

INDEPENDENT INSTITUTIONS

Enhancing Democratic Integrity and Accountability through
Constitutional Design



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Sixth Women Constitution-Makers' Dialogue, 2024

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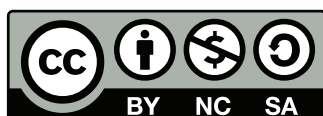


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Contents

Acknowledgements	iv
Executive summary	1
Key findings.....	1
Introduction.....	4
The Women Constitution-Makers' Dialogue series	4
Defining the scope.....	5
Background	6
Structure of the report.....	7
Chapter 1	
Positioning independent institutions	9
1.1.Legitimacy and public trust	10
1.2.The role of political will, public pressure and timing.....	11
Chapter 2	
Personnel.....	14
2.1.Design goals and emerging patterns in appointment processes	14
2.2.Qualifications.....	18
2.3.Women's leadership and inclusion in independent institutions	19
Chapter 3	
Translating mandates into outcomes.....	22
3.1.Political interference and resource shortfalls	22
3.2.Reporting and accountability.....	24
3.3.Examples of success	24
Chapter 4	
Concluding observations	27
References	29
Laws and standing orders.....	31
Constitutions.....	31

Annex A. Programme.....	33
Annex B. List of participants.....	37
About the authors.....	39
About the partners	40
International IDEA.....	40
Edinburgh Centre for Constitutional Law	41
PeaceRep	41

EXECUTIVE SUMMARY

The Women Constitution-Makers' Dialogue series was established in 2019 as an annual platform for peer-to-peer exchanges among women involved in constitution-making around the world. It supports structured engagement among national practitioners from past and ongoing processes, predominantly in fragile settings, and with international expert advisors. Both conceptual and practical, the series responds to the need for an organized, women-centred approach to inclusive, participatory and gender-sensitive constitution-building and peace processes. The participants, constituting a global network of women constitution-makers and peacebuilders linked through the organizing partners, convened for the sixth event in November 2024. Entitled 'Independent Institutions: Enhancing Democratic Integrity and Accountability through Constitutional Design', the Dialogue brought together 28 expert practitioners, members of independent institutions, advocates and researchers—women and men—covering **The Gambia, Kenya, Moldova, Myanmar, Nepal, Palestine, South Africa, South Sudan, Sri Lanka, Sudan, Syria, Trinidad and Tobago, Tunisia and Zimbabwe**, with a video message from **Ukraine**. The Dialogue explored experiences in the negotiation, design and implementation of independent institutions. Participants further examined successes and challenges for these bodies, also through a gender lens.

KEY FINDINGS

Key findings from the sixth Women Constitution-Makers' Dialogue include the following:

1. In contrast to elected bodies, independent institutions derive their legitimacy from public trust in their impartiality and integrity. Their interactions with government actors are key to earning that confidence. However, when institutions are seen merely as extensions of ruling elites, they quickly lose credibility in the eyes of citizens. Independent institutions

Independent institutions derive their legitimacy from public trust in their impartiality and integrity.

operate most successfully when they can both critique government actions and collaborate with public actors on shared goals. Partnerships that balance constructive engagement with government and credible oversight ultimately serve the public interest while preserving institutional independence.

2. During constitutional reform processes, stakeholders may wish to establish or strengthen the constitutional basis for independent institutions. However, while constitutional entrenchment may strengthen an institution, establishment by statute should also be considered since constitutional reform processes often stall or fail.
3. Even the strongest legal foundation for an independent institution's establishment and mandate cannot fully shield it from manipulation or obstruction when political will to ensure its success is lacking. Dialogue participants noted that civil society pressure and broader public awareness often prove decisive in compelling authorities to establish and support independent institutions. Yet even entrenched independent institutions can become vulnerable if broader governance priorities change. Participants stressed that strategic partnerships with civil society and media, alongside regular public outreach, maintain visibility and bolster such institutions' standing, making it politically costly to defund or dismantle them.
4. Designing a transparent appointment process—featuring public calls for applicants, multi-stakeholder selection bodies and opportunities for parliamentary scrutiny—can increase the likelihood of selecting representative, high-calibre members for independent institutions. In many systems, however, executive dominance can still result in rubber-stamping favoured candidates, even with measures aimed at curbing partisanship.
5. In some contexts, including foreign members on independent bodies can boost independent institutions' credibility and resilience against corruption or political interference, but this approach needs to be weighed against the potential weakening of legitimacy for national stakeholders, as well as the expenses and logistical challenges—such as travel and sometimes translation—that accompany international involvement.
6. Even with constitutional or statutory requirements specifying women's participation and minority representation, effective inclusion often remains elusive within independent institutions. While formal measures are an important first step, they do not guarantee meaningful influence on their own: entrenched social pressures, cultural biases and harassment can still impede women's leadership. Public recruitment campaigns and multi-stakeholder nomination panels increase the likelihood that qualified women and other underrepresented groups will step forward.
7. The leadership of women in independent institutions has tangibly shaped agendas and outcomes—for example, by prioritizing issues such as violence against women, inheritance laws, and early and forced marriage. Peer support, capacity building and mentorship are essential for women,

youth, persons with disabilities and other marginalized communities to acquire the skills, networks and strategic insights historically more accessible to men, which will enable these groups to serve more effectively.

8. One of the most common barriers to the effective implementation of independent institutions' mandates is inadequate or politically manipulated funding. Without meaningful control over budgets or reliable allocations from government, independent institutions can struggle to meet even basic operational obligations—such as staffing offices, investigating complaints and publishing reports. Foreign aid financing might be an option but raises concerns around governments reneging on their responsibilities, foreign interference and long-term sustainability problems if donor priorities shift.
9. Independent institutions can and do deliver positive results for democracy, especially when certain conditions—sufficient powers, protected resources and public visibility—are in place. At the same time, more is not always better. During constitutional negotiations, seeking to establish independent institutions for each (often historically marginalized) interest group can lead to the proliferation of institutions to beyond what is effective or sustainable. In some cases, granting a single institution a broader but clearly defined mandate may better serve democracy than smaller institutions with narrow, overlapping functions, which risk becoming less visible, less sustainable and more isolated from shared learning. Constitution-makers should therefore pay attention to the overall architecture of independent institutions in the constitution, ensuring they have complementary powers and mandates.

The leadership of women in independent institutions has tangibly shaped agendas and outcomes.

INTRODUCTION

On 21 and 22 November 2024, the International Institute for Democracy and Electoral Assistance (International IDEA)—together with the University of Edinburgh Law School and as part of the Peace and Conflict Resolution Evidence Platform (PeaceRep)—hosted the sixth annual Women Constitution-Makers' Dialogue in The Hague, the Netherlands.

The Women Constitution-Makers' Dialogue is a platform for women constitution-makers to discuss their experiences, successes and challenges with peers from other constitutional reform endeavours.

THE WOMEN CONSTITUTION-MAKERS' DIALOGUE SERIES

The Women Constitution-Makers' Dialogue was initiated in 2019 as a platform for women constitution-makers from past and ongoing processes to discuss their experiences, successes and challenges with peers from other constitutional reform endeavours. It represents a conceptual and practical response to the documented need for an organized, systematic and women-centred approach to constitution-building. Through these discussions, participants have shared experiences, exchanged ideas and identified comparative models and resources related to both constitution-making processes and constitutional design choices. The previous themes¹ were:

2019	Founding Women: A Dialogue with Women Constitution-Makers
2020	Constitutional Reform in Response to Social Unrest
2021	Constitutions, Customary and Religious Law and Gender Equality: Reconciling Rights in Constitutional Design Negotiations
2022	Constitutional Approaches to Decentralization: Elements, Challenges and Implications
2023	Natural Resource Management: Development and Environmental Protection in Constitutional Reform Processes

¹ For more information and to view previous workshop reports, visit <<https://constitutionnet.org/event-series/women-constitution-makers-dialogue>>.

The theme of the sixth Women Constitution-Makers' Dialogue was 'Independent Institutions: Enhancing Democratic Integrity and Accountability through Constitutional Design'. The discussion aimed to: (a) build the knowledge and capacity of participants to engage in constitutional negotiations surrounding the design of independent institutions, including mechanisms to enhance the institutions' independence, effectiveness and resilience; and (b) compare experiences in the composition, design and powers of independent institutions, as well as successes and challenges in discharging their mandates.

As in previous years, the Dialogue participants represented a variety of countries in conflict and transition, and included those with comparable experience in countries where the issues under discussion have been addressed in innovative and creative ways. The peer-to-peer exchange was supported by colleagues from the international practitioner community and academia who focus on comparative constitution-building, peacebuilding, democracy and democratic transitions, as well as independent institutions.

