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AP Photo / Aimen Zine

How Women Influence Constitution Making After Conflict and Unrest

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PHOTO ON FRONT COVER | Members of the Tunisian National Constituent Assembly celebrate the adoption of the new constitution in Tunis, January 26, 2014.

EXECUTIVE SUMMARY

Constitution reform is a frequent feature of peace and transition processes: 75 countries undertook constitution reform in the wake of armed conflict, unrest, or negotiated transition from authoritarianism to democracy between 1990 and 2015. Often complementing peace talks, constitutional negotiations advance new political settlements, bringing diverse parties together to agree on how power will be exercised in a country's future. Increasingly, citizens and international actors alike advocate for participatory constitution-making processes that include a broader cross-section of society—often to address the marginalization and inequalities that contributed to conflict or unrest in the first place.

Despite increasing attention to women's roles in peace processes in recent years—and mounting evidence of positive outcomes when women exert influence—women's roles in constitutional reform remain underexplored. In countries affected by conflict or unrest, 19 percent of members of constitution-reform bodies between 1990 and 2015 were women. Although women's participation levels vary from process to process, their proportion has been increasing in the post-Cold War era.

Nonetheless, women remain far from achieving equal participation in these processes, and access does not always translate to influence. In the eight cases examined in this report, women faced multiple challenges to their participation, including gendered biases that undermined their political legitimacy, barriers to effective coalition building, and powerful parties whose interests conflicted with their own.

Despite these hurdles, the cases show that women have exerted considerable influence on the decision-making process, the text of the constitution, and broader prospects for a successful transition to lasting peace. Women repeatedly bridged divides in the negotiating process, contributing to peacebuilding and reconciliation in deeply divided societies, while also advancing consensus on key issues. They broadened societal participation and informed policymakers of citizens' diverse priorities for the constitution, helping to ensure greater traction for the emerging social contract. They consistently advanced constitutional provisions for more equitable, inclusive societies—whether focusing on women's rights or those of other marginalized groups. Given the correlations between exclusion and conflict, and between gender equality and peace, women's focus on these priorities represent significant contributions to a legal foundation for peaceful and inclusive societies.

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Lessons from the cases studies suggest at least five complementary tactics for women looking to influence constitutional negotiations, and for men and women who wish to support more inclusive constitution-reform processes in fragile and conflict-affected environments:

1

Mobilize early.

The rules for electing or appointing members to a constitution-making body are frequently established early in a peace or transition process. Women typically succeeded in gaining access when they presented a joint front and advocated for inclusion long before the election or nomination process began.

2

Incentivize women's participation, and go beyond tokenism.

Quotas for increasing gender balance among members of constitution-making bodies arguably contributed to higher levels of women's participation. In many cases, however, women then had to overcome a perceived lack of legitimacy—and often did so through subject-matter expertise or by asserting political authority.

3

Cultivate strategic alliances and broad coalitions.

Whether through coordinated coalitions advocating for common goals or cooperation with key political parties and male policymakers, women strengthened their access and influence by building strategic alliances. This included partnering with “insiders” in the constitution-reform body *and* “outsiders” in civil society, as well as across societal divides that underlie sources of conflict or unrest.

4

Frame the debate effectively.

Women repeatedly advocated for issues relating to gender equality and the rights of marginalized groups. When they successfully framed these issues in relationship to overarching goals of peace, reconciliation, or democracy, they were more likely to realize their objectives.

5

Understand the negotiating context, and get creative.

When women had a clear understanding of the constitution-making process, key actors, and major interests, they frequently found creative ways to overcome obstacles to their influence—from convincing dominant players that their interests aligned to blocking procedures until negotiators agreed to include women in their delegations.

These lessons suggest that international donors and those offering technical assistance could support more inclusive constitution-making processes by providing flexible funding and support for women's early mobilization initiatives. They should also increase assistance for training initiatives focused on advocacy and strategic messaging. These should accommodate a range of women's perspectives, while facilitating consensus on shared priorities—not least through trauma-healing and reconciliation activities, where appropriate.

INTRODUCTION: THE GLOBAL CONTEXT

Over the past 25 years, the world has witnessed a wave of constitutional processes associated with peacebuilding and political transitions—from the post-conflict processes in sub-Saharan Africa in the mid-1990s to the Arab Spring in the early 2010s. Globally, 75 countries undertook constitution reform in the wake of armed conflict, unrest, or negotiated transition from authoritarianism to democracy between 1990 and 2015 (see Annex I). Many countries did so more than once. In most cases, countries chose to draft a wholly new constitution, rather than making minor amendments; in part, to mark the start of a new era or break with an unfavorable past. Whatever the extent of reform, countries frequently used the process to acknowledge and address conflict drivers, such as the marginalization of certain groups or demands for self-determination. Constitution reform, therefore, represents a significant opportunity to transform the state, its institutions, and its relationship with society—and to contribute to peacebuilding.

Yet the potential for constitution reform to transform conflict depends, in part, on who gets to participate. Amid growing evidence that exclusion and inequality between groups is a significant driver of conflict and unrest, there is also increasing recognition that good governance depends upon a strong social compact between citizens and the state. Additionally, it has become more apparent that peace processes that include women and other traditionally marginalized groups are more likely to succeed.¹

Over the past two decades, women's participation in constitution making has expanded. Women are increasingly taking on roles as drafters and technical experts, or otherwise representing the needs and interests of their communities. But women are not yet equal participants; an element of constitution reform that remains underexplored. This report examines the

diverse roles that women play in constitution reform during peace and transition processes, their impact on constitution-reform processes and outcomes, and whether and how their participation links to peace and security outcomes.²

Women's participation in constitution reform is on the rise

As a fundamental legal text, a constitution typically serves as the foundation for all laws and is superior to other law (which can usually be reviewed by courts for its compliance with the constitution). Therefore, the stakes are extremely high in constitution-reform processes, particularly where an entirely new text is involved. Decision making is typically dominated by political elites—and in cases of armed conflict, parties to the discord—who are also predominantly male. These reform processes are an opportunity for parties to shape the outcomes in their favor; thus, competition among elites can be fierce. For example, parties will often engage in heated debate over whether to adopt a presidential or parliamentary system, as this can influence their own access to power.

While constitution reform will always require elite buy-in to succeed, in recent years domestic constituents (often supported by international advisors and donors) have pushed to establish processes that include features like more diverse representation in elected or appointed reform bodies and mechanisms for public engagement. Participatory constitution making is now widely viewed as best practice.³ It represents an opportunity to achieve greater legitimacy, foster a strong sense of public ownership, and support

the development of an inclusive national identity.⁴ In a qualitative study of constitution-drafting processes in 19 countries, researchers concluded that “an inclusive approach can be vital to enabling conflicting parties to debate and negotiate the terms of the new national order and resolve important differences peacefully,” particularly in deeply divided societies and those emerging from conflict.⁵

This emphasis on broader participation has, in some quarters, included a push for greater women’s inclusion—traditionally the largest single group to be marginalized from political processes. Like men, women have represented diverse, intersecting identities and a variety of constituencies as members of drafting commissions, technical experts, civil society representatives, community leaders, and voters. Yet women’s participation remains poorly documented in most processes, and existing studies have not yet measured their rate of formal representation across cases. Our analysis of 20 constitution-reform processes in countries experiencing conflict, unrest, or political transition between 1990 and 2015 reveals that, on average, 19 percent of members of formal constitution-reform bodies were women (see Annex II).

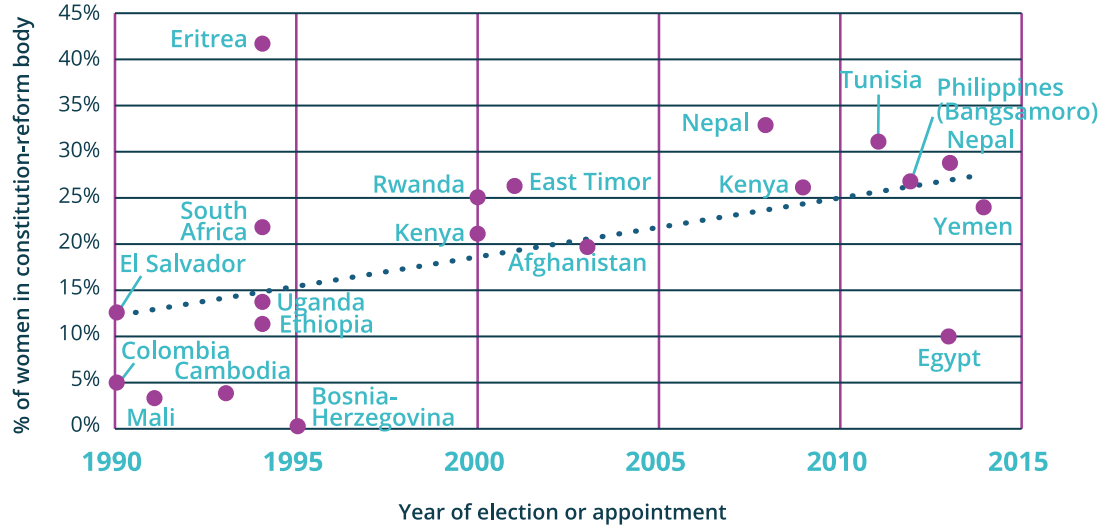
This number has not remained static over time. Although women’s participation levels continue to vary from process to process, their proportion has been increasing in the post-Cold War era: From an average of 13 percent between 1990 and 1995 to an average of 24 percent between 2010 and 2015. The graph below (Figure 1) illustrates this upward trend in women’s participation across a range of processes, which varied in geography, size (from constitution commissions with less than 15 members to national conferences with over 1,000 participants), and process drivers (e.g., inter-state armed conflict; intra-state armed conflict; independence; or transition from authoritarian rule). *(For additional details, see Annex II.)*

While additional research is needed to explore the causes driving this trend, it may be partly explained by three factors:

- 1 Growing demands for democratic participation globally since the third wave of democratization in the 1990s;
- 2 Increasing women’s representation in politics and legal domains; and
- 3 International commitments to broader participation and inclusion.

Nonetheless, the data also reveals that women are far from achieving equal representation in these processes—even though this is arguably a democratic right and an important measure of democratic quality.⁶

Figure 1: Women’s representation in formal constitution-reform processes⁷





AP Photo / Hassene Dridi

Members of parliament attend Tunisia's newly elected assembly during its inaugural meeting in Tunis on November 22, 2011, ready to start shaping the constitution.

Between 1990 and 2015,
19 percent of members of
formal constitution-reform
bodies were women.

Women's access and influence remain poorly understood

Whatever their levels of participation in particular constitution-reform processes, women's avenues for access and their impact on constitution reform remain poorly understood. Researchers have increasingly emphasized the value and impact of broadly inclusive processes, but few have disaggregated women's contributions. Existing research in this field focuses largely on documenting constitutional provisions relating to women's rights and the status of women (e.g., gender equality/non-discrimination; gender parity via electoral quotas; gender-based violence; and reproductive rights).⁸

But how do women get involved in traditionally male-dominated constitution-reform processes in the first place? How do they exert their influence, and to what effect? A small number of studies have begun to chart the landscape of women's inclusion in multiparty negotiations and the incorporation of gendered provisions in resulting peace agreements or constitutions. They have uncovered environmental factors influencing participation, such as key actors' receptivity to women's contributions, the structure of the process itself, and the degree to which women's civil society has space to mobilize alongside the formal process.⁹ Some have also examined the role of international and regional institutions in linking constitution making to gender justice.¹⁰ This study builds on that line of questioning and explores women's strategic agency, at a national level, in advancing or failing to advance their own participation and influence in constitution-reform processes.

It also seeks to connect the often distinct fields of research on constitution reform and peace processes by exploring whether and how women's participation in constitution reform helps to shape peace and stability. When it comes to peace processes, studies have shown that women's participation affects both the process and the outcomes. When women influence a peace or transition process, parties are more likely to reach an agreement and the resulting peace is more likely to endure.¹¹ In addition, women frequently bring other marginalized groups into peacebuilding and governance processes, making them more inclusive and effective.¹² Although constitution reform is often a

component of a larger peace or transition process, studies have yet to focus on the impact of women's constitutional participation in the same way.¹³

Similarly, analyses of gender provisions in constitution-reform processes frequently fail to make a link to broader peace and security outcomes. Yet there are many possible connections that deserve exploration. For example, statistical analysis of the largest dataset on the status of women in the world today shows that the physical security of women better predicts a country's peacefulness than does its level of democracy, GDP, or religion.¹⁴ Where family law structures—such as those regulating minimum age of marriage, property and inheritance rights, or divorce and custody rights—discriminate against women, this is also an indicator for a country's propensity for conflict and fragility.¹⁵ Countries with higher proportions of women in parliament are less likely to become involved in interstate or civil wars, and less likely to perpetrate domestic human rights abuses.¹⁶ The causal direction for these correlations is not always clear, but they deserve consideration by those analyzing or designing constitutions as part of a peace or transition process. If a constitution serves as the legal basis for issues like violence against women, family law, and women's equal political representation—and women are more likely to advocate for such provisions—can women's constitutional participation support a more robust peace?

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Drawing on eight case studies, this report explores the diverse ways in which women have participated in constitution reform and shaped (or failed to shape) decision-making processes, substantive outcomes, and priorities for peace. It focuses primarily, but not exclusively, on women's roles in formal constitution-making bodies and the ways these intersect with civil society.

Additional insights and tools for those looking to influence constitution making from outside as well as inside these fora are available in Inclusive Security's accompanying publication *A Women's Guide to Constitution Making*. The spotlight in both publications is on *how* women exert influence and how this relates to peacebuilding. Others have already produced comprehensive guidance on the text of gender equality provisions in constitutions around the world, which therefore receives secondary treatment here.¹⁷ The cases include a range of constitutional processes that occurred between 1990 and 2015: Colombia, East Timor, Kenya, Nepal, the Philippines, Rwanda, South Africa, and Tunisia. In each case, the constitution was the result of a peace process or other elite pact emerging out of armed conflict or major political transition. Six of the cases (Colombia, Kenya, Nepal, the Philippines, Rwanda, and South Africa) represent constitution drafting in the wake of formal peace processes or processes related to violent conflict between domestic actors. Reform in East Timor evolved out of an international dispute and foreign occupation. And in Tunisia a mostly nonviolent popular uprising led to the 2011 transition to democracy and subsequent constitutional process. The cases represent a breadth of approaches to reform (e.g., elected vs. appointed reform bodies, influence of domestic vs. international players), but all incorporate some participation beyond traditional political elites and powerful belligerents, whether through elections, public consultations, or referenda. Women also played or attempted to play active roles both inside and outside of the formal process, in every case.

The authors collected data on each of the eight case studies through desk research, interviews, and focus groups. As a more recent case with little documentation of women's roles, Tunisia was selected for additional field research, which included more than a dozen interviews with Tunisian constituent assembly members, civil society representatives, and academics in September and October 2016.

Pulling insights and examples from the cases, the first, second, and fourth chapters explore how women have gained access to constitution-making processes, the impact they have had, and the challenges they have faced, respectively. To better document the Tunisian experience, Chapter 3 provides a detailed examination of women's roles and impact in the country's constitutional process from 2011 to 2014.

The concluding chapter offers guidance on strategies and tactics that have strengthened women's access and influence in diverse settings. What emerges are observations on how women have uniquely shaped constitutional discourse and, further, how their actions contribute to building robust peace.

NOTES

- 1 See, for example: Frances Stewart, *Horizontal Inequalities as a Cause of Conflict: Understanding Group Violence in Multiethnic Societies* (New York: Palgrave Macmillan, 2008); Daron Acemoglu and James Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (New York: Crown, 2012); Robert Muggah, Timothy D. Sisk, Eugenia Piza-Lopez, Jago Salmon, and Patrick Keuleers, *Governance for Peace: Securing the Social Contract* (New York: UNDP, 2012), World Bank, *World Development Report 2017: Governance and the Law* (Washington, DC: World Bank, 2017); Marie O'Reilly, Andrea Ó Súilleabháin, and Thania Paffenholz, *Reimagining Peacemaking: Women's Roles in Peace Processes* (New York: International Peace Institute, June 2015).
- 2 The authors acknowledge the nonbinary nature of gender, as well as the need for constitution-reform processes that are inclusive far beyond women's participation. The scope of this report, however, is limited to the experiences of individuals who identify as women. Further research and exploration into constitutional processes that are inclusive of all genders is encouraged.
- 3 For example, see: Vivien Hart, *Democratic Constitution Making - Special Report 107* (Washington, DC: United States Institute of Peace, July 2003).
- 4 Ibid. See also: Jamal Benomar, *Constitution-Making and Peace Building: Lessons Learned From the Constitution-Making Processes of Post-Conflict Countries* (New York: United Nations Development Programme, 2003); Michele Brandt, Jill Cottrell, Yash Ghai, and Anthony Regan, *Constitution-making and Reform: Options for the Process* (Geneva: Interpeace, 2011); Jason Gluck and Michele Brandt, *Participatory and inclusive constitution making: Giving voice to the demands of citizens in the wake of the Arab Spring* (Washington: United States Institute of Peace, 2015); Laurel E. Miller, "Designing Constitution-Making Processes: Lessons from the Past, Questions for the Future," in *Framing the State in Times of Transition: Case Studies in Constitution Making*, ed. Laurel E. Miller (Washington, DC: United States Institute of Peace, 2010), 628.
- 5 Miller, "Designing Constitution-Making," 628.
- 6 Manon Tremblay, "Democracy, Representation, and Women: A Comparative Analysis," *Democratization* 14, no. 4 (2007): 1; Arend Lijphart, *Patterns of Democracy*, 2nd ed. (New Haven: Yale University Press, 2012), 280; Hart, *Democratic Constitution Making*, 5-6.

- 7 Percentages for Kenya in this graph represent an average of women's participation in two constitutional bodies: in 2000, the Constitution of Kenya Review Commission and National Constitution Conference; in 2009, the Committee of Experts and Parliamentary Select Committee. For more information, please see Annex II.
- 8 Fionnuala Ní Aoláin, Dina Francesca Haynes, and Naomi Cahn, *On the Frontlines: Gender, War, and the Post-Conflict Process* (Oxford: Oxford University Press, 2011), 215; Adele Cassola, Amy Raub, Danielle Foley, Jody Heymann, "Where do women stand? New evidence on the presence and absence of gender equality in the world's constitutions," *Politics and Gender* 10 (2014). Thirty-nine percent of constitutions adopted between 2000 and 2011 include affirmative measures (such as quotas or other mechanisms) to promote gender parity in government positions.
- 9 Georgina Waylen, "A Seat at the Table – Is It Enough? Gender and Multiparty Negotiations in South Africa and Northern Ireland," *Politics and Gender* 10, no. 4 (2014), 503 (comparing the experiences of women's advocates in South Africa and Northern Ireland); Georgina Waylen, *Engendering Transitions: Women's Mobilization, Institutions and Gender Outcomes* (Oxford: Oxford University Press, 2007), 69-72.
- 10 Christina Murray and Cindy Wittke, "International Institutions, Constitution-Making, and Gender," in *Constitutions and Gender: Research Handbooks in Comparative Constitutional Law series*, ed. Helen Irving (Cheltenham, UK: Edward Elgar, forthcoming 2017).
- 11 O'Reilly, Ó Súilleabháin, and Paffenholz, *Reimagining Peacemaking*, 9-13.
- 12 Marie O'Reilly, *Why Women? Inclusive Security and Peaceful Societies* (Washington, DC: Inclusive Security, October 2015).
- 13 For research on women's roles in ceasefire negotiations, which often precede broader peace processes, see: Michelle Barsa, Olivia Holt-Ivry, Allison Muehlenbeck, *Inclusive Ceasefires: Women, Gender, and a Sustainable End to Violence* (Washington, DC: Inclusive Security, March 2016).
- 14 Valerie M. Hudson, Bonnie Ballif-Spanvill, Mary Caprioli, and Chad F. Emmett, *Sex and World Peace* (New York: Colombia University Press, 2014), 112.
- 15 Valerie M. Hudson, Donna Lee Bowen, and Perpetua Lynne Nielsen, "We Are Not Helpless: Addressing Structural Gender Inequality in Post-Conflict Societies," *PRISM* 6, no. 1 (March 2016): 123-139.
- 16 Mary Caprioli and Mark Boyer, "Gender, Violence, and International Crisis," *Journal of Conflict Resolution* 45 (August 2001): 503-518; Erik Melander, "Gender equality and intrastate armed conflict," *International Studies Quarterly* 49, no. 4 (2005): 695-714; Erik Melander, "Political Gender Equality and State Human Rights Abuse," *Journal of Peace Research* 42, no. 2 (March 2005): 149-166.
- 17 See, for example, Christine Forster, *Global Good Practices in Advancing Gender Equality and Women's Empowerment in Constitutions* (New York: United Nations Development Programme, 2016).

1 HOW DO WOMEN GET ACCESS?

In periods of political transition or peacemaking, the entry points to influence high-level processes—for those who are not part of the male-dominated political elite or conflict parties—are seldom clear at the outset. Constitution making is typically managed and implemented by an elected or appointed entity (and frequently by both), but is rarely a standalone process with a distinct beginning and end. In countries emerging from armed conflict, constitutional bargaining can begin quite early in the peace process (e.g., when parties to the conflict are establishing a legal and political framework to govern peace talks).¹ Constitutional principles or constitution-like arrangements can also appear in a comprehensive peace agreement or accord that concludes a period of conflict.² Similarly, in countries undergoing political transition, the parties may negotiate key constitutional principles prior to the formal reform process.³ Basic rules governing who gets to participate, what roles they can play, and what structures will inform decision making are frequently determined prior to the election or appointment of entities responsible for administering the constitution-reform process.

Given these dynamics, women have often been most successful at participating in constitution-reform processes when they have:

- 1 Mobilized early;
- 2 Pushed for mechanisms (such as quotas) to promote their participation;
- 3 Presented a united front in their efforts to increase women's inclusion; and
- 4 Leveraged connections with civil society to broaden women's access beyond direct participation.

Mobilizing early

When and how women mobilize in a peace or transitional process can significantly shape their access to constitutional negotiations. Access is more likely to be won in contexts where women's networks or organizations exist prior to the beginning of a reform process or otherwise have the capacity to organize quickly at the outset of constitutional bargaining.⁴ While no single study has yet examined the impact of early mobilization, comparative case analysis suggests that it had positive effects on women's inclusion (or the inclusion of their priority issues) in Chile, Colombia, Czechoslovakia, El Salvador, Iraq, Northern Ireland, the Philippines, South Africa, and Rwanda.⁵ In many of these cases, women's organizations had a pre-existing support base and/or connections to high-level decision makers, which enabled them to advocate for women's inclusion as soon as constitutional bargaining began to emerge. The benefits of early mobilization are clearly seen in the cases of South Africa and the Philippines, where women used a variety of tactics in civil society and formal politics to ensure access to the constitution-drafting process.

