box 7 - Practical Tools and Guidance for Constitutional Design.....	46
Box 8 - Gender Inclusive Language.....	47
Box 9 - Limitation and Derogation Provisions.....	50

## LIST OF TABLES

Table 1 - Example provisions for equality and non-discrimination.....	49
Table 2 - Example provisions for women's rights.....	51
Table 3 - Example provisions for affirmative action, political participation and participation in public life.....	55
Table 4 - Example provisions for citizenship and nationality.....	58
Table 5 - Example provisions for marriage and family life .....	60
Table 6 - Example provisions for property, inheritance and land tenure.....	62
Table 8 - Example provisions for gender equality machineries .....	65

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## LIST OF ACRONYMS

<b>CA</b>	Constituent Assembly
<b>CDA</b>	Constitutional Drafting Assembly
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>EU</b>	European Union
<b>FAO</b>	Food and Agriculture Organization
<b>GESI</b>	Gender Equality and Social Inclusion
<b>IFAD</b>	International Fund for Agricultural Development
<b>IFES</b>	International Foundation for Electoral Systems
<b>INGO</b>	International Non-Governmental Organization
<b>KEWOPA</b>	Kenya Women Parliamentarians Association
<b>LEAF</b>	Legal Education and Action Fund
<b>LWPP</b>	Libyan Women's Platform for Peace
<b>MADA</b>	Palestinian Center for <i>Development</i> and <i>Media</i> Freedoms
<b>MP</b>	Member of Parliament
<b>NWC</b>	National Women Commission
<b>NGO</b>	Non-Governmental Organization
<b>SDG</b>	Sustainable Development Goal
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNDP</b>	United Nations Development Programme
<b>UNHCR</b>	United Nations High Commission for Refugees
<b>UNSCRUN</b>	Security Council Resolution
<b>UNSMIL</b>	United Nations Support Mission in Libya
<b>UN Women</b>	United Nations Entity for Gender Equality and the Empowerment of Women
<b>WFP</b>	World Food Programme
<b>WPS</b>	Women, Peace and Security

# DEFINITIONS

**Affirmative action:** A range of measures (e.g., positive action, preferential treatment, quota systems) that give preferential treatment to specific individuals or groups so as to bring them to the same level as others. Such measures are usually for a fixed or determined period and do not constitute discrimination against others.

**Candidate quotas:** A mechanism, either voluntary or set out in law, which requires that a certain proportion of the candidates standing in an election must be from a specific group of people (e.g., a minimum percentage of women candidates).

**Citizenship:** A formal or legal status of belonging to a State usually by being born to citizens of that State or by being conferred such status through formal procedures.

**Civic education:** Programs that introduce knowledge and ideas to equip and empower individuals to participate in democratic processes, such as constitutional review processes. (Also see *public participation*)

**“Claw back” clause:** Clauses that allow certain rights to be partially limited for justifiable reasons (also called ‘limitation clauses’). Derogation clauses allow for limitations only in specific circumstances (e.g., in a State of emergency).

**Constituent assembly:** A body composed of representatives, usually elected, for the purpose of drafting and/or adopting a constitution. A constituent assembly may also serve a secondary legislative function.

**Constitution review process:** The process of wholly drafting a new interim or permanent constitution or amending/revising an existing constitution. This also includes the implementation of the resulting constitutional document.

**Constitutional implementation:** The process of putting the rules of the constitution into practice. This may include passing new laws, setting up institutions or changing existing laws and institutions as required by the constitution.

**Customary law:** Legal systems, often unwritten, developed from the societal norms, customs and practices of a particular community.

**Dualist legal traditions:** Countries which require parliamentary approval and legislation prior to the incorporation of international treaties into domestic law. The courts of such States are not bound to apply treaties in their decisions, although an increasing number demonstrate such usage. (For comparison, see *monist legal traditions*)

**Formal equality:** Equal treatment of individuals before the law. For example, as expressed in provisions that (a) prohibit discrimination (non-discrimination provisions) and (b) State that all persons are equal (equality provisions). (For comparison, see *substantive equality*)

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**Gender-neutral quotas:** A maximum level of representation for either gender (e.g., neither gender can occupy more than 60 per cent of seats) in a particular institution or group of institutions.

**Gender equality machineries:** Independent governmental institutions with a mandate to protect and promote gender equality.

**Indirect discrimination:** When a law or policy is based on seemingly neutral criteria but their actual effect has a detrimental impact on a specific group of persons.

**Interim constitution:** A constitution that is considered to be in force for a limited period and which is commonly used to facilitate the framing of a permanent constitution.

**Intersectionality:** Recognizing that an individual's needs, perspectives and experiences are shaped by a diverse intersection of identities which include gender as well as factors like race, class, caste, ethnicity, sexuality, disability, nationality, geographical location and religion.

**Monist legal traditions:** Countries where international treaties automatically become part of domestic law upon ratification or accession. International treaties are regarded as an integral part of domestic law and the courts apply them in their decisions. (For comparison, see *dualist legal traditions*)

**Promulgation:** The legal procedure, usually a formal declaration, of effecting or bringing into operational force a new constitution or law.

**Public participation:** The active involvement of the public in a constitution review process, through mechanisms such as consultations, public hearings and referendums. Often accompanied with or preceded by civic education.

**Referendum:** A process by which people vote in favor of or against a proposal to introduce a change in the constitution or other law. The result of a referendum may be either binding or optional. Also known as a plebiscite.

**Reserved seats:** Seats set aside for specific groups (e.g., women) in the legislature. Representatives from these reserved seats are usually elected in the same manner as other representatives.

**Substantive equality:** A recognition that formal equality (i.e., equality before the law) is not sufficient for achieving equality in practice. The achievement of substantive equality has four dimensions: redressing disadvantage; countering stigma, prejudice, humiliation and violence; transforming social and institutional structures; and facilitating political participation and social inclusion. (For comparison, see *formal equality*)



# EXECUTIVE SUMMARY

## Introduction

As the supreme law of the land, constitutions often provide the strongest legal means of protecting and promoting gender equality.<sup>1</sup> They have the potential to entrench gender equality by providing clear rules and expectations, serving as an anchor for legal claims to advance rights and protections, and guiding decision makers and activists on more gender-responsive law-making. Constitutional review processes, therefore, create critical opportunities for advancing gender equality and women's rights.

In the 25 years since the Beijing Declaration and Platform for Action, hundreds of constitutional processes have provided gender equality advocates with a platform for consolidating real gains on women's rights.<sup>2</sup>

Global women's landmarks (e.g., the Beijing Declaration and Platform for Action and the Women, Peace, and Security agenda) have fought for women to be represented and heard in constitutional processes and for their priorities to be transformed into equitable, enforceable rights.<sup>3</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has played a catalytic role in normalizing women's constitutional rights. Since its adoption in 1979, the inclusion of gender-related constitutional provisions has become near universal and almost all constitutions include, at a minimum, basic gender equality guarantees. While only 54 per cent of constitutions designed before 1970 included explicit guarantees of equality or non-discrimination across sex and/or gender, 100 per cent of constitutions developed between 2000 and 2017 include such guarantees.<sup>4</sup> Post-conflict constitutions in particular have resulted in significant gains for women – 94 per cent include anti-discriminatory provisions based on sex and 75 per cent reference gender quotas.<sup>5</sup> Women's

participation in constitutional review processes has also seen overall gains – increasing from an average of 13 per cent between 1990 and 1995 to an average of 24 per cent between 2010 and 2015.

Yet, despite this progress, much work remains. Women's inclusion in constitutional review processes remains well below parity and when women participate, they are often the target of harassment, threats and physical attacks and their substantive input is often undervalued by decision makers because they are not perceived as legitimate political actors. And despite hard-won gains, a gender-conscious constitution in itself does not guarantee the realization of rights and protections. Effective implementation is a necessary component of advancing gender equality and many countries struggle with fully implementing their constitutions due to resource shortages, failures of leadership, lack of political will, insufficient technical capacity, opposition by elites and privileged groups, and/or weak rule of law.<sup>6</sup>

For decades, UN Women has played a pivotal role in advancing gender equality and women's rights in constitutional review processes and beyond. It supports the realization of CEDAW by providing technical assistance and resources to constitutional actors and the institutions, organizations and members of the public that support them. Serving as the gender focal point within the wider UN system and a key partner and convener to a range of constitutional actors (e.g., constitutional review bodies, parliamentary gender caucuses, law reform commissions, women's movements, gender machineries, international NGOs), UN Women has also directly supported gender equality advocates across all phases of a constitutional review process to ensure women's perspectives are included in constitutional deliberations and that the resulting constitutional text is gender-responsive and implemented effectively.

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Drawing on insights from UN Women staff as well as other practitioners, academics and organizations working at the nexus of gender equality and constitutional review, this Guidance Note conveys lessons learned through a range of case studies, including examples of UN Women's direct support to constitutional review processes across a variety of contexts. This Guidance Note shares international good practice, examples and lessons learned from a range of **constitutional review processes** and **constitutional design** – from wholly new constitutions to more minor amendments and revisions, interim constitutions as well as unwritten constitutions. Each one of these constitutional moments provides a critical entry point for gender equality advocates to advance women's rights.

## Guidance for the Constitutional Review Process

This Guidance Note is being issued at a time when the UN Secretary General has issued a **Guidance Note on UN Constitutional Assistance**. This latter Guidance Note endorses inclusivity, participation and transparency as a fundamental principle and strategy. It endorses the fact that “participatory constitution making embraces all sectors of society, particularly women, youth, linguistic, religious, and ethnic groups, sexual and gender minorities and persons with disabilities.”

The design of a gender-responsive constitution requires an inclusive process where women and other gender equality advocates are influential and active participants, both as members of constitutional review bodies and as movement builders and activists. As such, the Guidance Note focuses on maximizing the impact of these actors across the three phases of constitutional review: (1) setting the agenda, (2) consulting, negotiating, designing and adopting a constitution, and (3) implementing the constitution. For each phase, activities and strategies for advancing gender equality are shared as well as examples from UN Women constitutional support. In summary, the key takeaways include:

### Setting the agenda

- **Mobilize early:** Mobilization of gender equality advocates and women's networks must occur well before the constitutional process begins, particularly where constitutional processes are preceded by peace negotiations or other political settlements. The early stages of constitution review (i.e., rule-making, election/appointment of the constitutional review body) establish how the constitution and its contents will be discussed and drafted. Gender equality advocates need to mobilize early to ensure strategic allies are included in the constitutional review body to provide entry points for continued engagement into the process.

### Consulting, negotiating, designing and adopting a constitution

- **Harness collective action and build broad coalitions/movements:** Building inclusive, diverse coalitions or movements with a shared agenda is one of the most powerful tools for achieving influence in a constitutional process. This should include building strong working relationships between gender equality advocates inside constitutional review bodies as well as with activists outside the formal process. Coalition building should recognize and celebrate the intersectionality of women's experiences and acknowledge the direct/indirect discrimination of women subject to multiple forms of oppressions.
- **Develop strategic advocacy for gender equality:** Effective advocacy requires intentional planning and engagement. Messaging should reflect the current political context and, where possible, align with the priorities of key influencers and decision makers within the constitutional review body. Advocates should also think carefully about how to frame draft gender-related provisions, considering what is possible now and what may be possible in two or three political cycles.

If full gains are not realistic given current political conditions, advocates should target basic principles (like equality/non-discrimination and women's rights) that can be leveraged for growth and expansion.

- **Support women within the constitutional review body:** Women representatives in constitution review bodies occupy positions of power, but that often comes at a cost. They are subject to gender biases that question their credibility and legitimacy as political actors in addition to their gender equality priorities. Male allies and actors outside of the formal process should seek ways to support these women who are ultimately the spokespersons for the gender equality agenda within the constitutional process.

### Implementing the constitution

- **Support and enable constitutional implementation:** Constitutions only provide de jure rights and protections. Continued pressure on and engagement with policymakers is needed to make those hard-won rights a reality. Gender equality advocates should concentrate on activities that promote the implementation of specific provisions, such as law/policy making, the establishment of gender equality machineries and public interest litigation.

UN Women is uniquely placed to support gender equality advocates both inside and outside a constitutional review process, through all phases of a constitutional process. This is bolstered by the long-term relationships that country office staff are able to cultivate with government institutions, local women leaders and other gender equality advocates. Staff have been able to leverage these relationships to serve as gender equality resources in constitution review processes and subsequent constitutional implementation efforts, particularly as it relates to country commitments under CEDAW.

## Guidance for Constitutional Design

The Guidance Note explores eight broad categories of constitutional provisions which represent some of the first-order provisions that relate to gender equality and women's rights as reflected in CEDAW and other international human rights instruments. Each category includes general guidance on international good practice, sample constitutional provisions, and examples of how UN Women has supported the implementation of such provisions. The eight categories include:

- **Equality and non-discrimination:** Equality and non-discrimination are core international human rights standards and foundational building blocks for every constitution. Since all rights are fundamentally indivisible, interrelated and interdependent, these provisions in particular provide a high standard against which to hold other fundamental rights and freedoms as well as laws and policies. Constitutions should include language that promotes formal and substantive equality, prohibits direct and indirect discrimination, recognizes multiple forms of discrimination, and applies prohibitions to private and public persons/institutions.
- **Women's rights:** Women's rights provisions must extend beyond general principles of equality and non-discrimination by naming rights and freedoms for women explicitly. They provide an important entry point for the domestication of global and regional legal standards in areas such as equal access to education, health, citizenship and participation in elected and appointed bodies. Some constitutions provide broad language that is complementary to substantive equality provisions, while others identify specific areas where women have faced discrimination.
- **Affirmative action, political participation and participation in public life and institutions:** Many constitutions employ affirmative action

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provisions to address historical and widespread discrimination against women and promote progress toward substantive gender equality. Quotas or other mechanisms have been used to mandate women's inclusion in all branches of government, civil service and other political and public institutions. Yet, while quotas can be effective in increasing the number of women representatives, many countries have struggled to fully implement them and, in some cases, they have resulted in other adverse effects. This highlights the need for careful implementation design and more holistic approaches.

- **Citizenship and nationality:** Citizenship is a basic precondition to gender equality. Historically, women's citizenship rights have been defined largely by their relationships with men (i.e., granted through patrilineal relationships or marriage). This can have disastrous effects, such as rendering women Stateless when widowed or divorced. As such, recent trends have sought to promote women's equal and independent citizenship rights, including a woman's right to retain citizenship upon divorce as well as the ability to transfer citizenship to her spouse and children.
- **Marriage and family life:** A minority of constitution's guarantee equal rights within or while entering and exiting a marriage. As such, there is a need to advance provisions that recognize equality of spouses during all phases of a marriage. This includes, for example, protecting women from forced marriage and divorce, enforcing the same minimum legal marriage age for men and women, and guaranteeing equal decision-making power over communal property.
- **Property, inheritance and land tenure:** Constitutional protection of women's equal

right to purchase, own, inherit, and dispose of property and land both within and outside marriage can have serious implications for women, particularly in rural areas where control and ownership are critical to livelihoods, food security and physical security. Because legal regimes for inheritance and property ownership can greatly vary, particularly in plural legal systems, strong constitutional guarantees are needed to protect women's rights.

- **Status of international law:** Incorporating international law into domestic legal frameworks can help to strengthen gender equality. In contrast to the dualist tradition, the monist tradition enables international law to be directly applied in domestic courts to enforce rights in areas where there is no domestic law and assist in interpreting existing law. This also offers women more immediate access to rights protected by international law.
- **Gender equality machineries:** Gender equality machineries are independent institutions that play a key role in supporting the implementation of constitutional guarantees and promoting continued gender mainstreaming across all levels and aspects of the government. A constitutional mandate provides gender equality machineries with legal and symbolic standing as one of the country's core institutions and also ensures that such institutions cannot be easily dismantled. Beyond a clear mandate, gender equality institutions also require adequate funding and human resources, strong relationships with women's civil society organizations, and meaningful influence over government agenda setting and decision-making in order to be effective.



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## INTRODUCTION





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A constitution is a powerful legal instrument. In the most simplified terms, it sets out the basic rules to structure and define what the government looks like and how it functions. It also describes the duties and obligations of the State vis-à-vis citizens and in some cases citizens' obligations to one another, typically captured in terms of key human rights, such as equality and non-discrimination.<sup>8</sup> As such, a constitution has the potential to entrench gender equality and women's rights by providing clear rules and expectations, serving as an anchor for legal claims to advance rights and protections, and guiding decision makers and activists on more gender-responsive law-making.

Constitutional review processes, therefore, create critical opportunities for advancing gender equality and women's rights. Historically, waves of constitutional reviews have followed global or regional political trends and events, such as decolonization, the end of the Cold War, and popular uprisings such as the Arab Spring and more. Constitutional reviews may also be triggered by significant shifts in the political landscape (e.g., end of one-party rule) or at the start of a post-war era to signal a new beginning.<sup>9</sup> While many of these event-based constitutional moments result in the drafting of a wholly new constitution or a significantly amended one, in some cases, constitutional review may also include less extensive amendments to revise outdated provisions that no longer serve evolving political, social and economic conditions. Most constitutions in the world have been amended at least once in the last 40 years and 88 per cent of constitutions in Sub-Saharan Africa have been rewritten in the last 30 years.<sup>10</sup>

In the 25 years since the Beijing Declaration and Platform for Action, hundreds of constitutional processes have provided gender equality advocates with a platform for consolidating real gains on women's rights.<sup>11</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has played a catalytic role in normalizing women's constitutional rights. Since its adoption in

1979, the inclusion of gender-related constitutional provisions has become near universal and almost all constitutions include, at a minimum, basic gender equality guarantees. Through its general recommendations and concluding observations, the CEDAW Committee continues to hold States Parties to account on their gender equality commitments, providing actionable guidance to inform and shape future and ongoing constitutional deliberations.<sup>12</sup>

Constitutional review processes can involve all swaths of society, but are typically led by political elites in elected or appointed constitutional review bodies (e.g., stand-alone constitutional commission, constituent assembly or parliament, parliamentary committee, constitutional convention) and women are typically vastly underrepresented.<sup>13</sup> Due to the foundational nature of constitutions, such processes are inherently political and highly competitive. In many instances, whoever controls the outcome of the review process gains immense influence over the State and its functions. Gender equality advocates often find themselves at odds with the process, where issues like women's rights are not seen as an urgent priority by the parties involved.

Global women's milestones (e.g., the Beijing Declaration and Plan of Action and the Women, Peace, and Security (WPS) agenda) have fought for women to be represented and heard in constitutional processes and for their priorities to be transformed into equitable, enforceable rights.<sup>14</sup> But this journey has not been easy or straightforward. Women involved in these processes have been harassed, threatened and physically attacked for challenging the status quo. And despite these efforts, women continue to be side-lined in these and other decision-making processes that directly affect their lives and livelihoods.

There is a critical need to increase women's representation in constitutional review bodies and to support their important work on gender equality and women's rights. Women are a vital part of society and their perspectives must be included in

deliberations as well as in constitutional outcomes. Effective constitutional implementation is also a necessary component for ensuring any hard-fought gains are realized.

In contexts like South Africa, Tunisia, Ireland, and others featured in this Guidance Note, the inclusion of women in constitution review bodies coupled with the participation and activism of women's civil society and feminist movements have led to concrete gains for more equitable and inclusive societies.<sup>15</sup> Women often broaden societal participation in constitutional review processes and ensure that citizens' views are heard and considered by decision makers. Beyond advocating for gender equality, women also consistently advance constitutional provisions that support the rights of marginalized groups. Women also bridge divides in constitutional deliberations, contributing to peacebuilding and reconciliation in deeply divided societies, while also advancing consensus on constitutional issues.<sup>16</sup> Given the correlation between exclusion and conflict, these efforts contribute to more durable peace and in some cases address core conflict drivers.

This Guidance Note shares international good practice, examples and lessons learned from a range of constitutional review processes – from wholly new constitutions to more minor amendments and revisions, interim constitutions as well as unwritten constitutions. Each of these constitutional processes and formats offers different opportunities and avenues for advancing women's rights. For example, New Zealand's "unwritten" constitution consists of statutes, conventions and protocols that define the rights of citizens and can be amended by a simple majority in Parliament; this provides a much lower threshold for change than countries like Ecuador that require a referendum to amend the constitution.<sup>17</sup> The culture around constitutional amendments can also shape opportunities – the United States, for example, has shied away from constitutional amendments and often interprets new rights through judicial review, while the Indian constitution has been amended over 100 times in

the past sixty years.<sup>18</sup> These contextual nuances can shape different entry points for gender equality advocates and it is essential that advocacy strategies are based on these context-specific factors.

Building on the forthcoming Guidance Note of the Secretary-General on United Nations Constitutional Assistance, this document provides concrete, actionable guidance on how to implement inclusive constitutional review processes that ultimately support the achievement of gender equality and women's rights. In an era where constitutional review is increasingly a part of the political landscape, this guidance is needed now more than ever. Drawing on insights from UN Women staff as well as other practitioners, academics, and organizations working at the nexus of gender equality and constitutional review, this document conveys lessons learned through a range of case studies, including examples of UN Women's direct support to constitutional review processes all over the world. The guidance was informed by a review of constitution-related activities by UN Women country offices in addition to constitutional handbooks, reports and academic research (*see Annex 1 for additional resources*).