DEFINING THE SCOPE

The conversation centred on independent institutions, which occupy an important space outside the traditional tripartite model of the state—the executive, legislative and judicial branches—they are therefore often called 'fourth-branch' institutions.² Their unique position is intended to provide oversight and regulation of as well as checks on government actions, with the aim of promoting the implementation of constitutional provisions and norms, and enhancing accountability, transparency and efficiency within the state.

The form and functions of these bodies vary widely but they can be broadly sorted into two categories.

- **Guardians:** The first group contains guardian bodies that directly support the democratic functions of the state, ensuring the proper functioning of essential domains such as administration of free and fair elections (electoral management bodies), government use of public funds (auditors general), independence of the judiciary (judicial service commissions) and economic stability and long-term financial health (central banks).
- **Watchdogs:** The second group consists of integrity bodies that serve in a watchdog role. The powers of this group may involve receiving and investigating public complaints, conducting research and advocacy, formulating and evaluating policies, and monitoring the implementation of national and international treaties relevant to their mandates. These bodies include national human rights institutions, ombudspersons, women's rights

The conversation centred on independent institutions, also known as 'fourth-branch' institutions, which occupy an important space outside the traditional tripartite model of the state.

² They are also referred to as 'independent oversight and regulatory', 'guarantor', 'countervailing', or 'knowledge' institutions, depending on the scope of the definition and country context.

and equality commissions, anti-corruption agencies and data protection commissioners.

Since independent institutions are designed and given powers to fit their specific purpose and context, they do not always fit neatly into either of the above categories and some might even be under the control of the executive, raising further complexities.

Members or former members of the following institutions were present at the Dialogue:

- Human Rights Commission; Anti-Corruption Commission (Zimbabwe);
- Independent Access to Information Commission (The Gambia);
- Independent Anti-Corruption Advisory Committee; Prosecutor Vetting Commission (Moldova);
- Office of the Auditor-General (South Africa);
- Committee on Judicial Appointments (Trinidad and Tobago);
- Ad hoc Commission on Individual Liberties and Equality (Tunisia); and
- Constitutional Council (Sri Lanka).

Consequently, the following discussion primarily centres on the roles, challenges and insights related to these bodies.

In recent decades, the numbers and thematic diversity of fourth-branch institutions have increased, along with a growing trend towards their constitutionalization.

BACKGROUND

In recent decades, the numbers and thematic diversity of fourth-branch institutions have increased, along with a growing trend towards their constitutionalization. This expansion primarily began in the post-World War II decolonization period, driven by efforts to ensure the neutrality of the civil service, judiciary and electoral management bodies. In subsequent periods of democratic transition, independent institutions were further constitutionalized as part of broader efforts to promote inclusion, combat corruption and uphold human rights ([Bulmer 2019](#)).

In conflict-affected settings, the establishment of independent institutions often accompanies peace agreements or reconstruction activities, as seen in Bosnia and Herzegovina, Liberia and Sierra Leone. These institutions may be ad hoc, like truth and reconciliation commissions, or permanent, designed to address systemic corruption, oversee free and fair elections, and prevent future human rights violations in post-conflict countries. They can also contribute to broader peacebuilding and transitional justice initiatives ([UN OHCHR 2010](#)).

The establishment of independent institutions, as with the implementation of many constitutional provisions, reveals the complex interactions between these bodies and the broader political and institutional environment. In some cases, these institutions have faced considerable delays in their establishment or have not been operationalized at all, as exemplified by the non-establishment of several of Tunisia's independent constitutional bodies

outlined in the [2014 Constitution](#). Even when established, these institutions often grapple with challenges such as insufficient expertise and capacity, vulnerability to capture by political or private interests, and deficits of accountability ([World Bank 2020](#)).

Nevertheless, independent institutions are increasingly understood as important components in promoting and supporting constitutional democracy ([Dixon and Tushnet 2023](#)). This recognition is reflected in international frameworks such as the African Charter on Democracy, Elections and Governance (2007: [article 15](#)) and constitutions such as that of South Africa (Republic of South Africa 1996: [Chapter 9](#)). Additionally, [Goal 16](#) of the Sustainable Development Goals highlights the importance of strong institutions for fostering peaceful and inclusive societies. Specifically, Target 16.6 calls on countries to develop effective, accountable and transparent institutions at all levels to strengthen the rule of law, combat corruption and protect the rights of women and other marginalized groups.

The ability of independent institutions to operate without political interference and to fulfil their mandates is influenced by the strength of political will, inter-branch power dynamics, competing interests within the country, and incentives for compliance and accountability. Moreover, although there is limited research on the overall impact of independent institutions, the fact that authoritarians and aspiring democratic backsliders often target these institutions and their leadership suggests that they are perceived as at least theoretically capable and potentially effective in upholding and advancing the norms which they are established to protect ([Khaitan 2024](#); [Bisarya and Rogers 2023](#)).

Key design choices for constitution-makers include the structure of these institutions, mandates, powers and membership (including representative qualities and methods of appointment and removal). Despite the caveats mentioned above, constitution-makers must also consider how, given political and financial realities, to improve the likelihood that these bodies can operate with financial and operational autonomy in theory and in practice. Achieving the right balance between independence and accountability is crucial, with some scholars arguing that the goal of designing these bodies should be 'optimization rather than maximization' ([Khaitan 2024: 14](#)).

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STRUCTURE OF THE REPORT

This report proceeds as follows. This introduction has outlined the central theme of the discussions for the sixth Dialogue, outlining the scope of the definition and the intended roles of independent institutions in supporting democracy. Chapter 1 considers selected issues uncovered during the Dialogue regarding the positioning of independent institutions vis-à-vis the powers of the state and civil society, focusing on legitimacy, public trust and political will. Chapter 2 explores considerations related to the leadership and staffing of independent institutions, with a particular focus on appointment

procedures and the inclusion of women. Chapter 3 addresses the challenges and successes encountered in the operation of these institutions. Chapter 4 concludes with final observations, stressing how inclusive and representative independent institutions can be vital mechanisms for safeguarding democratic governance and constitutional rights.

Chapter 1

POSITIONING INDEPENDENT INSTITUTIONS

This chapter outlines key themes that emerged from the Women Constitution-Makers' Dialogue about democratic legitimacy, public trust and political will in relation to independent institutions.

Independent institutions occupy a unique position in the architecture of the state: unlike the legislative and executive branches, their legitimacy does not come from political victory through elections and, unlike the judicial branch, their legitimacy does not come from developing a strong reputation for impartial adjudication and legal interpretation. Yet the notion of 'pure independence' can be somewhat misleading. For many institutions, operating entirely without reference to governmental policy is neither feasible nor desirable. A body may also have a dual positionality—for example, critiquing the government internally while representing the state in international forums—which naturally requires coordination and collaboration with government actors.

Like courts, fourth-branch institutions require two layers of autonomy. First, the institution itself must have autonomy in relation to its finances, staffing and agenda. Second, individual office-holders—commissioners, ombudspersons, auditors—need personal guarantees such as transparent appointment processes, protected tenure and fixed remuneration. Both layers are necessary—an office with a protected budget can still be neutralized if its leaders can be politically coerced, while secure leaders are hamstrung if their institution's funding is taken hostage. Independence then refers to the ability of these bodies and the actors within them to act autonomously without interference, including both operational and financial independence (with attendant mechanisms for accountability). Their legitimacy and effectiveness often hinge on the degree of public trust they cultivate, which in turn depends on political will—not just at their founding but throughout the institutions' longer-term operations.

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In practice, these institutions must strike a careful balance to be effective. They must be able to collaborate with the government when appropriate but challenge the government when this is needed.

1.1. LEGITIMACY AND PUBLIC TRUST

Discussions from the Dialogue revealed that perceived legitimacy and public trust in independent institutions depend largely on the relationships which these institutions form with the government and with the public. Since these institutions occupy a position that straddles law and politics, trust is especially important to maintain their legitimacy ([Khaitan 2024](#)). In practice, these institutions must strike a careful balance to be effective. They must be able to collaborate with the government when appropriate but challenge the government when this is needed. This principle is reflected in the Constitution of **Kenya**, which states that an objective of the commissions and independent offices is to ‘secure the observance by all State organs of democratic values and principles’ while being ‘independent and not subject to direction or control by any person or authority’ ([Constitution of Kenya 2010: article 249](#)).