Women's organizing has a long history in **South Africa**, including anti-apartheid civil resistance activities as early as the 1940s and 1950s. This set the stage for women's involvement in the 1994 constitutional process that followed the dismantling of apartheid.⁶ In the 1980s and 1990s, women convened several regional conferences and meetings to build networks and solidarity among others involved in liberation movements across southern Africa. Those from Angola, Mozambique, and Zimbabwe warned South African women that their political allies would likely try to sideline the "women's agenda" in favor of other priorities like power sharing and statebuilding.⁷ In 1990, the Malibongwe Conference brought together women's organizations in South Africa and those in exile to strategize for the coming transition, calling for the right of women to participate equally in all decision making, particularly in the constitution-drafting process.⁸



Black Sash, a white women's organization that nonviolently resisted Apartheid, pickets the second Convention for a Democratic South Africa, with security standing by, Johannesburg, May 1992.

South Africa

YEAR OF ELECTION OR APPOINTMENT

1994

NUMBER OF SEATS HELD BY WOMEN

NATIONAL ASSEMBLY | 100 out of 400 seats (25 percent)

SENATE | 16 out of 90 seats (18 percent)

ELECTED OR APPOINTED?

Elected via proportional representation

QUOTA OR OTHER MECHANISM?

No formal quota; African National Congress had an internal quota of 30 percent (every 3rd person on a party list was a woman)

The African National Congress Women's League became a leading force for women's inclusion throughout the transition process. The Women's League shaped the African National Congress party platform on issues of women's participation and gender equality, which in turn increased women's access.⁹ As initial bilateral talks began to materialize between the African National Congress and the government in 1991, the Women's League pressed the party leadership to formally acknowledge the issue of gender equality. As the peace process expanded and incorporated other parties and stakeholders, the Women's League continued to advocate for greater inclusion.¹⁰

In 1992, the Women's League was the driving force behind the creation of the Women's National Coalition, credited as the most dominant and vocal women's alliance in South Africa during the transition period. The Women's National Coalition pushed for greater women's inclusion in the multi-party peace process. At the time of the coalition's formation, the peace talks (known as the Convention for a Democratic South Africa) included only 23 women out of 400 participants. As a new negotiation process began in 1993 (the Multi-Party Negotiating Process), activists from the Women's National Coalition stormed the room and blocked the proceedings until the parties agreed to incorporate more women into the negotiation delegations.¹¹ All 26 parties eventually agreed to incorporate one woman per technical committee and one woman per party delegation to the primary decision-making body, the Negotiating Council (each party sent four delegates and two advisors), where issues like the interim constitution were debated and decided.¹²

The country's first ever nonracial, democratic parliamentary elections followed shortly after the conclusion of the Multi-Party Negotiating Process in 1994. The two houses of parliament together served as the constituent assembly, responsible for drafting a permanent constitution. A gender quota was not established for the parliamentary elections. In lieu of a formal requirement, some political parties voluntarily implemented their own quotas to ensure women's representation. For years, the African National Congress Women's League pushed party leaders to incorporate a gender-based quota system; they eventually acquiesced and adopted a quota just prior to the 1994 elections. As a result, women represented every third candidate on each of the African National Congress' electoral lists.¹³

When the African National Congress swept the 1994 elections, winning large majorities in the parliament, this ensured women were among those drafting the new constitution. Women won 100 out of 400 seats in the national assembly (elected by proportional representation) and 16 out of 90 seats in the senate (parties represented in each of the nine provincial legislatures nominated 10 senators).¹⁴ Women held 89 of the African National Congress' 252 seats in the national assembly (35 percent).¹⁵

Through early mobilization that combined local organizing, regional networking, persistent pressure on the dominant political party, and creative interventions during the peace negotiations, South African women were able to gain significant access to the constitution-drafting body.

Through early mobilization that combined local organizing, regional networking, persistent pressure on the dominant political party, and creative interventions during the peace negotiations, South African women were able to gain significant access to the constitution-drafting body. This pluralistic and inclusive assembly then went on to produce one of the world's most gender-equal constitutions (see the next chapter for more information).

In the **Philippines**, women advocated for a role in the peace negotiations long before any constitutional phase was in sight. As their participation in peacemaking increased, it set the stage for continued women's inclusion in the constitutional phase.

Fifteen years of peace talks between the government of the Philippines and the Moro Islamic Liberation Front (MILF)—an armed separatist movement from the Bangsamoro area in the country's south—prefaced the sub-national Bangsamoro constitutional process. Women's participation increased throughout the peace process, as women in civil society mobilized to become part of the negotiations and women who earned seats at the table advanced the inclusion of additional women.¹⁶ During the last 10 years of the peace talks, every negotiation delegation appointed by the government included at least one woman.¹⁷ By the signing of the Comprehensive Agreement in 2014, which proposed a new autonomous regional entity in exchange for the disarmament of separatist forces, women made up an unusually high 50 percent of the government's negotiating team and 25 percent of the signatories.¹⁸

When the 15-member Bangsamoro Transition Commission was formed in 2013 to draft the Bangsamoro Basic Law (a subnational constitution), both parties committed to including women on the commission.¹⁹ Out of its eight seats, the government appointed three women, while the Moro Islamic Liberation Front appointed one woman among its seven seats.²⁰ Froilyn Mendoza, one of the female commission members, noted how women's participation in the peace process paved the way for her participation in the constitutional reform that followed: "Those women who were in high-level positions in the peace process...it's one of the things that helped set the stage, the strategic position of women. It [also] helped women to see that your voice can be heard."²¹



AP Photo / Aaron Favila

Filipino Muslim women join a rally at the Philippine Senate to coincide with the hearing on the passage of the Bangsamoro Basic Law in Manila, on June 3, 2015.

Philippines

YEAR OF ELECTION OR APPOINTMENT
2013

NUMBER OF SEATS HELD BY WOMEN
BANGSAMORO TRANSITION COMMISSION
4 out of 15 seats (27 percent)

ELECTED OR APPOINTED?
Appointed

QUOTA OR OTHER MECHANISM?
Commitments to women's inclusion from both parties

Pushing for mechanisms to promote participation

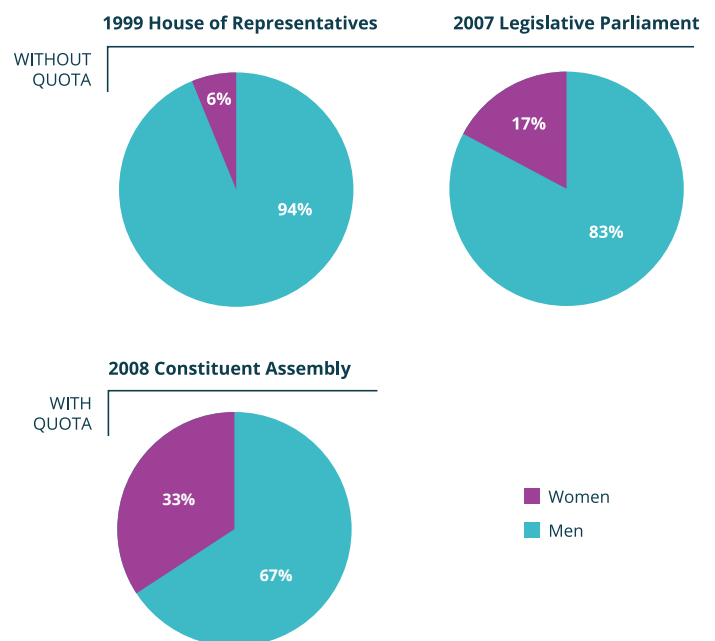
Women's early mobilization was successful, in part, because mechanisms to guarantee or incentivize the election or selection of women are often laid out during the peace process phase. These mechanisms are typically necessary for women to overcome the gendered hurdles to participation created by centuries of male dominance of constitution reform, and politics writ large. In addition to formal mechanisms such as electoral quotas, more informal mechanisms—such as parties' public commitments to inclusion—can also play a role in advancing women's participation.

In the peace process between the Philippines government and MILF, women secured commitments from both parties to include women in their delegations to the peace negotiations, which in turn created the expectation that this inclusion would continue in the constitution phase. In South Africa, a gender-based quota did not gain traction in the peace talks that began in 1990 between the government and a coalition of anti-government groups led by the African National Congress. Instead, the African National Congress effectively applied a gender-based quota within its own party, as outlined above.²²

In **Nepal**, the application of a gender-based quota to the elections for the constituent assembly contributed to a significant increase in women's representation relative to prior elections for legislative bodies in that country. The constitutional process in Nepal emerged out of a 20-year armed conflict between the government and an armed insurgency led by the Communist Party of Nepal (Maoists). Following an agreement between the parties to transition from a Hindu constitutional monarchy to a more secular state, a Comprehensive Peace Agreement was signed in 2006, paving the way for the constitutional process.²³ The process began with the appointment of an Interim Constitution Drafting Committee.²⁴ Despite women's participation in the peace process, there were no women appointed to the committee, which also lacked representation from many of Nepal's diverse classes, castes, ethnic groups, and regions.²⁵ Amid protests by many groups, including women's organizations, the committee was reorganized and its new membership included four women out of a total of 16 members.²⁶

The resulting 2007 interim constitution included a specific clause calling for the representation of women in the constituent assembly, an elected body that would serve as the national legislature and draft the permanent constitution. Article 63(5) stated that "at least one-third of such total number of candidates nominated shall be women," and this was enacted into law prior to the 2008 constituent assembly elections.²⁷ As a result of the quota, 191 women were elected (33 percent of the 575 elected seats), which included the first women from many marginalized classes, castes, and ethnic groups to be elected to office.²⁸ After the first constituent assembly failed to agree on a final constitution and was dissolved in 2012, a second constituent assembly was elected using the same electoral rules, with women winning 172 seats (30 percent of the 575 elected seats).²⁹ In prior legislative elections in 2007 and 1999, which did not have a quota, women won only 17 percent and 6 percent of the seats, respectively (see Figure 2).³⁰

Figure 2: Proportion of Female Representatives in Nepal, With (2008) and Without (1999, 2007) an Electoral Quota





Getty Images / AFP / Pedro Ugarte

Nepal's assembly votes to abolish the monarchy and declare a republic on May 28, 2008.

Nepal

YEAR OF ELECTION OR APPOINTMENT
2008; 2013

NUMBER OF SEATS HELD BY WOMEN
FIRST CONSTITUENT ASSEMBLY | 197
(191 elected, 6 appointed) out of 601 seats
(33 percent)

SECOND CONSTITUENT ASSEMBLY | 176
(172 elected, 4 appointed) out of 601 seats
(29 percent)

ELECTED OR APPOINTED?
Appointed and elected (proportional representation and first-past-the-post)

QUOTA OR OTHER MECHANISM?
Quota: one-third of candidates nominated must be women

Presenting a united front

Even where electoral quotas or commitments to women's inclusion cannot be secured, women can still advance their participation by building coalitions nationally and with international partners. The presence and absence of a coordinated, unified front played a significant role in the cases of East Timor and Colombia, respectively.

Women's organizing in **East Timor** (now called Timor-Leste) prior to the 2001 constituent assembly elections provides one example where effective coordination led to positive outcomes for women's participation.

The constitutional process in East Timor marked the end of a 25-year conflict driven by an attempted annexation by Indonesia. Women's mobilization in civil society had deep roots dating back to the resistance movement during Indonesian occupation, but had never coalesced into a united women's movement. The Platform for Action for the Advancement of Women of Timor Loro Sao, formed in 2000, represented a first attempt at building a coherent national agenda.³¹ Members of the platform advocated for a women's quota in the electoral law governing the constituent assembly elections. Timorese policymakers initially supported the quota, but ultimately declined to include it in the final electoral law.³²

In response to this shift, the platform organized protests and pressured policymakers to create alternative measures to encourage and support female candidates. The United Nations Transitional Administration in East Timor, which oversaw East Timor's transition to independence, agreed to fund training for 200 female candidates across the thirteen electoral districts. Additionally, political parties whose party lists included at least 30 percent female candidates earned extra campaign airtime on UN-run radio and television.³³ Even though the quota initiative failed, women still won 23 out of 88 seats in the constituent assembly (26 percent).³⁴ One of the factors leading to the Platform for Action's success was the coordinated effort of women's organizations. While members did not agree on every substantive issue, the platform served as an overarching framework to plan and execute a concerted effort to get women elected to the assembly.

Even where electoral quotas or commitments to women's inclusion cannot be secured, women can still advance their participation by building coalitions nationally and with international partners.



Following the passage of a new constitution, an East Timorese woman casts her ballot in Dili, on April 14, 2002, in the nation's first presidential election.

East Timor

YEAR OF ELECTION OR APPOINTMENT
2001

NUMBER OF SEATS HELD BY WOMEN
CONSTITUENT ASSEMBLY | 23 out of 88 seats
(26 percent)

ELECTED OR APPOINTED?
Elected (proportional representation)

QUOTA OR OTHER MECHANISM?
None

By contrast, women involved in **Colombia's** 1990 constitution-drafting process could not agree on a unified strategy to push for women's inclusion in their constituent assembly. The constitutional process in Colombia took place amid an ongoing armed conflict between the government and several guerilla groups.³⁵ In the lead-up to the constituent assembly elections, women's organizations remained divided on how to best maximize their representation. They agreed that the constituent assembly represented a great opportunity to increase women's political presence, but disagreed on what would be the most effective strategy for securing participation. One group of women formed an electoral list made up of only women, while others advocated to political parties to include more women on their party lists, claiming that a women-only list was "separatist." A third group called for women to rally behind the nongovernmental organization list, which was headed by a woman.³⁶ In the end, the women-only list did not gain enough votes for a seat and women won only four out of 74 seats. The women involved felt that their lack of organization and consensus contributed to the poor outcome.³⁷

Leveraging connections with civil society

While an emphasis on gender-based quotas and other mechanisms has generally helped boost the number of women represented in constitution-making bodies, women remain in the minority in these fora. As a result, they often seek to broaden *indirect* participation by leveraging connections between women inside the formal process and women in civil society who are positioned to inform the process.

Indeed, women's roles in constitution making extend beyond the constitution-reform body and include their activities as outside experts or academics, members of civil society organizations, social activists, religious leaders, and more. Women's organizations often bridge the gap between the formal process and local communities, particularly when official public engagement is absent or insufficient. As described in the next chapter, women's organizations frequently



Centro de Memoria, Pazy Recondición

Members of Colombia's national constituent assembly in 1991.

Colombia

YEAR OF ELECTION OR APPOINTMENT
1990

NUMBER OF SEATS HELD BY WOMEN
NATIONAL CONSTITUENT ASSEMBLY
4 out of 74 seats (5 percent)

ELECTED OR APPOINTED?
Elected (proportional representation)

QUOTA OR OTHER MECHANISM?
None

conduct consultations in their local communities and use the information gathered to form recommendations on how community needs can be addressed through the constitution.

However, to make their voices heard inside the constitution-making body, women who are external often need to leverage their influence through strategies like collective action and mobilization. Women inside the formal process have helped to expand access by connecting with women in civil society to collaborate toward common goals, bolster the weight of a shared substantive agenda, and share information across the two spheres. The Rwandan and Kenyan cases illustrate this point.

The constitutional process in **Rwanda** evolved out of the political transition process following the civil war and 1994 genocide. During the transition process, the opposition-turned-government Rwandan Patriotic Front (RPF) espoused a commitment to gender equality; ultimately the party nominated women to three of the 12 seats on the Legal and Constitutional Commission.³⁸

While the male commissioners primarily brought experience from politics and the army, at least two of the female commissioners had deep roots in civil society.³⁹ Marie Thérèse Mukamulisa led a national network of civil society organizations focused on development. Judith Kanakuze was a gender expert and long-time women's rights activist who saw women as her primary constituency.⁴⁰ Using her position to create access for women activists, Kanakuze made feasible an alliance between the commission, the Rwanda Women Parliamentary Forum, and civil society to push forward a gender-sensitive constitution.⁴¹ Having strong allies inside the commission made a significant difference for the women's movement: not only did the whole commission become more gender sensitive in its own deliberations, it also made concerted efforts to solicit the input of women during countrywide consultations.⁴²

Women's roles in constitution making extend beyond the constitution-reform body and include their activities as outside experts, members of civil society organizations, social activists, religious leaders, and more.



Judith Kanakuze, member of Rwanda's Legal and Constitutional Commission.

Rwanda

YEAR OF ELECTION OR APPOINTMENT

2000

NUMBER OF SEATS HELD BY WOMEN

LEGAL AND CONSTITUTIONAL COMMISSION

3 out of 12 seats (25 percent)

ELECTED OR APPOINTED?

Appointed

QUOTA OR OTHER MECHANISM?

None



Delegates in Kenya's constitutional commission hold up a copy of the draft constitution on March 23, 2004, at the Boma's conference center in Nairobi.

Kenya

1997 PROCESS

YEAR OF ELECTION OR APPOINTMENT
2000

NUMBER OF SEATS HELD BY WOMEN
CONSTITUTION OF KENYA REVIEW COMMISSION |
7 out of 27 seats (26 percent)

NATIONAL CONSTITUTION CONFERENCE |
100 out of 629 delegates (16 percent)

ELECTED OR APPOINTED? | Appointed

QUOTA OR OTHER MECHANISM?

Specific quotas for the number of women representatives appointed (e.g., at least two out of the 13 commissioners nominated by political parties)

2008 PROCESS

YEAR OF ELECTION OR APPOINTMENT
2009

NUMBER OF SEATS HELD BY WOMEN
COMMITTEE OF EXPERTS |
3 out of 9 seats (33 percent)

PARLIAMENTARY SELECT COMMITTEE |
5 out of 26 seats (19 percent)

ELECTED OR APPOINTED? | Appointed

QUOTA OR OTHER MECHANISM?

General guidance: Composition of both committees should reflect "gender balance," and the chairperson and deputy chairperson shall be of opposite genders

In **Kenya**, efforts to reform the constitution spanned over 13 years. The first process began in 1997 but suffered from political deadlock and manipulation; a draft was presented, but failed in a 2005 referendum. The second reform process emerged out of post-election violence in 2008 and was facilitated by a nine-member Committee of Experts, in conjunction with a parliamentary committee and the national assembly.

Atsango Chesoni, who served as a member of the National Constitution Conference in the 1997 process and Deputy Chairperson of the Committee of Experts in the 2008 process, began her career as a civil society activist. She was working as a human rights lawyer for the Federation of Women Lawyers (FIDA) when the Women's Political Caucus was formed in 1997. Women's civil society organizations, like FIDA, and members of parliament formed this diverse coalition to push for women's inclusion in the constitutional process.⁴³ An ardent women's rights activist, Chesoni understood the importance of women working together both inside and outside of the formal process when it came to her role in the Committee of Experts. She believed that

*[y]ou must always have the people who beat the drum from the inside and those who beat it from the outside. It is not sufficient to have Professor Christina Murray, Njoki Ndung'u and I in [the Committee of Experts]. We require somebody to beat the drum from the outside.*⁴⁴

Rwanda's Kanakuze and Kenya's Chesoni both illustrate the importance of collaboration between women inside and outside the process. It is not enough to have women working within a constitution-reform body; they must also engage with and support women in civil society and others outside the process in order to achieve their shared goals.

NOTES

- 1 Dina Francesca Haynes, Fionnuala Ní Aoláin, and Naomi Cahn, "Gendering Constitutional Design in Post-Conflict Societies," *William and Mary Journal on Women & Law* 17 (2011), 516. Also see: Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford: Oxford University Press, 2008), 56-57.
- 2 Haynes et al., "Gendering Constitutional Design," 513; Bell, *On the Law of Peace*, 60-61; Christine Bell and Catherine O'Rourke, "Peace Agreements or Pieces of Paper? The Impact of UNSC Resolution 1325 on Peace Processes and their Agreements," *International and Comparative Law Quarterly* 59 (2010).
- 3 For example, see Chapter 3 of this report, on the Tunisian transition.
- 4 Ní Aoláin et al., *On the Frontlines*, 206; Waylen, "A Seat at the Table," 518.
- 5 See, for example: Laura McLeod, "Gender and Peace Settlements from a Quantitative Perspective: A Global Survey," Working Papers in Gender and Institutional Change no. 2 (Manchester, UK: University of Manchester, 2014): 31; Haynes et al., "Gendering Constitutional Design," 517-518; Waylen, *Engendering Transitions*, 69-77.
- 6 Sheila Meintjes, "Gender, nationalism and transformation: Difference and commonality in South Africa's past and present," in *Women, Ethnicity and Nationalism: The Politics of Transition*, eds. Rick Wilford and Robert L. Miller (London: Routledge, 1998), 65-66; Leslie Hill, "Redefining the Terms: Putting South African Women on Democracy's Agenda," *Meridians* 4, no. 2 (2004), 115-116; Susan Bazilli and Marilou McPhedran, "Women's Constitutional Activism in Canada and South Africa," *International Review of Constitutionalism* 9, no. 2 (2009), 393-394.
- 7 Ibid.
- 8 Gisela Geisler, "Parliament is another terrain of struggle: Women, Men and Politics in South Africa," *The Journal of Modern African Studies* 38, no. 4 (December 2000), 611.
- 9 For example, in 1990 you can see the gendering of the African National Congress' platform (e.g., changes to their constitutional guidelines and the campaign vision; seminars to discuss constitutional reform and women/gender issues; party leadership issuing a "Statement on the Emancipation of Women" that publicly accepted the legitimacy of a "gender agenda" and recognized the need for gender equality within the party, the movement, and in society as a whole); Cheryl McEwan, "Engendering citizenship: gendered spaces of democracy in South Africa," *Political Geography* 19, no. 5 (June 2000), 634-635.
- 10 Sheila Meintjes, "The Women's Struggle for Equality During South Africa's Transition to Democracy," *Transformations* 30 (1996), 48.
- 11 Gay W. Seidman, "Gendered Citizenship: South Africa's Democratic Transition and the Construction of a Gendered State," *Gender and Society* 13, no. 3 (June 1999), 294.
- 12 National Democratic Institute for International Affairs, *The Politics of South Africa on Election Day, April 1994* (Washington, DC: National Democratic Institute, 1994); Geisler, "Parliament is another terrain of struggle," 614; Padraig O'Malley, "Multi-Party Negotiation Process leading to Constitution," *O'Malley – The Heart of Hope*, Nelson Mandela Centre of Memory.
- 13 Waylen, *Engendering Transitions*, 106.
- 14 Inter-Parliamentary Union, "South Africa – Parliamentary Chamber: National Assembly, Elections Held in 1994," www.ipu.org/parline-e/reports/arc/2291_94.htm; Inter-Parliamentary Union, "South Africa – Parliamentary Chamber: National Council of Provinces, Elections Held in 1994," www.ipu.org/parline-e/reports/arc/2292_94.htm.
- 15 Electoral Institute for Sustainable Democracy in Africa, "South Africa: Women's representation quotas," *African Democracy Encyclopaedia Project*, EISA, eisa.org.za/wep/souquotas.htm (updated April 2009).
- 16 O'Reilly et al., *Reimagining Peacemaking*.
- 17 Ibid., 22; Irene Morada Santiago, "Mindanao," in *Peacemaking in Asia and the Pacific: Women's Participation, Perspectives, Priorities*, ed. Cate Buchanan (Geneva: Centre for Humanitarian Dialogue, 2011), 24.
- 18 O'Reilly et al., *Reimagining Peacemaking*, 22.
- 19 Carolyn O. Arguillas, "At least 2 Lumads, 2 women in 15-member GPH-MILF Transition Commission," MindaNews, October 27, 2012, www.mindanews.com/peace-process/2012/10/at-least-2-lumads-2-women-in-15-member-gph-milf-transition-commission/.
- 20 International Crisis Group, *The Philippines: Renewing Prospects for Peace in Mindanao – Asia Report No. 281*, (Brussels: International Crisis Group, July 2016), 6; Conciliation Resources, *Operationalising women's 'meaningful participation' in the Bangsamoro: political participation, security and transitional justice*, (London: Conciliation Resources, September 2015), Appendix 3.
- 21 Interview with Froilyn Mendoza, August 9, 2016.
- 22 See also: Geisler, "Parliament is another terrain of struggle," 611.
- 23 International Crisis Group, *Nepal's Divisive New Constitution: An Existential Crisis – Asia Report No. 276* (Brussels: International Crisis Group), 3; Bipin Adhikari, "Legitimacy and peace processes: from coercion to consent," *Accord* 25 (2014).
- 24 Kroc Institute for International Peace Studies, "Constitutional Reform: Comprehensive Peace Agreement," *Peace Accords Matrix*, University of Notre Dame, peaceaccords.nd.edu/provision/constitutional-reform-comprehensive-peace-agreement.