UN Women has played a pivotal role in advancing gender equality and women's rights in constitutional review processes and beyond. It supports the realization of CEDAW by providing technical assistance and resources to constitutional actors and the institutions, organizations and members of the public that support them. Serving as the gender focal point within the wider UN system and a key partner and convener to a range of constitutional actors (e.g., constitutional review bodies, parliamentary gender caucuses, law reform commissions, women's movements, gender machineries, international NGOs), UN Women has also directly supported gender equality advocates across all phases of a constitutional review process to ensure women's perspectives are included in constitutional deliberations and that the resulting constitutional text is gender-responsive and implemented effectively.

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This Guidance Note offers research and guidance on both constitutional process and design. It first explores why/how constitutions are a tool for promoting gender equality and women's rights in Chapter 2, then introduces common components of a constitutional review process in Chapter 3. This chapter provides a broad overview of how new constitutions or amendments are drafted, deliberated and implemented as well as advocacy and mobilization strategies that have been employed by gender equality advocates across a variety of contexts and types of review processes. Chapter 4 dives into constitution design and provides sample constitutional language to advance gender equality and women's rights in practice. This chapter also features global examples of UN Women's support

to implement critical gender equality provisions. Chapter 5 concludes with tailored guidance and key takeaways for specific target audiences.

The primary target audiences for this Note are UN Women staff, members of constitutional review bodies, women civil society organizations and other gender equality advocates. The guidance may also be relevant for other UN agencies as well as organizations that support women leaders (e.g., INGOs, regional organizations), foreign governments and other donors that support constitutional review processes, implementing agencies, civil society groups that represent other marginalized communities or identities, among others.



# 2

## CONSTITUTIONS: A VEHICLE FOR ADVANCING WOMEN'S RIGHTS





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Constitutions often provide the strongest legal means of protecting and promoting gender equality.<sup>19</sup> In many cases, constitutional law is supreme law, meaning that ordinary legislation that does not comply with the letter and spirit of the constitution can be overturned. When gender equality is constitutionally enshrined, it provides a benchmark against which all laws can be measured and also helps to set expectations in terms of law-making more generally. Moreover, because constitutions are often more difficult to amend than ordinary legislation, this also provides more enduring protections for women's rights.

CEDAW has long recognized the role of constitutions in realizing women's rights. Article 2 calls for States Parties to "embody the principle of the equality of men and women in their national constitutions... and to ensure, through law and other appropriate means, the practical realization of this principle."

The CEDAW Committee has also recognized that countries with gender equality guarantees are better equipped to secure essential services for women, such as access to justice.<sup>20</sup>

Constitutional protections are needed to address pervasive and persistent gender discrimination, so that women can realize their full political, social and economic potential. Many constitutions already include basic rights and protections in addition to affirmative action clauses that require the State to take action in support of substantive equality for women, for examples, see Chapter 4. However, a gender-conscious constitution does not necessarily guarantee gender equality in practice; effective implementation is critical and, in some contexts, may require addressing systemic rule of law deficiencies, due to endemic corruption, weak institutional capacities or other drivers.

## 2.1 GLOBAL TRENDS PRIORITIZE GENDER EQUALITY

Since the adoption of CEDAW in 1979, there has been a general uptick in gender-related constitutional provisions globally. Researchers attribute this to momentum catalyzed by global feminist movements (e.g., the proclamation of International Women's Year in 1975 and subsequent world conferences on women including the Beijing Declaration and Plan of Action in 1995) in addition to trends in support of more open and participatory constitutional processes which emerged in the 1980s and 1990s.<sup>21</sup>

Relentless civil society activism by women leaders over the past 50 years has also made this possible through sustained pressure. Strong domestic women's movements are often bolstered by international support for constitutionalizing gender equality, particularly in contexts where international advisors, INGOs, and other regional/global actors

are actively involved in the constitution review process.<sup>22</sup> Recent examples include women's mobilization around recent democratic transitions in the Middle East and North Africa and peace negotiations in contexts like South Sudan.<sup>23</sup> This sustained activism is particularly important given that, in many cases, violent conflict and/or unrest can undermine the rule of law, fuel existing patriarchal and misogynistic norms, and thereby impede gender equality gains.<sup>24</sup>

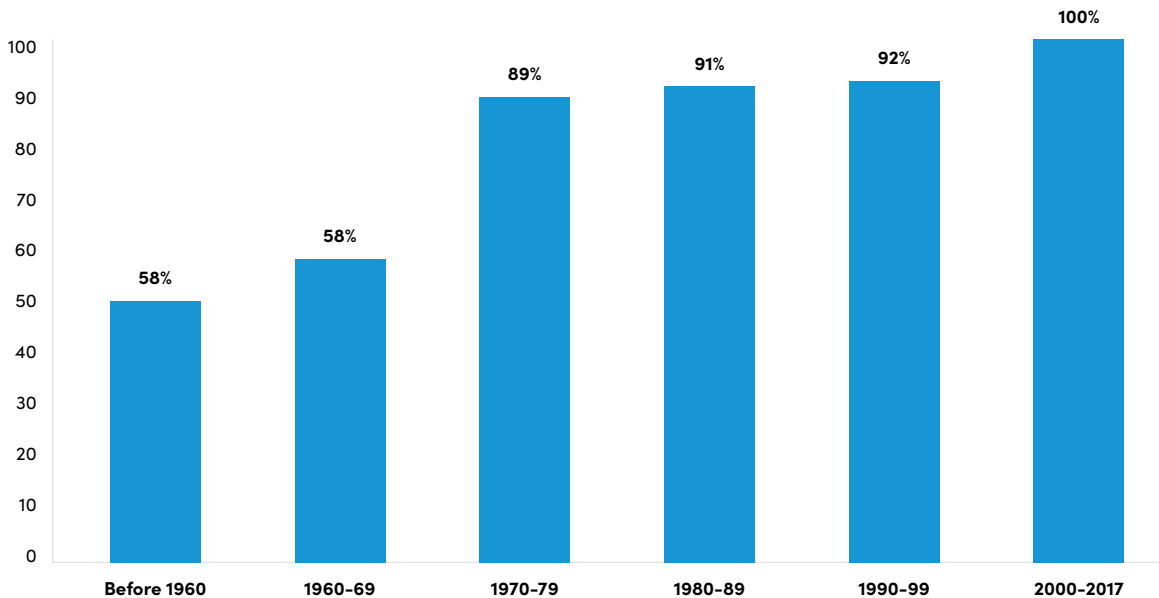
Other normative frameworks, such as the Sustainable Development Goals (SDGs) and WPS agenda, have also drawn attention to the need for women's inclusion in constitutional review processes as well as the positive outcomes linked to more gender-responsive constitutions (see *Section 2.2 The Role of Constitutions in Sustainable Development*

and Long-Term Peace and Stability). The past decade has also seen a rise in constitutional guidance tailored specifically for promoting women's rights and representation.<sup>25</sup>

Substantively, gender equality and women's rights provisions can be quite wide ranging. Gender-specific equality and non-discrimination clauses are the most common. In fact, explicit guarantees of sex and/or gender equality or non-discrimination

have become a widely accepted constitutional norm. While only 54 per cent of constitutions developed before 1970 included equality guarantees, 100 per cent of constitutions developed between 2000 and 2017 include such guarantees (see Figure 1).<sup>26</sup> As of 2017, 85 per cent of constitutions guarantee gender equality, most often by prohibiting formal discrimination by the State and/or guaranteeing equal rights.<sup>27</sup>

**FIGURE 1 - GUARANTEES OF GENDER EQUALITY BY YEAR OF CONSTITUTIONAL ADOPTION<sup>28</sup>**

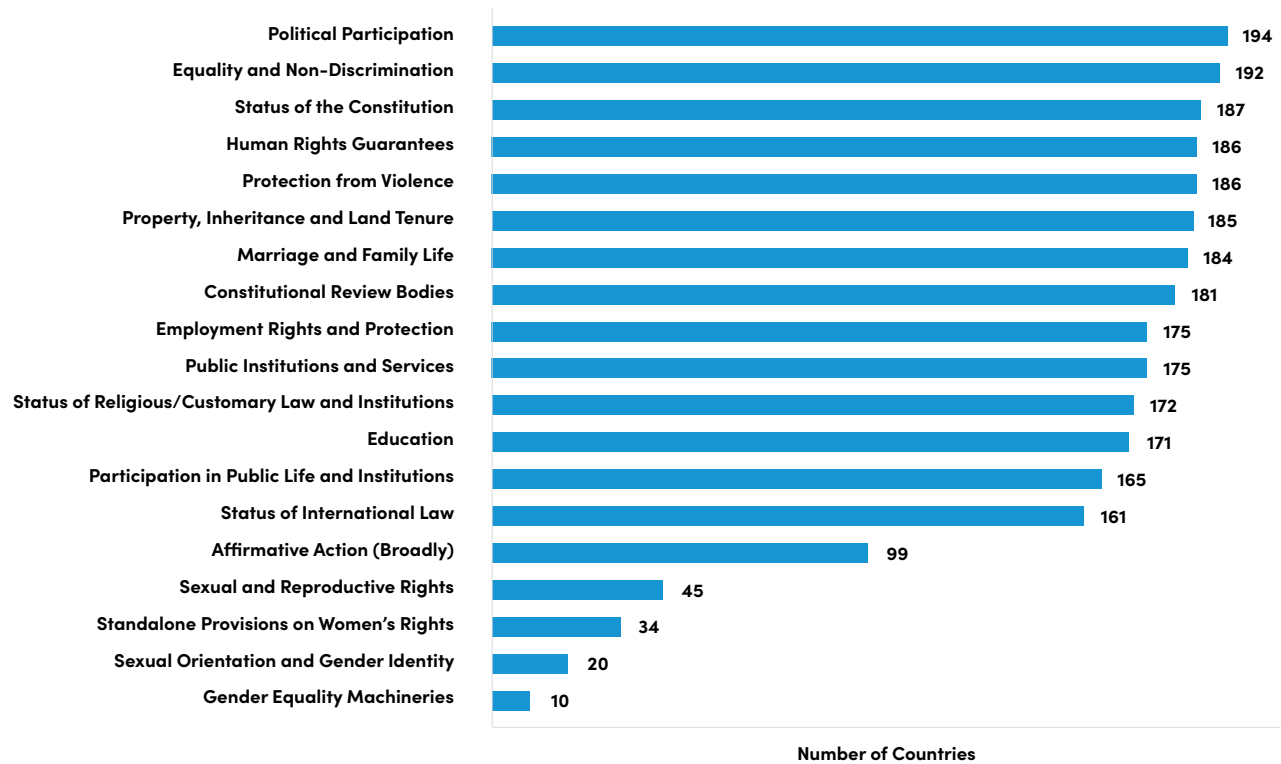


Source: <https://www.worldpolicycenter.org/policies/does-the-constitution-explicitly-guarantee-equality-or-non-discrimination-across-sex-and-or-gender>

In addition to equality and non-discrimination clauses, many constitutions also include stand-alone women's rights and affirmative action provisions as well as specific provisions on women's political, social and economic rights, rights related to family and marriage, and rights related to property, inheritance and land tenure (see Figure 2 and Chapter 4 for more information). While there is limited available data, studies have shown a global

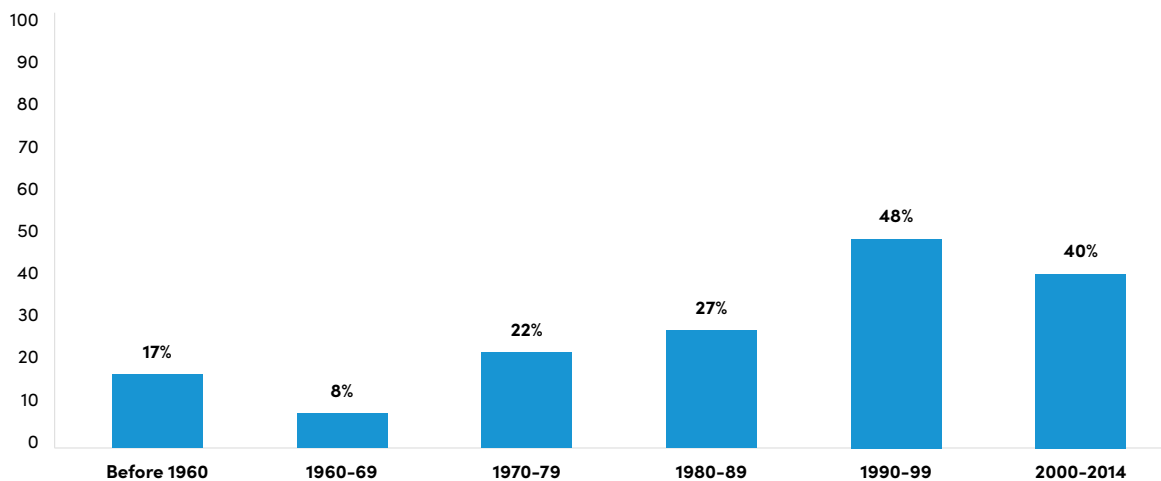
upward trend in constitutional rights related to marriage and family over time (see Figure 3). Post-conflict constitutions in particular have resulted in significant gains for women – 94 per cent include anti-discriminatory provisions based on sex and 75 per cent reference gender quotas.<sup>29</sup> Zimbabwe for example made significant gender equality gains in its 2013 constitution (see Figure 4).<sup>30</sup>

**FIGURE 2 - NUMBER OF COUNTRIES WITH CONSTITUTIONAL PROVISIONS TO ADVANCE EQUALITY, BY TYPE<sup>31</sup>**



Source: <https://constitutions.unwomen.org/en/dashboard>

**FIGURE 3 - GUARANTEES OF WOMEN'S EQUALITY IN MARRIAGE BY YEAR OF CONSTITUTIONAL ADOPTION<sup>32</sup>**



Source: <https://www.worldpolicycenter.org/policies/does-the-constitution-explicitly-protect-womens-right-to-equality-in-marriage-in-all-aspects-including-entering-existing-and-within-marriage>



**FIGURE 4 - CONSTITUTIONAL EVOLUTION IN ZIMBABWE<sup>33</sup>**

	Constitution of 1979 as amended to 2000	Amended 2005	Amended 2009	New 2013
Affirmative Action (Broadly)	Not present	Added or changed	Present	Added or changed
Equality and Non-Discrimination	Present	Present	Added or changed	Added or changed
Gender Equality Mechanisms	Not present	Not present	Not present	Added or changed
Participation in Public Life and Institutions	Not present	Added or changed	Added or changed	Added or changed
Political Participation Quotas: National level	Not present	Not present	Not present	Added or changed
Political Participation Quotas: Subnational levels	Not present	Not present	Not present	Added or changed
Sexual and Reproductive Rights	Not present	Not present	Not present	Added or changed
Sexual Orientation and Gender Identity	Not present	Not present	Not present	Added or changed
Women's Rights	Not present	Not present	Not present	Added or changed

Provisions related to category are:

■ Not present   
 ■ Present   
 ■ Added or changed

Source: <https://constitutions.unwomen.org/en/resources/constitutional-reforms-over-time>

While broader trends indicate a general expansion of women's rights over the past forty years, there are also examples of persistent gaps, regression and/or significant differences between constitutional language (*de jure*) and implementation (*de facto*).<sup>34</sup> For example, some constitutions include limitation or derogation provisions that undermine women's rights and protections (see *Box 9 - Limitation and Derogation Provisions*) or are otherwise weakened by poor enforcement and/or conservative interpretations of such rights.<sup>35</sup>

Indirect discrimination remains a notable gap across constitutions globally. Most constitutions prohibit direct discrimination on the basis of sex, which prevents laws and policies from explicitly discriminating against women and girls (e.g., a law

that excludes women and girls from inheritance rights). However, only 5 per cent of constitutions address indirect discrimination, which occurs when a law or policy is based on seemingly neutral criteria but, in effect, has a detrimental impact on a specific group of persons (e.g., a requirement of land ownership to register to vote in a context where land owners are disproportionately male).<sup>36</sup> Indirect discrimination provisions provide more expansive protections critical for achieving substantive gender equality.

In countries with plural legal systems, the relationship between statutory and customary or religious law can also have an impact on women's rights. For example, 8 per cent of constitutions allow customary or religious law to take precedence over

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women's equal rights provisions.<sup>37</sup> While customary and religious law does not inherently undermine gender equality, it is important to harmonize conflicting laws and ensure they conform to regional and international human rights standards.

These and other legal shortfalls translate into women's continued differential treatment under the law. For example, women are unable to do the following in the same way or on an equal basis as men:<sup>38</sup>

- Inherit equally as daughters in 39 countries
- Inherit equally as a spouse in 36 countries
- Apply for a passport in 37 countries
- Be head of household or family in 31 countries
- Get a job or pursue a trade or profession in 18 countries
- Obtain a national ID card in 11 countries

Constitutional implementation also remains a challenge across many contexts – whether relating to broader constitutional legitimacy or specifically as it applies to women's rights provisions (*see Chapters 3 and 4 for examples*).

While women's participation in constitutional review processes has seen overall gains – increasing from an average of 13 per cent between 1990 and 1995 to an average of 24 per cent between 2010 and 2015 – these figures fall short of achieving gender parity.<sup>39</sup> This increase in women's representation reflects broader trends related to global movements for more inclusive policymaking (e.g., the Beijing

Platform, SDGs, WPS). Since the adoption of UN Security Council Resolution 1325 (UNSCR 1325) in 2000, women's participation in peace processes has also increased.<sup>40</sup> In conflict-affected contexts, peace processes often serve as important entry points for women's representation in constitutional review, particularly where the review process and substantive constitutional design issues are integrated into peace negotiations (*see Box 4 – Post-Conflict Constitutions and Links to Inclusive Peace Processes*).

However, even where women successfully gain entry into constitutional review processes, they are still often subject to tokenism, challenges to their legitimacy/credibility as political actors, and in some cases explicit threats/violence. These and other barriers prevent and undermine women's meaningful participation in constitutional review (*see Section 3.4 Gender Bias and Discrimination in Constitutional Review Processes*).<sup>41</sup> These outcomes are often the unintended effects of affirmative action provisions (e.g., gender quotas), which are otherwise put in place to promote the inclusion of women. In other words, establishing mechanisms to guarantee women's representation can in some ways undermine their emancipation. Ensuring the effective participation of women in constitutional review must be a nuanced and context-specific process that takes into account these potential adverse impacts.

Ultimately, continued negotiation and advocacy is needed to promote both women's participation in constitutional review processes as well as constitutional outcomes that support gender equality and women's rights. Much work is needed to ensure gender equality is enshrined in all constitutions and also that such rights are realized.

## 2.2 THE ROLE OF CONSTITUTIONS IN SUSTAINABLE DEVELOPMENT AND LONG-TERM PEACE AND STABILITY

Constitutions and their effective implementation are one of many factors that will ultimately lead to substantive gender equality. And, while gender equality is a worthy goal in and of itself, research suggests that it also has important linkages with sustainable development and long-term peace. This has been affirmed by global frameworks like the SDGs; the linkage between gender equality and sustainable development is embodied in SDG Goal 5 and gender equality is also acknowledged as a cross-cutting theme across all 17 Goals.<sup>42</sup>

When States promote gender equality through constitutional language and implementation, they are also making progress toward a wide range of sustainable development objectives from promoting economic growth and labor productivity, to reducing poverty and enhancing human capital through health and education. Evidence has shown that the realization of women's rights correlates with positive development outcomes. For example, strengthening women's land rights and gender-equal access to productive resources and opportunities has the potential to increase global crop yields by 20–30 per cent and lift 100–150 million people out of hunger.<sup>43</sup> Similarly, promoting gender equality in the education and labor market can reduce the global rate of extreme poverty by 0.5 percentage points.<sup>44</sup>

Constitutional provisions that support women's political participation and more specifically their representation in parliament can also have long-lasting impacts on development and peace. Countries that support women's political participation and leadership tend to be more

inclusive, responsive, egalitarian and democratic. Women parliamentarians are more likely than men to prioritize broader development issues (e.g., poverty reduction and service delivery) and advance laws that promote gender equality, thereby creating a positive feedback loop.<sup>45</sup> Studies have also shown that higher levels of women's representation in parliament reduces the risk of civil war and decreases the likelihood that a State will use violence when faced with an international crisis or carry out human rights abuses (e.g., political imprisonment, torture, killings and disappearances).<sup>46</sup> Moreover, in countries emerging from armed conflict, when 35 per cent of parliamentarians are women, the risk of relapse into conflict is near zero.<sup>47</sup>

More broadly, evidence has shown that where women are more empowered in multiple spheres of life (e.g., physical security/safety, marriage and family law) and gender equality commitments are enforced, countries are less likely to go to war, face high levels of crime and violence, or be in bad standing with the international community. In other words, the realization of women's constitutional rights, such as protection from violence and equality in marriage and family life, can directly impact a country's propensity for peace.<sup>48</sup>

These factors illustrate the broader incentives for constitutionally enshrining gender equality and women's rights. Such provisions and their effective implementation have the potential to support broad gains, particularly in developing, fragile and conflict-affected countries.