This dynamic between these institutions and the government affects the understanding of certain powers and where to allocate authority. An institution without prosecutorial power, for example, may be hamstrung in fulfilling its mandate—but the answer is not to automatically bestow such powers on the institution. The **Zimbabwe** Human Rights Commission, for example, cannot prosecute alleged violations that it investigates ([Constitution of Zimbabwe 2013: article 243](#); [Zimbabwe 2012, Human Rights Commission Act: part III](#)), but this is not seen as a barrier to its effectiveness. Rather, prosecutorial authority could be seen to compromise its moral authority, given that its primary function is to raise awareness and respect for human rights. Similarly, if the Zimbabwe Anti-Corruption Commission were granted prosecutorial authority in addition to its investigative function, this might potentially produce inefficiencies as concentrating too many functions within a single entity may overwhelm it and reduce its overall effectiveness ([Constitution of Zimbabwe 2013: article 255](#); [Zimbabwe 2016, Anti-Corruption Commission Act: section 13](#)). For anti-corruption bodies in particular, the United Nations Convention against Corruption (UNCAC) distinguishes between prevention and enforcement roles, each requiring different institutional setups. While coordinating anti-corruption policies may be most effective from within government to ensure authority for implementation, many oversight tasks—verifying asset declarations, scrutinizing political finance and conducting broader corruption investigations—require a degree of organizational separation to ensure impartiality and prevent conflicts of interest. In some contexts, consolidating functions into a single body can enhance clarity, accountability and expertise—but only if that concentration does not undermine the institution’s ability to act effectively and independently. The key design question is how to balance integration (for effective implementation) with autonomy (for credible oversight).

A legitimate independent institution is often one that enjoys a reputation of impartiality, integrity and proactive engagement with the public. The Auditor-General of **South Africa** has a reputation for independence. Under the Public Audit Act 2005, the Office of the Auditor General’s own financial statements and performance information must be examined each year by an external,

independent auditor, appointed by a parliamentary committee, ensuring the institution meets the same high standards which it imposes on other institutions. According to the World Bank, out of 118 countries reviewed, the South African Auditor-General is one of only two supreme audit institutions that earned a 'very high' score for independence (World Bank 2021). It is also critical that the Auditor-General herself is understood as a person of high moral character (see 2.2: Qualifications). The **Gambian** National Human Rights Commission similarly has a positive public image, also enjoying "A-Status" for full compliance with the [Paris Principles](#). It is widely regarded as non-partisan, investigating and taking public positions on a range of human rights issues regardless of shifting political winds. According to one participant, the primary factor in this success has been the commission's provision of decentralized services. The more accessible an institution is and the more local services it provides, the more likely the public will value and trust it, and therefore be invested in its continued existence (see 3.3: Examples of success; [Jaw 2024](#)).

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On the other hand, when an institution is not sufficiently independent from political actors or private interests, it is considered captured by those interests and no longer capable of fulfilling its mandate. Public perceptions matter: even if an institution is formally independent on paper, it can be ineffective if the public views it as an extension of entrenched power ([Khaitan 2024](#)). For decades under the Assad regime, institutions in **Syria** were captured and served as tools of oppression rather than vehicles for serving the needs of the people. Even before the regime's fall in December 2024, Syrians widely regarded state institutions as extensions of a corrupt government that failed to protect citizens, also complicit in predatory acts of violence ([UN OHCHR 2024](#)). In the current transitional phase, the legacy of institutional capture must be dismantled to restore public trust but the challenge of establishing truly independent institutions remains formidable.

Quotes from participants

'The separation of powers and the concept of three branches have taken a lot of time to become established, so these institutions will also take time.'

counter-power that completes and compensates for representative democracy.'

'These institutions are public, both independent and integrated within the state. They serve as a

'Independent institutions, when going about their business, should remember that they are instruments of the state, not the government of the day.'

1.2. THE ROLE OF POLITICAL WILL, PUBLIC PRESSURE AND TIMING

Political will is rarely aligned with the establishment and effective operationalization of independent institutions, since they generally exist to monitor and hold politicians to account. However, in political transitions there are often windows of opportunity wherein political actors may be constrained to act *against* their will.

For example, in **Kenya**, the drafting of the 2010 Constitution took place in the aftermath of mass electoral violence. Broad-based and vehement public demands for reform, coupled with intense international scrutiny, brought great pressure to bear on politicians to accept demands for a more decentralized and more democratic political framework, including the constitutionalization of numerous important independent institutions. Fearing that political will would wane in the wake of the promulgation of the Constitution, the Committee of Experts in charge of drafting the text included a strict timeline for parliament to legislate on the implementation of the Constitution, including the stipulations regarding the establishment of critical independent institutions ([Constitution of Kenya 2010: 6th Sched., section 5\(7\)](#)).

In **The Gambia**, timing proved key in order to set up institutions before political consensus for reform dissipated into political in-fighting. The pro-democracy momentum following the electoral defeat of longstanding dictator Yahya Jammeh was leveraged to establish key independent institutions—the Access to Information Commission and the National Human Rights Commission—through ordinary legislation, rather than waiting for the protracted process of the entire constitutional review to be completed. While the constitutional reform process is stalled as of early 2025, the two independent institutions are up and running.

There may also be such a thing as ‘too much’ public pressure, which can lead to the proliferation of independent institutions beyond what is effective or sustainable.

However, there may also be such a thing as ‘too much’ public pressure, which can lead to the proliferation of independent institutions beyond what is effective or sustainable. In **Nepal**, for example, the involvement of various interest groups in the constitution-making process led to the inclusion of numerous commissions—with seven designed to protect the interests of a particular group or community (e.g. women, minorities, Muslims, Indigenous peoples). Over time, however, this has led to concerns about overlapping mandates, about the true representativeness of the appointees, political interference and inefficient use of resources ([Poudel 2022](#)). As noted during the Dialogue with respect to **Kenya**, institutions initially seen as fulfilling a desire to ‘compensate for the past’ have increasingly been viewed as wasteful.

Political will is perhaps most visibly tested in the establishment and operation of ad hoc and temporary institutions. These bodies often arise in transitional moments or in response to specific crises and their success depends heavily on the willingness of political leaders to empower them with real authority and to respect their mandates, even when their findings are politically inconvenient (for example, the Individual Freedoms and Equality Committee in **Tunisia** and the Committee for Dismantling the 30 June 1989 Regime, Removal of Empowerment and Corruption and Recovery of Public Funds in **Sudan**).

Quotes from participants

'We might have a really good design on paper, but there must be efforts to animate [independent institutions]. Civil society, the opposition, the media—these institutions can be used to make sure they develop beyond design.'

'The Paris Principles are still valid, although a bit old. The question is not an absence of criteria but of political will which prevents effective implementation.'

'We have a government that is no longer interested in reform but fighting against a vibrant and resilient society that is moving fast.'

'We fought for this constitution, we created this constitution, because we believed in this institution. ... Leadership and political awareness are critical, no matter how [these institutions] are designed.'

Chapter 2

PERSONNEL

This chapter reflects conversations at the Women Constitution-Makers' Dialogue on how appointment procedures to independent institutions shape these bodies' ability to operate with integrity, autonomy and public trust. While much attention has been paid to the powers or mandates of independent institutions, their effectiveness ultimately hinges on who is selected to lead and staff them—and how.

An effective independent institution consists of members with the technical expertise, non-partisan profile and moral integrity required to resist political or private interests and instead uphold democratic norms, hold the government to account and represent the public interest.

An effective independent institution consists of members with the technical expertise, non-partisan profile and moral integrity required to resist political or private interests and instead uphold democratic norms, hold the government to account and represent the public interest. Appointment procedures are therefore a key design choice—one that ultimately determines whether these bodies and their actions will be respected by political actors and citizens (Bulmer 2019). Similarly, while representation and inclusion of women as members in these institutions are increasingly understood as normative goods—linked to broader goals of equality, legitimacy and responsiveness—and in some cases constitutionally guaranteed, the actual achievement of meaningful gender equality in these bodies has been patchy and slow.

2.1. DESIGN GOALS AND EMERGING PATTERNS IN APPOINTMENT PROCESSES

Appointment processes for independent institutions vary widely across jurisdictions and according to a given institution's specific role and mandate. Even with this diversity, however, appointment processes tend to share a set of common objectives: to secure independence and political neutrality, guarantee professional competence and appropriate qualifications, enhance legitimacy and representativeness, and ensure transparency.

While terminology differs across jurisdictions, the appointment process typically involves three distinct stages:

- **Nomination:** Candidates are proposed through various mechanisms, such as open calls, political party recommendations, or nominating bodies (or sometimes a combination of these mechanisms).
- **Selection:** Shortlisted candidates are vetted, evaluated and selected or ranked, often by a dedicated committee or panel. In some cases, this stage involves a legislative vote.
- **Appointment:** the formal designation of members to office, often carried out by the executive.

Countries represented at the Dialogue used a range of models, including parliamentary committees and multi-stakeholder selection bodies. In some jurisdictions, an umbrella or ‘meta-guarantor’ body makes selections for more than one institution. These procedures are frequently combined or layered, with nomination handled by one actor, selection by a second, and the appointment made by another (or third actor)—depending on the intended checks and balances.