- 25 Women's Caucus, Constituent Assembly Secretariat, Nepal Law Society, and International IDEA, *Women Members of the Constituent Assembly: A study on contributions of women in constitution making in Nepal* (Kathmandu: Women's Caucus, Constituent Assembly Secretariat, Nepal Law Society; Stockholm: International IDEA, 2011), 51.
- 26 Ibid.; Inclusive Peace and Transition Initiative, *Women in Peace and Transition Processes - Nepal* (2008-2012) (Geneva: The Graduate Institute of International and Development Studies, November 2016), 5.
- 27 Government of Nepal, *The Interim Constitution of Nepal, Act 2063 (January 15, 2007)*, Article 63(5); Government of Nepal, *Election to Members of the Constituent Assembly Act 2064 (June 22, 2007)*, see Article 7.
- 28 Women held 12.5 percent of seats elected through first-past-the-post compared to 28 percent of seats elected through proportional representation. Women's Caucus et al., *Women Members of the Constituent Assembly*, 62.
- 29 Bishnu Raj Upreti and Ashild Kolas, *Women in Nepal's Transition* (Oslo: Peace Research Institute Oslo, November 2016), 3.
- 30 Inter-Parliamentary Union, "Nepal – Legislative Parliament 2007," www.ipu.org/parline-e/reports/arc/2386_07.htm; Inter-Parliamentary Union, "Nepal – Parliamentary Chamber: Pratinidhi Sabha 1999," www.ipu.org/parline-e/reports/arc/2386_99.htm.
- 31 Several sources accredit the development of the Platform for Action for the Advancement of Women of Timor Loro Sao to the national network of women's organizations REDE. Milena Pires, "East Timor and the Debate on Quotas," in *The Implementation of Quotas: Asian Experiences, Quota Workshop Report Series* (Stockholm: International IDEA, 2003), 21; Haynes et al., "Gendering Constitutional Design," 517; Waylen, *Engendering Transitions*, 522.
- 32 Louis Aucoin and Michele Brandt, "East Timor's Constitutional Passage to Independence," in *Framing the State in Times of Transition: Case Studies in Constitution Making*, ed. Laurel E. Miller (Washington, DC: United States Institute of Peace, 2010), 256.
- 33 Pires, "East Timor," 3-4; Susanne Alldén, "Post-Conflict Reconstruction and Women's Security – analyzing political outputs in East Timor," Umeå Working Papers in Peace and Conflict Studies, no. 1 (Umeå, Sweden: Umeå University, April 15, 2007), 7.
- 34 Randall Garrison, *The Role of Constitution-Building Processes in Democratization: Case Study: East Timor*, (Stockholm: International IDEA, 2005), 21.
- 35 Donald T. Fox, Gustavo Gallon-Giraldo, and Anne Stetson, "Lessons of the Colombian Constitutional Reform of 1991: Toward the Security of Peace and Reconciliation?" in *Framing the State in Times of Transition: Case Studies in Constitution Making*, ed. Laurel E. Miller (Washington, DC: United States Institute of Peace, 2010), 470.
- 36 Martha I. Morgan, "Constitution-Making in a Time of Cholera: Women and the 1991 Colombian Constitution," *Yale Journal of Law and Feminism* 4, no. 2 (1991), 373-374.
- 37 Ibid.
- 38 Priscilla Yachat Ankut, *The Role of Constitution-Building Processes in Democratization - Case Study: Rwanda* (Stockholm: International IDEA, 2005), 24.
- 39 Swanee Hunt, *Rwandan Women Rising* (Durham: Duke University Press, 2017).
- 40 Ankut, *The Role of Constitution-Building Processes*, 24.
- 41 Hunt, *Rwandan Women Rising*.
- 42 Rirhandu Mageza-Barthel, *Mobilizing Transnational Gender Politics in Post-Genocide Rwanda* (New York: Routledge, 2015), 111.
- 43 Focus group with Atsango Chesoni in Nairobi, Kenya, August 4, 2016; Athena D. Mutua, "Gender Equality and Women's Solidarity across Religious, Ethnic, and Class Differences in the Kenyan Constitutional Review Process," *William & Mary Journal of Women and the Law* 13, no. 1 (2006), 50-51.
- 44 Susan Anyangu, "Atsango Chesoni: Standing tall on the shoulders of giants," *The Standard*, May 2, 2009, www.standardmedia.co.ke/article/1144013040/atsango-chesoni-standing-tall-on-the-shoulders-of-giants.

2 | WHAT IMPACT DO WOMEN HAVE?

Women's access to constitution-making processes is an important first step for participation. However, access alone does not guarantee impact on the process or its outcome. There is no single blueprint for how women influence constitution-making initiatives; as actors inside and outside the elected or appointed bodies, women take on a variety of roles. In the cases examined for this report, where women were able to exert influence, they enhanced both the process of constitutional reform and the substantive content of the constitutional provisions. They did this in three key ways that, taken together, increased the prospects for successful peace and transition:

- 1 Moving decision making forward by bridging communal divides and advancing consensus;
- 2 Broadening societal participation and informing policymakers of diverse priorities through education campaigns and by soliciting citizens' inputs; and
- 3 Advancing constitutional provisions for more equitable, inclusive societies.

Building coalitions that bridge divides

In contexts where conflict drivers are linked to societal divisions, women frequently built bridges between communities as a means to influence constitutional outcomes. Women come together across communal divides not merely to advance their own inclusion, as noted in the cases of South Africa and East Timor in the previous chapter. They also seek to identify broader shared interests and agree on common priorities for the new constitution. This work is not without significant challenges. But women have demonstrated how building strategic relationships can grow their support base and strengthen the power of their message. Further, this coalition building is also an end in itself: It advances peacebuilding and reconciliation

across divides. By working together, women often model for policymakers how communities affected by conflict can collaborate and develop consensus on priority issues.

In **Kenya**, women in civil society, together with women directly involved in the constitution-making process, used coalition building as a strategy to bridge divides and advance their priorities. The Kenyan constitutional reform process unfolded over two decades in an environment of deep division and animosity between identity groups. Members of the political elite exploited ethnic and religious divisions to gain power.¹ Beginning in 1997, the sometimes fraught constitutional process experienced a number of false starts. In 2000, a Constitution of Kenya Review Commission was formed to prepare a draft constitution for review by a 629-member National Constitutional Conference (which included all members of parliament, local government, political parties, and civil society).² The conference, however, was rife with disagreement, boycotts, and even bribery of delegates.³

Women in the National Constitutional Conference worked together despite their diverse political views and ethnic affiliations. As one female member of parliament described:

During the National Constitution Conference, [the political parties] wanted to separate us. To some extent, we were about to buy into that, but we were able to mobilize the women together. We came and said we want to be one tribe. We have 43 tribes in Kenya and [women] became the 44th.⁴

By uniting as women, female conference members coordinated their advocacy efforts and developed a strategy for recruiting other members to their agenda.⁵ The women used diversity to their advantage. They worked together to identify potential allies in the National Constitution Conference, and strategized who would be best placed to engage them. For example, when they identified a potential ally from the Rift Valley, they had a woman from the Rift Valley approach the

delegate about supporting a constitutional provision for a 30 percent electoral quota for women. Moreover, they made sure to select a woman who was not widely known as a proponent of the quota because they knew the delegate would not engage with someone from the women's inner circle.⁶

After the conference, the draft constitution was further amended by parliament and was subsequently voted down in a 2005 referendum. The loss was largely attributed to political fragmentation and ethnic division with many viewing it as a referendum on President Mwai Kibaki's government.⁷ In the aftermath of the 2008 election violence, reconciliation and dialogue efforts led to the resumption of the constitutional reform process in early 2009.

Citizen input into—and understanding of—constitution-reform processes is a significant factor in ensuring the legitimacy and efficacy of the final product.

By 2008, Kenyan women already had a long history of organizing on issues like democratic governance, peacebuilding, human rights, and gender equality. However, civil society organizations remained largely siloed and narrowly focused on specific issues and/or groups.⁸ When women leaders from across Kenyan society gathered in 2008 to discuss the road ahead, it quickly became clear that political divisions and ethnic tensions were pervasive and would prevent collaboration across groups.⁹ When politics became increasingly polarized, so did the women.¹⁰ These challenges were a continuation of issues that arose in the earlier constitutional process. For example, disagreements between Muslim and non-Muslim women over the jurisdiction of Islamic courts, divisions along ethnic lines over decentralization and the powers of the executive branch, and questions as to whether the urban, elite women who would likely benefit from a quota could represent the interests of the majority of Kenyan women, who were rural and poor.¹¹

To overcome these divisions, the women held a “spitting session” to air their grievances, engage in heated debate, and, hopefully, begin to embrace their commonalities.¹² This “spitting session” was one of the first meetings of the Women's Consultative Group, initially formed to feed into the National Dialogue and Reconciliation process led by Kofi Annan and the African Union Panel of Eminent African Personalities. Graça Machel, a member of the panel, pushed Kenyan women to come together over a united agenda and played an active role in the formation of the Women's Consultative Group. As recalled by one member of the group, “[Machel] told me that she would not want to come into a mediation process in which women are not speaking in one voice across all the divides, that is age, tribe, political party... women will come before that team in a united voice.”¹³

EXCERPTS FROM KENYAN CONSTITUTION OF 2010

“A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.”

ARTICLE 14(1)

“Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.”

ARTICLE 27(3)

“The National Assembly consists of... (a) two hundred and ninety members, each elected by the registered voters of single member constituencies; (b) forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency...”

ARTICLE 97

The “spitting session,” though unplanned, played a key role in uniting Kenyan women around the mediation process. As one participant noted:

It [was] the most candid meeting I've ever been to in terms of [the] women's movement in this country... because we had had this honest conversation, that then made it possible to begin to have a conversation about how we were going to put together a team of women that would ensure that women's concerns were infused into whatever sessions were coming.¹⁴

Some women leaders also attested that the session helped increase women's influence in the constitution-reform process. Atsango Chesoni, who served as Deputy Chairperson of the Committee of Experts in the 2008 constitutional process, believed that “because of Graça Machel's intervention we were able to come together and to support whatever was going on to ensure the women's agenda.”¹⁵ Women advocated for provisions related to equal rights and non-discrimination in marriage, divorce, property, and citizenship, as well as women's representation at all levels (see excerpts on next page for examples of what women were able to accomplish).¹⁶

Chesoni further acknowledged that

[constitution drafting] is not a one-woman battle. It requires women to stand together, acknowledge and offer each other sisterhood, acknowledge other women who have previously been involved in [the] process and seek their advice based on their experiences. The biggest lesson is to learn how to listen to each other and work together regardless of party affiliation, ethnic background, and whether or not we like each other.¹⁷

Broadening societal participation and informing policymakers

Since constitutions represent a form of social contract between citizens and the state, citizen input into—and understanding of—constitution-reform processes is a significant factor in ensuring the legitimacy and efficacy of the final product. As we note in the introduction, constitution-reform processes are predominantly led and controlled by the political elite and, in situations of conflict, armed groups—both of which tend to be male-

dominated. Although current best practices encourage policymakers to include public participation as part of the reform process, in many cases these initiatives fall short because of lack of commitment or resources. Or because of a concern that broader, more inclusive proceedings would unsettle desired arrangements for exercising power. Consistent with their roles in bringing other marginalized groups into peace processes,¹⁸ women in civil society have frequently helped inform communities and empowered them to participate in constitution making.

Women's organizations may bridge the gap between the formal process and their local communities, particularly when government-led public engagement is absent or insufficient.

Women's organizations may bridge the gap between the formal process and their local communities, particularly when government-led public engagement is absent or insufficient. For example, women's groups often design and implement civic education programs to raise awareness of the constitutional process and the issues being debated in the constitution-reform body. Women's organizations also often consult with local communities and gather citizen input to inform recommendations for constitution drafters and other policymakers. This supports the inclusion of a broad range of voices and amplifies the involvement of communities underrepresented by actors inside the reform process.

As a result, making a new constitution contributes to an active, inclusive, and democratic society. Across the cases, women seized the opening that constitution making presented to engage democratically and carve a role for themselves in the political process.¹⁹ Developments in South Africa and the Philippines illustrate this point.

Women's civil society in **South Africa** undertook a highly coordinated, broad-based effort to reach out to women across the country. The magnitude and scope of community consultations in South Africa represents possibly the largest, most comprehensive outreach program conducted by women's organizations to influence and inform a constitutional process.

During South Africa's transition and constitution-reform process, the African National Congress Women's League—along with 92 other nongovernmental organizations and 13 regional coalitions—formed the Women's National Coalition to engage across South Africa's divided communities, mobilizing and educating grassroots women.²⁰ The coalition's members included organizations that crossed ideology, race, class, political affiliations, etc., as well as women from the ruling National Party and the opposition African National Congress.²¹ By forming the coalition, women leaders sought to infuse the constitution's substantive content with principles of gender equality, and to push for specific provisions on women's inclusion in decision making.²² As stated by one of its members in an early convening: "Women have to make sure that the constitution goes beyond a ritualistic commitment to equality and actually lays the basis for effective gender equality."²³

The Women's National Coalition was founded to conduct an ambitious nationwide consultation program. The consultation program aimed to "educate and elicit women's demands," by cataloging their problems, needs, and hopes for the future, and feeding this into a set of constitutional recommendations.²⁴ The outreach effort reached an estimated two million women, reflecting the country's racial, cultural, and linguistic diversity.²⁵ The coalition then used the findings to form the basis for a Women's Charter for Effective Equality. The charter reflected the diversity of women's needs, as well as their specificity as distinct from men's needs. One of the charter's strengths was that it also highlighted the race, class, and regional inequalities among women, raising the need to acknowledge and account for these differences in any constitutional outcomes.²⁶

The Women's Charter called for gender equality and the recognition of rights for women in a range of areas, including economic opportunity, education, development, family/private life, and health. Calls for women's inclusion in policymaking included "equal opportunity and access to leadership and decision-

making positions at all levels of government," as well as in traditional communities.²⁷ But there was disagreement over the direction, content, and style of the charter campaign and its consultations. For example, within the coalition there were different conceptions of equality and disagreements over the role of the state in the struggle for gender equality, particularly between members from the National Party and the African National Congress.²⁸

EXCERPTS FROM SOUTH AFRICAN CONSTITUTION OF 1996

"The National Assembly consists of no fewer than 350 and no more than 400 women and men."

ARTICLE 46

"The Auditor-General must be a woman or a man who is a South African citizen and a fit and proper person to hold that office."

ARTICLE 193

Nonetheless, the charter was formally adopted by the Women's National Coalition in June 1994, after deliberations in the constitutional assembly had already begun.²⁹ The charter was successful in capturing the diversity of women's interests, but did not necessarily become the rallying cry for women's organizations to mobilize behind, as its drafters had hoped. As the constitutional process unfolded, women activists grew increasingly visible across the political spectrum, and, in part due to the charter, women activists of all political views agreed that gender issues should be taken up during, rather than after, the transition.³⁰

The Women's National Coalition created "a visible political constituency of women during the transitional process,"³¹ and its priorities were reflected in the final 1996 constitution—widely considered one of the most gender-sensitive constitutions currently in force. Non-sexism is enshrined in the constitution's founding principles. The Bill of Rights upholds equality and equal protection before the law. The constitution also uses gender-inclusive language when describing elected and appointed positions within the government (see excerpts above).³²

Efforts to elevate women's voices and priorities in the **Philippines** followed a pattern used in other contexts, where individual women's organizations designed and implemented consultations alone or in partnership with a few other national or international organizations. In 2013 and 2014, a coalition of women, peace, and security organizations called Women Engaged in Action on 1325 (WE Act 1325) connected with more

EXCERPTS FROM DRAFT BANGSAMORO BASIC LAW (PHILIPPINES) OF 2015

"Right of women to meaningful political participation and protection from all forms of violence."

ARTICLE VIII, BASIC RIGHTS, SEC. 1 (G)

"Sectoral representatives, constituting ten percent (10%) of the Members of Parliament...Women and Youth sectors be entitled to one reserved seat each."

BANGSAMORO PARLIAMENT, SEC. 5

than 200 women representing Moro, Lumad, and Christian communities to "bring to the fore women's perspectives which are traditionally on the margins and not mainstreamed in peace documents."³³ Women exchanged views on decommissioning, arms control, policing structure, transitional justice, and the participation of previously excluded groups like indigenous peoples and Moro women. These consultations informed a set of recommendations that WE Act 1325 shared with the Bangsamoro Transition Commission.³⁴

In a parallel effort, a coalition of five women's organizations—supported by Conciliation Resources, an international nongovernmental organization—held consultations with around 2,750 women, including religious and tribal leaders, former combatants, students, academics, and individuals in the business sector. From these consultations, they developed a set of specific recommendations for the Bangsamoro Transition Commission, which included draft provisions on violence against women, indigenous peoples' rights, the justice system, governance, women's political

participation, and policing.³⁵ When receiving the women's recommendations, one of the female commissioners, Johaira Wahab, noted that community participation is necessary for the success of the broader peace process and acknowledged the added value of the consultations not only as a means for collecting information, but also as an opportunity for reflection.³⁶

Although the draft Basic Law that resulted from this process did not pass in the national congress, it featured several provisions that responded to some of the recommendations elevated by women, such as quotas or other mechanisms to guarantee women's representation in government and the right to protection from all forms of violence (see excerpts at left).³⁷ Notably, the draft Basic Law also included language supporting the creation of a women's fund, where "at least five percent...of the total budget appropriation of each ministry, office, and constituent local government unit of the Bangsamoro shall be set aside for gender responsive programs."³⁸ As of October 2017, a revised version of the law has been filed for deliberation in the House of Representatives. The gender provisions cited here also appear in the revised version.

Advancing constitutional provisions for more equitable, inclusive societies

In addition to shaping the *process* of constitution making, women also focus on achieving specific, substantive constitutional *outcomes*. As members of constitution-reform bodies and as external actors, women typically have a specific agenda or set of interests that they would like to see included in the final text. The key issues that women advocate for vary from case to case and can be

Across the cases, women's most visible impact on the content of constitutions related to provisions addressing gender equality and women's rights.

shaped by the drivers for constitutional change.³⁹ Across the cases, women's most visible impact on the content of constitutions related to provisions addressing gender equality and women's rights. These commitments ranged from protecting women's right to work to ending violence against women to advancing women's political participation.

In many cases, women also advocated for protections for other marginalized groups in their societies, such as provisions relating to the recognition of minority

identities or protection of minorities' rights in Colombia, Kenya, Nepal, the Philippines, and South Africa.

To reach their goals, women used a variety of advocacy strategies and tactics (see Box 1 below). As with attempts to increase their access to the constitution-making process (outlined in Chapter 1), women's efforts to influence the substance of constitutional debates were typically most successful where women inside and outside the constitution-making body advocated for similar provisions.

BOX 1 | SAMPLE ADVOCACY STRATEGIES FOR INFLUENCING CONSTITUTION REFORM

- **Direct negotiation/bargaining within the constitution-reform body**

Case example: Women in Tunisia's National Constituent Assembly negotiated with each other and with their political parties to advance constitutional provisions (see page 38).

- **Lobbying from outside the constitution-reform body**

Case example: Colombia's Women and the Constituent Assembly National Network engaged directly with members of the constituent assembly on gender equality, equitable participation of women in decision making, and the use of gender-inclusive language (see page 25).

- **Mass mobilization (protests, demonstrations, sit-ins, etc.)**

Case example: Tunisian women organized mass protests in response to the controversial "complementarity" provision which was interpreted to suggest that women were unequal to men (see page 43).

- **Coalition building across political, ethnic, religious, and other divides**

Case example: Women in Kenya's National Constitution Conference came together despite diverse political views and ethnic affiliations to coordinate advocacy efforts on their shared agenda (see page 19).

- **Strategic messaging that aligns with ongoing political rhetoric**

Case example: Collectifs Pro Femmes couched women's inclusion as vital to peace, unity, and reconciliation, which were core political themes in the Rwandan constitutional process (see page 26).

- **Bringing in voices and perspectives from the public to demonstrate credibility**

Case example: South Africa's Women's National Coalition conducted nationwide consultations and used those findings to form the basis of a Women's Charter for Effective Equality (see page 22).

*For additional guidance and case examples, see
Nanako Tamaru and Marie O'Reilly, A Women's Guide to Constitution Making
(Washington, DC: Inclusive Security, January 2018).*

This was the case in **Colombia**, where women outside the formal process advocated utilizing proposals, lobbying, and public pressure, while those inside used bargaining and negotiation to advance women's rights in the constitution. As a result, Colombian women achieved several gender equality gains in the constitution, despite holding only four out of 74 seats in the national constituent assembly.