# 3

ADVANCING GENDER  
EQUALITY BEGINS WITH  
WOMEN'S PARTICIPATION  
IN CONSTITUTIONAL  
REVIEW PROCESSES





Women's participation is a necessary step toward creating more gender-responsive constitutions. Yet, constitutional review, like other political processes, has long been dominated by elite men who purport to represent the interests of all of society. History has shown the limits of this approach and over the past 40 years, constitutional processes have become more inclusive of women as well as other underrepresented and marginalized constituencies.<sup>49</sup> In countries emerging from conflict, women's representation in constitutional review bodies nearly doubled from 1990 to 2015, but women still only represent around one out of four members.<sup>50</sup>

Women play a myriad of roles in constitutional review processes. They are decision makers and leaders within and outside the formal process. They mobilize communities and other movements to feed into and shape constitutional debates. Women also serve as legal experts and advisors to constitutional review bodies. Yet, despite these and many more entry points, women's access does not always translate into influence.<sup>51</sup>

Women remain an important, yet often excluded constituency in constitutional deliberations and decision-making. Advocates must devise strategies to ensure women's voices are accounted for and heard in the process. This includes promoting women's participation and leadership in

constitutional review bodies in addition to other institutions that have influence over constitutional outcomes. For example, in contexts where parliament is involved in the drafting, design, and/or adoption process, women's representation and political clout in parliament (and political parties) are vital for advancing gender equality. In conflict-affected contexts, women's inclusion in peace processes can directly impact if/how women are represented in subsequent constitutional processes as well as the degree to which their priorities are considered. Broadly, women's participation at the earliest stages of constitutional review (e.g., peace processes, political negotiations, etc.) help to ensure sustained representation throughout the process (see for example *Box 4 – Post-Conflict Constitutions and Links to Inclusive Peace Processes*).

Drawing on global examples, this chapter explores the political barriers that women must navigate to effectively participate in constitutional bargaining. The case studies illustrate advocacy strategies from a range of global contexts as well as types of processes (e.g., amendment processes; drafting of wholly new constitutions; processes led by a commission vs. constituent assembly). Highlighting lessons learned by women advocates and activists, this chapter surveys best practices on how to build political momentum to ensure gender equality and women's rights are constitutionally enshrined.

## BOX 1 · PRACTICAL TOOLS AND GUIDANCE FOR CONSTITUTIONAL REVIEW AND ADVOCACY

This Guidance Note provides a broad overview of potential approaches for advancing women's inclusion in constitutional review processes. The following resources are highly recommended for more in-depth guidance:

**Inclusive Security, A Women's Guide to Constitution Making (2018)** is designed for women seeking to influence constitutional processes in their own countries, whether by earning a seat in a constitutional review body, advocating from civil society, advising as a constitutional expert, or supporting the process in other ways. In addition to an overview of core constitutional concepts, the guide lays out a five-step strategic framework for designing and implementing advocacy strategies that can be tailored to any constitutional agenda, including 17 tools to design an advocacy campaign.

**Euromed Feminist Initiative IFE-EFI, ABC Guide for a Gender Sensitive Constitution (2015)** provides a feminist perspective on constitutional review processes. **Chapter 6** explores how to maximize the equal participation of women in all stages of constitutional review.

## 3.1 MAKING THE CASE FOR WOMEN'S PARTICIPATION

Calls for greater women's political participation, or more specifically women's participation in constitutional review processes, draw on decades of international norms and laws. Article 7 of CEDAW calls for women's participation in the formulation and implementation of government policy. The Beijing Declaration and Plan of Action similarly promotes gender balance in governmental bodies and committees, noting that affirmative action may be needed to achieve equal representation of women and men.<sup>52</sup> In countries affected by conflict, UN Security Council Resolution 1325 and its sister resolutions (i.e., the WPS agenda) call on States to increase the representation of women in all peace and security decision-making processes.<sup>53</sup> The CEDAW Committee has also recommended that States "ensure women's equal participation... and adopt gender-sensitive mechanisms or public participation and input into [constitutional review processes]."<sup>54</sup>

Beyond normative and treaty frameworks, women's inclusion should also be a matter of principle. Women are a critical constituency and, in some cases, represent a majority of society. In order to effectively design a constitution that addresses the needs of women and girls, their participation should be required. Women themselves are best placed to understand and pursue the legal protection of their interests, from reproductive rights to political freedoms and protection from violence.

Yet, women are not a homogenous constituency. While they may be able to forge broad consensus on certain priorities, this does not mean that women will always agree on all aspects related to gender equality and women's rights. Their experiences are shaped by intersecting identities (e.g., ethnicity, language, religion, disability, sexual orientation) and this "intersectionality" also brings value to constitutional review processes. In addition to being

passionate gender equality advocates, women often help to shape protections for other marginalized groups in their societies, such as provisions relating to the recognition of minority identities or protection of minorities' rights, therefore supporting more equitable and inclusive societies broadly.<sup>55</sup> (*For more information on intersectionality, see Box 5 – Women's Intersectional Identities and the Challenges of Platform Creation*).

Women are also effective at broadening participation to build more democratic and

inclusive processes.<sup>56</sup> Women civil society leaders frequently organize campaigns to solicit inputs from the broader public, including women, and then consolidate and amplify those priorities within the formal process. The inclusion of women in constitutional review processes also often leads to quotas or other mechanisms that promote women's continued political representation, which can contribute directly to outcomes like sustainable development and peace (see *Section 2.2 The Role of Constitutions in Sustainable Development and Long-Term Peace and Stability*).

## 3.2 OVERVIEW OF CONSTITUTIONAL REVIEW PROCESSES

Constitutional review processes can take many forms and involve a range of actors. For example, an amendment process may draw on existing political institutions and follow rules set out by an existing constitution; whereas, constitution making may involve new institutions and processes established specifically for this purpose. Every constitutional review process is unique and variations are generally tied to the local context or political climate. While sequencing may vary, many processes include the following stages or phases:

- **A constitutional moment:** Constitutional review processes often begin with a political decision, triggered by a national need.<sup>57</sup> Whether emerging over time (e.g., the 1874 Swiss Constitution was amended 140 times before being completely revised in 1999), in the aftermath of a specific event (e.g., Timor-Leste required a new constitution after gaining independence from Indonesia in 2002), or as the result of advocacy on specific issues (e.g., the Malawi constitution was amended in 2017 to raise the minimum age of marriage in accordance with international human rights standards), constitutional review is typically

driven by a particular need identified by policymakers and/or the public that is supported by a critical mass of society. While constitutional review often takes place after violent conflict or other major political transitions, such crises are not a prerequisite for review. Many constitutional processes have occurred during times of peace and stability (e.g., Switzerland and Malawi).

- **Setting the agenda:** In constitutional processes that require new institutions and rules, the parties involved have to negotiate and agree on the guiding principles, structure, membership and procedures of the constitutional review body. As a result, this stage can be highly contentious as parties seek terms that are favorable to their influence and agendas. This stage is often omitted in processes that employ existing constitutional provisions that guide amendment or drafting processes. In the case of major political transitions as a result of armed conflict, popular uprising or other factors, the terms of a constitutional review process may be negotiated as part of a broader political or peace agreement (see *Box 4 – Post-Conflict Constitutions and Links to Inclusive Peace Processes*).

Where new institutions are created, an election and/or selection process may be necessary. For large constituent assemblies, this could involve national elections for which rules and procedures need to be designed. For smaller commissions, this could include an appointment process led by the executive or determined by political parties or other parties involved in a political transition.

- **Consulting, negotiating, designing and adopting a constitution:** While drafting and negotiation of the constitutional content takes place within a constitutional review body, this process is often influenced and supported by actors outside of the formal process, such as civil society, legal experts, INGOs and UN agencies. Many constitutional processes also include one

or more rounds of public consultation. Adoption of the final text is often conducted via a majority vote in a constituent assembly or parliament, sometimes followed by a public referendum.

In conflict-affected contexts, constitutional deliberation and decision-making can have important implications for durable peace.<sup>58</sup> The process itself can be formally part of or flow out of peace negotiations or other political settlements. The design or content of the constitution can also address core conflict drivers or grievances, such as political exclusion of certain groups by law (*de jure*) or in practice (*de facto*). Constitutional review can provide an opportunity to support more inclusive peace-making and peace-building.

## BOX 2 - WHAT IS A CONSTITUTIONAL REVIEW BODY?

The size, scope and procedures of a constitutional review body vary from process to process and can include new institutions specifically elected or appointed for this particular purpose (e.g., constituent assembly, constitutional committee or convention), existing institutions that also perform other functions (e.g., national parliament or parliamentary committee), or some combination of both.<sup>59</sup> For example, the 2008 Kenyan constitutional process included a nine-member committee of experts appointed specifically for the constitution-making process, a 26-member parliamentary committee, and the full parliament.<sup>60</sup> By contrast, Colombia's 1991 constitution was written by a constituent assembly that was elected specifically for constitution making and subsequent amendments have been deliberated and adopted in accordance with the rules in the constitution.<sup>61</sup>

Political elites often play a central role as members (or influencers) of a constitutional review body. While membership rules are largely context dependent, it can often include government officials, political party leaders, members of political movements, civil society, traditional or customary leaders, and/or in post-conflict cases, representatives from armed groups. Membership rules are typically decided in the rules-making process.

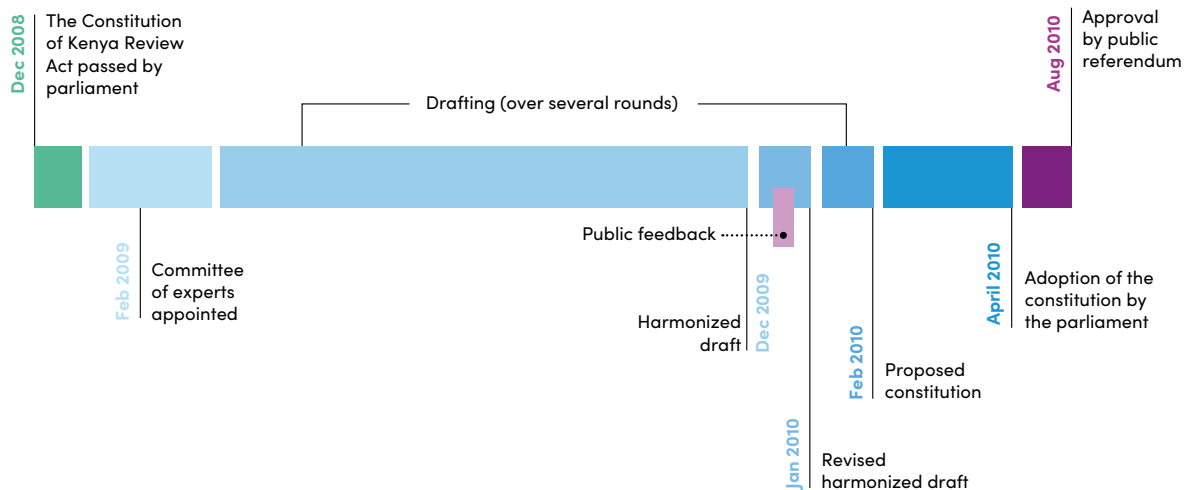
How and whether women participate in these institutions can depend on a range of factors, including the breadth and depth of women's leadership in the political elite as well as efforts to mobilize and advocate for women's inclusion during the rules-making process. In some cases, affirmative action measures (e.g., quotas or reserved seats) are used to guarantee women's inclusion. Entry points will vary depending on the type of institution as well as the election or selection process.<sup>62</sup>



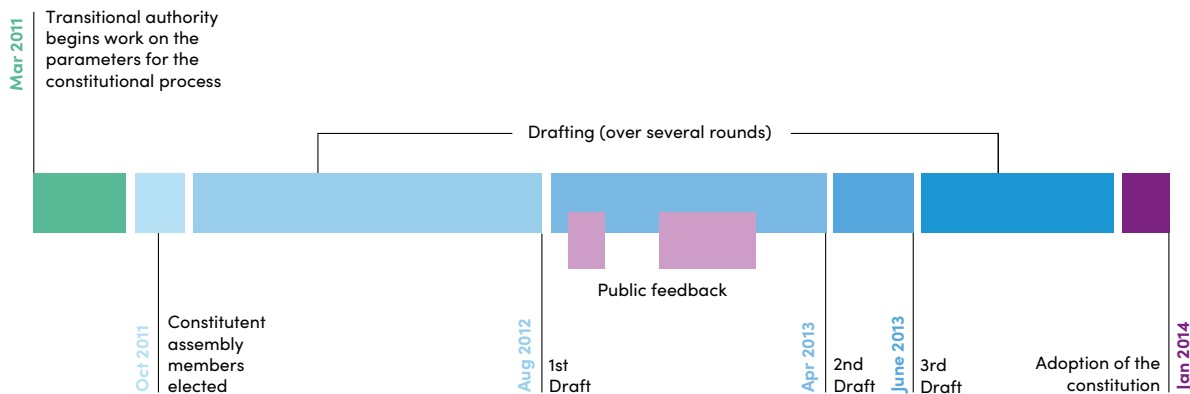
- Implementing the constitution:** After a constitution is promulgated, the work of realizing hard-won rights and protections begins. Constitutions typically provide a foundation and guiding principles for the formation and functioning of the State and rely on implementing legislation and government policy to determine more concrete rules and procedures.

Whether leading to an amendment or a wholly new constitution, a constitutional review process can take months to years to complete. The 2010 Kenyan constitution was drafted over the course of 20 months, but was the culmination of reform efforts that spanned almost two decades (see *Figure 5*). In Tunisia, the process lasted almost three years after the popular uprising ended President Zine El Abidine Ben Ali's 20-year reign (see *Figure 6*).

**FIGURE 5 - OVERVIEW OF 2008 CONSTITUTIONAL PROCESS IN KENYA<sup>63</sup>**



**FIGURE 6 - OVERVIEW OF 2011 CONSTITUTIONAL PROCESS IN TUNISIA<sup>64</sup>**



Source: <https://www.inclusivesecurity.org/wp-content/uploads/2018/02/Womens-Guide-to-Constitution-Making.pdf>

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Each phase in a constitution process offers many entry points for gender equality advocates. For example, advocacy during the agenda setting phase (particularly related to the election/selection process) can influence how/whether women are represented within the constitutional review body itself. And this can have effects on how/whether

women's priorities and concerns are heard and considered within the deliberative design process. The next sections will provide more concrete guidance and recommendations on how gender equality advocates can influence each phase as well as illustrative global examples of how women have achieved this in practice.

## 3.3 ENTRY POINTS FOR GENDER EQUALITY ADVOCATES

This section revisits the typical phases of a constitutional review process, overlaid with examples of how gender equality advocates from feminist movements, gender machineries, constitutional review bodies, parliamentary caucuses, law reform commissions, the UN system, and others have

advanced and advocated for women's rights. The examples illustrate important entry points, opportunity areas and key lessons learned from prior constitutional processes (see *Box 3 – Advocacy and Mobilization Strategies for Gender Equality and Women's Rights*).

### 3.3.1 SETTING THE AGENDA

Constitutional review processes have a distinct starting point. Yet, it is not marked by the constitutional review body's first day in office, it comes much, much earlier in the process, such as when parties first agree that a process will take place. In processes where new institutions are established, this initial phase is vitally important because it is where the "rules of the game" are decided. The rules-making process can also be linked to or a part of peace negotiations or other political bargaining (see *Box 4 – Post-Conflict Constitutions and Links to Inclusive Peace Processes*).

In order to maximize women's representation in a constitutional review body, early mobilization prior to this phase is necessary so that women are well-positioned to advocate for inclusion at the start of the agenda setting process. When and how women mobilize can significantly shape their access.<sup>66</sup> In particular, the member election and/or selection process can have a determinative impact on whose interests are directly represented.

### BOX 3 - ADVOCACY AND MOBILIZATION STRATEGIES FOR GENDER EQUALITY AND WOMEN'S RIGHTS

Gender equality advocates can choose from a range of advocacy and mobilization strategies to influence constitutional deliberations and decision-making.<sup>65</sup> The following are a few examples that have proven successful in multiple contexts and can be employed across different stages of a constitutional review process. The case examples included in this section provide further context for each of the strategies as well.

Strategy	Why it's useful	Potential challenges
<b>Inclusive coalition building that brings women together across political, ethnic, religious and other societal divides</b>	Demonstrates women's diversity and also women's ability to forge consensus and identify common demands; streamlines women's demands into something manageable for the constitutional review body	Can be difficult to forge consensus among diverse groups of women – without concerted effort women from the most marginalized groups will remain sidelined; building consensus takes time so this process should be implemented as early as possible
<b>Work with and through influential male allies</b>	Leverages existing power structures to achieve systemic change; acknowledging that men have power within the system and that their support will lend greater influence/legitimacy to women's demands	Want to avoid “men speaking for women” or to suggest that women do not need their own representatives because men can represent their interests
<b>Coordinating efforts with gender advocates on the “inside” and the “outside” of the process</b>	External mobilization can bolster efforts to advance gender equality within constitutional negotiations	Can be difficult to forge consensus among diverse groups on advocacy priorities and sequencing; advocates outside the process may not fully appreciate the constraints faced by advocates inside the process and vice versa
<b>Civic education and awareness-raising</b>	Ensures women are aware of their rights and the importance of the constitutional process; provides something tangible for women to mobilize around	Translating awareness into action and maintaining momentum after the completion of the review process



#### BOX 4 - POST-CONFLICT CONSTITUTIONS AND LINKS TO INCLUSIVE PEACE PROCESSES

In countries emerging from armed conflict, constitutional bargaining can be interwoven with peace negotiations. Constitutional principles or arrangements can appear in ceasefire agreements (e.g., Bosnia Herzegovina – 1995 Dayton Peace Agreement), transitional political arrangements (e.g., South Sudan – 2018 Revitalized Agreement on the Resolution of the Conflict in South Sudan), or peace agreements (Northern Ireland – 1998 Good Friday Agreement).<sup>67</sup> Early mobilization in such cases may mean organizing around constitutional priorities in addition to other (and likely related) peacemaking priorities during the peace negotiation phase.

This builds on the normative foundations of the WPS agenda, which calls for greater women's inclusion in peace and security decision-making.<sup>68</sup> Women's inclusion and activism in peace processes can influence whether women are included and what roles they play in subsequent constitutional review processes, which can further shape the types of rights and protections that are included in the resulting constitution.<sup>69</sup> For example, in the decades-long peace process between the Government of the Philippines and the Moro Islamic Liberation Front (MILF), women secured commitments from both parties to include women in their negotiation delegations and women's participation subsequently increased throughout the lifecycle of the peace process. This in turn created an expectation that women's inclusion would continue in the constitution drafting process. When the Bangsamoro Transition Commission was formed to draft the Bangsamoro subnational constitution, women constituted 4 out of 15 members (3 appointed by the government, 1 appointed by MILF).<sup>70</sup>

Advancing constitutional priorities like gender equality may be difficult in these early stages, when parties to the conflict and other political actors are largely focused on power and resource sharing. Gender equality advocates need to identify ways to link women's inclusion with the political agendas of key decision makers (see *Section 3.3.2 Consulting, Negotiating, Designing and Adopting a Constitution*). Strategies for women's mobilization around peacemaking are similar to strategies for constitution making, so gender equality advocates should be readily equipped. Additional technical support will also likely be needed related to specific constitutional provisions that can shape women's lived experiences (e.g., equality and non-discrimination, women's rights, citizenship, marriage and family).

Gender equality advocates should coordinate with existing women's networks to build momentum or tap into efforts already underway. This could include supporting women (as well as male gender equality champions) in the rules-making process as well as building a common platform or advocacy agenda with women across the parties involved as well as in broader society. Where priorities are already determined through a peace agreement or other political settlement, mobilization around those priorities may be needed to ensure proper implementation. While the primary focus may be on

ensuring election/selection processes are gender-responsive, advocates should also be prepared to engage in discussions on other mechanisms that can impact the participation and leadership of women (e.g., rules that require gender parity in leadership positions, gender-responsive rules of procedure, working conditions that are conducive to caregiving duties).<sup>71</sup>

With regards to election/selection processes in particular, gender equality advocates should prioritize advocacy around affirmative action

measures to ensure women are represented as well as activities to promote women candidates and strengthen their candidacy. This can include the use of **candidate quotas, voluntary political party quotas** or other similar mechanisms.<sup>72</sup> For example, in Timor Leste's constitutional process after gaining independence, women's organizations formed a "platform for action" ahead of the constituent assembly elections to advocate for a women's candidate quota. When the parties refused to codify a quota provision, the platform changed tactics and directly pressured parties to support and include women's candidates. The platform also worked with the UN Transitional Administration in East Timor to provide **trainings for women candidates** and offer extra airtime on the UN-run radio station to parties whose candidates included at least 30 per cent women.<sup>73</sup>

Coordination across women's movements or coalitions is also important for maximizing impact. Gender equality advocates involved in Colombia's 1990 elections for the National Constituent Assembly, which took place amid an ongoing armed conflict, could not agree on a unified strategy to promote women's representation. One group formed an electoral list made up of only women candidates, while others rallied around a civil society electoral list. Others also advocated for the inclusion of more

women candidates on political party lists. In the end, women won only four out of 74 seats, an outcome largely attributed to the lack of organization and consensus between women's movements.<sup>74</sup>

Where elections are involved, **voter education and awareness-raising** may be key strategies for increasing the number of women voters participating in the election and educating voters on the importance of voting for women candidates. In contexts with weak rule of law, this may also entail accountability mechanisms to ensure elections remain free and fair and that women voters and candidates are not intimidated or threatened.