In terms of partisan composition, one approach to designing bodies involved in appointments is to give the ruling party a majority while including opposition members and non-political members, with the goal of enhancing transparency and robustness of the process. Alternatively, some appointment bodies are designed to reflect the political representation in parliament in a proportional way—meaning that the ruling party might not have a majority of seats, depending on how the elections turned out. In some systems, the ruling party/coalition and the opposition party (or parties) have equal representation (e.g. [Constitution of the Seychelles 1993: article 140](#)). In most of these models, expert members are included to contribute to the ability of the appointment bodies to select people with professional competence, enhance the credibility of appointments and limit the risk of partisan capture.

It is important to compose these bodies and design the process of appointment in a way that avoids the undue dominance of one group as well as the potential for deadlock. Overly majoritarian processes may lead to quick appointments, but risk undermining the impartiality and credibility of appointees, and the institution itself. Requiring consensus between the government and opposition parties can promote partisan independence and legitimacy; however, it can also lead to either principled or politically motivated deadlock, potentially leaving key positions vacant and hindering the functionality of the independent institution ([Khaitan 2024](#)). For example, **Guyana’s** Constitution says the president can appoint the chancellor and a chief justice only with the opposition leader’s agreement—an arrangement intended to ensure bipartisanship but which, in practice, gives either side a veto. Because of a political impasse, successive presidents have used the

Overly majoritarian processes may lead to quick appointments, but risk undermining the impartiality and credibility of appointees, and the institution itself.

constitutional fallback of keeping both offices filled on an ‘acting’ basis for more than 15 years ([Constitution of Guyana 1980: article 127](#)).

Nepal’s appointment process illustrates a two-tiered structure involving both a nomination/selection body and a parliamentary confirmation process. The Constitutional Council is an umbrella body model, also seen in **Fiji**, the **Seychelles** and **Sri Lanka**, with the mandate to nominate officials for multiple constitutional offices ([Samararatne 2024](#)). In Nepal, this six-member council consists of the prime minister (chair), the chief justice, the speaker and deputy speaker of the House of Representatives, the leader of the opposition and the chairperson of the National Assembly ([Constitution of Nepal 2015: article 284\(1\)](#)). The council is a powerful body, charged with nominations for many key positions, including that of chief justice and over 60 officials across 13 constitutional bodies that support democratic governance and the protection of human rights ([Constitution of Nepal 2015: article 284\(1\)](#)). The council was established as a multi-partisan mechanism to increase legitimacy and the nomination of both ‘high calibre and more diverse appointees’ (Niti Foundation 2024: 15). While unanimity in decision making is the standard required under the Constitutional Council Act (section 6(5)), legislative amendments and ordinances have weakened this norm, enabling the prime minister and a small number of allies to control nominations (Niti Foundation 2024: 16–17).

UN human rights experts have expressed concern about irregularities, such as appointments bypassing parliamentary hearings or other mandatory criteria.

Following the council’s nomination, the Parliamentary Hearing Committee, a 15-member joint committee, holds a constitutionally mandated parliamentary hearing ([Constitution of Nepal 2015: article 292](#); [National Assembly of Nepal Parliamentary Hearing Committee of Nepal n.d.](#)). The Parliamentary Hearing Committee includes 12 members nominated by the speaker of the house and 3 by the chair of the National Assembly. According to the Federal Parliament’s standing rules, parliamentary parties must make their nominations ‘on the basis of the number of members they have’ and, as far as practicable, to ensure the inclusion of women and minorities ([Nepal, Joint Sitting and Joint Committee \(Conduct of Business\), Rules 2080 2023: Rule 25](#)). Currently, the ruling coalition holds 10 of the 15 seats—the two-thirds majority required to reject a nominee ([Nepal, Joint Sitting and Joint Committee \(Conduct of Business\), Rules 2080 2023, Rule 26\(5\)](#)). This two-step nomination framework has failed to deliver the intended checks and balances. Parliamentary hearings have often been criticized as ceremonial, with no nominees being rejected, and some members being appointed despite allegations of misconduct or lack of qualifications (Ghimire 2021; Niti Foundation 2024: 20–22). Further, UN human rights experts have expressed concern about irregularities, such as appointments bypassing parliamentary hearings or other mandatory criteria ([UN OHCHR 2021](#)).

In **South Africa**, a parliamentary committee—proportionally composed of parties represented in the National Assembly—initiates the appointment process for the six Chapter 9 ‘state institutions supporting constitutional democracy’ (Public Protector, Auditor-General, Electoral Commission, Human Rights Commission, Commission for Gender Equality and Commission for the Promotion and Protection of the Rights of Cultural, Religious and

Linguistic Communities) as required by the Constitution ([Constitution of South Africa 1996: section 193\(5\)\(a\)](#)). The committee issues a nationwide public advertisement, accepts self-nominations and third-party nominations, publishes accepted CVs, invites written objections or endorsements, and conducts live-streamed interviews—giving citizens and civil society groups direct access to the process. After vetting and deliberation, the committee recommends preferred candidates to the full assembly: a 60 per cent majority is required for the Public Protector and the Auditor-General, while a simple majority is required for all other Chapter 9 commissioners ([Constitution of South Africa 1996: section 193\(5\)\(b\)](#)). The Constitution provides that throughout the process, the need for every commission to ‘broadly reflect the race and gender composition’ of the country must be considered ([Constitution of South Africa 1996: section 193\(2\)](#)). Finally, the president appoints the chosen candidate on the assembly’s recommendation ([Constitution of South Africa 1996: section 193\(4\)](#)).

South Sudan follows an executive-dominated model. All members of constitutionalized independent institutions, including the Anti-Corruption Commission and Human Rights Commission, are appointed by the president with the approval of a simple majority in the National Legislative Assembly ([Constitution of South Sudan 2011: article 143\(2\), article 145\(2\)](#)). This process is essentially shielded from scrutiny, and the political reality is that the proposals of the president are always approved.

The Gambia exemplifies a multi-stakeholder nomination and selection model, with a degree of legislative approval preceding executive appointment. A seven-member selection panel includes representatives from six civil society umbrella organizations (the Association of Non-Governmental Organizations, the Gambia Bar Association, the Gambia Federation of the Disabled, the National Youth Council, the Female Lawyers’ Association of The Gambia and the Gambia Press Union), plus a non-voting government representative. It must include at least two women ([Republic of The Gambia 2017, National Human Rights Commission Act: Schedule section 5\(1\)\(a\)–\(b\)](#)). The transparency of the procedure is regulated. The president, through the attorney general and minister of justice, first advertises and invites suitably qualified persons to apply for a position on the Human Rights Commission. The selection panel then considers the applicants and creates a shortlist of nine candidates (taking cognizance of pluralism and gender representation), which is published for 14 days. Anyone may submit an objection, and the panel decides whether the objection warrants disqualification of a nominee or removal from the list. The National Assembly approves five from the shortlist to forward to the president for formal appointment. Through this fair and transparent process performed by a diverse and independent selection panel, the commission itself enjoys a non-partisan, impartial public image.

Contextual concerns may call for particular qualifications, including international membership. Foreign membership in such bodies may increase the non-partisanship of the body and its decisions and also its overall legitimacy.

A strict prohibition on political affiliation is common across jurisdictions, aimed at safeguarding institutional independence.

2.2. QUALIFICATIONS

Contextual concerns may call for particular qualifications, including international membership. For example, **Moldova** established three temporary Evaluation Commissions—the Pre-Vetting Commission, the Judicial Vetting Commission and the Prosecutor Vetting Commission—to address concerns about the independence of its justice system and a history of widespread corruption ([Evaluation Commissions n.d.](#)). Each body includes members proposed by ‘development partners’ defined as ‘international donors (international organizations, diplomatic missions and their representative offices in the Republic of Moldova) active in the field of justice reform and fight against corruption in the last 2 years’ ([Moldova 2022, Law No. 26/2022: article 5](#); [Moldova 2023, Law No. 252/2023: article 6](#)), with appointment requiring a three-fifths majority of votes by the elected members of parliament. International members not only fill at least half of each body’s seats but also serve as chairpersons for two of them. Foreign membership in such bodies may increase the non-partisanship of the body and its decisions and also its overall legitimacy. Depending on the context, it may conversely weaken the body’s legitimacy among national stakeholders and introduce significant implementation costs, such as those related to travel, translation services and associated delays.

In addition to structuring appointment processes, defining the qualifications of nominees is a key aspect of designing independent institutions. Eligibility criteria focus on a mix of formal qualifications, professional experience, personal integrity and political neutrality. Most institutions require candidates to hold at least a university degree, with some specifying relevant fields such as law, public administration, economics or human rights. The required experience typically ranges from 5 to 10 years, with anti-corruption bodies generally requiring members to be qualified as lawyers or public accountants, or have experience in the investigation of crimes (e.g. **Zimbabwe** 2012, Human Rights Commission Act; [Constitution of Zimbabwe 2013: section 254\(2\)](#)). Personal suitability and character are also emphasized, with language such as ‘publicly recognized’ (**The Gambia**), ‘irreproachable reputation’ (**Moldova**), ‘fit and proper’ and ‘eminence and integrity’ (**Sri Lanka**) or ‘distinguished career’ (**Kenya**) used to signal the expectations of seniority, integrity, competence and high ethical standards. Listing qualifications may raise the barrier for awarding positions on independent commissions as patronage for political cadres.