Proposals for gender equality in the Colombian constitution were articulated as early as October 1990, two months before the elections for the national constituent assembly. The government established 1,580 working groups to engage with local communities and solicit proposals on constitutional content. Women's organizations across the country, particularly in Bogota and Cali, seized this opportunity. They submitted proposals on political and social rights, with their core proposal focused on codifying the principles of the Convention on the Elimination of All Forms of Discrimination Against Women.⁴⁰ Experts in the working groups organized the proposals received into recommendations that were later shared with the assembly.⁴¹

EXCERPTS FROM COLOMBIAN CONSTITUTION OF 1991

"The authorities will guarantee the adequate and effective participation of women in the decision making ranks of the public administration."

ARTICLE 40

"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 will benefit from the special assistance and protection of the state..."

ARTICLE 43

When the national constituent assembly began working on the draft, a coalition of 34 women's groups issued a statement in one of the leading newspapers calling for women's demands to be included in the new constitution. Following this statement, women from across the country formed the Women and the Constituent Assembly National Network (*Mujeres a la Asamblea Nacional Constituyente*), which grew to include 70 women's organizations. The network lobbied constituent assembly members on gender equality, equitable participation of women in decision making, and the use of gender-inclusive language in the constitution through meetings, publications, and pressure during plenary debates. The network also used radio and press conferences to disseminate its message.⁴²

Inside the constituent assembly, female assembly members also advocated for gender equality provisions, although they rejected the notion that they represented women's interests exclusively and disassociated themselves from feminists.⁴³ Thus, Maria Teresa Garces of the guerrilla-group-turned-political-party Alianza Democratica M-19 drafted several proposals on equality and protection for marginalized groups.⁴⁴ Aida Abella of the leftist Patriotic Union party also presented draft reforms on maternity leave, labor rights, and equality within the family.

While it's unclear from accounts whether, or how closely, women in the constituent assembly and women in civil society worked together, their combined efforts achieved significant gains for women in the 1991 constitution. Article 13, which recognizes that "all persons are born free and equal before the law," includes language that matches the draft proposal presented by Garces. Article 40 echoes the language proposed by women's organizations in Bogota, where it calls for women's participation in public administration.⁴⁵ A women's group from Cali, in particular, is credited for its role in pressuring constituent assembly members to include this provision. In terms of gender-inclusive language, the constitution also does not include the generic use of the word "men," instead using the word "person" in the first three titles (dealing with fundamental principles; rights, guarantees, and duties; and residents and territory), but thereafter reverting to masculine pronouns.⁴⁶ (see excerpts at left)

Other advocacy tactics that women successfully employed to secure constitutional provisions for gender equality or women's rights included strategic framing and messaging. In **Rwanda**, for example, women in civil society were particularly adept at leveraging political rhetoric from the transition process to support their constitutional gender agenda.

Even though President Paul Kagame had willingly responded to calls for greater gender equality in Rwanda prior to the constitutional process, constitutional provisions to this end still faced significant resistance in parliament and elsewhere.⁴⁷ Thus, throughout the drafting process, women in civil society couched the language of women's rights and gender equality within the framework of other priorities the government had articulated, such as peace, unity, and reconciliation. For example, Collectifs Pro Femmes/Twese Hamwe, a coalition of 41 organizations, lobbied constitutional commission members and other policymakers on substantive issues related to gender equality, nondiscrimination, gender mainstreaming, and the development of a national gender policy.⁴⁸ Collectifs Pro Femmes argued that "it was necessary to protect gender equity in family and political life in the Constitution, not only to address women's marginalization, but to *promote peace, unity, and reconciliation in Rwanda*."⁴⁹ They highlighted how housing shortages, limited food production, needs of orphans, and the financial and social challenges facing female-headed households threatened the fragile peace and stability the state had recently accomplished.⁵⁰ They explained how peace, unity, and reconciliation could not be achieved without women's inclusion, and promoted the vital role for women in the state's social, political, and economic reconstruction plan.⁵¹ At every turn, women in civil society linked their problems and solutions to the government's problems and solutions.

This focused effort likely contributed to the government's perception of women's rights and gender equality as non-threatening to the state. While the government remained reluctant to substantially engage with advocates for multi-party democracy or specific ethnic interests, it gave space to advocates for women's rights to be included and heard. Members of the Legal and Constitutional Commission could more easily engage with the proposals on gender equality because they were not perceived to disrupt the governance

system envisioned by the political elites.⁵² Allies in parliament—particularly the women's caucus—then pushed the draft provisions to the finish line.⁵³

As a result of these efforts, the 2003 Rwandan constitution included a number of key rights provisions (e.g., gender equality, prohibition of gender discrimination, equal rights and duties in marriage and raising children) and specific language on women's inclusion (e.g., 24 reserved seats for women out of 80 in the national assembly and a 30 percent quota for women in the senate) (see excerpts below).⁵⁴ Judith Kanakuze called the constitution a "major watershed for women, eliminating barriers that prevent women from participating in decision making."⁵⁵ As evidence of these historic gains by women, Rwanda remains the global leader of women's inclusion with the largest proportion of female parliamentarians in office (61 percent in the chamber of deputies and 39 percent in the senate).⁵⁶

EXCERPTS FROM RWANDAN CONSTITUTION OF 2003

"The State of Rwanda commits itself to ... equality of all Rwandans and between women and men reflected by ensuring that women are granted at least thirty per cent of posts in decision making organs."

ARTICLE 9

"Political organizations ... operate in such a manner as to ensure that women and men have equal access to elective offices."

ARTICLE 52

Increased prospects for peace

In most cases, the constitutional processes under consideration were too recent to analyze the likelihood of the constitution's long-term success, which remains outside the scope of this study. Nonetheless, in those cases where women successfully influenced the constitutional process, they contributed to elements that increase the likelihood of a successful peace or transition process.

Where women bridged divides and advanced consensus in the negotiating process, they not only increased the chances of agreement on specific constitutional provisions, they also deepened the shared political understanding needed for broader political settlement. This includes both formal and informal agreements about how to exercise power in the state.⁵⁷ These efforts can help forge a common perception among the elites involved that their interests are best served through political frameworks for administering power, thus reducing the likelihood that any party will resort to violence.

When women increased citizens' participation in the constitutional process or pushed for greater transparency, they were also supporting the success of any new social contract. Similarly, by advocating for provisions that directly affect women and other marginalized groups, they helped ensure that the constitution better reflected citizens' needs and their vision for society. While this certainly does not guarantee success, it arguably leads to a more robust agreement and representative constitution, which in turn increases the prospects for a successful transition.

Finally, given the strong correlation between exclusion, inequality, and conflict, provisions focused on equality for all citizens should improve prospects of transitioning to a peaceful state based on the rule of law, in which all citizens have equal rights before that law. Exclusion of marginalized groups has long been accepted as a root cause of conflict. New research now also demonstrates a strong correlation between gender equality and peaceful societies. Scholars have shown that gender equality is a greater predictor of peace than a country's economic wealth, levels of democracy, or religion.⁵⁸ In fact, scholar Valerie Hudson and her colleagues have shown that inequity in family law—structures regulating rights around property, inheritance, divorce, and child custody, for example—is a strong determinant of societal instability.⁵⁹ So, while gender equality and the protection of women's rights are, of course, ends in themselves, “gender provisions” in a constitution can also have repercussions far beyond these laudable ends—ones that are particularly important in fragile and conflict-affected contexts.

Where women bridged divides and advanced consensus in the negotiating process, they not only increased the chances of agreement on specific constitutional provisions, they also deepened the shared political understanding needed for broader political settlement.

NOTES

- 1 Patty Chang, Mayesha Alam, Roslyn Warren, Rukmani Bhatia, and Rebecca Turkington, *Women Leading Peace* (Washington: Georgetown Institute for Women, Peace and Security, 2015), 73-74.
- 2 Jill Cottrell and Yash Ghai, *The Role of Constitution-Building Processes in Democratization – Case Study: Kenya* (Stockholm: International IDEA, 2004), 6-7.
- 3 Ibid., 12.
- 4 Focus group with Sophia Abdi in Nairobi, Kenya, August 4, 2016.
- 5 Ibid., Focus group with Atsango Chesoni in Nairobi, Kenya, August 4, 2016.
- 6 Ibid.
- 7 Cottrell and Ghai, *The Role of Constitution-Building*, 3; Martin van Vilet, Winluck Wahiu, and Augustine Magolowondo, *Constitutional Reform Processes and Political Parties: Principles for Practice* (The Hague: Netherlands Institute for Multiparty Democracy, 2015), 28; Media Development Association, *History of Constitution Making in Kenya* (Nairobi: Media Development Association and Konrad Adenauer Foundation, 2012), 32, 46.
- 8 Chang et al., *Women Leading Peace*, 81.
- 9 Ibid., 84; Meredith Preston McGhie and E. Njoki Wamai, *Beyond the numbers: Women's Participation in the Kenya National Dialogue and Reconciliation* (Geneva: Centre for Humanitarian Dialogue, 2011), 19.
- 10 Focus group with Martha Karua in Nairobi, Kenya, August 4, 2016.
- 11 Mutua, "Gender Equality and Women's Solidarity," 11.
- 12 Chang et al., *Women Leading Peace*, 84-85.
- 13 Ibid., 82.
- 14 Ibid., 85.
- 15 Focus group with Atsango Chesoni in Nairobi, Kenya, August 4, 2016.
- 16 Focus group with Atsango Chesoni, Martha Karua, Joyce Majiwa in Nairobi, Kenya, August 4, 2016.
- 17 Ibid.
- 18 O'Reilly, *Why Women?*
- 19 Many thanks to our reviewer Christina Murray for raising this important point.
- 20 Geisler, "Parliament is another terrain of struggle," 613.
- 21 Hill, "Redefining the Terms," 115-116, Shereen Hassim, "A Conspiracy of Women: The Women's Movement in South Africa's Transition to Democracy," *Social Research* 69, no. 3 (Fall 2002), 705-706.
- 22 Geisler, "Parliament is another terrain of struggle," 613.
- 23 Meintjes, "The Women's Struggle for Equality," 57.
- 24 Ibid., 59.
- 25 Ibid., 61.
- 26 McEwan, "Engendering citizenship," 635; Meintjes, "The Women's Struggle for Equality," 59.
- 27 African National Congress, *The Women's Charter for Effective Equality*, Article 7.
- 28 Hassim, "A Conspiracy of Women," 711.
- 29 Ibid., 711.
- 30 Seidman, "Gendered Citizenship," 293.
- 31 Hassim, "A Conspiracy of Women," 728. Some believed that the Women's National Coalition would carry on after the transition as a leading women's rights organization. However, after the Women's Charter was drafted, the coalition suffered from organizational and leadership problems. The elections in 1996 led to many of its leaders joining parliament, after which its momentum waned. Collective will around the implementation of the charter seemed to wilt as the new government took shape. Meintjes, "The Women's Struggle for Equality," 62.
- 32 Republic of South Africa, *Constitution of the Republic of South Africa No. 108 of 1996*, (December 18, 1996).
- 33 "Women share insights on normalization, submit recommendations to BTC," *Kababaihan at Kapayapaan*, March 2014, 40.
- 34 Ibid. These consultations were part of a project called "Women Working for Normalization" supported by the Australian Government.
- 35 See: Various women's organizations, "A Better Bangsamoro for all: Women's Contributions to the Bangsamoro Basic Law," Conciliation Resources, www.c-r.org/resources/better-bangsamoro-all-womens-contributions-bangsamoro-basic-law.
- 36 Ibid.
- 37 International Crisis Group, *The Philippines: Renewing Prospects*, 7 and 9.
- 38 Aurora Javate-de Dios, Melanie Reyes, and Women's Feature Service, *Gender, Peace and Security Infopack* (Quezon City: Miriam College-Women and Gender Institute, 2016), 11.
- 39 For examples of substantive issues that promote gender equality and inclusion, see Christine Forster, *Global Good Practices in Advancing Gender Equality and Women's Empowerment in Constitutions* (New York: United Nations Development Programme, 2016).
- 40 Morgan, "Constitution-Making in a Time of Cholera," 375-376.
- 41 David Rampf and Diana Chavarro, *The 1991 Colombian National Constituent Assembly: Turning Exclusion into Inclusion or a Vain Endeavor?* (Berlin: Berghof Foundation, 2014), 8; Constitution Writing and Conflict Resolution, "Colombia 1991," Princeton University, www.princeton.edu/~pcwcr/reports/colombia1991.html.

- 42 Morgan, "Constitution-Making in a Time of Cholera," 378-379.
- 43 Ibid., 402.
- 44 Ibid., 375-376.
- 45 Ibid., 381-382; Republic of Colombia, *Constitución Política de Colombia 1991*.
- 46 Morgan, "Constitution-Making in a Time of Cholera," 383.
- 47 Sarah Jane Cooper-Knock, "Gender, politics, and parliament in Rwanda," Open Democracy, February 26, 2016, www.opendemocracy.net/westminster/sarah-jane-cooper-knock/gender-politics-and-parliament-in-rwanda; Hunt, *Rwandan Women Rising*, 135-137.
- 48 Dr. Juliana Kantengwa, "Women's Participation in Electoral Processes in Post-Conflict Countries: The Case of Rwanda," Paper presented at panel discussion organized by Inter-Parliamentary Union, UN, and the Permanent Mission of Norway, March 3, 2004, 5.
- 49 Angela M. Banks, "Challenging Political Boundaries in Post-Conflict States," *University of Pennsylvania Journal of International Law* 29 (2007), 144-145.
- 50 Angela M. Banks, "Expanding Participation in Constitution Making: Challenges and Opportunities," *William and Mary Law Review* 49 (2008), 1066.
- 51 Banks, "Challenging Political Boundaries," 156.
- 52 Angela Banks, "Expanding Participation in Constitution Making: Challenges and Opportunities," *William and Mary Law Review* 49 (2008): 1066.
- 53 Hunt, *Rwandan Women Rising*, 135-139.
- 54 Republic of Rwanda, *The Constitution of the Republic of Rwanda* (May 26, 2003), Articles 11, 26, 76, 82.
- 55 Elizabeth Powley, *Defending Children's Rights* (Washington, DC: Inclusive Security, April 2008), 9.
- 56 Inter-Parliamentary Union, "Women in national parliaments," www.ipu.org/wmn-e/classif.htm.
- 57 Christine Bell and Kimana Zulueta-Fuelscher, *Sequencing Peace Agreements and Constitutions in the Political Settlement Process* (Stockholm: International IDEA, November 2016).
- 58 Hudson et al., *Sex and World Peace*.
- 59 Hudson et al., "We Are Not Helpless," 123-139.

3 CASE STUDY: WOMEN INFLUENCING CONSTITUTION REFORM IN TUNISIA¹

At the dawn of 2011, a revolution burst into the streets of Tunisia. Women and men came together across the country to call for an end to President Zine El Abidine Ben Ali's 20-year reign. Many observers have recognized what followed as a successful transition to constitutional democracy, at a time when other Arab Spring countries descended into conflict.² The Tunisian case serves as an informative example of constitution making for countries undergoing radical political change, whether due to conflict or governmental transition. Yet, despite this attention on Tunisia and its successes, few studies to date have offered a gendered analysis of the process, and there has been little documentation of women's participation.³

In fact, the Tunisian case provides a valuable illustration of how a wide range of modalities for women's participation can be used in one context. Women held 31 percent of seats in the national constituent assembly—more than the global average for constitutional negotiations in peace and transition processes. Women also made important contributions outside of the formal process, as they mobilized protests, demanded accountability, and advised both male and female assembly members on constitutional challenges. As such, this chapter will examine the Tunisian case in detail, from the transitional period beginning in early 2011 to the constitution's completion in January 2014.

Figure 3: Timeline of the Tunisian Constitutional Process



From revolution to constitution making

The 2011 revolution gave voice to decades of discontent harbored by many across Tunisian society. Tunisians blamed the Ben Ali regime for poor economic development in the interior governorates and high rates of poverty and unemployment among the working class. People felt marginalized and forgotten, their suffering exacerbated by the growing wealth and privilege of the ruling class. Further, Tunisians suffered decades of corruption, political repression, and violence perpetrated by security forces. From conservative Islamists to radical secularists, Tunisians called for a more open political climate, beginning with the formation of a representative and responsive government. Tunisian women, in particular, demanded greater inclusion and diversity in the government and other elected bodies.

At the time of the revolution, women held relatively progressive rights under the 1956 Personal Status Code and the 1959 constitution, which enshrined gender equality. However, in practice, the state's brand of feminism constrained women's freedoms and liberties.⁴ Women were prohibited from wearing a hijab or any Islamic veil in public spaces and were severely punished for any participation in, or even ties to, Islamist activism. While women held 29 percent of seats in parliament due to a quota implemented under Ben Ali, the women who came to power were primarily those who conformed to the parameters of state-defined feminism. Women who disagreed with the government's priorities, or those considered too radical, too Islamic, or too critical of the government, were excluded.⁵

The ouster of Ben Ali in January 2011 marked the beginning of the country's transition to multi-party democracy, which would evolve over the following three years, culminating in the ratification of a new constitution in January 2014. For many Tunisian women, the revolution and creation of a new constitution represented an opportunity to celebrate, acknowledge the diversity of womanhood, and demand autonomy and rights for women across all sectors of society.

How did women get access?

From January to October 2011, political leaders scrambled to establish a working government, while protests in the streets of Tunis continued to shape the direction of the transition. The Higher Authority for Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition ("Higher Authority") was established in early 2011 to help maintain the popular legitimacy of the transition and shepherd the lawmaking process.

Thus, political bargaining and civil society mobilization around the constitutional process began well before the inauguration of the constituent assembly in October 2011. Political parties jockeyed for popular favor, knowing that the outcome of the election would dictate who controlled the constitutional process. Tunisian women's organizations, activists, and legal experts understood the importance of this constitutional moment and sought to shape the discourse by focusing on who would ultimately draft the constitution and what issues they would prioritize.

For many Tunisian women, the revolution and creation of a new constitution represented an opportunity to celebrate, acknowledge the diversity of womanhood, and demand autonomy and rights for women across all sectors of society.

Women in civil society mobilize early

As the revolution began to take shape in 2011, Tunisian civil society breathed new life. Under the regimes of presidents Habib Bourguiba (1957-1987) and Ben Ali (1987-2011), many civil society organizations were co-opted or repressed by the state. As the revolution was realized, civil society finally shed the yoke of government control.⁶ For the Tunisian Association of Democratic Women (Association Tunisienne des Femmes Démocrates or ATFD), this meant a renewed opportunity to promote the rights and liberties Tunisian women deserved. Formed in 1989, ATFD is one of Tunisia's largest and oldest feminist organizations, with a broad support base of dedicated members organized around a mission to promote and protect women's rights.⁷ As the Arab uprisings gained momentum around the region, representatives from ATFD worked with women from Syria, Libya, Yemen, and other countries to develop recommendations on women's rights, in preparation for the transitions that would shape the Arab world. Members of ATFD saw the changing political landscape in the region as an opportunity to push their agenda, believing that "there can be no democracy without equality."⁸

In the aftermath of the revolution, ATFD also formed a coalition of sixteen like-minded organizations to establish a strong support base for women's rights. It included the Association for Tunisian Women for Research and Development; Parity and Equality; the League of Tunisian Women Voters; and Aswat Nissa (Voices of Women), among others. Prior to the election of the constituent assembly, the coalition drafted a five-point declaration on issues that concerned women (e.g., the elimination of reservations on the Convention on the Elimination of all Forms of Discrimination Against Women; gender parity in politics; and the rights of women in education, work, and health). The purpose of the declaration was to inform what they anticipated would be the major battleground issues for women's rights in the upcoming constitutional debate.⁹

Women's civil society groups also organized awareness-raising campaigns ahead of the constituent assembly elections to encourage women's participation. The elections provided Tunisians, men and women alike, a unique opportunity to voice their demands and elect parties and individuals to represent their interests in the constitutional process. Aswat Nissa worked with women in the suburbs of Tunis and in rural areas, where women were less likely to participate. As noted by Ikram Ben Said, the founder of Aswat Nissa:

We mainly worked on raising awareness and encouraging women to vote...going to various communities, explaining the electoral process to women, [and] holding election simulations. We were trying to show them the link between the private and the political, the importance of participation in this process.¹⁰

Almraa al-Horra, a women's civil society organization in the governorate of Sfax, launched a campaign encouraging all members of the public—men, women, and youth—to participate in the constituent assembly elections. From 2013-2015, the organization also worked with the United Nations Development Programme (UNDP) to support female candidates in Sfax for local and national elections.¹¹

The League of Tunisian Women Voters created a training-of-trainers program in rural areas to increase female voter turnout by supporting women to hold electoral education workshops in their communities. They were also the first organization to receive accreditation by the Independent Higher Authority for Elections—the government entity overseeing the 2011 elections—to serve as election observers.¹² Organizations like Aswat Nissa and the League of Tunisian Women Voters understood the high stakes of the 2011 constituent assembly elections. With the future of the country hanging in the balance, the elections represented a first step toward cementing women's rights in the constitution and entrenching women as political actors in a new democratic Tunisia.



AP Photo / Rex Features

A voter shows off her inked finger during Constituent Assembly elections in Tunis, Tunisia, on October 23, 2011.