The **inclusion of women's civil society representatives** as members of the constitutional review body may be another useful strategy, particular in contexts where women's civil society is strong and well-connected. Rwanda's Legal and Constitutional Commission, which was formed in 2000 following the civil war and genocide, included two civil society representatives among its 12 members. One of the women representatives, Judith Kanakuze, was a long-time women's rights activist and used her position to strengthen civil society's access to the constitutional process. Her contributions are credited with enabling a more gender-sensitive constitutional review process.<sup>75</sup>

## UN WOMEN Case examples on setting the agenda

### Coordinated advocacy on election rules to support women's inclusion in Tunisia<sup>76</sup>

Tunisia's constitutional process began with the formation of the Higher Authority for Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition (Higher Authority). The Higher Authority was responsible for proposing reforms at the start of the democratic transition and designing a roadmap for the constitution-drafting process. UN Women deployed an expert to support the electoral sub-commission in its work to ensure that measures would be taken to achieve political parity. Timing was critical; a volatile situation carried the risk of backtracking on Tunisia's existing achievements in women's rights. Advocacy and evidence of the best options for special measures helped push forward a consensus that women must comprise 50 per cent of candidates in the constituent assembly elections. UN Women also supported advocacy and mobilization by women's civil society around gender parity in the constituent assembly. Through concerted efforts by gender equality advocates both in the Higher Authority and in civil society, the resulting electoral law

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required political parties to alternate men and women on their candidate lists (i.e., vertical zipper). As a result of this parity provision, women held 27 per cent of seats in the constituent assembly.

#### **Advocacy planning on the formation of constitutional drafting committee in Libya<sup>77</sup>**

UN Women provided support to Karama, an NGO operating throughout the Arab region, and the Libyan Women's Platform for Peace (LWPP) to convene a series of consultations and workshops on the transitional process. In September 2012, Karama and LWPP convened a workshop to prepare and train civil society members on the rights of women and all Libyans. They gathered a group of 37 Libyan activists as well as two members of the General National Congress to develop strategies for influencing the constitutional drafting process. Building on prior advocacy efforts regarding the Constitutional Declaration, participants launched a campaign to lobby the General National Congress on selecting a diverse constitutional committee. They developed a series of formal recommendations that, if enacted, would preserve the independence of the constitutional drafting committee, ensure the input of legal experts, civil society, and diverse segments of the population, and require that women comprise at least 30 per cent of the committee's members.

#### **Strategies for engaging women voters in Nepal<sup>78</sup>**

After its first constituent assembly failed to agree on a new draft constitution, Nepal elected a second constituent assembly in November 2013 to carry on the work. In advance of the elections for the second constituent assembly, UN Women in partnership with UNDP educated women, especially those from marginalized communities, about voting and their role in the elections. The project aimed to ensure women were equally engaged in the political process, since their lives are as much affected by government decisions as those of men. Seeking to ensure that sufficient numbers of women turned out to vote, partnerships were also formed with media and civil society groups to increase awareness of the importance of women's participation in the elections and beyond.

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### **3.3.2 CONSULTING, NEGOTIATING, DESIGNING AND ADOPTING A CONSTITUTION**

Constitutional bargaining typically occurs within the confines of a constitutional review body. External actors also play a role by influencing and informing this process through technical assistance as well as advocacy on a range of political agendas. The inner workings and rules of procedure are specific to each constitutional review body, but often there is a drafting committee (or thematic committees) that composes initial constitutional provisions which are then deliberated in a plenary.<sup>79</sup>

Many processes also include mechanisms for gathering public input to inform deliberations and shape constitutional design, such as gathering public priorities in early drafting stages or soliciting public feedback on a draft constitution. These mechanisms can include face-to-face public meetings, civil society hearings, expert conferences, surveys, focus groups, social media and requests for written submissions.<sup>80</sup>



Constitutional processes typically culminate in the adoption of a final text. Ratification authority is often given to the constitutional review body (e.g., committee, constituent assembly), another relevant authority (e.g., head of State, parliament), the public via a referendum, or some combination thereof.<sup>81</sup> Recent experiences of failed referenda in Grenada and Zambia, which included women's rights in addition to other provisions, are a good reminder that a constitution review process is not over until the constitution is promulgated.<sup>82</sup>

This phase represents the heart of constitution design; it is in these deliberations that decisions are made about what substantive content to include in a constitution. As such, careful and strategic planning by gender equality advocates is necessary. When and how recommendations are conveyed to members of a constitution review body and/or actors outside of the process matters. Due to the wide-ranging options for advocacy and mobilization in this phase, the guidance is organized by type of strategy with additional detail provided below.

## Coalition building

In many of the case studies referenced in this Guidance Note, women established **broad coalitions across diverse constituencies** (political, ethnic, religious, etc.) to develop and promote **a common women's agenda**. Case examples suggest that this is one of the most powerful tools for achieving a gender-responsive constitution.<sup>83</sup> Through these actions, women demonstrate that they are capable of working across political and other divides within society and forging consensus despite opposing views. This approach helps to establish a critical mass behind a common agenda, which can create more credibility and visibility and increase momentum for change. This type of inclusive coalition building also mirrors a strategy often employed by women leaders to advance inclusive peace and security decision-making.<sup>84</sup>

The process for creating a common women's agenda often includes broad outreach to solicit inputs on perceived gender equality priorities. In some communities, women may not be aware of the ongoing constitutional review process and/or understand how the outcomes of the process may impact their lives directly, so these efforts may be accompanied by **civic education** to raise awareness of the constitutional process and the issues being debated.

Building consensus across diverse constituencies is not an easy task, particularly in divided societies or contexts emerging from conflict. In South Africa, the Women's National Coalition undertook an ambitious nationwide education and consultation program that reached an estimated two million women from all sectors of society. The findings were used to form the basis for a Women's Charter for Effective Equality but women leaders disagreed over the direction, content and style of the charter campaign – particularly regarding conceptions of equality and the role of the State in achieving gender equality. The Charter successfully captured the diversity of women's interests, but did not become a rallying cry for women's organizations to mobilize behind. Despite these setbacks, the Coalition and its campaign succeeded in creating a visible political constituency of women and many of its broader priorities were reflected in the final constitution.<sup>85</sup>

The most successful coalitions are often those that **bring together 'insiders' from within the constitutional review body and 'outsiders' from civil society**. This approach has the potential to create a positive feedback cycle, whereby the recommendations made by gender equality advocates inside the constitutional process are bolstered by civil society activism outside of the process. In other words, by aligning priorities, civil society mobilization provides momentum and popular support for what is being discussed inside the constitutional review body. Rwanda (2003), Kenya (2010) and Tunisia (2014) are just a few

examples where women members of constitution reform bodies worked closely with allies in civil society to ensure a coordinated effort toward the shared goals.<sup>86</sup>

In contexts where constitutional review bodies are larger in size (e.g., constituent assemblies or

conferences), additional benefits may arise from establishing a **women's caucus or gender working group**. Such cross-party cooperation can help with agenda setting and consensus building prior to a vote by a drafting committee or the plenary.<sup>87</sup>

## BOX 5 - WOMEN'S INTERSECTIONAL IDENTITIES AND THE CHALLENGES OF PLATFORM CREATION

Platform creation is not always an easy exercise and advocates should not assume that women will readily agree on shared priorities around gender equality. Like other constituencies, women are not a homogenous group. Their needs, perspectives and experiences are shaped by a diverse intersection of identities which include gender as well as factors like race, class, caste, ethnicity, sexuality, disability, nationality, geographical location and religion. Their lived experiences inform their gender equality priorities and what is seen as necessary by some, may not be a priority for others.

For example, in Tunisia, women constituent assembly members were able to forge consensus and advance key gender equality provisions that were included in the final constitution. While they generally agreed that women's rights should be maintained and advanced, their ideas of what those rights actually constituted and the role of women in society did not always align. When it came to the details, women—like men—held a diversity of opinions. Even after the passage of the constitution, women assembly members remained divided over how particular gender equality goals should be achieved in practice.<sup>88</sup>

Intersectional identities may also influence power dynamics within a platform, often privileging elite women over rural women and women from marginalized groups. While coalitions should seek to include women from all walks of life, gender equality advocates must be aware that how the coalition operates, whose voices are heard, and who speaks on behalf of the coalition can have impacts on overall inclusion and cohesiveness. Without careful consideration, decision-making can (and has in some contexts) further side-line women who are subject to multiple forms of oppressions.

In Nepal, for instance, women in the 2008 constituent assembly formed a caucus to promote cross-party coalition building on a joint women's agenda. But, ultimately, members of the caucus found it difficult to build and sustain consensus, which hampered their ability to influence assembly leadership. Some members attributed the failure to internal prejudices and an inability to bridge class, caste, education and other conflict-related divides within the caucus. In this case, insufficient trust and coalition-building made it difficult for women to unite around key priorities, recruit male allies and make their voices heard.<sup>89</sup>

## Civic education and outreach

Civic education and awareness-raising are strategies used to expand the pool of individuals and communities that are engaged in a constitution review process. These types of programs can be used **to prepare women, and particularly women from marginalized constituencies, for consultations with the constitutional review body**, by providing space for reflection and discussion on priorities as well as basic education on the constitutional process and what issues are being debated. In some cases, entities like UN Women, have facilitated these in-person consultations directly. For example, in Liberia and Sierra Leone, UN Women led nation-wide consultation exercises with thousands of women to build momentum on gender equality priorities (see *Case Examples on Consulting, Negotiating, Designing and Adopting a Constitution*).

Similar to best practices for coalition building, great care should be taken to ensure that activities are accessible, inclusive, and acknowledge the broad, intersectional representativeness of women and women's civil society groups. Mobilization of women's voices ahead of public consultations may be particularly important where public opinion is generally conservative or adverse to women's rights agendas. Inputs gathered through this process can help to inform a common women's agenda that could also be shared with the constitutional review body during a public comment period or used for more direct advocacy. In Zimbabwe, the G-20 coalition of women academics and activists, and representatives from the national machinery, the women's parliamentary caucus, and the Constitution Select Committee dedicated significant resources to public education to ensure women's issues assumed a place in public discourse. They used civic education to mobilize women and men nationwide to support the inclusion of strong gender equality and women's rights constitutional provisions.<sup>90</sup>

Where a popular referendum is part of the adoption process, civic education and awareness-raising is

often necessary **to inform the public on the content of the constitution**. For gender equality advocates, this could include educating the broader public about the importance of women's rights provisions as well as educating women about the process of voting in a referendum and encouraging them to vote. In Ireland, women's rights leaders mobilized a coalition of over 100 diverse civil society and grassroots organizations in support of a referendum to remove a constitutional ban on abortion. In addition to voter education and canvassing, the "Together for Yes" coalition used personal storytelling as a powerful tool for conveying the need and urgency of the constitutional amendment and build a strong voter base for the referendum.<sup>91</sup> While the purpose of a referendum is to secure popular legitimization of the text, it can also be a politically fraught process in which political parties manipulate messaging around the referendum. In such cases, civic education should include capacity-building on identifying and navigating misinformation and disinformation, particularly as it relates to gender equality.

In contexts where women's public participation is generally low, civic education activities may be necessary to combat direct and indirect discrimination that threaten women voters' participation. This may include advocacy, technical assistance and joint initiatives with the electoral commission to establish voting rules do not discriminate against women (e.g., barriers to women's voter registration) and ensure that public messaging on the referendum encourages the equal participation of women.

For civic education and awareness-raising broadly, gender equality advocates should design strategies to reach the widest relevant audience, use appropriate channels for disseminating information depending on the local context and the target audience (e.g., radio, written materials, training-of-trainer models, mobile theatre, SMS), and take into consideration potential safety and security issues for participants. For example, gender equality advocates may also consider more innovative



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approaches for **organizing and network weaving using technology and social media**, particularly in contexts where in-person mobilization is challenging or constrained. The African Women Leaders Network in Nigeria adopted WhatsApp as an additional official means of communication to more effectively reach and engage their geographically broad and diverse membership of over 100 networks of national, State and grassroots networks of women. Mobile phones were used to facilitate consultative meeting with women's constituencies and other key stakeholders on the constitutional process.

## Strategic advocacy<sup>92</sup>

How a common women's agenda and other priorities are communicated to a constitutional review body is another priority area. **Decisions around who/how/when recommendations are delivered** should be informed by a power analysis and mapping exercise that clarifies who the advocacy target is, what their interests are, and who they are most likely to listen to. Gender equality advocates also need to consider the deliberation process and agenda to identify entry points. Women in the 2008 Kenyan constitutional process designed their advocacy strategies based on who among them would be best suited to engage with certain constitutional actors. To build their roster of allies they would, for example, identify an advocacy target and then send someone from the same ethnic group or from the same region who could more easily build rapport.<sup>93</sup>

It is also important to **frame recommendations effectively** and ensure that advocacy messaging fits the political moment. Constitutional review processes are inherently political and highly competitive; there are a wide range of actors all seeking attention for their political agenda. Gender equality advocates

must think carefully about how to frame women's rights in a way that matches the political priorities of key decision makers. Following the ouster of President Ben-Ali in Tunisia, many people viewed the constitution drafting process as a way to peacefully transition to democracy and institutionalize the principles of plurality, justice and equality. With this in mind, gender equality advocates frequently framed their messages in terms of democracy and human rights.<sup>94</sup> Similarly, in Greece, during deliberations over a constitutional amendment on substantive gender equality, gender advocates stressed the need for Greece to keep pace with constitutional developments among its European neighbors, notably that substantive equality and affirmative action measures to increase women's political representation were a growing constitutional tradition among European Union (EU) member States and within EU institutions.<sup>95</sup>

## Technical assistance

Constitutional review bodies often solicit technical assistance on gender equality and women's rights provisions. Members could be seeking expert guidance on **how to frame particular gender-related provisions** as well as **comparative examples** of constitutional good practice. Gender equality advocates may also provide a **gender audit** of a draft constitution. Often this includes examining the constitution for gender discriminatory language and provisions, determining whether it complies with international normative frameworks, and proposing reforms based on findings and good practices from other countries.<sup>96</sup> Technical assistance can be offered to constitution review bodies by request or as part of a larger advocacy agenda.

## UN WOMEN Case examples on Consulting, Negotiating, Designing and Adopting a Constitution

### Influencing constitutional design through a Common Women's Agenda in Liberia<sup>97</sup>

Liberia initiated a constitution review process beginning in 2012. To ensure women's collective voices were heard in the process, UN Women and the Office of the Gender Advisor–United Nations Mission in Liberia, in partnership with the Ministry of Gender, Children and Social Protection, worked with a diverse group of women to develop a Minimum Agenda for Constitution Reform. This included a nation-wide consultation exercise with nearly 5,000 women, men, youth, civil society, religious leaders, government officials, and traditional leaders. The Minimum Agenda covered a range of issues including equality and non-discrimination, rights of women in marriage, protection against all forms of violence, equal participation, affirmative action, and the use of gender-sensitive language in the constitution. The Minimum Agenda was featured prominently in the review process, as a result of both technical and financial assistance provided to the Women Constitutional Review Taskforce, the Women's Legislative Caucus, and the media to understand, buy-in, and articulate these demands. Through the advocacy efforts of Liberian women, along with critical UN Women support, about 85 percent of their demands were integrated into the draft constitution. Unfortunately, the process stalled and the draft constitution was never adopted.

### Building capacity, coalitions and a core set of demands in Libya<sup>98</sup>

In Libya, UNDP, United Nations Support Mission in Libya (UNSMIL) and UNWOMEN, with later support provided by the International Foundation for Electoral Systems (IFES), worked with activists and women members of the Constitutional Drafting Assembly (CDA) to develop a core set of demands as well as an advocacy strategy that focused on a two-pillar approach: lobbying directly to the Constitution Drafting Assembly (CDA) and gathering further support for the demands among civil society and the public. The demands were informed by regional legal experts who provided technical assistance during the debates. Activists and CDA members also had the opportunity to strengthen their knowledge on core issues related to the constitution-making process and international good practices. UN Women also brought together 35 activists to review and analyze the CDA's preliminary work on 12 proposed new constitutional chapters. Analysis was carried out from a gender perspective, with an emphasis on international norms and standards.

### Engagement with key stakeholders, including constitution review members, in Grenada<sup>99</sup>

From 2014 to 2016, Grenada underwent a constitutional review process that did not result in a final constitution; however, the process was important for raising awareness on women's rights. Within that process, UN Women in collaboration with UNDP delivered technical assistance to strengthen provisions in the Bill of Rights relating to non-discrimination and gender equality. Together with the Constitutional Reform Advisory Committee, they also held consultations with civil society organizations and generated support for gender equality. Some raised concerns that there was too much focus on the passage of the gender equality section of the Bill of Rights and that more awareness-raising and public buy-in would be needed to avoid backlash. UN Women had previously helped to lay the groundwork for this by supporting consultations with civil society on the proposed reframing of the Bill of Rights to include a section on gender equality. UN Women also developed communication and advocacy tools, such as infographics and radio spots, to raise public awareness on the Bill of Rights, gender equality, and its links to sustainable development.

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### **Technical support for the constitutional assembly in Nepal<sup>100</sup>**

In Nepal, UN Women focused its efforts on improving the technical and advocacy capacity of political actors and increasing the political representation of women. Through workshops organized in early 2014, UN Women worked directly with new constituent assembly (CA) members to strengthen their understanding of how to develop a gender responsive constitution. Additional sessions were also held on international, regional, and national instruments on women's human rights and the role of media. To support this and other technical knowledge, UN Women developed a background note for constituent assembly members on key gender equality considerations for the new constitution, which they used for advocacy and lobbying. UN Women's Civil Society Advisory Group members also held informal meetings with CA members and political leaders to share the contents of the background note.

### **Partnerships with women's civil society and government to advance gender equality in Tunisia<sup>101</sup>**

UN Women successfully advocated for the inclusion of gender equality in the 2014 Tunisian constitution by building civil society capacity as well as leading discussions among constituent assembly members and other decision makers in partnership with national groups. UN Women partnered with gender equality advocates to produce a steady stream of evidence and recommendations to inform constitutional debates, covering issues such as the gender parity principle and commitments under CEDAW. For example, UN Women worked with the Tunisian Association of Democratic Women to build strong, evidence-based gender equality arguments that enabled outreach and advocacy to communities and strengthened their effective participation in the constitution-making process. Other partnerships included support to the Centre for Research, Studies, Documentation and Information on Women for organizing advocacy events, such as a high-level debate on the integration of the principle of parity in the Constitution. The event gathered members of the constituent assembly, government policymakers, and civil society representatives at a crucial moment in the drafting process. UN Women, in partnership with the Ministry of Women and Family Affairs and the Wilson Center (Global Women's Leadership Initiative), also brought together stakeholders from across the region to exchange experiences and best practices on integrating gender equality principles in national constitutions. Participants from governmental institutions and NGOs shared their experiences and lessons learned from designing constitutional principles on gender equality, human rights, and non-discrimination.

### **Direct engagement with rural women in Sierra Leone<sup>102</sup>**

In Sierra Leone, UN Women mobilized and facilitated the engagement of women from across all sectors of society to ensure their voices were heard in a 2012–2016 constitutional process that took place during the Ebola epidemic. Under the slogan “Leh we talk” (let us talk), UN Women organized two rounds of consultations, capturing the voices of over 6,000 women located in the remotest parts of the country. These consultations were used to educate primarily rural women on the constitutional review process and the gender equality dimensions of the existing 1991 Constitution. UN Women also documented women's views on what they would like to see in a new Constitution. The teams were made up of Parliamentarians, Legal Experts, and representatives from the Ministry of Social Welfare, Gender and Children's Affairs, the Human Rights Commission, and the Constitutional Review Committee as well as umbrella civil society organizations. Their views and aspirations were collated into a historic Women's Charter that was submitted to the Constitutional Review Committee.

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### 3.3.3 IMPLEMENTING THE CONSTITUTION

After a constitution is promulgated, there is often a collective sense that the work is “done.” However, this is where continued pressure on policymakers, and institutional decision makers more broadly, is needed for the realization of gender equality and women’s rights. Without proper implementation, constitutional rights and protections offer limited change for women’s lived realities.

Many countries struggle with fully implementing their constitutions due to resource shortages, failures of leadership, lack of political will, insufficient technical capacity, opposition by elites and privileged groups, and/or weak rule of law.<sup>103</sup> Factors like legislative and executive inertia or resistance to change, social and cultural norms, and an imbalance of power in government and society may also limit constitutional realities particularly as it relates to women’s rights.<sup>104</sup>

To ensure that gender-related provisions are properly implemented, it is incumbent on gender equality advocates at all levels in the government as well as in civil society and other sectors to continue working together on consolidating these advances. Efforts can include **establishing new laws and policies** to give effect to gender equality provisions and repealing laws that are inconsistent; **ensuring that national gender machineries established by the constitutions are sufficiently resourced and supported**; **educating women on the rights and responsibilities** in the new constitution and how these can impact their lives; and **supporting the establishment of new mechanisms and processes** that enable women’s equal access and opportunity as established under the constitution.