A strict prohibition on political affiliation is common across jurisdictions, aimed at safeguarding institutional independence. For example, **Zimbabwe** requires members of independent commissions to relinquish political party membership upon their appointment, while for the Access to Information Commission **The Gambia** sets a five-year cooling-off period for previous political office holders ([Republic of The Gambia 2021, Access to Information Act: section 43\(2\)](#)). Similarly, **Sri Lanka**’s Constitutional Council excludes anyone affiliated with a political party from its non-parliamentary membership ([Constitution of Sri Lanka 1978: Chapter VIIA, article 41A\(5\)](#)). In addition to the risk of partisan capture, independent institutions can be susceptible to industry

capture when revolving doors form between these positions and private sector organizations ([Khaitan 2024](#)). This risk is especially high in small jurisdictions, where smaller pools of professionals may make such overlaps more likely.

2.3. WOMEN'S LEADERSHIP AND INCLUSION IN INDEPENDENT INSTITUTIONS

As articulated by a participant from **Syria**, 'it is really important to consider the different ways we evaluate women's participation'. While the numerical inclusion of women and minorities is widely understood as a positive norm, such metrics offer only a narrow view of representation. Minimum thresholds or quotas can serve as a useful starting point but they do not speak to the depth, quality or impact of participation, nor do they guarantee equitable influence *within* institutions.

For example, **South Sudan**'s Constitution provides that 'the National Government shall ensure that at least twenty-five percent of the membership of [independent] institutions and commissions shall be women' ([Constitution of South Sudan 2011: article 142\(3\)](#)). This is echoed in membership criteria for the National Constitutional Review Commission, which emphasizes gender, political and regional diversity ([article 202\(5\)](#)). Similarly in **The Gambia**, section 5(2) of the National Human Rights Commission Act stipulates that the five-member commission must include at least two women ([Republic of The Gambia 2017, National Human Rights Commission Act](#)). The Access to Information Act contains a comparable requirement ([Republic of The Gambia 2021, Access to Information Act: section 43\(2\)](#)).

Yet, in practice, leadership positions within these institutions continue to be disproportionately occupied by men, with women generally relegated to deputy positions. This is also mirrored in the wider political sphere: men often lead political parties, while women more often serve as secretaries-general or in mobilization roles. To remedy this exclusion from leadership roles, **Kenya**'s 2010 Constitution provides that the chairperson and vice-chairperson of a commission shall not be of the same gender ([Constitution of Kenya 2010: article 250\(11\)](#)). **The Gambia**'s 2020 draft constitution went further to ensure that the chairperson and, when applicable, the vice-chairperson of an independent institution or office must 'be succeeded by a person of a different gender' in an attempt to ensure that women would not always be placed in deputy roles ([Constitution of The Gambia 2020, Draft: article 216\(8\)\(b\)](#); [Constitution of Kenya 2010: article 250\(11\)](#)). However, this requirement was wholly removed in a later draft ([Constitution of The Gambia 2024, Draft: article 197](#)). Nevertheless, participants at the Dialogue believed that various aspects of process design could encourage women and other underrepresented groups to come forward and be selected, in particular upon public calls for applications and in connection with the use of multi-stakeholder panels.

While the numerical inclusion of women and minorities is widely understood as a positive norm, such metrics offer only a narrow view of representation.

Leadership positions within these institutions continue to be disproportionately occupied by men, with women generally relegated to deputy positions.

While transparency in appointment processes for independent institutions can contribute to the institution's legitimacy (see 1.1: Legitimacy and public trust), publicizing personal information about women leaders often exposes them to online harassment and potentially also to physical violence. Such risks are a startlingly pervasive and global problem for women in public life, with politicians and journalists in particular targeted with digital gender-based violence (e.g. [Glinski 2025](#)). Participants in the Dialogue had experienced or witnessed coordinated gendered disinformation and online harassment against themselves and their families. These attacks are not just personal—they are systemic efforts to silence women in politics, as their leadership is still seen to transgress gender norms. Such cultural and digital pressures contribute to an environment in which women must carefully weigh the risks and costs of political engagement or seeking a role in an independent institution.

Better implementation of policies to promote the inclusion of women in these bodies requires an overarching review of the social, economic and cultural obstacles that stand in the way of women's meaningful participation in public life.

Better implementation of policies to promote the inclusion of women in these bodies, then, requires an overarching review of the social, economic and cultural obstacles that stand in the way of women's meaningful participation in public life. One participant noted that women may decide not to participate in temporary or ad hoc institutions for fear that, once they do, they will have forfeited the chance to hold a more permanent role in a future institution. Such a concern arises due to a perceived scarcity of leadership positions made available for women. At the same time, participants highlighted that visibility and experience in one institution can, in other contexts, improve the likelihood that a woman will be nominated to serve in another. These contradictory dynamics point to the need for transparent, inclusive processes that expand—not ration—leadership opportunities for women.

Nevertheless, the Dialogue highlighted the resilience of women, with encouraging examples of how women's leadership has tangibly shaped the agenda, focus and impact of independent institutions. In **Tunisia**, the temporary Commission on Individual Freedoms and Equality ([COLIBE n.d.](#)), chaired by a feminist lawyer, placed gender equality at the centre of its mandate, which was to review Tunisia's legislation in accordance with the 2014 Constitution and international human rights standards. Although its proposal to reform inheritance law was ultimately rejected by the Tunisian Parliament, its work succeeded in sparking national debate on taboo subjects. In **South Africa**, the current Auditor-General, Tsakani Maluleke, is the first woman to hold this post. She has broadened the institution's scope to include performance and environmental audits, and has prioritized accessibility, institutional credibility and public engagement. In **The Gambia**, the National Human Rights Commission includes two women among its five members and has proactively engaged on women's rights and other issues often neglected in public discourse, such as early marriage and the rights of the elderly. These cases show that the inclusion of women—particularly in leadership positions—can significantly shape the vision and impact of independent institutions. Participants at the Dialogue also stressed the importance of ensuring that, once appointed, women and minority members have access to peer networks, civil society support, and mentorship and training to enable them to serve effectively and to provide strategies to counteract gender discrimination which they encounter in their roles.

Quotes from participants

'We're expected to be confined in these roles. ... It's like an ongoing battle that we're facing.'

'Our voices must not only be heard but integrated at all stages in our communities.'

'Inclusion is not the definition of full representation: it includes equality.'

Chapter 3

TRANSLATING MANDATES INTO OUTCOMES

This chapter focuses on the implementation phase of independent institutions, building on the prior discussion around their design and staffing. Political interference, either directly obstructing the institution's functions or through financial control, is an ongoing concern. Participants shared examples of both stagnation and successes, with financial autonomy, institutional visibility and collaboration between institutions being key facets of translating mandates into outcomes.

A recurring theme during the Dialogue was the gap between institutional design and practical implementation.

3.1. POLITICAL INTERFERENCE AND RESOURCE SHORTFALLS

A recurring theme during the Dialogue was the gap between institutional design and practical implementation. Participants identified several barriers to the effective operation of independent institutions. These include political obstruction, inadequate funding, weak enforcement powers and insufficient public engagement.

In certain contexts, independent institutions granted constitutional status never progressed beyond the design stage because of failure to pass enabling legislation or reach consensus on appointments. In **Tunisia**, the 2014 Constitution elevated five independent institutions to constitutional status: the Supreme Independent Elections Commission, the Audio-Visual Communication Commission, the Human Rights Commission, the Commission for Sustainable Development and the Rights of Future Generations and the Good Governance and Anti-Corruption Commission ([Constitution of Tunisia 2014: articles 126–30](#)). The Constitution required that members of these institutions be elected by the Assembly of the Representatives of the People by a qualified majority and that the composition and the methods for election would be established by law ([article 125](#)). However, a failure to pass the required framework law and persistent parliamentary deadlock over appointments meant that only the

electoral commission became operational ([Danish Institute for Human Rights 2018: 38](#); [L'Instance Supérieure Indépendante pour les Élections n.d.](#)).

Even when institutions are established, they often face very different implementation challenges depending on the broader political and governance conditions. In some contexts—particularly those marked by prolonged conflict or political fragility—institutions may struggle to function due to extreme resource scarcity and instability. Participants of the Dialogue gave stark examples, such as the Human Rights Commission of **South Sudan**, which has been evicted from its offices multiple times and struggles to maintain basic operations due to lack of funding ([Okuj 2024](#)). In **Palestine**, the Independent Commission for Human Rights has historically received the majority of its core funding from international donors, with the government routinely failing to contribute to its budget. This is despite the Paris Principles requirement that governments ensure financial support to national human rights institutions sufficient for enabling them to perform their functions effectively and autonomously ([GANHRI 2021](#)).