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Women in the Higher Authority advocate for electoral parity

The body responsible for proposing reforms at the start of the democratic transition and designing the roadmap for the constitution-drafting process was the Higher Authority for the Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition (“Higher Authority”). It emerged from negotiations between then Prime Minister Mohamed Ghannouchi and a grouping of political parties, civil society organizations, and unions. In March 2011, Ghannouchi’s successor as prime minister, Beji Caid Essebsi, formally appointed the Higher Authority’s members, at the recommendation of the authority’s leaders, including its president, prominent legal scholar Yadh Ben Achour. The leaders sought to account for geographical diversity and the inclusion of youth and women among the authority’s 155 members.¹³

The Higher Authority maintained a distinction between two groups of members, commonly referred to as the “committee of experts” and the “political council.” Twenty legal experts comprised the committee of experts under the continued leadership of Yadh Ben Achour, while the political council included 135 representatives of political parties and civil society. The committee of experts drafted legislation necessary for the transition to proceed (e.g., laws related to elections, political parties, and freedom of press), and the political council debated and voted on the draft laws. Draft legislation approved by the political council was then submitted to the government, which had the power to issue laws by decree.¹⁴

Women served as members of both the expert committee and political council. The relatively high proportion of women on the committee of experts (30 percent) was not a coincidence. Ben Achour, who was a strong proponent of women’s participation, hand-picked members of the committee; and women members advocated for the inclusion of other women. Yosra Fraoues, the youngest member of the committee, attributed her appointment to the recommendation of Hafidha Chekir: “She recommended me to Yadh Ben Achour because...there were more academics than practitioners and more men than women. We had a meeting and I convinced him [to appoint me to the committee].”¹⁵

The Higher Authority served as a quasi-legislative body, creating laws to govern the country in the absence of an elected parliament. As part of this mandate, the Higher Authority drafted the rules for the October 2011 elections of the national constituent assembly, the body responsible for drafting the constitution. Decree Law 2011-35 (see excerpts on next page) introduced the principle of vertical parity or a “vertical zipper,” which requires the names on every party list to alternate between male and female candidates. This was the first time gender parity appeared in Tunisian law.¹⁶ The Tunisian electoral system follows the principles of proportional representation, meaning that political parties register lists of candidates and voters place their votes for parties, not individual candidates. Each party is generally awarded a number of seats proportional to the percentage of votes won, and the representatives are selected from the registered party lists from top to bottom.¹⁷ Requiring vertical parity meant that parties could not stack the top of their lists with male

Figure 4: Composition and Legislative Process of the Higher Authority for the Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition



candidates and relegate women to low positions on the list, unlikely to ever hold office; the first or second position on every list had to be occupied by a woman.¹⁸

This provision paved the way for women's inclusion in the constitutional process; it was also one of the toughest battles for women's rights advocates in the Higher Authority. Women in the committee of experts, like Hafida Chekir and Yosra Fraoues, championed the vertical parity provision—along with several male allies, such as former President of the Tunisian League for Human Rights Mukhtar Trifi, who raised the provision every time the electoral law was discussed. They were determined to incorporate gender into key policies.¹⁹ Their strategy was to “ask for more rights and to put the ceiling high—not give an opportunity to people for regression or going backwards.”²⁰ Yet they also understood the risks of pushing for too much, too quickly. They focused on securing vertical parity, forgoing an additional layer of horizontal parity (i.e., the added requirement of alternating between men and women at the heads of party lists). “[We knew horizontal parity] was too much at the time,” explained Fraoues.²¹

After the committee of experts agreed on the draft electoral law and passed the draft to the political council for deliberation, Chekir, Fraoues, and others prepared a strategy to lobby political council members on the importance of the parity provision. According to procedural rules, the committee of experts could not intervene or participate when the political council debated draft laws. But on the margins of the official forum, they discussed ways in which the exact wording of the text could help to generate consensus and support for the provision.²²

As part of their strategy to cultivate support for the parity provision, advocates recognized the need to bring the influential Islamist political party, Ennahdha, on board. They “[seized] the opportunity that Ennahdha was always accused of being against women's rights, telling [them] that ‘This is an opportunity for you to prove that all they say is wrong, that you've changed.’”²³ According to one Ennahdha leader, the party was split in its support for parity. But “when they were drafting the law for elections to the constituent assembly... these ladies...put political parties in front of their responsibilities so no one could say no. Imagine that at the time, [when] all of us were ambitious to build a new Tunisia, a democratic Tunisia, one political party would say ‘No, I don't want parity—it would be really

catastrophic for them.”²⁴ Once Ennahdha members agreed to accept the provision, it was easier to sway some of the progressive parties. Many of those parties did not want to appear more conservative than Ennahdha, and agreed to support the provision. To the advocates' surprise, several progressive parties still resisted quite fiercely. New and small parties, in particular, worried they would not have enough women in their ranks to fill their electoral lists.²⁵ According to the Ennahdha official, this same resistance from smaller parties reemerged during the debate in the constituent assembly over horizontal electoral parity. “It's not only between the conservative position and the progressive position,” she explained, “[It's] a fight for power; politics is power.”²⁶

EXCERPTS OF DECREE LAW 2011-35 ON GENDER PARITY

“Candidates shall file their candidacy applications on the basis of parity between men and women. Lists shall be established in such a way to alternate between men and women. Lists that do not follow this principle shall only be admitted when the number of seats, in the relevant constituency, is odd.”

ARTICLE 16

Gender parity comes to partial fruition

Women's advocacy around electoral parity came at a critical time in the revolution; political parties were under immense pressure to support it. As political parties sought to shore up popular support ahead of the approaching constituent assembly elections, public opinion seemed in favor of gender equality. Additionally, influential figures in civil society—like the Tunisian General Trade Union, one of the longest-running, most influential nongovernmental entities in Tunisia—backed the parity provision.²⁷ On May 11, 2011, the president signed Decree Law 2011-35, which called on parties to “file their candidacy applications on the basis of parity between men and women” and for electoral lists “to be established in such a way to alternate between men and women.”²⁸

In the October 2011 election for the national constituent assembly, 19 parties and eight independents received enough votes to gain seats. Ennahdha won 37 percent of the votes (89 of 217 seats), more than the next eight parties combined.²⁹ This was a notable victory, given the decades of repression and persecution that Ennahdha members and other Islamists faced under the Bourguiba and Ben Ali regimes.³⁰

Women capitalized on their momentum in the revolution and its aftermath, taking critical steps to influence the constitutional negotiations and shape the future of their country.

Women took 59 out of 217 seats, or 27 percent. By virtue of the parity requirements, additional women joined when male members resigned during the assembly's tenure. In the end, the constituent assembly included 67 female members, or 31 percent.³¹ While this rate of women's participation is relatively high compared to other constitutional processes, proponents of the parity provision had hoped for even greater women's representation, closer to 50 percent. But since the law did not explicitly require horizontal parity, only eight percent of the roughly 1,500 lists were headed by women.³² This, combined with the fragmentation of the vote, resulted in only the male heads of many party lists being elected.³³ Women's representation was primarily located in the significant number of seats won by a single party: Ennahdha (42 of the 59 seats held by women).

What impact did women have?

On October 23, 2011, Tunisians elected 158 men and 59 women to serve their country as members of the national constituent assembly, tasked with the weighty responsibility of drafting a new, post-revolution constitution. The constituent assembly, however, did not operate in a political vacuum; its decisions, and ultimately the constitution itself, were shaped by input

and feedback from the Tunisian people, with civil society acting as an interlocutor.

Women participated in the constitution-drafting process as elected representatives of the Tunisian people and as active, engaged citizens outside the assembly—activists, legal experts, educators, advocates, and more. They capitalized on the momentum of women's participation in the revolution and its aftermath, taking critical steps to influence the constitutional negotiations and shape the future of their country, despite numerous obstacles to their participation. Their stories chronicle a pivotal moment in Tunisia's history from a perspective seldom told.

Building consensus in the constituent assembly

Although women ultimately earned 31 percent of the seats in the constituent assembly, this did not guarantee them a proportional number of the assembly's formal leadership roles. Women served on all of the constitutional committees, as well as in the executive bureau; but male members largely dominated the committee leadership positions, which were filled proportionately by the political parties. Only one woman served as a committee president: Farida Labidi of Ennahdha presided over the Committee on Rights and Liberties.³⁴ Labidi believes she was selected to lead this important committee because of her experience as a human rights lawyer and a political prisoner during the Ben Ali era; Ennahdha also wanted to signal its support for its female assembly members.³⁵ Three other women held vice presidencies in the drafting committees (see Figure 5).³⁶ Ennahdha's Mehrezia Labidi (no relation to Farida) served as the first vice president of the constituent assembly under Mustapha Ben Jaafar, where she mediated plenary debates in Ben Jaafar's absence.

Nonetheless, throughout the drafting process, women demonstrated informal leadership as engaged and active assembly members. Records indicate that, on average, women voted more frequently than their male counterparts.³⁷ Habib Khedher, who served as general rapporteur of the constitution, also noted that "[women] were more present and disciplined than men in the committees. If the work of the [drafting] committees took a long time, the women were present from beginning to end."³⁸ Some in the constituent assembly also believed that committees headed by

women, like the general legislation commission, were more efficient than committees run by men.³⁹ Female assembly members were seen as demonstrating particular commitment to working in the governorates and connecting to their constituencies.⁴⁰

Many Tunisians attribute the success of the transition to the level and degree of consensus achieved within the constituent assembly. As the assembly members with the highest rates of attendance and participation, women were leaders in driving others toward compromise, pushing for consensus more regularly than their male counterparts in drafting committees and the plenary.⁴¹

Women comprised more than a third of the crucial 23-member Consensus Committee, which assembly president Mustapha Ben Jaafar created in 2013 to resolve controversial issues emerging from the drafting committees.⁴² Unlike the other committees, whose memberships were determined proportionately to the number of seats each party held in the assembly, political parties were represented more evenly in the Consensus Committee, giving the opposition a greater voice.⁴³ Parties used the committee as a forum for negotiating divisive issues and reaching settlements. Women like Rym Majoub invoked Article 93 of the rules of procedure on multiple occasions, which allowed articles to be reopened for debate. This enabled her and other women to re-table issues of importance to them in the Consensus Committee. Among other contentious issues, the committee requested closer scrutiny of Article 46, which deals with women's rights.⁴⁴ Majoub and others prepared rigorously for the committee's debate on the article, discussing strategies and role-playing before the meetings to practice their arguments. On this and other divisive articles—those related to women's rights and those not—the Consensus Committee proved critical to reaching agreement. So influential was the forum that it has been credited with "creating the constitution in the form we now recognize."⁴⁵

Figure 5: Constitution Drafting Committees



As the first vice president of the constituent assembly, Mehrezia Labidi also played a particularly public role in forging consensus as she presided over plenary debates. She was conscious of the immense pressure and responsibility to foster agreement when she served as plenary chair, and employed creative tactics to understand not only the main points of contention, but also the assembly members themselves. As Labidi recalled:

*I spent a lot of time observing my colleagues both inside and outside of the plenary sessions: I attended the committee debates and the meetings...of the Consensus Committee. I listened to my colleagues to see what their arguments were and to gauge their capacity to negotiate, to hold firm, and to reach out to others. That helped me to run the plenary sessions, particularly during the general debates about the Constitution.*⁴⁶

Figure 6: Drafting Process within the National Constituent Assembly



By closely observing the individuals as well as the debate, Labidi felt she could better drive the plenary toward consensus. She sought to “show them the common ground between them...[and] make them all feel that they were contributing to the article that would be put to the vote.”⁴⁷

Working across partisan divides to achieve common interests

The constitution-drafting process was not without controversy. It was seen as an opportunity to institutionalize the principles of freedom, dignity, plurality, justice, and equality that gave rise to the

revolution, but Tunisians disagreed on what those principles meant in practice and how the legal text should represent those values. While there were a number of fault lines, perhaps the most volatile was the political divide between the Islamist Ennahdha party and more left-leaning, secular opposition parties. Both sides feared that the other would co-opt the process in a way that would constrain the identities and way of life of their supporters. Growing hostility between political camps—in addition to two political assassinations—nearly derailed the entire transition in the summer of 2013. But thanks, in part, to the National Dialogue Quartet and the perseverance of the constituent assembly members, the process resumed its course (see Box 2 below).

BOX 2 | THE QUARTET AND A TRANSITION ON THIN ICE

On July 25, 2013, constituent assembly member Mohammad Brahmi became the second opposition leader to be assassinated in a five-month period following the death of prominent human rights activist Chokri Belaid. The event sent shockwaves through the country. Brahmi was a vocal critic of the Ennahdha party. A general strike was called and hundreds of protestors spilled into the streets, demanding the government’s resignation and calling into question the transition process.⁴⁸

The constituent assembly was also in tumult. Some members boycotted proceedings and joined the protests outside the parliament building calling for the dissolution of the assembly. Mustapha Ben Jaafar, president of the constituent assembly, called for a suspension of activities on August 6th until formal negotiations could begin.⁴⁹ Tunisia’s transitional process appeared on the brink of collapse.

As discord escalated, leaders of four long-standing and influential organizations—the General Labor Union; the Confederation of Industry, Trade and Handicrafts; the Human Rights League; and the Order of Lawyers—joined together to call for a national dialogue to navigate the country out of chaos. They became known as “the Quartet.” The

Quartet leadership included one woman, Ouided Bouchamaoui, the first woman in history to lead the Confederation of Industry, Trade and Handicrafts.⁵⁰ The Quartet presented a road map that laid out the final steps of the transition across three tracks—electoral, constitutional, and governmental—including completion of the constitution, a new electoral law, a non-partisan interim government, and a timetable for parliamentary and presidential elections.⁵¹

At first, Ennahdha leadership refused to acknowledge the legitimacy of the Quartet. Ennahdha and its political allies had, after all, won in popular elections; the Quartet was a group of self-appointed civil society leaders. But as protests grew to the thousands outside government buildings, Ennahdha and other party leaders agreed to negotiate with the Quartet to get the transition back on track.⁵² The constituent assembly resumed work on September 12 and the Quartet negotiations extended into January 2014. Eventually, the three tracks outlined by the negotiated roadmap were completed as planned, although on an extended timeline.⁵³ All four organizations in the Quartet were recognized for their contributions to the transition with a Nobel Peace Prize, awarded in 2015.⁵⁴

The contours of this discord were complex and nuanced, and they critically affected the climate of the transition both before and after the national dialogue. They also influenced gendered questions in the text of the constitution, as well as the positions that women took in the constituent assembly. The political chasm between Ennahdha and left-wing parties made cooperation among women inside (and outside) the constituent assembly difficult. Distrust, and even animosity, were present on both sides. Women on the left feared that Ennahdha and its supporters were determined to enforce a conservative interpretation of Sharia law, dialing back or limiting their relatively advanced rights under the Personal Status Code and their demands for constitutionalized gender equality.⁵⁵ Meanwhile, women who supported Ennahdha felt that leftist women were unwilling to recognize a range of feminist thought and the validity of their own feminist claims. Some believed the liberal camp pushed a radical feminist agenda that was not appropriate for the Tunisian context or rooted in the Tunisian tradition.⁵⁶

Even as they held different—and sometimes competing—views, some women across the political spectrum found that they agreed on general principles like gender equality and parity in elected assemblies. To maximize their influence, a number of women in the constituent assembly worked together across party lines on what they could identify as shared interests. A civil society observer of the constitutional process saw that “there were many women across partisan lines who had...a common awareness [of their] tremendous responsibility towards all other women in society.”⁵⁷ These women wanted to create a space where they could exchange views and opinions and develop solutions independent from political party agendas.⁵⁸

While there is no definitive account of how women across the political spectrum began to work together, anecdotal evidence suggests a softening of positions among women within the constituent assembly over time. Rym Majoub, a member of the leftist Democratic bloc, remembered:

[M]utual distrust that separated [women] at the beginning of the [constituent assembly's] mandate. That changed a lot over time. Accepting others is an integral part of any democracy. It is very important. I was able to get to know the people underneath the hard outer shells that some assembly members presented. The conflicts and the ensuing reconciliations brought us closer together.⁵⁹

Another female assembly member observed: “Women deputies thought about their country and future generations instead of political gains.”⁶⁰ Observers of the constituent assembly also noted that “they all faced the same challenges as women...because it was a masculine environment and I think that made them realize that they had common interests.”⁶¹

Even as they held different—and sometimes competing—views, some women across the political spectrum found that they agreed on general principles like gender equality and parity in elected assemblies.

The rules of procedure precluded women from forming a formal caucus. Although the rules were later amended to abolish those restrictions, some viewed a women's caucus as contradicting the principle of proportional representation, making it difficult to rally sufficient support from other members.⁶² Political parties were also reluctant to see members acting outside their control.⁶³ As such, women who sought to work together regardless of party affiliation began collaborating informally on issues of mutual interest, such as the principle of gender equality.

This cross-party cooperation served as a way to build consensus before the debate was brought to political parties in the committees and plenary. Women negotiated among themselves, saying to one another: “If you insist on passing this part, my party [will] not accept this part, so let us all agree on our common interests, so that our parties will have to accept this.”⁶⁴ They prepared the ground for specific constitutional proposals by crafting language their parties could agree on. According to one observer, this strategy “enabled the different progressive articles to be advanced and enshrined within the constitution,” particularly those related to gender equality and gender parity in elected assemblies.⁶⁵

However, not all women in the constituent assembly supported this informal collaboration. While there was general agreement among female members that women's rights should be maintained and advanced, ideas of what constituted those rights and the role of women in society diverged.⁶⁶ When it came to the details, women—like men—held a diversity of opinions. In the constituent assembly, this meant that, while some women members actively worked together to identify common principles across the ideological divide, others remained staunch in their opposition and contested the creation of a women's bloc, whether formal or informal.⁶⁷

To reduce these divides to “Islamist” versus “secular” paints an overly simplistic picture that obscures the overlapping identities that many Tunisians, including Tunisian women, hold. Some Tunisians, for example, are religiously observant and would like to see a role for Islam in Tunisian politics, but still espouse liberal views on women's rights and equality. In addition, terms like “liberal” and “conservative” do not always conform with party lines: A plurality of views existed among women and men within Ennahdha, and within progressive parties like the Congress for the Republic, Democratic Group, and Ettakatol. Thus, when the constituent assembly committed the state to work to attain gender parity between men and women in elected assemblies, one observer described the variety of reactions within each political camp as follows:

*Amid tears of joy from [Ennahdha's] Jaouhra Tis and Yamina Zoghlami, a denunciation of the vote by [Ennahdha's] Monia Brahim, and the absence of joy of any kind from a few members of the parliament from the Democratic Group and Ettakatol, some observers were disoriented by the new dividing lines that emerged from the vote.*⁶⁸

Even after the passage of the constitution, female assembly members remained divided over how particular goals, like women's equal representation in politics, should be achieved in practice. As such, identifying shared interests and achieving agreement on constitutional language took tough negotiation and compromise.

Keeping the process accountable to the people

While the constituent assembly remained the nucleus of constitution drafting, the grassroots nature of the revolution created an environment where individual Tunisians could access and contribute to the constitutional process through civil society activities and other outlets. This was, in part, supported by the efforts of organizations like Al Bawsala, which played a critical role in promoting transparency and accountability by ensuring that the proceedings of the constituent assembly were accessible and available to the public (see Box 3). But perhaps the most notable and widely recognized contribution of Tunisian civil society was through demonstrations and protests throughout the constitution-drafting process.

Civil society used protests to hold the government, political parties, and assembly members accountable and to communicate dissatisfaction with the process and/or its outcomes when the transition appeared to stray from what they perceived as the founding principles of the revolution. One observer noted:

*The [amount] of mobilization was truly impressive: the associations organized demonstrations with thousands of people, civil society created national and international pressure; it managed to keep up substantial media pressure throughout the constitution-making process.*⁶⁹

Tunisian women participated in and led many of these demonstrations. In particular, women's organizations were at the forefront of protests following the release of the first draft of the constitution in August 2012 which included a controversial “complementarity” clause. This clause stated that “the state shall guarantee the protection of the rights of women and shall support the gains thereof as true partners to men in the building of the nation and as *having a role complementary thereto within the family*” (emphasis added).⁷⁰ While supporters of the clause insisted that the Arabic draft had been mistranslated into French and English, taken out of context, and inaccurately reported by the media, many Tunisians interpreted it to mean that women were unequal to men.⁷¹ Civil society mobilized en masse, with thousands of women taking to the streets to denounce what they believed was the constituent assembly's attempt to relegate women to second class status.⁷² (For more on the complementarity debate, see Box 4.)

BOX 3 | WOMEN IN CIVIL SOCIETY PROMOTING TRANSPARENCY

Amira Yahyaoui co-founded Al Bawsala, a civil society organization, to push for a human rights agenda in the constitutional process. Although Al Bawsala was first and foremost focused on human rights, it quickly morphed into a monitoring and transparency organization inside the constituent assembly. According to Yahyaoui, she “very quickly realized that no one knew what was going on in the assembly, that no one knew its operating rules and no one was taking part in it apart from the 217 elected assembly members, and even they weren’t largely present at the time.”⁷³ Although the plenary sessions were broadcast live on television, little was known about the inner workings of the drafting committees, where most of the debates took place.

Recognizing this gap, Yahyaoui and her colleagues began recording assembly proceedings (including attendance, voting patterns, and reports on substantive debates) and publishing the information online and via social media.⁷⁴ Assembly members initially tried to prevent them from gaining access, but Yahyaoui and her colleagues remained adamant. As she remembers it: “The vast majority of members supported us until we published something that might backfire on them. When what we published was in their interests, they considered us as allies, but each time what we published was to their detriment, we once again became an enemy to be defeated.”⁷⁵

Yahyaoui advocated directly to the assembly president Mustapha Ben Jaafar to convince him that transparency was vital to the constitutional process, and joined together with other NGOs to lodge a complaint against him when they weren’t satisfied by his response. “We were uncompromising, and we negotiated nothing. That was our way of showing the assembly members that we, the people, the citizens, now held the power, and that they represented the people, that community of citizens.”⁷⁶

Fostering civic engagement and information exchange

In addition to protests and demonstrations, women in civil society also directly advocated to assembly members on specific constitutional issues. The Tunisian Association of Democratic Women (Association Tunisienne des Femmes Démocrates or ATFD), for example, focused their advocacy efforts on assembly members whom they could easily bring on board to their agenda; their allies “became like a bridge between civil society and the assembly in some parties.”⁷⁷ By employing this strategy, women advocates capitalized on disagreements within the political parties. They realized that many constitutional issues were first debated at the party level before progressing to the committees and plenary. By establishing relationships with multiple members within each party, they could advance their cause at the ground level.

Additionally, ATFD held a virtual constituent assembly, where they invited assembly members and civil society representatives to participate in a mock drafting process. Civil society representatives included the Tunisian League of Human Rights, Association for Tunisian Women for Research and Development, women’s unions, and the Tunisian Judges Association. They welcomed perspectives from across the political spectrum, and even invited Ennahdha member Mehrezia Labidi—who was seen to have opposing views—to speak at the convening.⁷⁸ The virtual assembly helped to encourage dialogue between civil society and female assembly members, and cultivate agreement on important constitutional issues.

Organizations like Aswat Nissa provided training on the basics of politics and governing to women in the constituent assembly. They saw training and capacity building as key to promoting gender equality and changing perceptions of women as political actors.⁷⁹ Some women lawyers and constitutional experts leveraged the assembly’s need for technical assistance to advocate for specific provisions. As one female law professor recalled:

Some deputies would call us for legal advice, so we would use that opportunity to present our recommendations. For example, the article on freedom of conscience – [assembly members] were okay with freedom of religion, but not freedom of conscience, and we persuaded them to adopt it.⁸⁰

They sent chapter-by-chapter comments to assembly members as the drafts were released. Women lawyers also focused on how to draft language that would leave little room for interpretation by judges, particularly on provisions related to rights and liberties.⁸¹

Women's civil society groups also supported the constitutional process by elevating women's voices from outside of the capital city. One women's organization in Sfax, Almraa Al-Horra, hosted dialogues between leaders of labor unions (including the Tunisian General Trade Union, the Tunisian Union of Trade, Industry, and Handicrafts, and the Tunisian Union of Agriculture and Fisheries) and local government officials responsible for employment policies. The project aimed to foster an exchange of ideas and develop recommendations for increasing the presence of women in these industries and for policies related to the right to strike, health, and security at work.⁸² As researcher Maryam Ben Salem noted, women outside of Tunis, especially in the poorer, more undeveloped interior regions of the country, tend to be "more focused on the economy than on politics, and there [was] not enough structure to link their protests in the interior to politics [in the capital]."⁸³ Organizations like Almraa Al-Horra adapted the discussions being held at the national level to local needs, and then fed the results back into the national debate by presenting their recommendations to members of the constituent assembly.⁸⁴ The Jasmine Foundation played a similar role in the more marginalized perimeter neighborhoods of Tunis, holding conferences and roundtables and producing reports that translated what was happening within the constituent assembly into laymen's terms in order to "bring the constitution closer to people who would have difficulty accessing [it]."⁸⁵

The constituent assembly also created mechanisms to gather input directly from civil society and individuals. These programs for civic engagement included two "open days" in the assembly's chambers, where each drafting committee held a full-day public meeting to solicit input on substantive issues. The meetings hosted by the Committee on Rights and Liberties and the Committee on the Preamble, Fundamental Principles, and Constitutional Amendments had the largest attendance rates, around 100 individuals each.