An **independent, impartial and competent judiciary**, in addition to access to justice more broadly, is another essential mechanism for enabling constitutional implementation. It is part of the judiciary’s role to protect the constitutional rights of women. This includes reviewing legislation for its compliance with the constitution and

international law and in some instances holding the State accountable for its actions as it relates to constitutional protections. For example, in Ghana, the case of *Mensah G. v Mensah S.* solidified a woman’s right to equitable distribution of property on the dissolution of marriage. The Supreme Court cited Article 22 (3) of the Constitution which States that spouses shall have equal access to property jointly acquired during marriage. The court interpreted the provision to reinforce the guarantee and protection of all fundamental human rights, including women’s property rights, economic and cultural rights and practices. The court also integrated international human rights instruments into its equality analysis, including the Universal Declaration of Human Rights (UDHR) (Article 1) and CEDAW (Articles 1 and 5).<sup>105</sup>

The 2005 South Korean decision, *Case on the House Head System*, overturned traditional patriarchal rules contained in the Civil Code that required families, individuals and wives to be registered along patrilineal lines. The Constitutional Court found the rules to be discriminatory on the basis of sex and noted that feudal and patriarchal traditions could no longer be tolerated due to the supremacy of constitutional values like individual dignity and gender equality. The Court noted that while ‘traditions’ and ‘cultural heritage’ are mentioned in Article 9 of the Constitution, these concepts should be defined according to their contemporary meaning, with reference to constitutional guarantees.<sup>106</sup>

However, constitutional jurisprudence cannot be relied upon to advance gender equality provisions in every instance. The Canadian Charter of Rights and Freedoms includes two gender equality provisions (see sections 15 and 28), which represent hard-won gains by women’s rights activists during constitutional deliberations in the early 1980s. Following the enactment of the Charter, women activists formed the Women’s Legal Education and Action Fund (LEAF) to continue advancing women’s substantive equality by means of litigation. Yet despite efforts by LEAF

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and others, Canadian courts have not interpreted these provisions to bring about the transformative change intended by the provisions' drafters. In fact, the courts have inconsistently applied or otherwise avoided section 28, which guarantees rights equally to women and men.<sup>107</sup>

Where possible, litigation should also be accompanied by efforts to measure and assess the impacts of court decisions and scale and replicate these benefits.<sup>108</sup>

Gender equality advocates in civil society typically support a range of implementation functions, including using public interest litigation as a strategy for reforming unconstitutional and discriminatory

laws. But these groups often face resource shortages as funders transition to other priorities after a constitution is promulgated. This is common in post-conflict contexts where donors and others largely view the end of a constitutional process as the end of the transitional period.<sup>109</sup>

UN Women has supported and led numerous programs in countries around the world that help facilitate gender-responsive constitutional implementation, including many related to the phases described previously. In addition to the following examples, Chapter 5 includes case examples of UN Women-led implementation activities under each constitutional design category.

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## UN WOMEN Case examples on Implementing the constitution

### Realizing gender parity through law-making in the Central African Republic<sup>110</sup>

In 2016, three years after a violent coup ended President François Bozizé's decade-long rule, the Central African Republic promulgated a new constitution. Article 6 guarantees gender equality and Article 80 recognizes gender parity as within the realm of law for the parliament to decide. To support the implementation of these provisions, the Gender Equality Act was also promulgated in 2016. The Act establishes parity between men and women in the public, quasi-public, and private sector of employment and in all decision-making bodies. To support effective implementation, UN Women and women's civil society groups translated the Act into Sango, disseminated the law in rural areas, and organized efforts to draft an implementing decree on the parity law. UN Women provided coordination, technical, and financial support to the Ministry for the Promotion of Women in support of this initiative.

UN Women also supported the process of reforming the electoral code to align with parity requirements. This included technical assistance to the women's parliamentary caucus, support on the formulation of draft proposals, and advocacy and lobbying with members of the Interdepartmental Technical Committee responsible for preparing the preliminary draft of the Electoral Code. The new Code, which was promulgated in 2019, requires political parties, associations and groups to ensure at least 35 per cent of candidates are women in municipal, legislative, senatorial and regional elections.

### Supporting citizenship and political participation through national ID cards in Egypt<sup>111</sup>

Launched in 2011, UN Women, UNDP, the Egyptian Ministry of State for Administrative Development, the Civil Status Registry of the Ministry of the Interior, the Social Fund for Development, and a number of civil society groups and national bodies embarked on a program to register and issue two million ID cards for rural and marginalized women. An estimated five million women do not have any form of identity registration, which

prevents them from claiming a range of constitutionally protected rights, including voting and accessing education and health care. Many women, particularly in rural areas, are unaware of the purpose and benefits of identification, so UN Women also established a cadre of Youth Ambassadors for Women's Citizenship, who work with in ten governorates to facilitate the civil registration process and issuance of national ID cards.

### 3.4 GENDER BIAS AND DISCRIMINATION IN CONSTITUTIONAL REVIEW PROCESSES

Constitutional review processes can be fierce political competitions. Parties jockey for power and influence, knowing that constitutional outcomes may favor some groups over others. It can also be a messy and tangled process with every interest group seeking to promote their particular vision. For the women involved, this can be a complex and arduous experience, as they face a range of gender biases often unknown or unrealized by their male counterparts. Ironically, the direct and indirect discrimination that women face within the process is directly linked to the constitutional provisions they so often advocate for.

While the experiences of women are varied and context-specific, the examples below capture some of the most commonly reported gendered challenges:<sup>112</sup>

- Women's input is undervalued by decision makers because women are not seen as legitimate political actors, even where their male counterparts have the same or less experience. This is particularly the case for women who gained their position via quotas or other affirmative action mechanisms.
- Women are the target of harassment, threats and physical attacks stemming from a perception that politics is a male-only space.
- Women may experience self-doubt and misgivings related to their capacity and competence, driven by the internalization of misogynistic social and cultural norms.

- A general lack of recognition for women's diverse identities; when women are seen as a monolithic group, women from underrepresented minorities are further marginalized and silenced.
- An assumption that women can only advocate on "women's issues", coupled with a perception that "women's issues" are less important than other constitutional issues.

In Tunisia, women in the constituent assembly were not necessarily viewed as legitimate political actors by their peers. For some, the vertical parity requirement created a perception that women were included on electoral lists wholly to satisfy the law, not because of their expertise or capacity. In reality, the vast majority of the constituent assembly, both men and women, had little familiarity with the political and legislative process. Still, male assembly members had greater perceived credibility. In some instances, media outlets sought male assembly members to report on their committee's work even though they were not present during working sessions. Women constituent assembly members employed a range of strategies to combat these challenges. They worked around the rules of procedure to establish an informal women's caucus to elevate common priorities. In the media, women pressed journalists to interview other women. In one instance, Merhrezia Labidi, who served as the first vice president of the constituent assembly, had to reproach her male colleagues when chairing the plenary to establish her authority over debates.<sup>113</sup>

It is important for gender equality advocates to be aware of these and other potential barriers when planning advocacy and other constitution-related

activities. Understanding these gender dynamics will help to prepare for contingencies as well as identify ways to address or even overcome these challenges.

## BOX 6 · KEY TAKEAWAYS FOR INFLUENCING CONSTITUTIONAL REVIEW PROCESSES

- **Mobilize early:** Mobilization of women's networks must occur well before the constitutional process begins, particularly where constitutional processes are preceded by peace negotiations or other political settlements. The early stages of constitution review (i.e., rule-making, election/appointment of the constitutional review body) establish how the constitution and its contents will be discussed and drafted. Gender equality advocates need to mobilize early to ensure allies are included in the constitutional review body to provide entry points for continued engagement into the process.
- **Harness collective action and build broad coalitions/movements:** Building inclusive, diverse coalitions or movements with a shared agenda is one of the most powerful tools for achieving influence in a constitutional process. This should include building strong working relationships between gender equality advocates inside constitutional review bodies as well as with activists outside the formal process. Coalition building should recognize and celebrate the intersectionality of women's experiences and acknowledge the direct/indirect discrimination of women subject to multiple forms of oppressions.
- **Develop strategic advocacy for gender equality:** Effective advocacy requires intentional planning and engagement. Messaging should reflect the current political context and, where possible, align with the priorities of key influencers and decision makers within the constitutional review body. Advocates should also think carefully about how to frame draft gender-related provisions, considering what is possible now and what may be possible in two or three political cycles. If full gains are not realistic given current political conditions, advocates should target basic principles (like equality/non-discrimination and women's rights) that can be leveraged for growth and expansion.
- **Support women within the constitutional review body:** Women representatives in constitution review bodies occupy positions of power, but that often comes at a cost. They are subject to gender biases that question their credibility and legitimacy as political actors in addition to their gender equality priorities. Male allies and actors outside of the formal process should seek ways to support these women who are ultimately the spokespersons for the gender equality agenda within the constitutional process.
- **Support and enable constitutional implementation:** Constitutions only provide de jure rights and protections. Continued pressure on and engagement with policymakers is needed to make those hard-won rights a reality. Gender equality advocates should concentrate on activities that promote the implementation of specific provisions, such as law/policy making, the establishment of gender equality machineries, and public interest litigation.



4

ADVANCING WOMEN'S  
RIGHTS AND GENDER  
EQUALITY THROUGH  
CONSTITUTIONAL DESIGN





As noted in Chapter 2, constitutional content can have a significant impact on women's lived experiences. A well-designed, gender-responsive constitution may enable women to assert their rights, enjoy full and equal citizenship, and participate in political decision-making and public life on an equal footing with men. However, a constitution can also obstruct women's equality and agency and limit their rights and freedoms.<sup>114</sup> Therefore, what rights and protections are included in a constitution and how those provisions are worded are critically important and lay the groundwork for effective implementation.

While not exhaustive, this chapter explores eight broad categories of constitutional provisions: equality and non-discrimination; women's rights; affirmative action, political participation and participation in public life and institutions; citizenship and nationality; marriage and family life; property, inheritance and land tenure; status of international law; gender equality machineries. The categories represent some of the first-order provisions that relate to gender equality and women's rights as reflected in CEDAW and other international human rights instruments identified in the UN Women's Global Gender Equality Constitutional Database.<sup>115</sup>

## BOX 7 · PRACTICAL TOOLS AND GUIDANCE FOR CONSTITUTIONAL DESIGN

The categories and guidance included in this chapter provide an overview of key considerations for designing gender-responsive constitutions. The following resources should be referenced for additional guidance on constitutional design:

**UNDP, 2017. Women's Rights in Constitutions: Good global practices in advancing gender equality and women's empowerment in constitutions (2017)**: This policy guidance is designed to build the capacity of UNDP staff to advocate for the advancement of gender equality and women's human rights and provide technical support to a range of partners and national stakeholders. Topics include equality and non-discrimination, affirmative action, gender machineries and human rights bodies, and political, civil, economic, social and cultural rights.

**International IDEA, 2016. Constitution Assessment for Women's Equality**: This resource provides extensive guidance on a wide array of topics to analyze a constitution or draft constitution from the perspective of the substantive equality of women. Using a series of questions, short explanations and example provisions from constitutions around the world, the Assessment examines 55 of the most critical constitutional issues that affect women's rights and gender equality including values and principles; equality and non-discrimination; economic and social rights; citizenship; legislature and elections; government; implementation and enforcement; and constitutional interpretation.

**Euromed Feminist Initiative IFE-EFI, 2015. ABC for a Gender Sensitive Constitution: Handbook for engendering constitution-making (2015)**: This handbook provides a feminist perspective on both process and design elements of constitutional review. Chapter 3 notes which rights and principles should be included in a gender-responsive constitution and Chapter 5 explores strategies to ensure constitutional enforcement.

Additional areas for consideration that are not featured in this Guidance Note include education; employment rights and protection; protection from violence; sexual and reproductive rights; sexual orientation and gender identity; and status of religious/customary law.<sup>116</sup> There are also a range of constitutional categories that are not explicitly linked to gender equality, but can impact the achievement of women's rights, such as decentralization, the separation of powers and electoral system design.<sup>117</sup>

While each section includes specific guidance on international good practice, constitutional design choices should also broadly seek to promote international norms and standards and ensure that selected approaches are reflective of the actual (not assumed) needs and experiences of women in the local context.

## BOX 8 - GENDER INCLUSIVE LANGUAGE<sup>118</sup>

How a constitution is written, or the specific language used, is another important feature of a gender-responsive constitution. Historically, constitutions have been written using “gender exclusive” language – applying masculine pronouns (i.e., he/his) to reference people, either individually or collectively, which reinforces gender biases that limit women's participation in political and public life (e.g., assumptions that the rights, offices and institutions described in the constitution privilege men over women). Some contemporary constitutions have employed more gender-neutral terms (e.g., person or citizen). However, removing all references to gender may still result in women's exclusion due to the same gendered assumptions (e.g., that public figures should be men).

A constitution can more effectively promote gender equality **by using both masculine and feminine pronouns** (e.g., she/he, her/his) to address gender biases. This should be integrated into all provisions that name person(s) and particularly provisions describing official positions traditionally occupied by men (e.g., presidency, premiership, judiciary).

### EXAMPLE PROVISIONS

**Constitution of the Republic of Tunisia (2014) – Article 21:** All citizens, **male and female**, have equal rights and duties, and are equal before the law without any discrimination.

**Constitution of the Republic of Fiji (2013) – Section 76(3):** The Supervisor of Elections must comply with any directions that the Electoral Commission gives **him or her** concerning the performance of **his or her** functions.

**Constitution of the Republic of Turkey (1982) – Article 104:** The President of the Republic is the head of the State. In this capacity, **he/she** shall represent the Republic of Turkey and the unity of the Turkish Nation...

*For additional guidance see ABC for a Gender Sensitive Constitution, Chapter 4. Op. Cit.*

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## 4.1 EQUALITY AND NON-DISCRIMINATION

Equality and non-discrimination are core international human rights standards and foundational building blocks for every constitution. CEDAW affirms the principle of equality between women and men throughout its provisions.<sup>119</sup>

Nearly all constitutions explicitly guarantee gender equality by prohibiting discrimination and/or guaranteeing equal rights.<sup>120</sup> These principles offer powerful protection of women's human rights, as recognized and promoted by CEDAW. Since all rights are fundamentally indivisible, interrelated and interdependent, these provisions in particular provide a high standard against which to hold other fundamental rights and freedoms as well as laws and policies (*see for example the cases from Ghana and South Korea in Section 3.3.3 Implementing the Constitution*).<sup>121</sup>

As described in Chapter 2, most constitutions provide basic protections for formal equality (i.e., equality before the law, equal protection of the law) (*see Section 2.1 Global Trends Prioritize Gender Equality*). But formal equality fails to take into account the historic discrimination and inequality that women have and continue to experience. As such, constitutions should also include language that promotes substantive equality (i.e., equal benefit or results, equal opportunities, equal access, equality in practice) to recognize how power dynamics and the different lived experiences of individuals and

groups may shape their ability to ultimately achieve equality. While considerably fewer constitutions (e.g., Ecuador) include such provisions, they are necessary for achieving equality between women and men.<sup>122</sup>

Non-discrimination on the basis of sex is similarly multi-faceted. Beyond basic prohibitions, provisions should also include:<sup>123</sup>

- definitions that include both direct and indirect discrimination;
- recognition of multiple forms of discrimination;
- application of prohibitions to both private and public persons/institutions; and
- a clear complaints process with remedies.

Women have multiple intersecting identities that can also result in multiple forms of discrimination. Recognition of indirect discrimination is also needed to account for historic gender inequalities.<sup>124</sup> This occurs when seemingly gender-neutral laws/policies have a discriminatory effect against women. For example, some constitutions require a certain level of educational attainment to stand for elected office, which is on its face gender neutral but may have a disproportionate impact on women in countries where there is unequal access to education.



**Table 1 - Example provisions for equality and non-discrimination**

<b>Basic Law of the Federal Republic of Germany 1949, as amended to 2019</b>	(1) All persons shall be equal before the law. (2) Men and women shall have equal rights. The State shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist. (3) No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability.... (Art. 3)	Formal and substantive equality
<b>Constitution of the Republic of Armenia 1995, as amended to 2020</b>	All people are equal before the law. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances shall be prohibited. (Arts. 28-29)	Non-exclusive list of grounds on which discrimination is prohibited
<b>Constitution of the Republic of Ecuador, 2008, as amended to 2021</b>	... The State shall adopt affirmative action measures that promote real equality for the benefit of the rights-bearers who are in a situation of inequality. ... (Art. 11) The following rights of persons are recognized and guaranteed: ... 4. The right to formal equality, material equality and nondiscrimination. ... (Art. 66)	Formal and substantive equality
<b>Political Constitution of the Plurinational State of Bolivia 2009</b>	II. The State is based on the values of unity, equality, inclusion, dignity, liberty, solidarity, reciprocity, respect, interdependence, harmony, transparency, equilibrium, equality of opportunity, social and gender equality in participation, common welfare, responsibility, social justice, distribution and redistribution of the social wealth and assets for well-being. (Art. 8)	Gender equality is Stated as a value, principle or objective of the State
<b>Constitution of the Republic of South Africa 1996, as amended to 2012</b>	(1) Everyone is equal before the law and has the right to equal protection and benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. (3) 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. ... (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair. (Sec. 9)	Includes formal and substantive equality; recognition of multiple forms of discrimination; applies to private actors
<b>Constitution of the Republic of Serbia 2006</b>	All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited. (Art. 21)	Prohibits direct and indirect discrimination

## BOX 9 - LIMITATION AND DEROGATION PROVISIONS

Limitation and derogation provisions (sometimes referred to as ‘claw back clauses’) allow certain rights to be partially limited for justifiable reasons. Derogation provisions allow for limitations only in specific circumstances (e.g., in a State of emergency). In some cases, these types of clauses are necessary and reasonable for the common good. For example, freedom of expression may be limited by a prohibition against inciting violence against a specific individual or group. But in some cases, claw back clauses can have a real impact on gender equality and women’s rights provisions. UN Women finds that 11 constitutions include limitation clauses that allow exceptions to non-discrimination clauses in matters of personal law (e.g., marriage, divorce, adoption and inheritance) and 14 constitutions discriminate against women in matters of citizenship.<sup>125</sup> Careful consideration is needed to ensure that such clauses do not undo gains to eliminating discrimination against women in law and in practice. Gender equality advocates should seek to make equality and non-discrimination an absolute right (i.e., cannot be limited under any circumstances) or, if not an absolute right, a non-derogable right (i.e., it can be limited but not suspended).

*For additional guidance on limitation clauses broadly, see Ahmed and Bulmer 2014.*

## UN WOMEN Case examples of implementing equality and non-discrimination provisions

### Opportunities for supporting substantive equality through the law in Kenya<sup>126</sup>

In Kenya, UN Women has worked to support the implementation of substantive equality in various sectors, as mandated by Article 27 of the 2010 Kenyan Constitution. For example, UN Women provided technical and financial support to the Public Procurement Regulatory Authority to implement Article 227(2)(b) of the constitution which provides for “the protection or advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination.” Trainings reached 1,000 local and national procurement officials and participants reported that they had a better understanding of how to implement their budgets, annual procurement plans, and contracts in line with the law that requires 30 per cent of government procurement contracts to go to businesses owned by women, youth, and people with disabilities. UN Women also worked with over 2,000 women entrepreneurs to better understand procurement requirements and how to submit bids positioned to win tenders.

### Audit and amendment of discriminatory laws in Côte d’Ivoire and Nepal<sup>127</sup>

UN Women has supported and enabled legal reform initiatives to adapt or repeal discriminatory laws in a number of countries. In **Côte d’Ivoire**, UN Women worked with the Ministry of Women, the Ministry of Justice, the Association of Women Lawyers of Côte d’Ivoire, and the National Observatory of Equity and Gender to conduct a gender audit of existing legislation. This included an inventory of laws containing discriminatory clauses coupled with an advocacy plan and proposals for revising those laws. With the support of UN Women,

the government initiated its review, which led to an amendment of the Marriage Act, which currently provides for equal management of the household among spouses.

Following the adoption of **Nepal's** new Constitution in 2015, the Ministry of Justice identified a need to harmonize 315 laws and enact 110 new federal laws, 22 provincial laws, and six local level laws with the new constitutional standards. UN Women provided technical assistance and advocacy on a number of legislative processes to amend discriminatory provisions. For example, UN Women provided the Ministry of Labor and Employment with a position paper as technical guidance to identify gender gaps and alternative provisions to the Foreign Employment Act. UN Women also led a joint review of the draft Criminal and Civil Code and submitted to the Speaker of Parliament its recommendations to end discrimination against women. Emerging from these recommendations, the Country's Criminal (Code) Act 2017 criminalizes 'chhaupadi' (a harmful traditional practice of socially isolating women and girls during their menstrual period) and the Country Civil (Code) Act 2017 ensures equality before the law, equal protection of the law, and prohibits all forms of discrimination.