In some contexts—particularly those marked by prolonged conflict or political fragility—institutions may struggle to function due to extreme resource scarcity and instability.

In **Zimbabwe**, the Constitution stipulates that independent institutions should be provided with adequate funds to effectively perform their functions via parliamentary appropriations ([Constitution of Zimbabwe 2013: article 322](#)), allowing commissions to make submissions to a parliamentary committee regarding yearly allocations ([Constitution of Zimbabwe 2013: article 325](#)). While parliamentary control is standard in many democracies, the Zimbabwe Human Rights Commission faces challenges due to underfunding and stringent controls over external financial support. Although the commission can receive grants or donations, these require approval from the responsible minister, and any additional income is subject to ministerial consent. This dual constraint—limited state funding coupled with restricted access to alternative resources—hampers the commission's ability to function effectively ([Zimbabwe 2012, Human Rights Commission Act: section 17](#)). Moreover, operational aspects such as international travel for commissioners necessitate cabinet approval. As a result, the commission can be blocked from attending strategically significant meetings within its mandate—such as United Nations Human Rights Council meetings—if other ministries are given priority.

In contrast, the statutory framework for **The Gambia's** Access to Information Commission permits the commission to receive funds from a broader range of sources, including domestic or foreign grants and donations, in addition to parliamentary funds ([Republic of The Gambia 2021, Access to Information Act: section 77\(b\)](#)). While governments have a responsibility to ensure that independent institutions are sufficiently funded, the possibility of seeking external funding from international donors and non-governmental organizations may enable independent institutions to function at greater capacity and enable these bodies to act with less fear of financial backlash. However, such funding can also lead to perceptions of external influence (or 'foreign interference') and there may also be risks for loss of sustainability once the funding period ends.

3.2. REPORTING AND ACCOUNTABILITY

Independent institutions are required to generate and submit reports to respective national parliaments as a form of accountability. These annual reports detail the institutions' activities, financial expenditures and operational challenges. However, participants noted that the impact of such reports can be diluted when not accompanied by meaningful engagement or follow-up. Beyond annual reports, independent institutions often produce issue-specific reports that address particular human rights concerns or investigations. The effectiveness of these reports hinges on their public availability and the extent to which they prompt legislative or governmental action.

For example, the **Zimbabwe** independent institution reports must be submitted via the minister of justice and legal affairs before being tabled in parliament, which may delay their release or result in selective sharing ([Constitution of Zimbabwe 2013: article 235](#); [Zimbabwe 2012, Human Rights Commission Act: sections 8\(1\)–\(3\)](#)). The Global Alliance of National Human Rights Institutions (GANHRI) has criticized the requirement for reports to move through the executive before reaching the legislature. Instead, the alliance has recommended that there should be a process by which independent institutions' reports must be widely circulated, discussed and considered by the legislature ([GANHRI 2023](#)).

A dual dissemination strategy is intended to enhance transparency, promote public trust and encourage responsive action from policymakers.

Constitutional bodies in **Kenya** must submit an annual report to both the president and parliament ([Constitution of Kenya 2010: article 254\(1\)](#)). One participant mentioned that these requirements produce a massive volume of reports submitted to parliament that are not prioritized; rather, the presidential address, which condenses the contents of these reports, is considered as sufficient contemplation of the issues. However, unlike the Zimbabwean commissions, those in Kenya are constitutionally required to publish and publicize their annual reports and any others required of them by the president, the National Assembly, or the Senate. Such requirements, which include a requirement to publish reports for the general public in addition to submission to parliament, can stimulate media and public debate where political consideration may be lacking. The Access to Information Commission of The Gambia, for example, is obliged to make public and widely disseminate its annual report ([Republic of The Gambia 2021, Access to Information Act: section 58\(g\)](#)). This dual dissemination strategy is intended to enhance transparency, promote public trust and encourage responsive action from policymakers.

Quotes from participants

'Don't add an institution when your core institution is broken ... fix the problem.'

'I wonder if there is a way ... in which we can entrench some kind of operational financial autonomy into the constitution for these institutions without ... sacrificing accountability?'

'Economic issues and the treasury's grip on the finances determine what the commission can even do.'

'The reports from these commissions have kind of just been taken as ... there's no longer urgency. They're brought, tabled and not prioritized. We have so many commissions and they are all obliged to report to Parliament, so if you collected all the reports, they'd be all over, an exercise in futility.'

'I've definitely been in places where the government takes advantage of its ability to disregard reports.'

'Public accountability is key to surviving under political pressure.'

3.3. EXAMPLES OF SUCCESS

Despite significant challenges, participants also shared success stories regarding the work of independent institutions, such as the establishment of provincial or regional offices. The National Human Rights Commission of **The Gambia** has expanded its ability to provide service delivery to rural areas through two regional offices, enabling the commission to forge partnerships with local authorities, communities and grassroots organizations ([Office of the President of the Republic of The Gambia 2023](#)). Through these regional offices, for example, the commission conducted workshops for community leaders on government accountability for service provision ([National Human Rights Commission 2024](#)). The work these offices perform popularizes the commission's activities and allows it to respond more effectively to human rights complaints and violations. Given these successes, the commission aims to expand into more regions for more equitable access to the commission's services—though scaling up remains a challenge in light of the limited financial allocation it receives from the government.

Collaborating with governmental bodies or other independent institutions can increase effective operation of independent institutions. The newly established Access to Information Commission of **The Gambia**, for example, has looked to the Gambian National Human Rights Commission for inspiration, modelling aspects of its operational setup and outreach strategies on the more established commission in an attempt to reproduce how the Human Rights Commission built up its public credibility. The Auditor-General of **South Africa** represents another success story. The Auditor-General has a broad constitutional mandate to audit and report on the accounts, financial statements and financial management of all national and provincial state departments and administrations and all municipalities, as well as any other institutions as required by law ([Constitution of the Republic of South Africa 1996: section 188](#)). Originally the Auditor-General faced challenges in implementation, as the legal framework granted investigative powers but did not empower the office to ensure that its recommendations were enacted

([Republic of South Africa 2004, Public Audit Act: Chapter 3](#)). The office leveraged its credibility and strategic partnerships with civil society, media and parliament to advocate reform. In 2019, an amendment to the Public Audit Act introduced the concept of 'material irregularity', empowering the Auditor-General to take remedial action when financial misconduct is identified rather than simply investigating and reporting problems once the losses have already been incurred ([Republic of South Africa 2018, Public Audit Amendment Act 2018](#); [Auditor-General of South Africa 2023](#); [Auditor-General of South Africa 2021](#)). Now sufficiently independent and highly accountable, the Auditor-General enjoys significant support from political leadership thanks to its effective communication. Furthermore, it collaborates with the South African Human Rights Commission and the Public Protector as sister organizations to share information, combine efforts and ensure coordinated oversight. Shaping conversations with different leaders of government with a view to the public interest has allowed the office to position itself as a partner rather than an adversary.

Quotes from participants

'We must appreciate and understand our local context, working together with local institutions that have been able to be successful. It's important to speak together on issues and make sure they're doing what they're supposed to do. There's power in unity.'

'I suppose we can easily be a thorn in the side. ... But success has allowed us to be seen as a partner in the journey towards better administration. We have to work hard to keep our independence; that is important, we cannot lose it.'

Chapter 4

CONCLUDING OBSERVATIONS

Independent institutions hold a special promise: of protecting democracy from within. As the sixth Women Constitution-Makers' Dialogue demonstrated, these institutions function best when the rule of law is strong but matter most when it is fragile or under attack. In moments of political transition, or in the context of democratic backsliding, independent bodies have the potential to hold the line—to provide resistance and accountability, protect constitutional and human rights, and represent the long-term interests of the public by safeguarding the democratic fundamentals of the state.

But independent institutions cannot achieve such goals automatically. Across the Dialogue discussions, participants emphasized that legitimacy cannot be presumed from constitutional texts. It must be earned: through public trust, consistent implementation and meaningful independence. And even then, that legitimacy must be defended. Institutions grounded in public engagement, community outreach and visible service delivery—such as the National Human Rights Commission in The Gambia or the Auditor-General in South Africa—were described as resilient in the face of political pressure precisely because they are valued by the people they serve.

The Dialogue discussion revealed, time and time again, how important the details of the design of institutions and procedures can be. Those wielding power will often do all they can to avoid scrutiny and constraints. Rigorous attention to detail in implementing legislation regarding such issues as appointment procedures can increase the political cost for obstructing the mandates of independent institutions.