With UNDP's support, the assembly also hosted a series of 24 national dialogues across the governorates, and 18 dialogues for members of the Tunisian diaspora in France and Italy (where the largest proportion of Tunisians abroad live), to encourage broad participation.⁸⁶ Women from across Tunisia, as individuals and as members of civil society, participated in the open days and national dialogue sessions. Women's organizations, like ATFD, held focus groups and workshops to develop their recommendations, and presented them directly to constituent assembly members. Recommendations made by women's civil society included guidance on equal rights between women and men, vertical and horizontal parity for women in the electoral law, women's representation in elected and appointed bodies, equal opportunities for men and women, and economic provisions relating to equal employment.⁸⁷

Women's civil society groups also supported the constitutional process by elevating women's voices from outside of the capital city.

Shaping the content of the constitution⁸⁸

Using mobilization and advocacy, women also influenced the range of substantive issues discussed in the constitutional debate—particularly those related to women's rights and gender equality. While women across the political spectrum may not have held the same views and opinions on every issue, they successfully pushed the constituent assembly to weigh these issues as important constitutional considerations.

Women inside and outside the constituent assembly primarily coalesced around a few key topics, including gender equality (Article 21) and parity in elected assemblies (Article 46). For many political parties and civil society organizations, these were not seen as priorities.⁸⁹ Women were told by some of their male counterparts that "this is not the time to talk about women's rights—we have to talk about freedom of speech, etc. That is more important."⁹⁰

But many interviewees reported that, if not for women's mobilization, these rights would not have been protected under the constitution. As explained by Sana Ben Achour, a prominent legal expert: "It is very important to have things constitutionalized because [although] they say it's only paper... law has an operational force, which is really important."⁹¹

The gender equality debate first drew attention in August 2012 upon the release of the first draft of the constitution, which included a controversial clause referring to women's "complementary" status (see Box 4). As mentioned above, civil society's response was immediate and fierce, with human rights and women's organizations circling petitions and calling for demonstrations. Thousands of protestors took to the streets with banners bearing messages like "Rise up, women, for your rights."⁹² Liberal feminist activists took to the airwaves to explain why the clause was problematic, because "even if the people didn't understand what complementarity meant, it was [an innate reaction] to refuse this concept."⁹³ Others provided expert testimony to the national constituent assembly to advocate for changing the language.⁹⁴ Swaying under this immense pressure, the constituent assembly abandoned the concept of complementarity in the second draft of the constitution.⁹⁵

EXCERPT FROM TUNISIAN CONSTITUTION OF 2014

"All citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination."

ARTICLE 21

BOX 4 | FROM COMPLEMENTARITY TO EQUAL CITIZENS

Divisions over gender equality came most famously to the fore with the release of the first draft of the new constitution in August 2012, which included a provision stating:

"The state shall guarantee the protection of the rights of women and shall support the gains thereof as true partners to men in the building of the nation and as having a role *complementary* thereto within the family."⁹⁶ (emphasis added)

For many liberal women, the complementarity language cemented their fears that Ennahdha, for all its protestations otherwise, sought to roll back women's hard-fought gains.⁹⁷ Sanaa Balhoubsh of the Association of Women's Rights in Tunisia told *The Washington Post*: "Even if the constitutional [drafters'] intention was good, and God only knows if it is, we still can't accept the text. The fact is, this text demeans women and makes them unequal or incomplete without men."⁹⁸

Supporters of the complementarity clause insisted that the Arabic draft had been mistranslated into French and English, taken out of context, and inaccurately reported by the media.⁹⁹ Another translation, for example, offers the clause thus: "The state guarantees the protection of women and supports their achievements, considering them as men's true partners in building the nation, and their [men's and women's] roles fulfill one another within the family."¹⁰⁰

No one from the rights and liberties committee, which was responsible for the draft language, came forward to publicly lay claim to its authorship. But committee president and Ennahda member Farida Labidi defended this view, arguing that "one cannot speak of equality between man and woman in the absolute." She asserted that protestors had taken the clause out of context by overlooking Article 22 (which later became Article 21), which already guaranteed citizens' equality without discrimination.¹⁰¹

Regardless, the massive pushback from civil society tipped the balance. Around 6,000-7,000 protestors spilled into the streets, calling on the constituent assembly to amend the clause. The second draft of the constitution abandoned the concept of gender partnership and complementarity.

Discourse around gender parity in politics began early in the process, first within the Higher Authority and then continuing in the constituent assembly. Women who supported the principle of parity saw this provision as vital to evolving the status of women in Tunisian society. As observed by one female assembly member:

*Women already acquired education, health, and equality from the personal status code, so the most important thing is that women be represented in decision-making processes, leadership, and political parties... women deputies are more present than men, yet when given a choice between women and men to represent them in parliament, people choose men. This is a mentality we have to change.*¹⁰²

Debates in the constituent assembly centered on whether gender parity in legislative elections was necessary, and if it should be incorporated into the constitution or left to the electoral law. Opinions coalesced around two main points of view not uncommon to quota debates around the world. The first argued that, unless the law reserved parliamentary seats for women, deeply rooted conservative traditions in Tunisia would prevent even the most competent female candidates from winning office. The second, opposing point of view held that reserving seats for women would undermine their authority, which would be better protected if their seats were won on the basis of merit alone.¹⁰³

Some in the constituent assembly also argued that parity should be incorporated into electoral law, instead of the constitution.¹⁰⁴ But a group of women and a small group of men within the constituent assembly—supported by civil society and the UN—warned: “Beware, if you don’t mention it in the constitution, you are going to lose it.”¹⁰⁵ In an impassioned speech to the plenary on the day of the amendment’s debate, Ennahda representative Monia Ibrahim fiercely denounced parity, contending that it undermined the principle of equality for which women had fought.¹⁰⁶ So heated was the debate that several national constituent assembly members threatened to vote against the adoption of the entire constitution if the amendment were included.¹⁰⁷

To win support for the inclusion of parity in the constitution, some women strategically framed the issue as “if you are against parity, you are against women.” Consequently, “no party would dare go against it, because they don’t want to appear against

women and don’t want to lose the woman vote.”¹⁰⁸

Advocates also publicly equated issues like parity and gender equality with popular revolutionary ideals, such as progressiveness, democracy, and modernism. They employed phrases like “There is no democracy without equality”¹⁰⁹ and “Modernity and democracy go hand in hand.”¹¹⁰ They also made sure to ask for the maximum, knowing they’d be negotiated down by other parties.

Article 46 and its controversial amendment were ultimately passed with 116 votes in favor, 40 against, and 32 abstentions.¹¹¹ Several months later, the national constituent assembly went on to pass a new electoral law that reaffirmed vertical parity.¹¹² Proponents of the parity provision in the constitutional process had hoped to enshrine horizontal parity, so that electoral lists would be required to alternate male and female candidates horizontally at the head of lists in addition to vertically from the top to the bottom of lists. But they could not convince the constituent assembly to go beyond the vertical approach.¹¹³ In June 2016, however, Tunisia’s parliament adopted an election law for municipal and regional elections that included both horizontal and vertical parity.¹¹⁴

In addition to the gains described above, some Tunisian women sought to expand and strengthen women’s rights in other areas, including equal inheritance. However, they chose to strategically postpone these divisive, hard-to-win battles for a later time, and instead focused on getting specific language into the constitution that would give them the broader legal foundation to pursue those issues later. ATFD, for example, chose to postpone the question of inheritance in lieu of higher priority issues. But, as one of its members noted: “You have Article 21 on ‘equality before the law’ and ‘equal rights.’ It’s not by chance that it was written [in this way].”¹¹⁵

Beyond such high priority gender-related provisions, many female advocates and activists also promoted issues like accountability, freedom of conscience, and human rights more broadly. However, when asked whether women coalesced around any specific substantive constitutional issues, male and female respondents overwhelmingly described the campaigns around women’s rights. This is perhaps an indicator of how many, in Tunisia and beyond, think of women’s participation as framed solely by gender.

Overall, the issues women advocated for—from gender equality and more inclusive governance to the

protection of human rights—represented many of the core values at the heart of the revolution. The transition was borne out of a shared discontent and frustration with the poverty, marginalization, repression, and corruption associated with the Ben Ali regime. It evolved from an inclusive, citizen-led movement rather than from the traditional, male-dominated political elite. The recognition and protection of women's rights and gender equality in the constitution represented a victory for women in Tunisian society, but it also brought gains for society as a whole—by enshrining principles of diversity, agency, and inclusion that were previously absent.

A look ahead

The involvement of Tunisian women in the constitutional process illustrates how women, individually and as a group, can impact the constitutional process and outcomes. Working collectively, women accomplished significant gains related to the recognition of women's rights. Individually, women demonstrated their ability to be savvy political players in an environment that was often hostile to their participation. However, despite these achievements, women faced a number of gendered challenges to their participation in constitution reform—in particular relating to social norms around women's roles in politics, a historically male-dominated space (see Chapter 4 on Challenges to Women's Influence).

With the constitution now in force, women are focused on implementation and testing the boundaries of the provisions they fought for so passionately.¹¹⁵ As noted by Rym Majoub, a member of the constituent assembly and current member of parliament:

The provisions of a constitution are general and open to several interpretations, and that is even truer of our constitution, which remained vague and prone to very different interpretations, given its consensual nature. A conservative would interpret it very differently from a progressive. That is why we wanted to put in place safeguards on matters we considered dangerous, and particularly with regard to rights and freedoms.¹¹⁶

Despite an increasingly divided political climate in Tunisia, the constitution has provided a foundation for further shifts toward gender equality. In 2017, the parliament passed legislation to protect women

from domestic violence and repealed the penal code provision allowing rapists to avoid punishment if they marry their victims. The government also annulled an administrative order from 1973 that prohibited Muslim women from marrying non-Muslims. President Béji Caïd Essebsi invoked the constitution while announcing a review of the personal status code's unequal inheritance rights for women. A commission has been appointed to tackle this contentious issue, and Ennahda has not opposed the initiative.

As the country moves toward instituting a new constitutional order, it has become clear that Tunisian women will continue to strive for de facto as well as de jure gender equality. Women do not represent a monolithic bloc and divisions of opinion will persist, but their varied contributions and continued participation in the legislative process signals hope for Tunisia's journey as an emerging democracy.

EXCERPTS FROM TUNISIAN CONSTITUTION OF 2014

“Work is a right for every citizen, male and female. The state shall take the necessary measures to guarantee work on the basis of competence and fairness.

All citizens, male and female, shall have the right to decent working conditions and to a fair wage.”

ARTICLE 40

“The state commits to protect women's accrued rights and work to strengthen and develop those rights.

The state guarantees the equality of opportunities between women and men to have access to all levels of responsibility in all domains.

The state works to attain parity between women and men in elected Assemblies.

The state shall take all necessary measures in order to eradicate violence against women.”

ARTICLE 46

NOTES

- 1 This chapter is reproduced and expanded upon in a standalone case study on Tunisia: Nanako Tamaru, Olivia Holt-Ivry, and Marie O'Reilly, *Beyond Revolution: Women Influencing Constitution Reform in Tunisia* (Tunis: UNDP and Inclusive Security, January 2018).
- 2 Freedom House, *Freedom in the World 2017* (Washington, DC: Freedom House, 2017).
- 3 Existing research on women's participation in the constitutional process includes: Global Women's Leadership Initiative, *Women's Participation: The Making of the Tunisian Constitution* (Washington, DC: Woodrow Wilson International Center for Scholars, 2013); Nedra Cherif, *Tunisian women in politics: From constitution makers to electoral contenders - Policy Brief No. 189* (Madrid: FRIDE and Oslo: HIVOS, November 2015).
- 4 Article 6 of the 1959 constitution states "All citizens shall have the same rights and duties. They shall be equal before the law." *Human Rights Watch*, "Tunisia: Landmark Action on Women's Rights," April 30, 2014, www.hrw.org/news/2014/04/30/tunisia-landmark-action-womens-rights.
- 5 Victoria Chambers with Clare Cummings, *Building Momentum: Women's empowerment in Tunisia* (London: Overseas Development Institute, 2015), 27; Amor Boubakri, "Chapter 5: Inclusiveness Policies in the Transitional Elections in Tunisia," in *Improving Electoral Practices: Case Studies and Practical Approaches* (Stockholm: International IDEA, 2015), 147.
- 6 Laurie A. Brand, *Women, the State, and Political Liberalization: Middle Eastern and North African Experiences* (New York: Columbia University Press, 1998), 177; Monica Marks, "Women's Rights before and after the Revolution," in *The Making of the Tunisian Revolution: Contexts, Architects, Prospects*, ed. Nouri Gana (Edinburgh: Edinburgh University Press, 2013), 232.
- 7 Interview with Leila Hamrouni in Tunis, Tunisia, October 2, 2016; "Présentation," ATFD, femmesdemocrates.org.tn/presentation-atfd-2/.
- 8 Interview with Bochra Bel Haj Hmida in La Marsa, Tunisia, October 3, 2016.
- 9 Interview with Sana Ben Achour in Tunis, Tunisia, October 3, 2016.
- 10 Sharmilla Ganesan, "The Woman Pushing Women Into Tunisia's Politics," *The Atlantic*, August 9, 2016, www.theatlantic.com/business/archive/2016/08/ikram-ben-said-tunisia-women/492242/.
- 11 Emna Bouzaziz, focus group with members of Almraa al-Horra in Sfax, Tunisia, October 1, 2016.
- 12 Olea Media, "Interview with Besma Soudani Belhadj: Tunisian women voting," Uploaded August 16, 2012, vimeo.com/47670081.
- 13 Yadh Ben Achour, "The Tunisian Revolution in its constitutional manifestations: The first transitional period (14 January 2011 – 16 December 2011)," in *The Constitution of Tunisia* (United Nations Development Programme, September 2016); The Carter Center, *The Constitution-Making Process in Tunisia – Final Report, 2011-2014* (Atlanta: The Carter Center, 2014).
- 14 Ibid.
- 15 Interview with Yosra Fraoues in Tunis, Tunisia, October 3, 2016.
- 16 Ibid.
- 17 See Andrew Reynolds and Ben Reilly, *The International IDEA Handbook of Electoral System Design* (Stockholm: International Institute for Democracy and Electoral Assistance, 2002), 60 for more information on proportional representation electoral systems.
- 18 For more on vertical parity (also known as the zebra or zipper system), see Drude Dahlerup, Zeina Hilal, Nana Kalandadze, and Rumbidzai Kandawasvika-Nhundu, *Atlas of Electoral Gender Quotas* (Stockholm: International IDEA, Inter-Parliamentary Union, Stockholm University, 2013), 29-31.
- 19 Interview with Yosra Fraoues in Tunis, Tunisia, October 3, 2016; Interview with Salsabil Klibi in Tunis, Tunisia, October 4, 2016.
- 20 Interview with Yosra Fraoues in Tunis, Tunisia, October 3, 2016.
- 21 Ibid.
- 22 Ibid.
- 23 Ibid.
- 24 Interview with Mehrezia Labidi in Tunis, Tunisia, October 4, 2016.
- 25 Interview with Yosra Fraoues in Tunis, Tunisia, October 3, 2016.
- 26 Interview with Mehrezia Labidi in Tunis, Tunisia, October 4, 2016.
- 27 The parity provision also received support from the Confederation of Industry, Trade and Handicrafts (UTICA), the Tunisian Association of Democratic Women, and the Tunisian Human Rights League. Interview with Leila Hamrouni in Tunis, Tunisia, October 2, 2016; Interview with Yosra Fraoues in Tunis, Tunisia, October 3, 2016.
- 28 Government of Tunisia, *Decree Law No. 35 on Election of the National Constituent Assembly*, Article 16 aceproject.org/ero-en/regions/africa/TN/tunisia-decree-no.-35-dated-10-may-on-the-election
- 29 National Democratic Institute, *Final report on the Tunisian National Constituent Assembly Elections* (Washington, DC: National Democratic Institute, October 23, 2011), 19.
- 30 See Monica Marks, *Convince, Coerce, or Compromise? Ennahda's Approach to Tunisia's Constitution* (Washington, DC: Brookings, February 2014).
- 31 Donia Ben Romdhane, "The mothers of the constitution – Tunisia," International IDEA, March 5, 2015, www.idea.int/news-media/news/mothers-constitution-tunisia.
- 32 Boubakri, "Inclusiveness Policies," 148.
- 33 Cherif, *Tunisian women in politics*, 2.

- 34 Al Bawsala, "L'Assemblée: Commissions," majles.marsad.tn/fr/assemblee/commissions.
- 35 Interview with Farida Labidi in La Marsa, Tunisia, September 27, 2016.
- 36 They were Salma Baccar of the Democratic bloc, Lobna Jeribi of the Ettakatol bloc, and Fattoum Lassoued of the Ennahdha bloc. See Al Bawsala, "L'Assemblée: Commissions," majles.marsad.tn/fr/assemblee/commissions.
- 37 See Al Bawsala, "Votes sur la constitution," majles.marsad.tn/fr/votes/constitution. Interview with Besma Jebali in Tunis, Tunisia, September 28, 2016; Interview with Mehrezia Labidi in Tunis, Tunisia, October 4, 2016.
- 38 Interview with Habib Kheder in Tunis, Tunisia, October 4, 2016.
- 39 Interview with Besma Jebali in Tunis, Tunisia, September 28, 2016.
- 40 Ibid.; Interview with Mehrezia Labidi in Tunis, Tunisia, October 4, 2016.
- 41 International IDEA, Center of Arab Women for Training and Research, Netherlands Institute for Multiparty Democracy, *Workshop on Lessons Learned by NCA Female Members* (Tunis, International IDEA, Center of Arab Women for Training and Research, Netherlands Institute for Multiparty Democracy, 2014), 63.
- 42 Rym Mahjoub, "From division to consensus: The role and contribution of the Consensus Committee," in *The Constitution of Tunisia* (United Nations Development Programme, September 2016), 1. Eight of the 23 committee members were women: 'Commission des consensus,' majles.marsad.tn/fr/assemblee/commissions/51e5132a7ea2c449b515d6eb.
- 43 Ibid, 1.
- 44 Interview with Habib Kheder in Tunis, Tunisia, October 4, 2016.
- 45 Mohamed El Hamdi, "Dissolving tensions between the groups and resuming the work of the Constituent Assembly," in *The Constitution of Tunisia* (United Nations Development Programme, September 2016), 5.
- 46 Mehrezia Laabidi, "Creating dialogue and guaranteeing respect – Chairing the Plenary Sessions," in *The constitution of Tunisia* (Amman: United Nations Development Programme, September 2016) 4.
- 47 Ibid., 3.
- 48 BBC, "Tunisian politician Mohamed Brahmi assassinated," July 23, 2013, www.bbc.com/news/world-africa-23452979.
- 49 The Carter Center, *The Constitution-Making Process in Tunisia*.
- 50 Chris Stephen, "The Tunisia quartet: how an impossible alliance saved the country from collapse," *The Guardian*, December 8, 2015, www.theguardian.com/world/2015/dec/08/tunisia-quartet-arab-spring-islamist-nobel-peace-prize.
- 51 "Tunisian Quartet in conversation," *Security Community: The OSCE Magazine* 1 (2016), www.osce.org/magazine/248471.
- 52 Chris Stephen, "The Tunisia quartet."
- 53 The Carter Center, *The Constitution-Making Process in Tunisia*, 29.
- 54 The Norwegian Nobel Committee, "The Nobel Peace Prize for 2015," (Oslo, October 2015) www.nobelprize.org/nobel_prizes/peace/laureates/2015/press.html.
- 55 Monica Marks, "Women's Rights before and after the Revolution," 225.
- 56 Interview with Besma Jebali in Tunis, Tunisia, September 28, 2016.
- 57 The parties included Ennahdha, the Democratic Bloc, and Ettakatol. Interview with Tasnim Chirchi in Ariana, Tunisia, October 4, 2016.
- 58 International IDEA, Center of Arab Women for Training and Research, Netherlands Institute for Multiparty Democracy, *Workshop on women working together in parliament: General Report on main conclusions and recommendations* (Tunis: International IDEA, December 29, 2014), 5-6.
- 59 Rym Mahjoub, "From division to consensus," 4.
- 60 Interview with Besma Jebali in Tunis, Tunisia, September 28, 2016.
- 61 Interview with Tasnim Chirchi in Ariana, Tunisia, October 4, 2016.
- 62 International IDEA et al., *Workshop on women working together in parliament*, 6.
- 63 Ibid.; Cherif, *Tunisian women in politics*, 3.
- 64 Interview with Tasnim Chirchi in Ariana, Tunisia, October 4, 2016.
- 65 Ibid.
- 66 Ibid.; Cherif, *Tunisian women in politics*, 3.
- 67 International IDEA et al., *Workshop on women working together in parliament*, 5.
- 68 Sahbi Khalfaoui, "The constitutional debates of 3-26 January 2014," in *The constitution of Tunisia* (Amman: United Nations Development Programme, September 2016), 3.
- 69 Amira Yahyaoui, "Observing the National Constituent Assembly," in *The constitution of Tunisia* (Amman: United Nations Development Programme, September 2016), 2.
- 70 This translation was taken from Monia Ben Jemia, "Interpretation of article 46 of the Constitution," in *The constitution of Tunisia* (Amman: United Nations Development Programme, September 2016), 2, and matches the language found in the unofficial English translation of the first draft prepared by International IDEA, www.constitutionnet.org/sites/default/files/draft-constitution-english.pdf.
- 71 BBC, "Tunisian women protest to demand equality," August 14, 2014, www.bbc.com/news/world-africa-19253289.
- 72 Yahyaoui, "Observing the National Constituent Assembly," 1.