## 4.2 WOMEN'S RIGHTS

Standalone provisions on women's rights extend beyond general principles of equality and non-discrimination by naming rights and freedoms for women explicitly. These clauses recognize that in order to achieve substantive equality, additional protections for women are needed in specific areas (e.g., social/economic rights, political participation, protection from violence). Such stand-alone clauses can also serve as mechanisms for holding States accountable to their obligations under CEDAW and other international human rights instruments.<sup>128</sup> They provide an important entry point for the domestication of global and regional legal standards

in areas such as equal access to education, health, citizenship and participation in elected and appointed bodies. Despite this important role, only 24 constitutions to date include stand-alone women's rights provisions.<sup>129</sup>

Some constitutions provide broad language that is complementary to substantive equality provisions, while others identify specific areas where women have faced discrimination. In order to develop provisions that are locally relevant and sufficiently tailored, the latter approach must be squarely grounded in the expressed needs of women.

**Table 2 – Example provisions for women's rights**

<b>Political Constitution of the Republic of Colombia 1991, as amended 2020</b>	Women and men have equal rights and opportunities. Women cannot be subjected to any type of discrimination. During their periods of pregnancy and following delivery, women shall benefit from the special assistance and protection of the State and shall receive from the latter food subsidies if they should thereafter find themselves unemployed or abandoned. The State shall support the female head of household in a special way. (Art. 43)	Particular focus on women's economic rights
<b>Constitution of the Socialist Republic of Vietnam 1992, as amended to 2013</b>	1. Male and female citizens have equal rights in all fields. The State shall adopt policies to guarantee the right to and opportunities for gender equality. 2. The State, society and family shall create the conditions for women to develop comprehensively and to advance their role in society. 3. Gender discrimination is prohibited. (Art. 26)	Broad language on women's rights

<b>Constitution of the Arab Republic of Egypt 2014 as amended to 2019</b>	<p>The State shall ensure the achievement of equality between women and men in all civil, political, economic, social, and cultural rights in accordance with the provisions of this Constitution.</p> <p>The State shall take the necessary measures to ensure the appropriate representation of women in the houses of representatives, as specified by Law. The State shall also guarantee women's right of holding public and senior management offices in the State and their appointment in judicial bodies and authorities without discrimination.</p> <p>The State shall protect women against all forms of violence and ensure enabling women to strike a balance between family duties and work requirements.</p> <p>The State shall provide care to and protection of motherhood and childhood, female heads of families, and elderly and neediest women. (Art. 11)</p>	<p>Identifies specific areas in which to promote women's rights</p>
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## UN WOMEN Case examples on the implementation of women's rights

### Enabling equal opportunities and gender-responsive elections in Zimbabwe<sup>130</sup>

Section 80 of the 2013 Zimbabwean constitution calls for women's explicit right to equal opportunities. In support of this provision, UN Women conducted a range of activities to create an enabling environment for women's political participation, particularly as political candidates. In partnership with UNDP, UN Women worked to increase women's participation in the electoral processes by strengthening the capacity of the Zimbabwe Electoral Commission (ZEC) to establish gender-responsive procedures, policies, systems and a program of civic education. It provided technical expertise to ZEC in conducting its first baseline study on Gender in Elections, reviewed the voter education manual, and trained ZEC elections staff on how to mainstream gender into the electoral cycle.

UN Women and UNDP supported the ZEC to mainstream gender into its voter education in 2018. Voter education materials were developed, printed and disseminated in all 10 provinces of the country. Gender campaign messages were also disseminated through social media and women's civil society organizations. Efforts were made to ensure women's active role in the election administration structures, including trainers, voter educators, and voter registration and polling staff.

With UN Women technical support and financial support, a Gender Observatory was also established to gather evidence and document women's experiences throughout the electoral cycle in line with national, regional and international provisions through a multi-stakeholder platform managed by the Zimbabwe Gender Commission. The Gender Observatory engaged political parties on addressing electoral violence and specifically violence against women.

### Women's rights made explicit in Victims and Land Restitution Law in Colombia<sup>131</sup>

In 2011, the Colombian parliament passed the Victims and Land Restitution Law, which includes 25 Articles on gender equality and women's human rights. UN Women advocated for the inclusion of gender perspectives and supported the participation of women's groups in discussions on the draft law. Implementation began



in 2012 with mass outreach to ensure women were able claim compensation. A training course helped government officials and social service groups gain new understanding of women's rights. In July 2012, UN Women signed a Memorandum of Understanding with the Unit for Integral Attention and Reparation of Victims, the key agency for implementation of the law. The agreement ensured the continued inclusion of a gender registration process, attendance, and redress for women survivors of conflict. UN Women trained officials from the Unit, with special emphasis on sexual and gender-based violence.

## 4.3 AFFIRMATIVE ACTION, POLITICAL PARTICIPATION AND PARTICIPATION IN PUBLIC LIFE AND INSTITUTIONS

Many constitutions employ affirmative action provisions to address historical and widespread discrimination against women and to promote progress toward substantive gender equality. To date, 99 constitutions include broad affirmative action provisions, while 28 constitutions cite guarantees on quotas related to women's political participation. Similar to the 34 existing stand-alone women's right provisions, these aforementioned clauses specifically mention women, sex or gender within the context of achieving equality.<sup>132</sup>

The CEDAW Committee defines affirmative action as "positive action, preferential treatment or quota systems to advance women's integration into education, into the economy, politics and employment" and for the purposes of "[accelerating] the equal participation of women in the political, economic, social, cultural, civil or any other field."<sup>133</sup> The Convention also makes it clear that such measures do not constitute discrimination against men.

As defined by Article 4 of CEDAW, affirmative action provisions (sometimes referred to as 'temporary special measures') are grounded in an assumption that at some point, equality will be achieved and

such special measures will no longer be needed. Thus, they are referred to as "temporary," even though they may be required for an extended and undetermined period of time. These are distinct from stand-alone women's rights provisions (i.e., provide broad language in support of substantive gender equality) and special measures that target women due to biological differences related to reproduction (e.g., reproductive and maternal health care, maternity leave).<sup>134</sup>

There is no single blueprint for affirmative action provisions. They can be broad (e.g., creating a general State obligation to take action in support of women's equality) or very specific (e.g., providing the exact number of reserved seats for women in parliament) (see *examples in Figure 7*). In a select number of constitutions, both broad and specific provisions are included. For example, the 2010 Kenyan constitution calls for affirmative action programs and policies broadly (Article 27) and also provides specific guidance on the number of women appointed/elected in institutions across different levels of the government (Articles 27, 81, 97, 98, 127, 175, 177, 197, 250).

**FIGURE 7 - A RANGE OF POSSIBLE APPROACHES TO AFFIRMATIVE ACTION**

**BROADER AFFIRMATIVE  
ACTION LANGUAGE**

**MORE SPECIFIC AFFIRMATIVE  
ACTION LANGUAGE**

<p><b>Constitution of the Republic of Congo 2002</b></p> <p>... The woman has the same rights as the man. The law guarantees and assures their promotion and their representativeness in all political, elective and administrative functions. (Art. 8)</p>	<p><b>Constitution of the Republic of Tunisia 2014</b></p> <p>The state orks to attain parity between women and men in elected Assemblies. ... (Art. 46)</p>	<p><b>Constitution of the Republic of Kenya 2010</b></p> <p>(8) In addition to the measures contemplated in clause (6), the State shall take legislative and othe measures to implement the principle that not more that two-thirds of the members of elective or appointive bodies shall be of the same geneder. (Art. 27)</p>	<p><b>Constitution of Nepal 2006, as amended to 2015</b></p> <p>(1) National Assembly shall be a permanent house. (2) there shall be fifty-nine members in tha National Assembly as follows: (a) Fifty six members elecceted from an Electoral Collage... with eight members from each province, including at least three women, one Dalit, one person with disability or minority; (b) Three members, including at least one woman, to be nominated by the President on the recommendation of Government of Nepal. ... (Art. 86)</p>
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Affirmative action provisions, such as quotas or other similar mechanisms, are increasingly used to bolster women's political rights and participation in public life and institutions. The measure is most commonly used to increase women's representation in national-level parliaments, through the use of:<sup>135</sup>

- **Candidate quotas:** A minimum percentage of women candidates (includes zipper or zebra lists where equal numbers of female and male candidates alternate across the candidate list).
- **Reserved seats quotas:** A certain number of parliamentary seats are reserved for women.
- **Gender-neutral quotas:** A maximum level of representation for either gender (e.g., neither gender can occupy more than 60 per cent of seats).

Women's participation and representation in political parties as well as electoral bodies also warrants attention. Political parties are the 'gatekeepers' to elected office, so how they function internally and whether women are able to gain leadership positions within political parties is also critical to women's representation.<sup>136</sup> Similarly, women's representation in electoral bodies is needed to ensure that electoral rules do not directly or indirectly discriminate against women.<sup>137</sup> Only 12 constitutions include provisions requiring women's participation and/or imposing the principle of non-discrimination on the basis of gender in electoral bodies and only four constitutions explicitly call for the inclusion of women.<sup>138</sup>

While in some cases quotas can be effective, many countries have struggled to fully implement them. For example, Kenya's two-third gender-neutral quota remains unfulfilled, despite 10 years of targeted advocacy by members of parliament,

civil society and other advocates. Implementing legislation has been rejected and continues to face delays.<sup>139</sup> Gender quotas can also be seen as ‘ceilings’ for women’s participation, thereby focusing efforts on simply achieving the quota or discouraging women’s representation beyond the quota. Additionally, women who occupy positions as a result of quotas or other mechanisms face additional barriers to their perceived legitimacy and competency. This highlights the need for careful implementation design and serves as a reminder that affirmative action should not be overly relied upon to rectify historic underrepresentation (see *Case Examples on the Implementation of Affirmative*

*Action, Political Participation and Participation in Public Life and Institutions*).<sup>140</sup>

Gender equality advocates should also avoid constitutional provisions that may limit women’s opportunities due to indirect discrimination.<sup>141</sup> For example, constitutional provisions (as well as provisions in implementing legislation) that place requirements on electoral candidates (e.g., education level) or candidates for public office (e.g., merit or competency) may appear gender neutral but can have a disproportionate negative impact on women due to unequal access to resources.

**Table 3 – Example provisions for affirmative action, political participation and participation in public life**

<b>Constitution of the Republic of Zimbabwe 2013 as amended to 2017</b>	<p>(1) The State must promote full gender balance in Zimbabwean society, and in particular—</p> <p>(a) the State must promote the full participation of women in all spheres of Zimbabwean society on the basis of equality with men;</p> <p>(b) the State must take all measures, including legislative measures, needed to ensure that—</p> <p>(i) both genders are equally represented in all institutions and agencies of government at every level; and</p> <p>(ii) women constitute at least half the membership of all Commissions and other elective and appointed governmental bodies established by or under this Constitution or any Act of Parliament;</p> <p>and</p> <p>(c) the State and all institutions and agencies of government at every level must take practical measures to ensure that women have access to resources, including land, on the basis of equality with men.</p> <p>(2) The State must take positive measures to rectify gender discrimination and imbalances resulting from past practices and policies. (Sec. 17)</p>	Broad affirmative action language that also provides specific benchmarks for elected and appointed bodies
<b>Constitution of the Democratic Republic of East Timor/Timor-Leste 2002</b>	<p>1. Direct and active participation by men and women in political life is a requirement of, and a fundamental instrument for consolidating, the democratic system.</p> <p>2. The law shall promote equality in the exercise of civil and political rights and nondiscrimination on the basis of gender for access to political positions. (Sec. 63)</p>	Women’s participation in political life is recognized as essential to democracy
<b>Constitution of the Islamic Republic of Pakistan 1973, as amended to 2019</b>	<p>(1) The Senate shall consist of one-hundred and four members, of whom,</p> <p>(a) fourteen shall be elected by the members of each Provincial Assembly;</p> <p>(b) eight shall be elected from the Federally Administered Tribal Areas, in such manner as the President may, by Order, prescribe;</p> <p>(c) two on general seats, and one woman and one technocrat including aalim shall be elected from the Federal Capital in such manner as the President may, by Order, prescribe;</p> <p>(d) four women shall be elected by the members of each Provincial Assembly;</p> <p>... (Art. 59)</p>	Reserved seats quotas

<b>Constitution of the Federal Government of Belgium 1994, as amended to 2019</b>	§ 3. The Senate is composed of no more than two-thirds of senators of the same gender. ... (Art. 67)	Gender-neutral quota
<b>Constitution of the Argentine Nation 1853, as amended to 1994</b>	... Actual equality of opportunities for men and women to elective and political party positions shall be guaranteed by means of positive actions in the regulation of political parties and in the electoral system. (Sec. 37)	Requirements for political parties
<b>Constitution of the Italian Republic 1947, as amended to 2020</b>	Any citizen of either sex is eligible for public offices and elected positions on equal terms, according to the conditions established by law. To this end, the Republic shall adopt specific measures to promote equal opportunities between women and men. ... (Art. 51)	Affirmative action related to public office and elected positions

## UN WOMEN Case examples on the implementation of Affirmative action, political participation and participation in public life and institutions

### Supporting women candidates and women voters in Sudan<sup>142</sup>

In 2010, before the first multi-party elections in 24 years, UN Women launched a multi-pronged effort to improve Sudanese women's electoral capacities. The program helped women candidates improve their efficacy, encouraged women's representation in electoral bodies, and supported voter and civic education that emphasized gender equality. Achieving wide outreach, these activities helped bring a record number of women to the polls and ensured that a 25 per cent quota for women parliamentarians was reached nationwide. In partnership with the African Union, UN Women also held gender and election briefings to acquaint election observers with the status of women's involvement in the ongoing election process. Advocacy and capacity-building work supported by UN Women from 2012 to 2014 also led to an amendment of the electoral law which raised the gender quota for legislative bodies from 25 per cent to 30 per cent.

UN Women also worked to strengthen Sudanese women's positions inside political parties. It conducted a gender analysis and review of political parties' constitutions to ensure compliance with affirmative action provisions in the 2005 Interim National Constitution and the Political Parties Act. Women leaders from the ten main political parties were also trained on leadership skills to enhance their capacity to vie for leadership positions within their party. An output of the training was the realization that women in all political parties played a subordinate role to that of men. Women resolved to come together across political lines to discuss common concerns and carry out joint advocacy to promote gender mainstreaming and women's empowerment in political party governance.

### Accountability for violence against women political leaders in Bolivia<sup>143</sup>

In 2012, the Bolivian Legislative Assembly adopted the Law against Political Violence and Harassment against Women – the first standalone law of this kind in the world. UN Women provided technical and financial assistance for this legislation, which mandates two- to five-year prison sentences for anyone who pressures, persecutes, harasses or threatens a woman exercising public functions and up to eight years in prison for



committing physical, psychological or sexual aggression. The law was passed following extensive advocacy by women's groups, particularly the national women's network Coordinadora de la Mujer. UN Women also supported the Association of Female Municipal Councilors and Mayors and the Supreme Electoral Court in drafting a protocol for the implementation of the law at the local level. It consulted and validated the protocol with women local councilors all over the country. The Ministry of Autonomies endorsed the protocol used by Municipal Councils to assess local efforts to guarantee women's continued political leadership and participation.

#### **Law-making and advocacy to support women's political participation in Kenya<sup>144</sup>**

In close partnership with the Kenya Women Parliamentarians Association (KEWOPA), UN Women supported continued advocacy on the passage of a Gender Bill that would enact the constitutionally mandated two-thirds gender quota. But despite nearly a decade of efforts, the Bill has not yet been approved by parliament. In 2015, UN Women provided KEWOPA with financial resources and technical capacity and helped mobilize the women's movement to engage with drafting a two-thirds gender Bill. KEWOPA held at least three consensus and capacity-building sessions focused on promoting discussion and drafting the Bill. Strategies led or supported by UN Women also included facilitating debate between political parties, MPs and women parliamentarians on attaining a formula to address the implementation of the two-thirds gender quota in addition to organizing lobbying and advocacy by the Ministry of Public Service, Youth and Gender Affairs, KEWOPA, key women political leaders, women's organizations, and religious leaders under the leadership of The National Gender and Equality Commission. However, after intense advocacy, including lobbying 147 male parliamentarians to support the Bill, there was not sufficient support. In 2016 and 2018, a draft Bill was debated in parliament but failed to obtain the required number of votes. As of June 2020, a Bill has not yet been passed.

Beyond law-making, UN Women has also conducted a wide range of activities related to promoting women's political participation in Kenya. This includes trainings and support for women candidates from all political parties, campaigns to raise public awareness on the need for more women in elected positions, and the prevention of violence against women in elections through the creation of a Women's Situation Room.

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## **4.4 CITIZENSHIP AND NATIONALITY**

Citizenship is a basic precondition to gender equality.<sup>145</sup> The right to citizenship, or the rules that govern how citizenship is granted or revoked, can have implications for other core human rights. For example, citizenship rules can impact whether/how women are able to fully claim the rights and provisions that are granted to citizens, including the right to vote or stand for public office, freedom of movement and choice of residence, and access to a range of public services and benefits.<sup>146</sup> Despite

historic gains on equality and non-discrimination provisions (see *Section 2.1 Global Trends Prioritize Gender Equality*), citizenship provisions have lagged behind. An estimated 50 percent of constitutions provide an explicit right to citizenship, either by descent, place of birth or both. However, 14 per cent of these constitutions restrict the ability of women to confer citizenship to their child and/or spouse. The other half either defer to domestic law or make no mention of citizenship.<sup>147</sup>

Historically, women's citizenship rights have been defined largely by their relationships with men (i.e., granted through patrilineal relationships or marriage).<sup>148</sup> This can have disastrous effects, such as rendering women Stateless when widowed or divorced. As such, recent trends have sought to promote women's equal and independent citizenship rights, including a woman's right to retain

citizenship upon divorce as well as the ability to transfer citizenship to her spouse and children.<sup>149</sup> Article 9 of CEDAW requires that women have equal rights with men to acquire, change or retain their nationality. Equal citizenship rights are necessary to demonstrate that the State does not privilege men above women.

**Table 4 – Example provisions for citizenship and nationality**

<b>Constitution of the Republic of Malawi 1994, as amended 2017</b>	1) Women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status which includes the right– (a) to be accorded the same rights as men in civil law, including equal capacity– ... (iv) to acquire and retain citizenship and nationality. ... (Sec. 24)	Principle of non-discrimination applied to citizenship and nationality
<b>Constitution of the Republic of the Philippines 1987</b>	The following are citizens of the Philippines: (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution; (2) Those whose fathers or mothers are citizens of the Philippines; (3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and (4) Those who are naturalized in accordance with law. (Art. IV, Sec. 1)	Equal citizenship rights through parentage
<b>Constitution of Barbados 1966, as amended to 2007</b>	(1) The following descriptions of person also have the right upon application to be registered as citizens of Barbados, namely— (a) a person who has been ordinarily resident in Barbados throughout the period of ten years (or such longer period as may be prescribed) immediately preceding that person's application; (b) a person who has been married to a citizen of Barbados, and has cohabited with that citizen, for such period as may be prescribed immediately preceding that person's application. ... (Sec. 3A)	Equal citizenship through marriage

## UN WOMEN Case examples on the implementation of citizenship and nationality

### Advocating for amendments to a discriminatory citizenship law in Nepal<sup>150</sup>

Nepal's 2015 constitution provides women with some citizenship rights, but those rights are not necessarily equal with that of men. Still, at the time of adoption, the constitution provided rights and protections to women that were not reflected in legislation, namely the Citizenship Act of 2006. As such, shortly after the constitutional process was completed, UN Women began efforts to reform the citizenship law which discriminated against women. In 2016, as an active member of the UN Working Group on Citizenship, UN Women drafted an advocacy tool on the revision of the law, calling for it to be amended in line with the fundamental rights guaranteed in Constitution as well as international human rights standards. UN Women, UNHCR and UNDP also collaborated in bringing together legal luminaries to find solutions to this issue.

In 2017, UN Women funded the National Women Commission (NWC) to map the implementation status of Nepal's international commitments, including CEDAW. The study issued concrete recommendations on amending/repealing all discriminatory provisions in the Constitution, Citizenship Act and Citizenship Rules that prevent women from acquiring, retaining or transferring citizenship on an equal basis with men. The NWC also led a national workshop to disseminate the findings of the study. The workshop was attended by 51 participants (18 women and 31 men), including members of parliament, representatives from various government ministries, women political party leaders, representatives from civil society organizations, journalists, lawyers, women from various security forces (Nepal Police, Armed Police and Nepal Army), representatives from Constitutional Commissions, and the Acting Chairperson, Secretary and senior officers of NWC.