Equally important is who leads and shapes these institutions. When women's priorities are reflected in the agendas of independent institutions, they confront forms of inequality that otherwise go unaddressed. Participants shared examples of women leading on issues such as early and forced marriage, inheritance law reform and gender-based violence—reminding us that content is as important as form. At the same time, participants were clear-eyed

Independent institutions hold a special promise: of protecting democracy from within. These institutions function best when the rule of law is strong but matter most when it is fragile or under attack.

When women's priorities are reflected in the agendas of independent institutions, they confront forms of inequality that otherwise go unaddressed.

about the personal and political costs of leadership. Discrimination, online harassment and limited pathways to senior roles continue to discourage or derail many promising leaders. Supporting women's full, safe and sustained participation in these institutions is not peripheral—it is central to the institutions' credibility and potential for transformative impact.

This Dialogue reaffirmed that designing independent institutions is only the first step. Building them, defending them and ensuring they equitably serve all communities—especially in transitional or fragile settings—is ongoing work.

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Annex A. Programme

21 November 2024

Time	Session
09:00–09:30	Registration and coffee
09:30–10:15	Welcome, objectives and introductions Sumit Bisarya , Head of Constitution-Building Programme, International IDEA Sharon Pia Hickey , Associate Programme Advisor, Constitution-Building Programme, International IDEA
10:15–11:15	Session 1. Conceptualizing and framing the issues. The rise of independent institutions <i>The first session will set the stage by exploring the rise of independent institutions, their purpose and potential and examining how they operate within their legal and political ecosystems. These institutions—though far from uniform in form and function—have become integral components of modern constitutional democracies and they hold the potential to promote inclusiveness, foster accountability and support the rule of law. But they also face real challenges, including political interference and operational limitations. Through illuminating the core principles behind the creation of these institutions and the diverse forms they take, this session lays the foundations for deeper discussions on the potential and limits of constitutional and institutional design for fourth-branch institutions.</i> Expert panel presentation followed by moderated discussion. <ul style="list-style-type: none"> • Christina Murray, former member, United Nations Mediation Support Standby Team; Professor Emeritus of Human Rights and Constitutional Law, University of Cape Town, South Africa • Dinesha Samararatne, Professor at the Department of Public and International Law, Faculty of Law of the University of Colombo; independent expert for the Constitutional Council of Sri Lanka
11:15–11:30	Break

Time	Session
11:30–13:00	<p>Session 2. The political dynamics of designing independent institutions</p> <p><i>As with all aspects of constitutional design, the creation of independent institutions is deeply influenced by political dynamics, competing interests and normative values. This session examines the complex political economy behind the design of independent institutions, where choices about structure, powers and membership are shaped by both practical concerns and power struggles during constitutional negotiations. The interests at play—from balancing expertise with representation to ensuring operational independence—reflect broader dynamics of inclusion and exclusion, as well as the influence of external actors.</i></p> <p>Moderator: Tamara El Khoury, Executive Director, Arab Association of Constitutional Law; Adjunct Professor of Constitutional Law, IE University Madrid</p> <p>Panellists:</p> <ul style="list-style-type: none"> • Salwa Hamrouni, Professor of Public Law at University of Carthage (FSJPST); expert for Tunisia's National Constituent Assembly (2011–2014); former member, ad hoc Commission on Individual Liberties and Equality (COLIBE), Tunisia • Pushpa Gautam Bhusal, President of Nepal Law Society; former Deputy Speaker, House of Representatives; former member, Constituent Assembly (2008–2012); former member, Interim Constitution Drafting Committee (2006); former member, Truth and Reconciliation Drafting Committee (2006) • Millie Grace Akoth Odhiambo, Member of Parliament; former Vice Chairperson, Constitutional Implementation Oversight Committee (2010–2013); former member, Parliamentary Select Committee on the Constitution (2009–2010), Kenya • Sanaa Alsarghali, Associate Professor of Constitutional Law; member, Palestinian Constitution Drafting Committee; co-founder and Director, Constitutional Centre at An-Najah National University, Palestine <p>Moderated discussion.</p>
13:00–14:15	Lunch
14:15–16:00	<p>Session 3. Democracy supporting/guardian institutions</p> <p><i>This session will focus on guardian institutions—those designed to promote and preserve stability, animate constitutional democratic norms and insulate core democratic processes and functions from political and partisan interference. These institutions typically include election management bodies, judicial service commissions, auditors general and central banks, among others. Their administrative and regulatory powers are meant to ensure that key functions of the state serve the long-term public interest rather than specific political parties or other actors. Recognizing their technical expertise and intended impartiality, sometimes these bodies are given policymaking powers within their sphere of competence (e.g. central banks) or quasi-judicial authority (e.g. some election management bodies adjudicate election disputes).</i></p> <p>Moderator: Kimana Zulueta-Fülscher, International IDEA</p> <p>Panellists:</p> <ul style="list-style-type: none"> • Pushpa Gautam Bhusal, President, Nepal Law Society; former Deputy Speaker, House of Representatives; former member, Constituent Assembly (2008–2012); former member, Interim Constitution Drafting Committee (2006); former member, Truth and Reconciliation Drafting Committee (2006) • Gloria Gune Lomodong, member, National Constitutional Review Commission, South Sudan • Tsakani Maluleke, Auditor-General, South Africa [online] • Tracy Robinson, Professor of Law, University of the West Indies, Mona; former member, Committee on Judicial Appointments, Trinidad and Tobago [online] • Nadejda Hriptievschi, member, Prosecutor Vetting Commission; member, Independent Evaluation Commission; former member, Independent Anti-Corruption Advisory Committee, Moldova [online] <p>Moderated discussion.</p>

22 November 2024

Time	Session
09:15–09:30	Welcome and overview of day two
09:30–11:00	<p>Session 4. Integrity/watchdog institutions</p> <p><i>This session will focus on integrity institutions—those tasked with monitoring government (in)action, ensuring accountability and upholding human rights. These institutions, including national human rights institutions and ombudspersons, may have diverse mandates, including to receive and investigate public complaints, to conduct research and advocacy as well as to formulate and evaluate government policies. Some of these bodies, like anti-corruption commissions, may even have prosecuting powers. The operational autonomy of these institutions must be assured while ensuring they do not become a law unto themselves.</i></p> <p>Moderator: Sharon Pia Hickey, International IDEA</p> <p>Panellists:</p> <ul style="list-style-type: none"> • Fungayi Jessie Majome, Chair, Human Rights Commission, Zimbabwe; former Commissioner, Anti-Corruption Commission, Zimbabwe • Ya Amie Touray, Commissioner, Independent Access to Information Commission; member, The Gambia Bar Association's Constitutional Review Committee • Awak Bior Ajang, member, National Constitutional Review Commission, South Sudan <p>Moderated discussion.</p>
11:00–11:15	Break
11:15–13:00	<p>Session 5. Transitional and ad hoc institutions</p> <p><i>This session will cover transitional and ad hoc institutions, typically designed for periods of significant political and institutional change or post-conflict reconstruction. These institutions often have sensitive, time-bound mandates such as vetting public officials as part of institutional reform, administering the first elections under a new political/constitutional dispensation, monitoring constitutional implementation, or facilitating truth and reconciliation processes. They may also target long-standing issues like corruption networks rooted in the previous regime (the so-called 'deep state'), where hidden alliances of political elites continue to exert influence to the detriment of democratic governance.</i></p> <p>Moderator: Christina Murray, former member, United Nations Mediation Support Standby Team; Professor Emeritus of Human Rights and Constitutional Law, University of Cape Town, South Africa</p> <p>Panellists:</p> <ul style="list-style-type: none"> • Salwa Hamrouni, Professor of Public Law at University of Carthage (FSJPST); expert for Tunisia's National Constituent Assembly (2011–2014); former member of the ad hoc Commission on Individual Liberties and Equality (COLIBE), Tunisia • Millie Grace Akoth Odhiambo, Member of Parliament; former Vice Chairperson, Constitutional Implementation Oversight Committee (2010–2013); former member, Parliamentary Select Committee on the Constitution (2009–2010), Kenya • Samia Hamid Ali El Hashmi, participated in drafting the 2019 transitional constitution in Sudan and 2021 reforms; lawyer before the Constitutional Court in Sudan [online] • Dima Moussa, member, Syrian Constitutional Committee; member and former Vice President of Syrian National Coalition • Sanaa Alsarghali, Associate Professor of Constitutional Law; member, Palestinian Constitution Drafting Committee; co-founder and Director, Constitutional Centre at An-Najah National University, Palestine