- 73 Ibid., 3. Other tactics included introducing vote traceability to find out how assembly members were voting; putting the assembly's diary online, when the assembly itself published nothing on its website; publishing the biographies of assembly members; publishing member absences; live-tweeting the plenary sessions in French to enable dual nationals who did not have a sufficient knowledge of Arabic to follow the debates; and translating and posting online several documents on the functioning of the assembly, as well as the working drafts of the constitution.
- 74 Ibid.
- 75 Ibid.
- 76 Interview with Bochra Bel Haj Hmida in La Marsa, Tunisia, October 3, 2016.
- 77 Ibid.; Interview with Sana Ben Achour in Tunis, Tunisia, October 3, 2016.
- 78 Stephan Faris, "Sister of the Tunisian Revolution," *Time*, September 12, 2014, time.com/3270885/ikram-ben-said-nextgen-leaders.
- 79 Interview with Salsabil Klibi in Tunis, Tunisia, October 4, 2016.
- 80 Ibid.
- 81 81 Emna Bouaziz, focus group with members of Almraa al-Horra in Sfax, Tunisia, October 1, 2016
- 82 Interview with Maryam Ben Salem in Tunis, Tunisia, September 30, 2016.
- 83 Tharoua Ellouze and Nihel Ellouze, focus group with members of Almraa al-Horra in Sfax, Tunisia, October 1, 2016.
- 84 Interview with Tasnim Chirchi in Ariana, Tunisia, October 4, 2016.
- 85 Badreddine Abdelkafi, "The National Constituent Assembly and the civil society: What is the relationship?" in *The constitution of Tunisia* (Amman: United Nations Development Programme, September 2016), 6; Interview with Badreddine Abdelkafi in Tunis, Tunisia, September 29, 2016. Eleven meetings were held in France and seven in Italy.
- 86 Emna Bouaziz, focus group with members of Almraa al-Horra in Sfax, Tunisia, October 1, 2016; Global Women's Leadership Initiative, Women's Participation: *The Making of the Tunisian Constitution*, 13-14.
- 87 Nanako Tamaru et al., *Beyond Revolution: Women Influencing Constitution Reform in Tunisia* (United Nations Development Programme, January 2018).
- 88 International IDEA et al., *Workshop on women working together in parliament*, 6.
- 89 Interview with Maryam Ben Salem in Tunis, Tunisia, September 30, 2016.
- 90 Interview with Sana Ben Achour in Tunis, Tunisia, October 3, 2016.
- 91 BBC, "Tunisian women protest to demand equality."
- 92 Interview with Yosra Fraoues in Tunis, Tunisia, October 3, 2016.
- 93 Interview with Sana Ben Achour in Tunis, Tunisia, October 3, 2016.
- 94 Monia Ben Jemia, "Interpretation of article 46 of the Constitution," in *The constitution of Tunisia* (Amman: United Nations Development Programme, September 2016), 2; Interview with Maryam Ben Salem in Tunis, Tunisia, September 30, 2016.
- 95 This translation was taken from Ben Jemia, "Interpretation of article 46 of the Constitution," 2 and matches the language found in the unofficial English translation of the first draft prepared by International IDEA, www.constitutionnet.org/sites/default/files/draft_constitution-english.pdf.
- 96 Bochra Bel Haj Hmida quoted in Borzou Daragahi, "Term used for women in Tunisia's draft constitution ignites debate, protests," *The Washington Post*, August 16, 2012, www.washingtonpost.com/world/middle_east/term-used-for-women-in-tunisia-draft-constitution-ignites-debate-protests/2012/08/16/c6045e24-e7bf-11e1-a3d2-2a05679928ef_story.html
- 97 Sanaa Balhoubsh quoted in Daragahi, "Term used for women in Tunisia's draft constitution."
- 98 Interview with Habib Kheder in Tunis, Tunisia, October 4, 2016.
- 99 Monica Marks, "'Complementary' status for Tunisian women," *Foreign Policy*, August 12, 2012, foreignpolicy.com/2012/08/20/complementary-status-for-tunisian-women
- 100 Mounira M. Charrad and Amina Zarrugh, "The Arab Spring and Women's Rights in Tunisia," *E-International Relations*, September 4, 2013, www.e-ir.info/2013/09/04/the-arabspring-and-womens-rights-in-tunisia.
- 101 Interview with Farida Labidi in La Marsa, Tunisia, September 27, 2016.
- 102 Interview with Habib Kheder in Tunis, Tunisia, October 4, 2016.
- 103 Interview with Mehrezia Labidi in Tunis, Tunisia, October 4, 2016.
- 104 Ibid.
- 105 Duncan Pickard, "Voting on the Tunisian Constitution," MENASource, Atlantic Council, January 14, 2014, www.atlanticcouncil.org/blogs/menasource/voting-on-the-tunisian-constitution.
- 106 Ben Jemia, "Interpretation of article 46 of the Constitution," 4.
- 107 Interview with Leila Hamrouni in Tunis, Tunisia, October 2, 2016.
- 108 Interview with Bochra Bel Haj Hmida in La Marsa, Tunisia, October 3, 2016.
- 109 Interview with Leila Hamrouni in Tunis, Tunisia, October 2, 2016.

- 110 Press Release, "The Carter Center Welcomes Human Rights Protections in Tunisia's New Constitution; Calls for Immediate Steps to Implement," The Carter Center, April 10, 2014, www.cartercenter.org/resources/pdfs/news/pr/tunisia-full-statement-041014.pdf.
- 111 Nidhal Mekki, "Tunisia's new electoral law and the consolidation of a new constitutional order," *Constitutionnet*, May 25, 2014, www.constitutionnet.org/news/tunisias-new-election-law-and-consolidation-new-constitutional-order.
- 112 For more on vertical and horizontal zippers (also known as the zebra system), see Drude Dahlerup, Zeina Hilal, Nana Kalandadze, and Rumbidzai Kandawasvika-Nhundu, *Atlas of Electoral Gender Quotas* (Stockholm: International IDEA, Inter-Parliamentary Union, Stockholm University, 2013), 29-31.
- 113 "Tunisia moves closer to achieving gender equality in politics," UN Women, June 28, 2016, www.unwomen.org/en/news/stories/2016/6/tunisia-moves-closer-to-achieving-gender-equality-in-politics.
- 114 Interview with Sana Ben Achour in Tunis, Tunisia, October 3, 2016.
- 115 For additional perspective on these implementation challenges, see Nanako Tamaru et al., *Beyond Revolution: Women Influencing Constitution Reform in Tunisia* (United Nations Development Programme, January 2018)
- 116 Rym Mahjoub, "From division to consensus," 2.

4 CHALLENGES TO WOMEN'S INFLUENCE

Women achieved gains for gender equality, peacebuilding, and more inclusive processes in the cases examined for this report. Nonetheless, these often represented only partial achievements of their broader agendas. Indeed, women also experienced failures and faced significant obstacles to influencing the constitution-making process and outcomes. These included:

- 1 Perceptions of women as token members of decision-making bodies;
- 2 Community and societal hostility toward women's inclusion, motivated by social norms;
- 3 Barriers to building strong coalitions; and
- 4 Sidelining of women's demands in favor of the interests of other, more powerful groups.

The constitution-making processes in Tunisia, Nepal, and the Philippines illustrate these challenges clearly.

Perceptions of tokenism within constitution-reform bodies

In **Tunisia**, women in the constituent assembly were not necessarily viewed as legitimate political actors by their peers, despite their high participation rates. Previously, women had served in the government under Ben Ali, but they were often nominated and seen as junior players that needed to be “tutored, protected, and guided.”¹ Although women played an active role in the revolution, this perception of women as inexperienced political actors created an environment where they were forced to prove their legitimacy at every turn. This was even the case at the highest levels of the assembly's leadership. Some political actors and activists worried that 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. Thus, women sought to have a voice within their parliamentary group and “not only be a finger that presses the button [to] vote.”²

In reality, the vast majority of the constituent assembly, both men and women, had little familiarity with the political and legislative process. “[N]othing prepared them for that role...because it was the first year of democracy and it was the first democratically elected parliament...most of them [both men and women] needed training, and that was obvious. And many of them lacked an understanding of policy issues and of policymaking in general,” said one activist.¹⁹ Still, male assembly members had greater perceived credibility, a reality which was reflected in their disproportionate representation in party leadership roles.⁴

Although women played an active role in the revolution, this perception of women as inexperienced political actors created an environment where they were forced to prove their legitimacy at every turn.

As the first vice president of the constituent assembly, Mehrezia Labidi supported the president of the assembly and presided over plenary debates in his absence. As one of the most prominent women's voices in the assembly, she understood what was at stake for the future of women in Tunisian politics:

I understood those risks relatively early on and I developed the ability to impose my authority. I was aware that, in doing so, I would be projecting an image of myself as an authoritarian woman, a strong woman, and that the opponents of the [ruling coalition] were going to criticize my iron fist, accusing me of curtailing

*their freedom. But I nevertheless decided to be firm... and fair. It was a personal challenge, too: proving to the Tunisians, to the Arab Muslims, and to the whole world, that a woman could reach such a position in an Arab, Muslim country, not because she was appointed, but because she was democratically elected, and that she could have the necessary authority to fulfil her duties and be up to the task.*⁵

In some instances, media outlets selected male assembly members to report on their committee's work even though they were not actually present during working sessions.

While mediating debates in the plenary, Labidi's competency and leadership were often tested. She had to enforce her authority and convince other members that she was not just a token woman representative. During one long and heated debate between two prominent figures—including a senior official from her own political party—Labidi imposed herself in the argument as chair of the plenary and lectured them on the rules of procedure, reproaching them for acting out of order. It was a show of force that set the tone for the remainder of her sessions. Afterward, she noticed a shift in how assembly members acted when she presided over debates. She was no longer viewed as a woman who received her appointment for the sake of parity; she was recognized and respected for her leadership and ability to manage the plenary.⁶

Discrimination in society

Media outlets in **Tunisia** also perpetuated the notion that men possessed greater capacity than their female counterparts. Journalists regularly interviewed assembly members on the body's progress and achievements, but primarily sought interviews with men, despite women's overall high rate of participation in the committee and plenary sessions. One female assembly member expressed great frustration that "women contributed to every period of the constitution-making process, but there's little recognition of [our achievements]."⁷ In some instances, media outlets

selected male assembly members to report on their committee's work even though they were not actually present during working sessions.⁸ Women in civil society faced many of the same challenges in gaining traction with media outlets. "I seized the opportunity to respond to all media requests, because in Tunisia, there aren't a lot of women in the media," noted cofounder of ATFD and current parliamentarian, Bochra Bel Haj Hmida. She found that she had to convince the media of her competence to speak on constitutional issues and, further, that she had to push journalists to engage with more women.⁹

Women outside of the constituent assembly also faced misgivings related to their capacity and competencies; these, however, were driven by the internalization of social and cultural norms. Observers noted that many women outside of the capital expressed doubt as to whether they could or should participate in political activities. According to one researcher: "There were lots of educated women, but they didn't feel they were competent enough compared to men. The less educated they were, the more they felt that."¹⁰ Civil society organizations also found that "women were not participating in the election, as voters nor as candidates. We noticed a lack of motivation and daring...Women were excluding themselves due to a lack of capacity."¹¹

In communities where women chose to mobilize and participate in constitution-related activities, some were discouraged and even threatened. They were told that "if you engage in politics, you'll gain a bad reputation."¹² As elected officials, female assembly members also faced gendered double standards. As women, they were not considered legitimate political actors, but when they fought to be taken seriously and "spoke as firmly and...as harshly as men, [they would say] 'Oh, they are not good women, because they are behaving like men.'"¹³

Women in the assembly also struggled to reconcile their identities as political actors and as mothers. Long hours in the constituent assembly proceedings made it difficult for women to fulfill their duties at home. Most votes took place after midnight, which made it particularly difficult for women with young children or those who were the sole caregivers in their families.¹⁴

Some women faced personal attacks as a result of their participation. Women in the constituent assembly were

disproportionately targets of harassment, assault, and insults, either directly or through social media.¹⁵ Civil society representatives who spoke to the media about women's rights were called traitors, accused of working on an agenda pushed by international actors.¹⁶ Some even reported receiving death threats.

Obstacles to coalition building

In part to challenge gendered assumptions about their political legitimacy, female assembly members in **Nepal** formed an informal women's caucus in 2009. Through the caucus, they hoped to strengthen their collective decision-making power and formulate a joint women's agenda.¹⁷ While creating a united women's front has distinct advantages, it can also be a challenge—particularly where women must reconcile multiple identities. In other cases, women succeeded in building strong enough coalitions to overcome very deep divides and accommodate multiple identities and loyalties. The Kenyan case (see page 19) shows how powerful dialogue, reconciliation, and trust-building initiatives can be. Indeed, in most of the cases, women managed to bridge significant identity divides to advance a common agenda, increase their inclusion, or help move the constitutional process forward, even where these divides were deep and resilient following decades of conflict, inequality, or oppression.

Women in Nepal's first constituent assembly, however, struggled to overcome class and caste divisions. At its core, the 20-year civil war in Nepal reflected grievances related to the social, political, and economic dominance of certain ethnic groups and castes at the expense of others, and a political system that failed to serve the needs of all Nepalis.¹⁸ The constitutional process that followed shortly after the 2006 Comprehensive Peace Agreement remained steeped in these same divisive politics.

The 197 women elected and appointed to the first constituent assembly in 2008 represented a diverse group, including members of marginalized and disadvantaged groups such as the Janajatis/indigenous, Madhesis, Dalits, and Muslims. In fact, members of these groups constituted 65 percent of the women in the constituent assembly.¹⁹ Initially, women from different classes and castes interfaced primarily with their own parties and remained relatively isolated from one another. Women from lower socioeconomic classes felt that more elite women looked down on them, and in some cases felt humiliated for their ethnic dress, use of language, and level of education. Meanwhile, women from more elite classes reported feeling sidelined by the process as they felt more opportunities were given to women from marginalized groups.²⁰

Female assembly members created the women's caucus to overcome these barriers and address the siloed nature of women's participation. It was meant to serve as a forum for women to work together regardless of party affiliation, and to formulate and promote a joint women's agenda in the constituent assembly. But, ultimately, members of the women's caucus found it difficult to build and sustain consensus, which hampered coordination, cooperation, and their ability to keep pressure on the assembly leadership. Some attributed the challenges in the women's caucus to members' prejudices against each other. Sixty-three percent of women assembly members blamed the shortcomings of their substantive agenda on their lack of unity.²¹ In the end, insufficient trust- and coalition-building efforts made it difficult for women to unite around key priorities, recruit male allies, and make their voices heard.

While creating a united women's front has distinct advantages, it can also be a challenge—particularly where women must reconcile multiple identities.

Conflicting interests vis-à-vis dominant parties

In **Nepal**, women's proposals on inheritance rights, proportional representation in elected bodies, and the formation of a women's commission were ultimately secured in the final constitution, despite the difficulties women faced in the first constituent assembly. However, women were unable to overturn a constitutional provision produced by the second constituent assembly that limited children's citizenship rights. The context in which the new constitution was ultimately agreed played a significant role.

The earthquake that hit Nepal in spring 2015 created a new urgency for political leaders to agree on a constitution after seven years of deliberations and recurring disagreements, particularly concerning the approach to decentralization and federalism. In their rush to overcome the impasse and reach an agreement in the wake of the earthquake, the four major political parties struck a deal among themselves.²²

In the preliminary draft presented in the second constituent assembly, Article 12 required both parents to hold Nepali citizenship in order for their child to acquire citizenship by descent. This meant that children born to single women and women married to foreign men would not have full citizenship rights; they could only acquire more restrictive "naturalized" citizenship at the discretion of the state. Further, Article 13 allowed a foreign woman married to a Nepali man to gain citizenship by relinquishing her foreign citizenship. However, a foreign man married to a Nepali woman was required to wait 15 years to acquire citizenship.²³

Women organized protests and petitions in opposition to this citizenship clause, even staging a hunger strike to demand equal citizenship rights. Opponents warned that it would leave millions of children stateless and relegate women to second class citizens.²⁴ One woman activist decried the draft constitution for "[bringing] shame to Nepal in the international arena as it is against various international conventions the country has signed to ensure equal rights of women."²⁵

Ultimately, the four main parties did not view this issue (or other contentious issues raised by marginalized communities) as aligning with their interests. The second constituent assembly passed the constitution with the discriminatory provisions intact, although

advocates did succeed in gaining some substantive victories (see excerpts below). The constitution was promulgated amid mass protests and unrest, in which at least 46 people were killed.²⁶

EXCERPTS FROM NEPALESE CONSTITUTION OF 2015

"Every woman shall have equal right to lineage without any gender discriminations."

ARTICLE 38.1

"Women shall have the right to access participate in all state structures and bodies on the basis of the principle of proportional inclusion."

ARTICLE 38.4

"In case of a person born to a Nepali woman citizen married to a foreign citizen ... he/she may acquire naturalized citizenship of Nepal as provided for by the federal law. Provided that at the time of acquisition of citizenship, both his/her mother and father are citizens of Nepal such person born in Nepal may acquire citizenship of Nepal by descent."

ARTICLE 11.7

In the **Philippines**, women also reported difficulty gaining traction when their core demands conflicted with the interests of the dominant parties. For example, tribal leaders nominated Froilyn Mendoza to represent the needs of indigenous peoples in the government's delegation to the Bangsamoro Transition Commission. Indigenous communities represent around 10 percent of the population in Bangsamoro, the newly formed autonomous region for which a subnational constitution—the Bangsamoro Basic Law—was being drafted. But as consensus was being built inside the commission, indigenous rights did not align with the interests of the main parties.

Prior to the commission, Mendoza led the Teduray-Lambangian Women's Organization, a coalition of 35 community-based organizations working to

advance indigenous women's inclusion in sustainable and environmental development, decision-making processes, peace, and justice.²⁷ As one of two indigenous representatives on the commission, Mendoza made clear to her colleagues that she was there to represent indigenous interests, not the government. She advocated for the Bangsamoro Basic Law to include specific provisions on indigenous rights—the same rights already provided for in the Philippines national constitution.²⁸

Mendoza championed these provisions even though she felt her counterpart in the delegation of the Moro Islamic Liberation Front (the armed opposition group) downplayed the importance of indigenous rights and other commission members called her a spoiler. She says: "I encountered resistance to the positions I was defending on behalf of my people. I had to make an effort to explain why these issues were important, and often felt unrecognized [even though] the results of the negotiations would shape the life of the Teduray."²⁹

To strengthen her influence inside the commission, Mendoza capitalized on her available resources. As a community organizer, Mendoza had some experience in policy advocacy, but lacked experience in policymaking. She understood that the strength of her campaign resided with the people she represented, and felt it was important to reach out directly to her constituents. She organized working sessions with indigenous leaders, experts, and policymakers from the National Commission on Indigenous Peoples, to ensure her recommendations reflected what they wanted in the Basic Law. She also gathered support from churches, NGOs, and academics, and organized community consultations through the Teduray-Lambangian Women's Organization.³⁰

Despite Mendoza's efforts, the commission did not include the indigenous rights provisions she proposed in the draft Basic Law that was presented to congress in 2014. Mendoza was the only commissioner who voted for the provisions. "Indigenous community issues are always misunderstood," Mendoza reflected, "[we] are viewed as spoilers by MILF and the government. [As a minority representative], how do I deal with my fellow members on the Commission who are Moro, how to balance that power? This is really difficult."³¹

NOTES

- 1 Interview with Mehrezia Labidi in Tunis, Tunisia, October 4, 2016.
- 2 Ibid.
- 3 Interview with Tasnim Chirchi in Ariana, Tunisia, October 4, 2016.
- 4 Interview with Farida Labidi in La Marsa, Tunisia, September 27, 2016; Interview with Mehrezia Labidi in Tunis, Tunisia, October 4, 2016; National Democratic Institute, "Tunisia's National Constituent Assembly: Gender Assessment," Washington: National Democratic Institute, March 2014, 9.
- 5 Mehrezia Labidi, "Creating dialogue and guaranteeing respect," 3.
- 6 Ibid.
- 7 Interview with Farida Labidi in La Marsa, Tunisia, September 27, 2016.
- 8 International IDEA et al., "Workshop on Lessons Learned by NCA Female Members," 62.
- 9 Interview with Bochra Bel Haj Hmida in La Marsa, Tunisia, October 3, 2016.
- 10 Interview with Maryam Ben Salem in Tunis, Tunisia, September 30, 2016.
- 11 Emna Bouaziz, focus group with members of Almraa al-Horra in Sfax, Tunisia, October 1, 2016.
- 12 Interview with Maryam Ben Salem in Tunis, Tunisia, September 30, 2016.
- 13 Interview with Mehrezia Labidi in Tunis, Tunisia, October 4, 2016.
- 14 From a workshop organized by International IDEA and the Netherlands Institute for Multi-party Democracy, see Donia Ben Romdhane, "The mothers of the constitution – Tunisia."
- 15 International IDEA et al., "Workshop on Lessons Learned by NCA Female Members," 63.
- 16 Interview with Yosra Fraoues in Tunis, Tunisia, October 3, 2016.
- 17 Women's Caucus et al., *Women Members of the Constituent Assembly*, 74-75
- 18 International Crisis Group, *Nepal's Divisive New Constitution*, 3; Bipin Adhikari, "Legitimacy and peace processes."
- 19 Women's Caucus et al., *Women Members of the Constituent Assembly*, 63.
- 20 Ibid., 89.
- 21 Ibid., 89-90.

- 22 Christine Bell, Charmaine Rodrigues, Silvia Suteu, Tom Gerald Daly, and Jenna Sapiano, "Constitution-making and political settlements in times of transition," Research Paper Series No 2016/23 (Edinburgh: University of Edinburgh School of Law, 2016).
- 23 International IDEA, *Nepal's Constitution Building Process: 2006-2015 – Progress, Challenges, and Contributions of International Community* (Stockholm: International IDEA, 2015), 24-25.
- 24 Tricia Taormina, "Nepal's Constitution Maintains Fatherhood Bias," *Women's e-news*, October 7, 2015, womensenews.org/2015/10/nepals-constitution-maintains-fatherhood-bias/.
- 25 Pratichya Dulal, "CA snubs proposal for gender friendly citizenship provisions," *The Kathmandu Post*, September 15, 2015, kathmandupost.ekantipur.com/news/2015-09-15/ca-snubs-proposal-for-gender-friendly-citizenship-provisions.html.
- 26 Anagha Neelakantan, Alexander Ramsbotham, and Deepak Thapa, *Peace, power and inclusive change in Nepal – Political Settlements in Practice* (London: Conciliation Resources and the Political Settlements Research Programme, October 2016).
- 27 Interview with Froilyn Mendoza via phone, August 9, 2016; "Teduray Lambangian Women's Organization (TLWOI)," www.c-r.org/organisation-profile/teduray-lambangian-womens-organization-tlwoi.
- 28 Interview with Froilyn Mendoza via phone, August 9, 2016.
- 29 Nerea Bilbatua, "Speaking up."
- 30 Interview with Froilyn Mendoza via phone, August 9, 2016.
- 31 Ibid.