## 4.5 MARRIAGE AND FAMILY LIFE

Women's equal rights in marriage are guaranteed in the UDHR (Article 16) as well as CEDAW (Article 16). Yet, only a quarter of constitutions guarantee equal rights within or while entering and exiting a marriage and even fewer (6 per cent) comprehensively protect equality at every stage (entering, exiting and within marriage).<sup>151</sup>

Recognition of equality in marriage matters for women's independence and ability to make decisions freely with regard to entering and exiting partnerships, reproductive choices, employment, inheritance, property/land ownership and much more.<sup>152</sup> Without those rights, women can be subject to discriminatory practices, like forced marriage and polygamy. Provisions that allow women to marry at a younger age than men can also have implications for child marriage. In some contexts, after divorce, women are denied equal rights to property accumulated during marriage. Women can also lose custody of their children, which is particularly the case for children born out of wedlock. Spousal support requirements can also discriminate against women where non-financial contributions (e.g., childrearing, caregiving) are not given the same weight as financial contributions. Under such heavy burdens, women may become trapped in violent relationships with life-threatening implications.<sup>153</sup>

Provisions that guarantee equality in marriage and family relations should:

- Recognize equality of spouses during all phases of a marriage
- Seek to protect women from forced marriage and divorce
- Enforce the same minimum legal marriage age for men and women
- Ensure that property can be divided equally at the dissolution of the marriage
- Support equal guardianship of children
- Guarantee equal decision-making power over communal property

CEDAW General Recommendation 21 also calls for women to share equal rights and responsibilities with men in informal marriages (e.g., customary, religious and common law) and de facto unions (i.e., common law marriage). These relationships should fall under equal marriage constitutional guarantees and not be subject to limitation (see *Box 9 – Limitation and Derogation Provisions*).<sup>154</sup>

**Table 5 – Example provisions for marriage and family life**

<b>Constitution of the Republic of Zimbabwe 2013 as amended to 2017</b>	The State must take appropriate measures to ensure that— (a) no marriage is entered into without the free and full consent of the intending spouses; (b) children are not pledged in marriage; (c) there is equality of rights and obligations of spouses during marriage and at its dissolution; and (d) in the event of dissolution of a marriage, whether through death or divorce, provision is made for the necessary protection of any children and spouses. (Sec. 26)	Equality in entering, during and ending a marriage
<b>Constitution of Japan 1946</b>	Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. (2) With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes. (Art. 24)	Equality in marriage
<b>Constitution of the Republic of Malawi 1994, as amended 2017</b>	(6) No person over the age of eighteen years shall be prevented from entering into marriage. (7) For persons between the age of fifteen and eighteen years a marriage shall only be entered into with the consent of their parents or guardians. (8) The State shall actively discourage marriage between persons where either of them is under the age of fifteen years. (Sec. 22)	Equal minimum age of marriage for men and women
<b>Constitution of the Republic of Ecuador 2008, as amended to 2021</b>	The stable and monogamous union between two persons without any other marriage ties who have a common-law home, for the lapse of time and under the conditions and circumstances provided for by law, shall enjoy the same rights and obligations of those families bound by formal marriage ties. (Art. 68)	Gender neutral language in regulating right to marriage

## UN WOMEN Case examples on the implementation of marriage and family life

### Law-making to support an anti-patriarchal approach to the family in Bolivia<sup>155</sup>

The Bolivian 2014 Families Code (deliberately in plural to signal new inclusiveness) was the result of advocacy and technical assistance provided to a group of lawmakers by UN Women. UN Women issued a clarification of concepts, principles, and normative guidelines for gender-responsive family legislation with a strong focus on women's and children's freedom from violence. The law embraces a broader and more inclusive concept of 'families' than traditional approaches and it includes considerations for diversity in the structure of the family. Divorce can be pursued by either parties' free will or mutual agreement. And in the case of divorce, the Code also encourages the shared custody of children, recognizing the joint responsibility of both parents in childcare, child-rearing and education. The Code also equates a common law marriage to a civil marriage before the law. In the past, a common law marriage would not acquire legal status until there had been two years of cohabitation.



### Collaboration with traditional chiefs on ending child marriage in Malawi<sup>156</sup>

In Malawi, a constitutional amendment was passed that raised the minimum age of marriage from 15 to 18 years for both girls and boys. UN Women played a pivotal role in lobbying for an end to the discriminatory practice, working with the government in addition to civil society representatives and traditional leaders. UN Women together with the Ministry for Local Government and Rural Development has continued to work with traditional leaders to support the implementation of the amendment. A network of female chiefs and wives of male chiefs was formed to advance the work of community members in ending child marriages and also in a bid to have a critical mass of traditional leaders to sustain the work going forward. UN Women also jointly hosted a conference which targeted over 150 traditional and cultural leaders to discuss child marriages and harmful cultural practices, resulting in the 2018 Blantyre Commitment to Action.

## 4.6 PROPERTY, INHERITANCE AND LAND TENURE

Constitutional protection of women's equal right to buy, own, inherit, and dispose of property and land both within and outside marriage can have serious implications for women, particularly in rural areas where control and ownership are critical to livelihoods, food security and physical security. Strong land rights can lead to women's economic empowerment and increase women's bargaining power in the household.<sup>157</sup> CEDAW recognizes that women should have "equal rights to conclude contracts and to administer property" and in marriage, both spouses should have the same rights "in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property" (Articles 15–16). Because legal regimes for inheritance and property ownership can greatly vary, particularly in plural legal systems, strong constitutional guarantees are needed to protect women's rights.

Discriminatory inheritance laws and practices can lead to women receiving a smaller share as compared to male relatives. Upon death or dissolution of marriage, women can be subject to discriminatory laws and practices that limit their access and ownership of marital property.

While rules governing inheritance are rarely included in constitutions, a growing number of constitutions, particularly in Africa, are integrating women's rights related to land and property ownership.<sup>158</sup> In addition to the marriage-related provisions discussed in the previous section, constitutional guarantees should include women's equal right to inherit, equal ownership and usage of land and property, as well as prohibitions on customary or religious practices related to property, inheritance and land that discriminate against women (*see Box 9 – Limitation and Derogation Provisions*).<sup>159</sup>

**Table 6 – Example provisions for property, inheritance and land tenure**

<b>Constitution of the Czech Republic 1993, as amended to 2013</b>	(1) Everyone has the right to own property. Each owner's property right shall have the same content and enjoy the same protection. Inheritance is guaranteed. ... (Charter, Art. 11)	Broad equality in property and inheritance
<b>Constitution of Nepal 2006, as amended to 2016</b>	(5) There shall be no gender discrimination regarding the right to parental property with regard to all family members. (Art. 18)	Prohibition of discrimination in inheritance; embedded in the gender equality clause
<b>Constitution of the Republic of Kenya 2010</b>	(1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—(f) elimination of gender discrimination in law, customs and practices related to land and property in land;	Extends land rights to apply to customs and practices
<b>Constitution of the Federal Democratic Republic of Ethiopia 1994</b>	7. Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property. ... (Art. 35)	Explicit mention of women's land/property rights

## UN WOMEN Case examples on the implementation of property, inheritance and land tenure

### Advocacy and awareness building on women's property rights in Kenya<sup>160</sup>

In Kenya, shortly after the passage of the 2010 Constitution, UN Women partnered with civil society groups to promote civic engagement and awareness on women's land rights enshrined in the National Land Policy and new Constitution. This included encouraging communities to abandon practices that bar women from owning and inheriting family land. Article 60 of the Constitution calls for the "elimination of gender discrimination law, customs and practices related to land and property in land."<sup>161</sup> UN Women also aimed to enhance the participation of women in decision-making over land management and use and accelerate legislation and implementation of gender sensitive laws regarding land and property.

In 2016, together with the Food and Agriculture Organization (FAO), UN Women engaged in a partnership on access to land rights and ownership for women in Turkana and Tana River counties. A situation analysis on land governance in the two counties was carried out and recommendations disseminated through policy briefs targeting county policymakers on how to enhance women's access to land and natural resources. The policy briefs highlighted the fact that even though policy and legal frameworks provide for equal rights and non-discrimination in access to land, women and youth still face many land-related challenges in Tana River County. The analysis explored community land rights and examined the barriers that women face trying to realize these rights. UN Women and FAO provided recommendations and strategies to strengthen and secure rights to community land for women and youth.

## 4.7 STATUS OF INTERNATIONAL LAW

Incorporating international law into domestic legal frameworks can help to strengthen gender equality, particularly with the integration of treaties like CEDAW which offers a progressive and comprehensive framing of women's rights. International laws and norms may be particularly impactful where the standards for protecting and realizing gender equality are higher in international law.<sup>162</sup>

Countries have taken various approaches for integrating international law commitments into domestic law. The monist or self-executing approach is efficient and straightforward; it enables international law to be directly applied in domestic courts to enforce rights in areas where there is no

domestic law and assists in interpreting existing law. The dualist approach requires enacting legislation, which could result in significant or perpetual delays.<sup>163</sup>

The monist approach gives women more immediate access to rights protected by international law, but could also require sensitization of government actors to ensure treaty obligations are clearly understood and enforced. At a minimum, gender equality advocates should seek to have international law, and especially international human rights law, recognized as a source of law.<sup>164</sup> Some countries have even given international treaties higher authority than domestic law (*see examples below*).

**Table 7 - Example provisions for the status of international law**

<b>Constitution of the Republic of Angola 2010</b>	<p>1. The fundamental rights established in this Constitution shall not exclude others contained in the laws and applicable rules of international law.</p> <p>2. Constitutional and legal precepts relating to fundamental rights must be interpreted and incorporated in accordance with the Universal Declaration of the Rights of Man, the African Charter on the Rights of Man and Peoples and international treaties on the subject ratified by the Republic of Angola.</p> <p>3. In any consideration by the Angolan courts of disputes concerning fundamental rights, the international instruments referred to in the previous point shall be applied, even if not invoked by the parties concerned. (Art. 26)</p>	Rights may be interpreted according to international law
<b>Political Constitution of the Plurinational State of Bolivia 2009</b>	<p>I. The international treaties and instruments in matters of human rights that have been signed and/or ratified, or those that have been joined by the State, which declare rights more favorable than those contained in the Constitution, shall have preferential application over those in this Constitution.</p> <p>II. The rights recognized in the Constitution shall be interpreted in agreement with international human rights treaties when the latter provide more favorable norms. (Art. 256)</p>	International law regarding human rights has supremacy when it is more favorable than the constitution
<b>Constitution of the Kingdom of the Netherlands 1815, as amended to 2018</b>	Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties or of resolutions by international institutions that are binding on all persons. (Art. 94)	International law takes precedence over domestic law
<b>Constitution of Romania 1991, as amended 2003</b>	<p>(1) The constitutional provisions relative to the citizens' rights and freedoms shall be interpreted and applied in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is a party.</p> <p>(2) Where inconsistency exists between the covenants and treaties on fundamental human rights to which Romania is a party, and national law, the international regulations shall prevail except where the Constitution or domestic laws comprise more favourable provisions. (Art. 20)</p>	International legal instruments apply directly

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## UN WOMEN Case examples on the implementation of THE status of international law

### Harmonizing laws after the ratification of the Istanbul Convention in Georgia<sup>165</sup>

In 2017, the Parliament of Georgia confirmed its commitment to combating violence against women by endorsing the ratification of the Istanbul Convention and adopting a package of amendments to 24 laws aimed at harmonizing Georgia's domestic legislation with the Convention. UN Women lobbied the Government for over five years and organized and/or supported several technical meetings and high-level events around this issue. UN Women also provided technical support to the package of legislative amendments. As a result of these amendments, the scope of the legislative framework on domestic violence has been expanded to also cover ending violence against women and girls in general, taking into consideration the gendered nature of domestic violence and addressing the phenomenon of violence against women in a holistic manner. In addition, new Articles envisaging criminal responsibility for stalking, forced sterilization and female genital mutilation have been added to the Criminal Code.

UN Women also coordinated joint advocacy and technical support toward the establishment of the Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence in the executive branch of the Government. The mandate of the Commission covers gender equality, violence against women and domestic violence, and issues related to women, peace and security.

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## 4.8 GENDER EQUALITY MACHINERIES

Gender equality machineries are independent institutions with a constitutional mandate to protect and promote gender equality. Complementary to governmental departments (e.g., Ministry of Gender), these institutions play a key role in supporting the implementation of constitutional guarantees and promoting continued gender mainstreaming across all levels and aspects of the government.<sup>166</sup> Similar to other national human rights institutions, gender machineries monitor and support compliance with international gender equality obligations (e.g., CEDAW, UNSCR 1325), perform core protection and investigation functions, and educate the public about gender equality and women's rights.

Gender equality machineries can be stand-alone institutions with an exclusive gender mandate (e.g., Nepal's National Women Commission) or can be combined with other human rights related mandates

(e.g., Kenya's National Human Rights and Equality Commission). Constitutional provisions should clearly set out the institution's mandate and powers in accordance with the Paris Principles, which offer minimum standards for effective, credible national human rights institutions.<sup>167</sup>

While many countries have dedicated gender institutions, only seven have constitutional mandates.<sup>168</sup> A constitutional mandate provides gender equality machineries with legal and symbolic standing as one of the country's core institutions and also ensures that such institutions cannot be easily dismantled. Beyond a clear mandate, gender equality institutions also require adequate funding and human resources, strong relationships with women's civil society organizations, and meaningful influence over government agenda setting and decision-making in order to be effective.



**Table 8 – Example provisions for gender equality machineries**

<b>Constitution of the Co-operative Republic of Guyana 1980, as amended to 2016</b>	<p>(1) The Women and Gender Equality Commission shall promote national recognition and acceptance that women's rights are human rights, respect for gender equality and the protection, development and attainment of gender equality.</p> <p>(2) The Women and Gender Equality Commission shall consist of persons from each of the categories referred to in subparagraphs (a), (b) and (c), appointed by the President as follows –</p> <p>(a) not less than five nor more than fifteen members, with expertise in women's and gender equality issues, nominated by entities, by a consensual mechanism determined by the National Assembly, after the entities which shall include the Women's Advisory Committee of the Trade Union Congress, are determined by the votes of not less than two-thirds of all the elected members of the National Assembly;</p> <p>(b) the Administrator of the Women's Affairs Bureau, by whatever name that office is designated; and</p> <p>(c) a member who shall be a nominee, without the right to vote, chosen by and from each of the following commissions: the Human Rights Commission, Ethnic Relations Commission, Indigenous Peoples' Commission, and Rights of the Child Commission. (Art. 212Q)</p>	<p>Establishes a stand-alone gender equality institution</p>
<b>Constitution of the Republic of Kenya 2010</b>	<p>(1) There is established the Kenya National Human Rights and Equality Commission.</p> <p>(2) The functions of the Commission are—</p> <p>(a) to promote respect for human rights and develop a culture of human rights in the Republic;</p> <p>(b) to promote gender equality and equity generally and to coordinate and facilitate gender mainstreaming in national development;</p> <p>... (Art. 59)</p>	<p>Human rights commission has explicit gender equality mandate</p>

## UN WOMEN Case examples on the implementation of Gender equality machineries

### Creation of the Zimbabwe Gender Commission in Zimbabwe<sup>169</sup>

UN Women played an important leadership role in supporting the formation of the Zimbabwe Gender Commission. Its implementing legislation was first introduced in 2014 and in response UN Women formed a Technical Committee of Gender Equality Advocates to conduct an in-depth analysis of the Bill and provided further technical support to the Attorney General's office, the Ministry of Women Affairs, Gender, and Community Development, and Parliament on finalizing the draft Bill. As part of this process, UN Women coordinated with civil society organizations to advocate for support to be provided to the Commission at the public consultation and public hearing meetings held by the Parliamentary Committee on Gender. The Parliamentary Committee agreed with the recommendations on ensuring that the Bill was compliant with constitutional provisions. The Bill was adopted into law in 2015. UN Women continued to provide support to the Zimbabwe Gender Commission after its formation, working together with UNDP to build the capacity of the Commission to promote gender equality and women's rights and to monitor and investigate violations of women's rights in the public and private sectors.

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## Support to national gender machineries on achieving international norms and standards in Nepal and Egypt<sup>170</sup>

The 2015 Constitution transformed **Nepal**'s existing National Women's Commission (NWC) into a constitutionally mandated body. In 2017, UN Women provided continuous support to the government with the aim of strengthening the long-term capacity of the NWC to monitor the implementation of CEDAW recommendations. The support to NWC included funds to map the implementation status of Nepal's international commitments, including CEDAW, focusing on reviewing its compliance with key obligations as a State party. The study also mapped how CEDAW and the Concluding Observations have been used to reform laws and policies and as reference in court cases. *(Also see Section 4.4 on the NWC's role in the Citizenship Act).*

UN Women provided technical and financial support to the **Egypt**'s National Council for Women in 2016 to develop a national Vision and Strategy for Women's Empowerment by 2030. This Vision and Strategy mainstreamed a gender equality perspective into the pillars of Egypt's Sustainable Development Strategy. The Vision and Strategy provided an important opportunity to tailor the global 2030 Agenda to the Egyptian context, while building on existing commitments to gender equality, such as those contained in the CEDAW concluding observations and drawing from the lessons learned from the 20-year review of the implementation of the Beijing Platform for Action.

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5

**KEY TAKEAWAYS:  
GUIDANCE FOR GENDER  
EQUALITY ADVOCATES**





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Gender equality advocates play an important role across all phases of constitutional review. From agenda setting to implementation, their leadership, expertise and mobilization is necessary for advancing more gender-responsive constitutions. While Chapters 3 and 4 provided broad guidance and international good practice, this chapter focuses on recommendations for specific actors, namely (1) members of constitutional review bodies, (2) women leaders outside of the formal process, and (3) UN Women staff.

Gender equality advocates regardless of their specific role should take note of the following five principles for maximizing impact in a constitutional process:

- **Priorities should reflect the local context:** Whether gender equality advocates are international, regional or local actors, gender equality and women's rights priorities should always reflect the actual (not assumed) needs and experiences of women in the local context.
- **Support inclusivity and diversity:** Women are a diverse constituency and this diversity should be acknowledged, celebrated and integrated into all parts of an advocacy strategy and substantive agenda. Efforts should also be made to encourage the leadership and participation of women from marginalized groups (i.e., women who face multiple forms of oppression).
- **Understand individual and collective strengths:** Each individual and group brings different strengths and knowledge to the constitutional process. Within the coalition of gender equality advocates, understanding these individual and collective strengths will help to deliver more impact.
- **Balance both supply and demand:** There must be room for both a critical mass of activists speaking with one voice (supply) as well as decision makers/influencers in the constitution review process who are interested and willing to act (demand). Often civil society and others outside of the process focus their efforts on mobilization without sufficiently building and cultivating relationships with individuals inside the process.
- **Plan for implementation:** The adoption of a new constitution or constitutional amendments is not an end in itself; it is only a milestone in a much longer process. Effective implementation is key for making hard-won gender equality provisions a reality.

The remaining guidance builds on these key principles and also identifies specific approaches based on the unique position occupied by each actor.

## 5.1 GUIDANCE FOR GENDER EQUALITY ADVOCATES IN CONSTITUTIONAL REVIEW BODIES

Gender equality advocates that are members of constitutional review bodies can be critical influencers and decision makers for women's rights. However, their ability to shape constitutional outcomes depends on a number of factors, such

as their capacity to marshal sufficient support on gender equality provisions. In some cases, members of constitutional review bodies may publicly espouse support for women's rights but see it as a low priority in the broader constitutional agenda.



This checklist provides broad guidance for members of constitutional review bodies, given their access to and role as constitutional decision makers.

## Checklist for Gender Equality Advocates in Constitutional Review Bodies

- **Identify allies and build internal and external coalitions across party lines.** Internal advocacy will be strengthened when coordinated across party lines (e.g., through a women's caucus) and coordinated with gender equality advocates outside of the formal process (e.g., civil society activists). Gender equality advocates should also seek allies/champions who can influence key decision makers and bring attention to women's constitutional priorities.
- **Foster engagement with external gender equality advocates.** Members of constitutional review bodies are representatives of broader society and should provide space for their constituents to raise specific priorities. Establishing channels for engaging external advocates and experts will help to elevate women's rights as a priority and demonstrate strong public support for the gender equality agenda.
- **Determine substantive priorities and draw on technical gender experts for support.** UN Women, women's civil society, and other international and domestic networks of gender experts are prepared to support the constitutional review body in drafting provisions that are both locally driven and align with international standards. Provisions that will be most foundational/impactful and can be leveraged for future gains (e.g., equality/non-discrimination, women's rights) should be prioritized. Depending on the context, certain types of provisions may be more controversial than others.
- **Develop strategic advocacy for gender equality provisions.** Members of constitutional review bodies should utilize strategic messaging that aligns with the priorities of key influencers/decision makers. Members should also think carefully about how to frame draft gender-related provisions. Consider what is possible now and what may be possible in two or three political cycles. If full gains are not realistic given current political conditions, target basic principles (like equality/non-discrimination and women's rights) that provide a foundation for expansion.
- **Support women within the constitutional review body.** Women representatives in constitution review bodies are subject to gender discrimination that undermines their credibility and legitimacy as political actors. Women may seek to support each other through the creation of a women's caucus or other 'safe spaces' for mobilizing around shared priorities and tackling gendered challenges within the process itself. Male allies should seek ways to support women and elevate their standing within the constitutional review body.

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## 5.2 GUIDANCE FOR WOMEN LEADERS AND GENDER EQUALITY ADVOCATES OUTSIDE OF THE FORMAL CONSTITUTIONAL PROCESS

Gender equality advocates outside of the formal constitutional process include women's civil society, women lawyers or other professional associations, human rights defenders, academics, and others. These gender advocates often play a range of roles, such as educating the public about the constitutional review process and encouraging active public engagement in the process, sustaining pressure on the review body to integrate women's priorities into the new constitution, and providing the review body with technical expertise on gender equality provisions. The following checklist provides broad guidance for these wide-ranging roles.