Time	Session
13:00–14:00	Lunch
14:00–15:30	<p>Session 6. Ensuring inclusivity and gender balance in independent institutions</p> <p>Despite strides in women’s representation and leadership in the past decades, women, especially minority women, still face structural and cultural barriers that affect their equal participation in constitution-making and independent constitutional institutions. For example, only 22 per cent of EMBs globally are chaired by women (International IDEA 2022). Additionally, women in high-profile roles often endure gendered harassment and disinformation, which can harm their well-being, undermine their authority and deter other women from seeking leadership roles. This session will discuss these challenges and how constitutions can address them and what other constitutional gender equality provisions and international standards can enhance women’s participation, leadership and influence in these institutions for the benefit of all of society.</p> <p>Moderator: Uli Rogers, National Democratic Institute</p> <p>Panellists:</p> <ul style="list-style-type: none"> • Samia Hamid Ali El Hashmi, participated in drafting the 2019 transitional constitution in Sudan and 2021 reforms; lawyer before the Constitutional Court in Sudan [online] • Ya Amie Touray, Commissioner, Independent Access to Information Commission; member, The Gambia Bar Association’s Constitutional Review Committee <p>Moderated discussion.</p>
15:30–15:45	Break
15:45–16:30	<p>Key take-aways and recommendations</p> <p>Moderated open discussion. <i>Participants will be asked to share one or more insights gained throughout the workshop.</i></p>

Annex B. List of participants

Awak Bior Ajang, member, National Constitutional Review Commission, South Sudan

Sanaa Alsarghali, Associate Professor of Constitutional Law; member, Palestinian Constitution Drafting Committee; Director, Constitutional Centre at An-Najah National University, Palestine

Pushpa Gautam Bhusal, senior advocate; President of the Nepal Law Society; former Deputy Speaker of the House of Representatives; former member, Constituent Assembly, Nepal

Radu Cotici, senior anti-corruption adviser, International Development Law Organization (IDLO)

Samia El Hashmi, lawyer before the Constitutional Court in Sudan; constitution drafter (2019 and 2021), Sudan [online]

Tamara El Khoury, Executive Director, Arab Association of Constitutional Law; Adjunct Professor, IE University Madrid

Salwa Hamrouni, Professor of Public Law, University of Carthage; Honorary President, Tunisian Association of Constitutional Law

Nadejda Hriptievschi, member, Prosecutor Vetting Commission; member, Independent Evaluation Commission; former member, Independent Anti-Corruption Advisory Committee, Moldova [online]

Kateryna Levchenko, Government Commissioner for Gender Equality Policy, Ukraine; member, Gender Equality Commission of the Council of Europe [video message]

Gloria Gune Lomodong, member, National Constitutional Review Commission, South Sudan

Fungayi Jessie Majome, Chair, Human Rights Commission, Zimbabwe

Tsakani Maluleke, Auditor-General of South Africa [online]

Dima Moussa, member, Syrian Constitutional Committee; member and former Vice President, Syrian National Coalition

Christina Murray, Professor Emeritus of Human Rights and Constitutional Law, University of Cape Town; former member, UN Mediation Support Standby Team

Millie Grace Akoth Odhiambo, Member of Parliament, Kenya; former Vice Chair, Constitutional Implementation Oversight Committee

Tracy Robinson, Professor of Law, University of the West Indies, Mona; former member, Committee on Judicial Appointments, Trinidad and Tobago [online]

Ulrike (Uli) Rodgers, Program Director, National Democratic Institute (NDI), Central and West Africa

Dinesha Samararatne, Professor, Department of Public and International Law, University of Colombo, Sri Lanka

Kate Sullivan, electoral adviser and administrator; former Principal Electoral Affairs Officer, UN Transition Assistance Mission to Sudan

Ya Amie Touray, Commissioner, Independent Access to Information Commission; member, Constitutional Review Committee, The Gambia

International IDEA staff

Adem Kassie Abebe, Senior Adviser, Constitution-Building Processes

Sumit Bisarya, Head of Constitution-Building Programme

W. Elliot Bulmer, Senior Adviser, Constitution-Building Programme

Sharon Pia Hickey, Associate Programme Officer, Constitution-Building Programme

Wunna Htay, Associate Programme Officer, Building Federal Democracy in Myanmar Programme

Kimana Zulueta-Fülscher, Senior Adviser, Constitution-Building Programme

Visiting students/interns

Anastasia Rivera, intern, Constitution-Building Programme; J.D. candidate, Indiana University Maurer School of Law

Clémence Roy, intern; Master's in Law candidate, Sciences Po Paris

Tatiana Van Den Haute, intern; Master's candidate in Economic Law, Sciences Po Paris

About the authors

Sharon Pia Hickey is a lawyer and Programme Officer in International IDEA's Constitution-Building Programme and Climate Change and Democracy Programme, where she generates knowledge on comparative constitutional process and design and supports constitution-building processes. She organizes the annual Women Constitution-Makers' Dialogue, which brings together women constitution-makers to discuss their experiences with peers. Sharon began her career in Ireland, supporting women running for political office and advocating political gender quotas. She has since held several roles supporting the rule of law, including at the International Gender Justice Clinic and the Cornell Center on the Death Penalty Worldwide at Cornell Law School, where she co-founded the Alice Project for Women on Death Row. Sharon graduated from the National University of Ireland, Maynooth and earned her LLM with certification in gender and sexuality law from Columbia Law School, where she served as an editor for the *Human Rights Law Review*.

Anastasia Rivera is a student at the Indiana University Maurer School of Law with a focus on constitutional design, feminist legal theory and constitutional environmentalism for the welfare of future generations. She completed an externship at International IDEA and brings extensive international experience to her work, having earned her BA in Philosophy and Global Studies from the College of William & Mary, Virginia and having spent several years teaching in Yamagata, Japan. After graduation, she plans to sit for the Washington DC bar exam and pursue a clerkship with the DC Superior Court.

About the partners

INTERNATIONAL IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with 35 Member States founded in 1995, with a mandate to support sustainable democracy worldwide.

What we do

We develop policy-friendly research related to elections, parliaments, constitutions, digitalization, climate change, inclusion and political representation, all under the umbrella of the UN Sustainable Development Goals. We assess the performance of democracies around the world through our unique Global State of Democracy Indices and Democracy Tracker.

We provide capacity development and expert advice to democratic actors including governments, parliaments, election officials and civil society. We develop tools and publish databases, books and primers in several languages on topics ranging from voter turnout to gender quotas.

We bring states and non-state actors together for dialogues and lesson sharing. We stand up and speak out to promote and protect democracy worldwide.

Where we work

Our headquarters is in Stockholm, and we have regional and country offices in Africa, Asia and the Pacific, Europe, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations and is accredited to European Union institutions.

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We have a catalogue with more than 1,000 publications and over 25 databases on our website. Most of our publications can be downloaded free of charge.

<<https://www.idea.int>>

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The Edinburgh Centre for Constitutional Law (ECCL) provides a focal point for staff and postgraduate research students working in all areas of Scots and UK public law, Commonwealth and comparative constitutional law, human rights law, environmental law and climate change law, democratization and transitional constitutionalism, and constitutional theory. Our members undertake research and teaching in all these areas, as well as provide expertise to institutions outside academia in the UK and beyond.

Website: <<https://www.law.ed.ac.uk/research/research-centres-and-networks/edinburgh-centre-constitutional-law>>

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PEACEREP

PeaceRep: The Peace and Conflict Resolution Evidence Platform is a research consortium based at Edinburgh Law School. Our research is rethinking peace and transition processes in the light of changing conflict dynamics, changing demands of inclusion and changes in patterns of global intervention in conflict and peace/mediation/transition management processes.

Consortium members include: Conciliation Resources, Centre for Trust, Peace and Social Relations (CTPSR) at Coventry University, Dialectiq, Edinburgh Law School, International IDEA, LSE Conflict and Civicness Research Group, LSE Middle East Centre, Queen's University Belfast, University of St Andrews, University of Stirling and the World Peace Foundation at Tufts University.

PeaceRep is funded by UK International Development from the UK Government.

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In recent decades, the numbers and thematic diversity of fourth-branch institutions have increased, along with a growing trend towards their constitutionalization. Key design choices for constitution-makers include the structure of these institutions, mandates, powers and membership (including representative qualities and methods of appointment and removal). Constitution-makers must also consider how, given political and financial realities, to improve the likelihood that these bodies can operate with financial and operational autonomy in theory and in practice.

Independent institutions hold a special promise: of protecting democracy from within. As the sixth Women Constitution-Makers' Dialogue demonstrated, these institutions function best when the rule of law is strong but matter most when it is fragile or under attack.

The theme of the sixth Women Constitution-Makers' Dialogue was 'Independent Institutions: Enhancing Democratic Integrity and Accountability through Constitutional Design'. The Women Constitution-Makers' Dialogue is a platform for women constitution-makers to discuss their experiences, successes and challenges with peers from other constitutional reform endeavours. It is hosted by International IDEA together with the University of Edinburgh Law School and as part of the Peace and Conflict Resolution Evidence Platform (PeaceRep).