5 | LESSONS FOR ACTION

Women involved in the cases examined here had a triple impact: on the constitutional decision-making process, on the constitution itself, and on broader prospects for peace and security. They repeatedly bridged divides in the negotiating process; broadened societal participation; and advanced constitutional provisions for more equitable, inclusive societies. Although the constitutional implementation stage is beyond the scope of this report, the kinds of provisions women secured are likely to build a foundation for stability and security that lasts beyond the negotiations themselves.

Drawing lessons from how women gained access and exerted influence, we can recommend five tactics for women looking to influence constitutional negotiations, and for men and women who wish to support more inclusive constitution-reform processes in fragile and conflict-affected environments.

BOX 5 | FIVE TACTICS FOR INCREASING WOMEN'S INFLUENCE ON CONSTITUTION-REFORM PROCESSES

1. Mobilize early
2. Incentivize women's participation, and go beyond tokenism
3. Cultivate strategic alliances and broad coalitions
4. Frame the debate effectively
5. Understand the negotiating context, and get creative

1. Mobilize early

Constitution reform sometimes takes place as part of peace negotiations, without any separate forum. Or pre-reform processes, such as peace or transition talks, can decide on the rules for electing or appointing members to the constitution-reform body. Whichever path emerges, it's critical for women's mobilization to begin as early as possible to ensure that they can participate.

In all cases bar one, women's early mobilization made it more likely that that women would be included in the constitution-reform process. In some cases, women involved in the pre-reform process supported women's inclusion in the drafting body, whether through direct advocacy or by shaping norms and expectations around who should participate. In the Philippines, for example, women made up 50 percent of the government's negotiating team and 25 percent of signatories when a comprehensive peace agreement was signed in 2014. They also played key leadership roles, such as presidential advisor on the peace process, in the final years of the peace negotiations. This active involvement in the peace process set a new norm for women's participation and paved the way for their inclusion in the subnational Bangsamoro constitutional process that followed.

In other cases, women's organizations mobilized outside of the official peace or transition process and pressured the participating parties to commit to including women in constitution reform. In East Timor, women's organizations formed a "platform for action" ahead of the constituent assembly elections to advocate for a quota for women. When policymakers failed to include the quota in the electoral law, the platform organized protests and pressured parties to support women's candidacies in other ways. Women ultimately won 26 percent of the seats in the assembly, despite their prior significant marginalization from political representation.

The case of Colombia, however, illustrates some of the pitfalls when early mobilization occurs, but is not coordinated. Leading up to the constituent assembly elections, women were divided over the best strategy to maximize women's inclusion. Some wanted to push political parties to add more women to their party lists, while others preferred to create a list wholly made up of female candidates. Women won only four out of 74 seats (5 percent), and many felt that their lack of organization, experience, and consensus contributed to the poor showing.

2. Incentivize women's participation, and go beyond tokenism

Two of the eight cases considered in this report used quotas to ensure women's participation in the constitution-reform process. In Nepal, women in the Interim Constitution Drafting Committee ensured the interim constitution mandated a 33 percent quota for women's representation in the constituent assembly that would follow. The "vertical zipper" quota in Tunisia meant that electoral lists for the constituent assembly had to alternate between men and women, which resulted in women holding 27 percent of seats (and later 31 percent) in the constituent assembly. It's likely that these quotas increased the proportion of women in the constituent assembly in each case. Legislation establishing the 2008 Kenyan constitutional process fell short of a formal quota and called for gender balance in the appointment of committee members, which led to mixed results. Perhaps due to the lack of enforcement mechanisms, women made up 33 percent of the Committee of Experts, but only 19 percent in the Parliamentary Select Committee.

Other mechanisms and strategies also proved successful in increasing the number of women represented. In South Africa, the African National Congress adopted its own internal quota following advocacy by the party's Women's League, which contributed to women gaining 21 percent of seats in the constituent assembly. In the Philippines, the parties leading the Bangsamoro constitutional process publicly committed to the principle of gender parity and appointed women to 27 percent of the committee seats, which was likely a consequence of women's early mobilization during the peace process.

In other cases, where quotas proved too contentious and women were not able to secure their participation using this tool, women's organizations and international actors often found innovative ways of incentivizing parties to ensure a minimal level of women's representation among their ranks. For example, in East Timor, the UN mission gave more air time on their radio station to parties that had at least 30 percent female representatives.

However, quotas and other mechanisms for fair gender representation did not always ensure that women could exert influence on the process. Interviews suggest that, in all three countries with quotas, women were sometimes perceived as less legitimate participants if they had earned a seat via a quota. This was often compounded by existing gender stereotypes that women were inexperienced political players, and by disproportionate media coverage of male participants. In Nepal, as noted in Chapter 4, many other barriers to women's influence persisted despite the high level of representation that the quota facilitated.

Nonetheless, women were often able to overcome a perceived lack of legitimacy when they brought subject-matter expertise to the process or successfully asserted their authority and capacity in male-dominated groups. In Tunisia, the female vice president of the assembly, who presided over many plenary debates, consciously and persistently leveraged her authority as chair to impose order and mediate antagonistic arguments. As a result, she became recognized and respected for her leadership and management skills.

3. Cultivate strategic alliances and broad coalitions

Across the cases, women's inclusion and influence were typically strengthened when they built strategic alliances. These ranged from coordinated coalitions of women who spoke with one voice on common goals to cooperation with key political parties and male policymakers. The most successful alliances often brought together "insiders" in the constituent assembly and "outsiders" in civil society.

For example, in Kenya, women's civil society organizations represented diverse political, religious, and ethnic constituencies that were often sharply divided by conflict and distrust. But through mediator facilitation, dialogue, and confidence-building activities, women in civil society and those directly involved in the constitutional negotiations forged common ground on priorities relating to gender equality (and equality more broadly). They then advocated to members of the constitution-reform bodies with recommendations and policy reports. Conversely, women participating in the constituent assembly in Nepal failed to bridge class, caste, and education divides, despite the creation of a women's caucus. As a result, 63 percent of female assembly members attributed deficiencies in their substantive agenda to their lack of unity.¹

In Tunisia, women in the constituent assembly crossed political party lines to advance provisions on gender equality and political parity for women in the constitution. These women built consensus on priorities and negotiated draft provisions that each of their political parties could agree on before the proposals were brought to a vote. They then worked separately to build support for these provisions within their own parties. Outside the formal process, women's organizations mobilized in civil society, organizing demonstrations in the thousands, keeping the media spotlight on issues relating to gender equality in the constitution, and increasing national and international pressure on the negotiators.

Regional and international alliances can also play a role. Prior to the transition process in South Africa, women built networks with other liberation movements across southern Africa. They learned from women in Mozambique, Zimbabwe, and Angola that political allies would likely sideline the "women's agenda" in favor of other priorities during the transition. In 1990, South African women's organizations teamed up with women in exile to articulate a unified call for women's equal participation in the constitution-drafting process.

4. Frame the debate effectively

Constitution reform in fragile and conflict-affected contexts tends to focus on creating a foundational legal framework for a stable, peaceful, and democratic society. The priorities that women focused on across the cases are inextricably linked to this overarching goal. Gender equality is a key predictor of peace—and since exclusion and inequality among groups is a significant driver of conflict, protecting the rights of those who are marginalized is a crucial element in constitutional design.

Women repeatedly advocated for issues relating to gender equality and the rights of marginalized groups, but they didn't always frame them in terms of the overarching goal of creating a foundation for a peaceful, just, and inclusive society. When they *did* frame their arguments in relationship to these foundational issues, however, they were typically more successful.

In Tunisia, for example, many people viewed the constitution-drafting process as a way to peacefully transition to democracy and institutionalize the demands of plurality, justice, and equality that gave rise to the revolution. With this in mind, women frequently used the framing of democracy, human rights, and equality between men and women in their advocacy, rather than focusing exclusively on women's rights. They delivered a message that no one could publicly disagree with: "There can be no democracy without equality." They connected their priorities to the broader narrative of establishing a government responsive to the needs of *all* Tunisians.

In Rwanda, women couched their advocacy for gender equality provisions in the constitution firmly within the government's priority goals of unity and reconciliation, and highlighted how women's marginalization could threaten the fragile peace. This careful framing and messaging helped ensure that the government did not perceive gender equality as threatening to the state or governance system envisaged by the political elites, as is often the case elsewhere.

5. Understand the negotiating context, and get creative

For any marginalized group looking to maximize its impact on constitutional negotiations, it's important to have a clear understanding of the process, actors, and negotiating context: What are the crucial issues that need to be resolved for a settlement to be reached? How can you persuade people that your issue is also an important part of the political settlement? Who are the key actors that need to support your agenda, and how can you win their support?

Women looking to influence constitution reform have leveraged a variety of creative pressure points to advance their agendas. In South Africa, women initially made up only 23 of 400 participants in the peace talks. When a new multi-party negotiation process began, activists in the Women's National Coalition forced their way into the room and blocked the proceedings until the negotiators agreed to include women in their delegations. This contributed to each of the 26 parties including women as 25 percent of their total number of delegates in the primary decision-making body working on the interim constitution.

In Tunisia, women in the expert committee—who championed gender parity for the constituent assembly—built support for the electoral law by getting creative with the rules. They got around the procedural regulations proscribing experts from intervening in political council debates by engaging

with council members in informal locations on the margins. When women secured their seats and the constituent assembly began its work, female participants seeking a gender parity provision in the constitution itself realized that support from the largest party—the Ennahda party—would be crucial. They won Ennahda's support, in part, by presenting the provision as an opportunity for the conservative party to change its reputation of being against women's rights. Tunisian women also understood that the time was not ripe to seek consensus on every gender-equality concern. They purposefully postponed issues like equal inheritance and instead chose to promote foundational constitutional language that would later strengthen their legal claims.

Kenyan and Tunisian women also leveraged their knowledge of the negotiation context in advocating for quotas and other gender parity provisions. They entered negotiations with the goal of achieving a 30 percent quota, but intentionally began by advocating for something much higher (such as a 50 percent threshold), knowing that such a significant ask would be rejected and scaled back. Women in Kenya went even further, strategizing around 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.

Since exclusion and inequality among groups is a significant driver of conflict, protecting the rights of those who are marginalized is a crucial element in constitutional design.

Options for the international community

The role of the international community in influencing inclusive, gendered constitution-making processes is outside the scope of this report.² Nonetheless, for those looking to support national processes that allow for meaningful women's participation, a number of entry points emerge from this research. First, donors and those offering technical assistance could provide flexible funding and support to women's early mobilization initiatives to help ensure that their voices are included from the start of a peace or transition process. This can also increase the chances that women will get direct access to constitution-making bodies when the time comes. Second, international actors could provide more support for training or education initiatives that focus on advocacy tactics and strategic messaging for women in constitution-making bodies and those in civil society looking to influence the constitution-making process.

When supporting women's participation, in particular, international actors should recognize the power of coalitions that build on a foundation of trauma healing and reconciliation initiatives. These can help women bridge identity and conflict divides, and thus more effectively unite around a common platform for action. International actors can also support work that addresses gendered biases against women's participation, to facilitate an environment that is more conducive to women's contributions.

At the same time, however, no one should expect all women to hold the same views and work as a monolithic block. It is possible to find ways to accommodate a range of women's perspectives while still agreeing on common priorities and bolstering women's participation. It's also wise to support diverse groups, as well as women who form coalitions. Outreach should be inclusive of women of all socioeconomic, ethnic, and identity groups. And many practicalities need to be considered with a gendered lens to avoid inadvertently excluding some or silencing others—for example, the time of day when meetings are held, when it is appropriate for outsiders or men to join the meetings, and the provision of security and childcare, as needed.³

Beyond constitution reform

Further research is needed to explore the connection between women's influence in constitutional negotiations and the implementation of the constitutions that result. For those seeking to create and maintain more inclusive and peaceful societies, implementing these constitutions (and in some cases, strengthening or amending certain provisions) will require continued engagement from women and men, as well as an enduring commitment to inclusion. The skills, knowledge, and value that women bring to constitution making is not confined to that singular process; in many of the cases, women continued to use the same tactics and strategies to remain influential political actors beyond the ratification of the constitution. It would be valuable to examine whether and how women maintained their mobilization, made the constitutional gains they achieved effective, and improved the lives of women and men in their society as a result. Constitutions provide a foundation from which to build, enabling women and men to use those provisions secured during the negotiations to advocate for greater gender equality, peace, and justice in their societies.

NOTES

- 1 Women's Caucus et al., *Women Members of the Constituent Assembly*.
- 2 See, for example, Christina Murray and Cindy Wittke, "International Institutions, Constitution-Making, and Gender," in *Constitutions and Gender: Research Handbooks in Comparative Constitutional Law series*, ed. Helen Irving (Cheltenham, UK: Edward Elgar, forthcoming 2017).
- 3 Many thanks to reviewers Christine Bell, Christina Murray, and Jason Gluck for their valuable suggestions that informed this section.

ANNEX I

Constitution Making in the Wake of Conflict and Unrest

Our research suggests that 75 countries undertook constitution-reform processes that emerged from armed conflict, unrest, or negotiated transition from authoritarianism to democracy between 1990 and 2015.

These include constitutional processes immediately following formal peace negotiations or that have other demonstrable links to armed conflict, as well as constitutional processes resulting from independence movements, revolutions, coups d'état, or political transitions toward multi-party democracy.

These processes involved a new or significantly revised constitutional framework; we did not include processes where, for example, constitutions were amended to extend term limits. In some cases, these constitutional processes are ongoing as a final constitution has not yet been adopted.

We first identified constitutional processes from the Comparative Constitutions Project dataset www.constituteproject.org. We then cross-referenced constitutional events with three datasets dealing with armed conflicts and/or political transitions:

- Uppsala Armed Conflict Dataset version 17.1
www.pcr.uu.se/research/UCDP/
- PITF State Failure Problem Set, 1955-2015, Consolidated Cases
www.systemicpeace.org/inscrdata.html
- Polity IV Annual Time-Series, 1800-2015
www.systemicpeace.org/inscrdata.html

We also drew from the University of Edinburgh's Peace Agreements Database www.peaceagreements.org and data collected by International IDEA on interim constitutions, in particular via data analysis by Christine Bell and Kimana Zulueta-Fulscher in *Sequencing Peace Agreements and Constitutions in the Political Settlement Process* (Stockholm: International IDEA, 2016).

Secondary research was used for constitutional processes that fell outside these datasets and sources (e.g., Philippines-Bangsamoro).

The chart on the following page lists the 75 countries, along with the year(s) when new or revised constitutions (in some cases interim constitutions) were adopted. Where the process is ongoing but no interim or final constitution has yet been adopted, we have noted the year that a significant draft was finalized.

Country	Year of new or revised constitution
Afghanistan	2004
Albania	1998
Algeria	1996
Angola	1992; 2010
Armenia	1995
Azerbaijan	1995
Benin	1990
Belarus	1994
Bosnia-Herzegovina	1995
Burundi	2005
Cambodia	1993
Central African Republic	2015
Chad	1996
Colombia	1991
Comoros	2001
Congo	1992; 2001
Croatia	1990
Czech Republic	1992
Democratic Republic of Congo	2005
East Timor	2002
Egypt	2012; 2014
El Salvador	1992
Eritrea	1997 (interim)
Estonia	1992
Ethiopia	1994
Fiji	1990; 1997; 2013
Gabon	1991
Georgia	1995
Ghana	1992
Guatemala	1994
Guinea	2010
Iraq	2005
Kazakhstan	1993
Kenya	2010
Kosovo	2008
Kyrgyzstan	1993; 2010
Latvia	1993
Lebanon	1990
Libya	2011 (interim); 2015 (interim)

Country	Year of new or revised constitution
Lithuania	1992
Macedonia	1991; 2001
Madagascar	1992
Mali	1992
Malawi	1995
Moldova	1994
Mongolia	1992
Mozambique	1990
Namibia	1990
Nepal	2007 (interim); 2015
Nicaragua	1995
Niger	1992; 1996; 1999; 2009; 2010
Papua New Guinea (Bougainville)	2004
Philippines (Bangsamoro)	2015 (draft)
Romania	1991
Russia	1993
Rwanda	2003
Senegal	2001
Sierra Leone	1991
Slovenia	1991
Somalia	2009 (interim); 2012 (interim)
South Africa	1996
South Sudan	2011; 2015 (interim)
Sudan	1998; 2005 (interim)
Tajikistan	1994; 1999
Tanzania	1992
Togo	1992
Tunisia	2014
Turkmenistan	1992
Uganda	1995
Ukraine	1996
Uzbekistan	1992
Venezuela	1999
Yemen	2014 (draft)
Zambia	1991
Zimbabwe	2013

ANNEX II

Women's Participation in Constitution-Reform Bodies

Using the master list of constitutional processes shared in Annex I, we conducted secondary research to assess the rates of women's representation in constitution making in the wake of conflict, unrest, and political transition. We found data on women's participation in 20 constitutional processes, which took place in 18 (or 24 percent) of the countries identified in the larger dataset (two of the processes occurred in Kenya and two occurred in Nepal).

We found that, on average, 19 percent of members of formal constitution-reform bodies in these settings were women between 1990 and 2015. This includes women serving as elected or appointed members of formal reform bodies and does not include women serving as observers or in less formal roles.

More research is needed to expand this dataset, as women's participation remains poorly documented in most constitution-reform processes.

The table below summarizes these findings on women's participation, which are also captured in a scatter graph on page 4 of this report.

Women's participation in constitution-reform bodies across case examples (1990 – 2014)

Country	Year of election or appointment	Number of seats held by women	Proportion of seats held by women	Elected or appointed?	Quota or other mechanism?
Colombia	1990	National Constituent Assembly: 4 out of 74 seats	5 percent	Elected (proportional representation)	NO QUOTA
El Salvador	1990	Negotiation delegations from the Government of El Salvador and the Frente Farabundo Marti para la Liberacion Nacional: 1 out of 8 seats	13 percent	Appointed	NO QUOTA
Mali	1991	National Conference: 52 out of 1518 seats	3 percent	Each group allocated a seat could choose the selection process	Unknown
Cambodia	1993	Constituent Assembly: 5 out of 115	4 percent	Elected (proportional representation)	NO QUOTA
Eritrea	1994	Constitutional Commission: 21 out of 50 seats	42 percent	Appointed	Unknown
Ethiopia	1994	Constitutional Commission: 3 out of 27 seats	11 percent	Appointed	QUOTA: 3 members to represent women

Country	Year of election or appointment	Number of seats held by women	Proportion of seats held by women	Elected or appointed?	Quota or other mechanism?
South Africa	1994	National assembly: 100 out of 400 seats Senate: 16 out of 90 seats	21 percent	Elected (proportional representation)	NO FORMAL QUOTA; African National Congress had an internal quota of 30 percent (every 3rd person on a party list was a woman)
Uganda	1994	Constitution Commission: 2 out of 21 seats Constituent Assembly: 52 out of 289 seats	14 percent	Elected (first-past-the-post) and indirect election	QUOTA: One woman delegate from each district
Bosnia-Herzegovina	1995	Negotiation delegations from the Republic of Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia: 0 seats	0 percent	Appointed	NO QUOTA
Kenya (1997 process)	2000	Constitution of Kenya Review Commission: 7 out of 27 seats National Constitution Conference: 100 out of 629 delegates	21 percent	Appointed	QUOTA: Specific quotas for the number of women representatives appointed (e.g., at least two out of the 13 commissioners nominated by political parties)
Rwanda	2000	Legal and Constitutional Commission: 3 out of 12 seats	25 percent	Appointed	NO QUOTA
East Timor	2001	Constituent Assembly: 23 out of 88 seats	26 percent	Elected (proportional representation)	NO QUOTA; Other support given to women candidates
Afghanistan	2003	Constitutional Loya Jirga: 100 out of 500 delegates Constitutional Commission: 7 out of 35 members	20 percent	Appointed	GENERAL GUIDANCE: To ensure the inclusion of women in the Loya Jirga

Country	Year of election or appointment	Number of seats held by women	Proportion of seats held by women	Elected or appointed?	Quota or other mechanism?
Nepal	2008	First constituent assembly: 197 out of 601 seats (33 percent)	33 percent	Appointed and elected (proportional representation and first-past-the-post)	QUOTA: At least one-third of such total number of candidates nominated shall be women
Kenya (2008 process)	2009	Committee of Experts: 3 out of 9 seats (33 percent) Parliamentary Select Committee: 5 out of 26 seats	26 percent	Appointed	GENERAL GUIDANCE: Composition of both committees should reflect "gender balance," and the chairperson and deputy chairperson shall be of opposite genders
Tunisia	2011	National Constituent Assembly: 67 out of 217 seats	31 percent	Elected (proportional representation)	QUOTA: Electoral lists to alternate between men and women
Philippines (Bangsamoro)	2013	Bangsamoro Transition Commission: 4 out of 15 seats	27 percent	Appointed	Commitments from both parties
Egypt	2013	Committee of 50: 5 out of 50 seats	10 percent	Appointed	QUOTA: At least 10 members represent youth and women
Nepal	2013	Second constituent assembly: 176 out of 601 seats	29 percent	Appointed and elected (proportional representation and first-past-the-post)	QUOTA: At least one-third of such total number of candidates nominated shall be women
Yemen	2014	Constitution Drafting Committee: 4 out of 17 seats	24 percent	Appointed	GENERAL GUIDANCE: Considerations should be made in regard to the representation of women

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As Director of Research & Analysis, Marie O'Reilly leads Inclusive Security's work examining why inclusion matters for peace and how it can be achieved. She is also a Visiting Fellow at the Feinstein International Center at Tufts University, and writes and speaks frequently about trends in peace and security. Prior to joining Inclusive Security, Ms. O'Reilly served as Editor and Research Fellow at the International Peace Institute. She has also conducted research, writing, and data analysis on issues relating to peacebuilding, governance, and gender for the Economist Intelligence Unit, United Nations Department of Peacekeeping Operations, and United Nations Development Programme.

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For more information on Inclusive Security's project on women's roles in constitution reform, see [InclusiveSecurity.org/constitutions](https://www.inclusivesecurity.org/constitutions).

INCLUSIVE SECURITY is transforming decision making about war and peace. We're convinced that a more secure world is possible if policymakers, security sectors, and conflict-affected populations work together. Women's meaningful participation, in particular, can make the difference between failure and success. Since 1999, Inclusive Security has equipped decision makers with knowledge and tools that strengthen their ability to develop inclusive policies and approaches. We have also bolstered the skills and influence of women leaders around the world. Together with these allies, we're making inclusion the rule, not the exception.

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