### Checklist for Gender Equality Advocates Outside the Formal Constitutional Process

- **Mobilize early.** Mobilization of gender equality networks should occur prior to the start of the constitutional process. In conflict-affected contexts, this could mean organizing during or even prior to any peace or political settlement process. Gender equality advocates need to mobilize early in order to promote women's inclusion in the constitutional review body as well as shape rules and procedures that can impact women's leadership and participation within the process.
- **Nurture inclusive, wide-reaching coalitions/ movements.** Building inclusive, diverse coalitions or movements with a shared agenda is one of the most powerful tools influencing constitutional processes. Coalition building should recognize and celebrate the intersectionality of women's experiences and strive to promote the leadership and voice of women from marginalized groups. Gender equality advocates may conduct civic education and consultations to inform other women's movements and support their involvement in the process.
- **Work with allies in the constitution review body.** Network weaving and coordination with members of the constitutional review body can help to align advocacy efforts and illustrate mass public support on key gender equality issues. Gender equality advocates should also seek ways to support women members specifically, strengthening and consolidating the future role for women in political decision-making.
- **Build consensus around priority provisions and develop strategic advocacy.** Effective advocacy requires intentional planning and engagement. To the degree possible, allies inside and outside of the constitutional process should agree on which substantive issues or provisions to prioritize. Messaging should then build on this consensus, reflect the current political context and, where possible, align with the priorities of key influencers and decision makers within the constitutional review body.
- **Support and enable constitutional implementation.** Substantive gender equality requires long-term investment; it is not achieved the moment a constitution is ratified. Gender equality advocates should concentrate on activities that promote the implementation of specific provisions, such as law/policymaking and the establishment of gender equality machineries. Public interest litigation is another important strategy for ensuring constitutional provisions are interpreted in a way that advances gender equality and women's rights.

## 5.3 GUIDANCE FOR UN WOMEN STAFF

For decades, UN Women (and previously UNIFEM) has played a pivotal role in advancing gender equality and women's rights around the world. In constitutional review processes, UN Women works with a range of partners (e.g., women's movements, gender machineries, constitutional review bodies, parliamentary gender caucuses, law reform commissions, UN agencies, international NGOs) to ensure women's perspectives are included in constitutional deliberations and that the resulting constitutional text is gender-responsive. UN Women also works closely with its partners to ensure gender equality and women's rights provisions are properly implemented.

Building on this mandate, staff should consider how to maximize UN Women's unique strengths, resources and access for the advancement of women's rights. The following checklist provides summary guidance for UN Women staff who are supporting constitutional review processes. Additional details and examples are provided in subsequent sections.

### Checklist for UN Women Staff

- **Support gender equality advocates across all phases of a constitutional review process.** UN Women is uniquely placed to support gender equality advocates both inside and outside a constitutional review process, from agenda setting to implementation. In particular, there is significant opportunity to support early mobilization which plays an important part in achieving women's representation/participation and establishing a gender equality agenda.
- **Capitalize on UN Women's convening power to engage with women leaders.** UN Women has the resources and networks to support the creation of broad, inclusive coalitions and has played an important role in facilitating the creation of a common women's agenda in a number of constitution review processes. UN Women is also well placed to connect women activists and others outside of the formal process with representatives of the constitutional review body.
- **Leverage UN Women's close partnerships with government institutions to provide technical assistance.** In many countries, UN Women country offices have provided expertise and resources to advance the gender equality agenda during constitutional review processes and into the implementation phase. Through this role, UN Women has gained entry points into gender equality machineries, parliament and other institutions to support continued progress on women's rights.
- **Continue engagement and advocacy to ensure constitutional provisions are implemented.** In many cases, funding and attention quickly fade after a constitution is promulgated. UN Women has an important role to play in supporting the realization of the rights and protections gained in a new constitution, particularly as it relates to country commitments under CEDAW.

### 5.3.1 SUSTAIN ENGAGEMENT ACROSS ALL PHASES OF CONSTITUTIONAL REVIEW

UN Women has supported dozens of constitutional review processes all over the world. This has been bolstered by the long-term relationships that

country office staff have cultivated with local women leaders and other gender equality advocates. Where possible, staff should use this continued engagement

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as an entry point for supporting gender equality advocates through all stages of a constitutional review process. UN Women is uniquely placed to provide consistent and continued support, as many other international and regional actors that provide gender-related constitutional expertise do not have dedicated country offices for long-term engagement.

To do this effectively, UN Women must sustain close working relationships with the government

and women's civil society, so that advocacy and mobilization channels are well established in advance of any constitution review process. This also requires staff to be aware of if/when a constitutional process might be on the horizon. Once these early mobilization mechanisms are in place, UN Women will be well-placed to support its government, civil society and community partners (*also see Sections 5.3.2 and 5.3.3*).

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## UN WOMEN case example on engagement across all phases of constitutional review – Egypt

**Agenda Setting:**<sup>171</sup> During the Egyptian revolution, UN Women primarily focused on strengthening women's networks and their advocacy capacities, working in close partnership with national women's groups and the transitional government. This included the development of an Egyptian Women's Charter, which was signed by half a million women and men and ratified by 500 women's NGOs. The Charter called for ensuring women's fair representation throughout the democratization process, upholding commitments to all international human rights conventions, extending basic services (especially to poor Egyptian women), and redressing discriminatory legislation, among other recommendations. A Coalition for Civic Education and Women's Participation, composed of 300 NGOs, was also formed to monitor women's political participation during the transition. Ahead of the constitutional process, UN Women also collaborated with MADA for Media Development to raise women's awareness on the principles of Islam regarding women's rights as well as principles such as freedom, equality, participation and social responsibility.

**Consulting, Negotiating, Designing and Adopting a Constitution:**<sup>172</sup> During the constitutional review process, UN Women concentrated its efforts on coordination and outreach to its network of 1000 NGOs from all over the country. UN Women supported civil society consultations and hearing sessions with the constituent committee to gather and identify local priorities. Two comprehensive reports were submitted based on those local consultations. In addition, 10 infographics, 16 knowledge products and 15 short documentaries were disseminated to support the leadership and constitutional rights of women. In 2012, UN Women produced a short documentary in partnership with the National Council for Women, which expressed concerns about the fate of personal status laws and the revival of support for female genital mutilation.

UN Women also worked with civil society organizations in their efforts to promote gender equality within the process. Through UN Women support, Karama brought together 68 women leaders and politicians, male and female civil society representatives, trade union leaders, and media officials to develop a set of 50 recommendations that were later submitted to Constitutional Committee. The Constitution that passed in 2014 reflected some of their key proposals; for example, that women have the right to hold public office and the highest administrative roles.



**Implementing the Constitution:**<sup>173</sup> UN Women has also strengthened the implementation of the 2014 constitution in a variety of different ways. Through legal reform, it has advocated for and supported various pieces of implementing legislation (*also see Section 4.8 Gender Equality Machineries*). UN Women also provided technical assistance to advance amendments on a range of laws including the law on female genital mutilation, personal status law, as well as laws related to violence against women.

Additional contributions have included programs that support the realization of women's rights (*also see Section 3.3.3 on the national ID cards initiative*). For example, UN Women sought to strengthen the capacity of women MPs with the knowledge and skills needed to effectively promote gender equality. Selected MPs participated in interactive discussions with prominent experts and practitioners to learn about how to increase investment in gender equality, reach parity for women at all levels of decision-making, eliminate discriminatory legislation, and address social norms that perpetuate discrimination and violence against women. Special sessions were also held on the role of national women's machineries in leveraging women's rights, the governing regulations of parliament, and the role of parliament as defined in the new Constitution.

UN Women, together with the National Council for Women, The Egyptian Center for Women's Rights and the Association for Egyptian Female Lawyers, also worked to increase women's representation in all levels of government, and particularly local government. UN Women and partners implemented a nationwide awareness-raising initiative to promote community understanding and action about the role of local councils. They reached 35,000 women in 27 governorates, encouraging them to vote and/or run for candidacy at the municipal level to ensure local level development decision-making remains accountable to women. Awareness-raising initiatives were also undertaken on topics such as the Egyptian political system, electoral laws, electoral campaign management, the formulation of electoral programs communication skills, and persuasion of the electorate through the media and social media.

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## 5.3.2 CONVENE AND ENGAGE WOMEN LEADERS

In its engagements with constitutional review processes, UN Women has often played the role of a convener, bringing together women leaders from across society to support gender-responsive constitutional design. This often includes convening women and gender equality advocates to develop a common agenda. In some cases, UN Women supported activities have led to the formation of new coalitions or platforms for engaging in the constitutional process.

Staff should continue to build on this area of expertise, providing resources, coordination and technical expertise where needed. Approaches include network weaving, capacity strengthening, engaging and elevating women from marginalized constituencies, strengthening relationships between women inside and outside of the process, facilitating cross-country learning and reflection, and creating and facilitating entry points for women's participation in the constitutional process.

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## UN Women case examples on convening and engaging women leaders

### Mobilization and coalition building across societal divides in Tanzania<sup>174</sup>

In Tanzania, UN Women supported the creation of the “Wanawake Na Katiba” or “Women for the Constitution” Coalition. The Coalition included 50 civil society organizations representing a wide range of women’s constituencies. It was among the few platforms that set aside religion, political affiliation, social status and ethnicity to represent the diversity of Tanzanian women.

Support provided by UN Women enabled coalition members to effectively advocate throughout the constitutional process. They lobbied the Constitution Review Commission, Constituent Assembly as well as Constitution Review Forums at the ward level. The Coalition provided recommendations in response to each progressive constitutional draft. The third draft of the constitution was a testament to the Coalition’s perseverance, capacity, advocacy and organizational skills as it contained major milestones that aligned with their agenda. Of the Coalition’s 12 key demands, 11 were included in the proposed constitution, including a provision on 50/50 representation of women in parliamentary elections.

Analysis of media reports illustrated a move from reporting on women being called to engage in the constitution-making process to women defining elements of the constitution and identifying key women’s rights issues within it. The news Articles also featured a variety of voices speaking on gender equality issues raised by the Coalition, such as equal representation in parliament, the definition of the age of the child, the age for marriage, and the prevention of violence against women and girls.

### Speaking with “one voice” in Sierra Leone<sup>175</sup>

Similar to efforts in Tanzania and elsewhere, UN Women supported the development of a common women’s agenda in Sierra Leone. In this case, many women’s networks had developed and submitted their own position papers to the Constitution Review Commission. While many of the papers expressed similar priorities, the sheer number of messages threatened to dilute women’s voices.

In response, UN Women embarked on a process of coordinating women’s diverse perspectives, including rural poor and illiterate women, to produce a consolidated women’s agenda to champion in the constitutional review process. UN Women convened 100 key stakeholders for a two-day brainstorming and writing workshop designed to re-familiarize participants with key gender equality issues in the constitution, present the various positions found in the many papers already submitted by women’s groups, and establish some level of consensus as to which issues were most important and needed to be retained in the final document. The media was also engaged to mobilize women’s groups across the country on the need to have a common position paper. Collectively participants synthesized the position papers into one position paper entitled “Many Messages, One Voice.” Most of the recommendations were accepted by the Constitution Review Commission, including a 30 per cent parliamentary gender quota.

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### 5.3.3 LEVERAGE CLOSE PARTNERSHIPS WITH GOVERNMENT INSTITUTIONS

In many countries, UN Women has close working relationships with government institutions (e.g., ministries, gender machineries, human rights bodies, electoral commissions, local government, etc.) that have functions related to the agency's gender equality mandate. Country offices have been able to leverage these relationships to serve as gender equality resources in constitution review processes and subsequent constitutional implementation efforts. For example, staff have provided technical assistance to constitution review bodies on integrating gender equality into draft constitutions, using comparative constitutional examples as well as concluding observations from the CEDAW committee. UN Women has also provided technical assistance and advocacy on law and policymaking/

reform related to constitutional implementation and supported capacity-building and awareness building for government officials on their gender equality obligations. Staff have even use periodic CEDAW reporting as a way to identify priorities and set the agenda for advancing constitutional implementation.

UN Women should continue to work closely with government institutions on fulfilling their constitutional obligations. In many cases, UN Women's support is a welcome resource for overstretched and under-resourced national gender machineries. This continued engagement may even lay the groundwork for potential entry points into future constitutional processes.

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#### UN Women case examples on leveraging close partnerships with government institutions

##### Gender audits to strengthen gender awareness in Georgia, Côte d'Ivoire and The Gambia<sup>176</sup>

In **Georgia**, UN Women as part of the UN Joint Programme for Gender Equality provided support to the parliamentary Gender Equality Council to develop a Gender Impact Assessment methodology for its legislative Bills. UNJP also provided technical expertise and supported Parliament in a self-assessment exercise on its gender capacity. Together with the International Labour Organization, UN Women carried out a similar exercise in **Côte d'Ivoire**. In order to evaluate the extent of gender mainstreaming throughout the ministerial structure, three ministries were selected to participate in a gender audit exercise. This exercise provided the ministries with a diagnostic tool to identify gaps, conduct analysis, and implement recommendations for the appropriate incorporation of gender considerations.

In **The Gambia**, UN Women conducted a gender mapping and analysis of national laws, including the 1997 Constitution, to inform the government's democratic and transitional **justice reforms**. The review was guided by CEDAW and other international and regional human rights instruments in addition to concluding observations and recommendations from the CEDAW Committee. A review committee was established with stakeholders from government and civil society involved in the protection and promotion of the rights of women and girls. The analysis identified ten laws or provisions to be repealed in whole or in part, 19 laws to be revised or amended, and two new laws to be enacted to bring the legislative framework in line with

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the country's gender equality and women's empowerment obligations. The findings were presented to the National Assembly, government ministries, the Truth and Reconciliation Commission, civil society organizations and the UN system for feedback and inputs.

#### **Women leaders mainstream gender in parliament in Tanzania<sup>177</sup>**

With UN Women support, the Tanzania Women Cross-Party Platform and Tanzania Women Parliamentary Group developed an Action Plan and training manual for women MPs on gender, leadership and entrepreneurship. Many of those who were trained then went on to mobilize women's participation in elections. UN Women also distributed policy briefs on gender gaps in the existing constitution to all 126 women MPs, fueling dialogue on the need for a more gender-sensitive constitutional text. This support and engagement of women MPs and women's caucuses strengthened the broader parliamentary knowledge base on gender equality and women's rights (e.g., property, reproductive health, gender-based violence, leadership and political participation and gender budgeting), leading to more successful advocacy on gender principles in the constitutional review process and other debates.

#### **Enhancing gender capacity across government ministries in Nepal<sup>178</sup>**

UN Women worked with various ministries in Nepal to mainstream gender into policies and increase gender capacity. Technical and financial support was provided to the Supreme Court to develop a gender equality and social inclusion (GESI) strategy for the judiciary. Similarly, UN Women through a joint program with FAO, WFP and IFAD, provided technical and coordination support to the Ministry of Agricultural Development to create a GESI component of the Agriculture Development Strategy. Additional efforts have been made to increase the capacity of key government officials to draft, implement and monitor gender-responsive laws, plans, budgets and statistics in line with the constitution and international standards. The country office also enhanced the responsiveness of duty bearers across governance institutions to promote and advance gender equality commitments (e.g., judiciary, line ministries, political parties, national commissions, provincial and local governments).

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### **5.3.4 SUPPORT EFFECTIVE IMPLEMENTATION**

The post-constitution review period is just as important as earlier phases, since this is where tangible advancements can be made toward gender equality. UN Women has historically provided the most support in this phase. For example, many country offices have worked closely with ministries and parliament on law and policymaking/reform in line with new constitutional provisions. UN Women staff have also indirectly supported constitutional implementation by working with women voters and candidates to ensure women have the ability

to claim their political rights and that sufficient numbers of women candidates are available to fulfill constitutionally mandated quotas.

In addition to supporting policy and legislative processes, country offices may consider other strategies and activities that also have long-term effects. For example, this could include strengthening the capacity of women representatives in parliament, ministries, the security sector, etc. to lead on constitutional implementation and, where



possible, women's networks to support these efforts. There is also an opportunity to sensitize officials from all branches of government as well as other statutory bodies on their gender equality-related obligations

(see examples from Section 5.3.3). Staff may also explore how to support and scale gains made through public interest litigation.

## UN Women Examples on supporting effective implementation

### Women's leadership for advancing gender equality in South Sudan<sup>179</sup>

Recognizing the value of investing in women's cross-party coalition building, UN Women established office spaces and a resource centre for the South Sudan Women's Parliamentary Caucus of the National Legislative Assembly. Following a comprehensive needs assessment, UN Women also initiated workshops to strengthen the capacity of the women's caucus and other specialized parliamentary committees. These inputs, combined with additional technical assistance, strengthened the capacity of national and State legislative assemblies to formulate, review and implement legal frameworks to advance women's rights and political participation in decision-making. Most of the resulting policies emerging from these processes, especially within the three key principal ministries (Petroleum and Mining, Education, Science and Technology and Health), were vetted by UN Women to ensure gender sensitivity.

### Investing in new leaders for more inclusive governance in Nepal<sup>180</sup>

UN Women invested in movement building by supporting Nepalese women and their networks to address gender-based inequalities across institutions. One initiative engaged conflict-affected women, home-based workers, rural women, women living with HIV and AIDS, survivors of human trafficking, and female migrant workers who returned home, providing them with training on leadership skills, laws and policies related to gender equality, women's empowerment, and the electoral system. The trainings also strengthened the institutional capacities of women's networks to more effectively communicate their concerns to political parties, women's alliances, planning and implementation bodies, community-based organizations, village groups, and professional associations. In the trainings, women learned about policy tools, political participation and gender inclusion, the local governance system, gender laws, planning procedures and voter education provisioned by the new Constitution.

### Strengthening women's local leadership in Colombia and Kenya<sup>181</sup>

In **Colombia**, UN Women strengthened the capacities of women in government as well as in civil society to better advocate for gender equality and women's rights in their respective decision-making arenas. UN Women, as part of the International Donor Working Group on Gender in Colombia (Mesa de Género de la Cooperación Internacional) and developed in conjunction with the Ministry of the Interior, contributed to a strategy for working with women in elected positions from different parts of the country. This included engaging with approximately 500 women councilors, legislative deputies, mayors and representatives of local administrative bodies to develop resources and training on party caucuses, political control, development plans and participatory budgeting.

With the support from UN Women, the **Kenya** Women Parliamentarians Association established a partnership

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with women members of county assemblies to help county representatives more effectively execute their legislative, representative and oversight roles. The mentorship program led to an increase in women's participation and leadership in legislative debates at the county level. UN Women also provided technical and financial support to the Council of Governors and the Kenya School of Government in the development and roll-out of a curriculum for women county executives. Through the training, participants learned to champion, support and steer gender-responsive governance policies, such as women's economic empowerment at the county level.

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# ANNEX 1: ADDITIONAL RESOURCES

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# ENDNOTES

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- 5 UN Women 2017a, p. 3.
- 6 Brandt et al. 2011, p. 30.
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- 8 For more information on the purpose and scope of constitutions, see Bulmer 2017; Hart 2003; Brandt et al. 2011; Miller 2010.
- 9 Tripp 2016.
- 10 Heymann et al. 2020, p. 69; Cassola 2014, p. 211.
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- 12 See for example UN OHCHR n.d.; UN OHCHR 2020.
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- 50 Tamaru and O'Reilly 2018a, p. 4.
- 51 Ibid.
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- 56 Ibid.
- 57 Brandt et al. 2011, p. 38.
- 58 Bell and Zulueta-Fülscher 2016; International IDEA 2015; Bell et al. 2016.
- 59 For additional information on the different types of constitutional review bodies, see Brandt et al. 2011.
- 60 Cottrell and Ghai 2004, p. 3.
- 61 Fox et al. 2010; Rodriguez-Ferrand 2012.
- 62 Suteu and Bell 2018, pp. 7–9.
- 63 Tamaru and O'Reilly 2018b.
- 64 Ibid.
- 65 Also see Flores and Made 2014, pp. 16–17.
- 66 Tamaru and O'Reilly 2018a, pp. 9–11.
- 67 Suteu and Bell 2018; Bell and Zulueta-Fülscher 2016.
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- 74 Tamaru and O'Reilly 2018a, pp. 56–57.
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- 85 Tamaru and O'Reilly 2018a, p. 22.
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- 89 Women's Caucus et al. 2011, pp. 74–75.
- 90 Flores and Made 2018, pp. 19–20.
- 91 Fletcher 2018; Schofield 2018.
- 92 For additional guidance on developing an effective advocacy strategy, see Tamaru and O'Reilly 2018a and Inclusive Security 2017.

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- 103 Brandt et al. 2011, p. 30.
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- 106 Ibid., pp. 60–61.
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- 111 UN Women 2013b; UN Women 2019c.
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- 113 Tamaru et al. 2018, p. 32.
- 114 Cassola 2014, p. 229.
- 115 UN Women 2016b.
- 116 For additional guidance, see International IDEA 2016a.
- 117 For additional guidance, see International IDEA 2016a; Suteu and Draji 2015. Also see for example, Slack et al 2016; Larserud and Taphorn 2007.
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- 119 For example, see Articles 2, 3, and 15(1).
- 120 Heymann et al. 2002, pp. 32–33.
- 121 Cassola 2014, pp. 230–231.
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- 125 UN Women, 2017a.
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