



# WOMEN AND CONSTITUTIONAL REFORM IN RESPONSE TO SOCIAL CRISIS

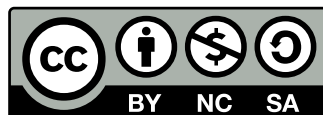
Second Annual Women Constitution-Makers' Dialogue, 2020



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# WOMEN AND CONSTITUTIONAL REFORM IN RESPONSE TO SOCIAL CRISIS

Second Annual Women Constitution-Makers' Dialogue, 2020

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# Acknowledgements

This Report was developed as a follow up to the Second Annual Women Constitution-Makers' Dialogue. Held in November 2020 on the theme of 'Constitutional Reform in Response to Social Unrest', the workshop was jointly organized by International IDEA and the Edinburgh Centre for Constitutional Law, School of Law, University of Edinburgh. The Dialogue was part of the Peace and Conflict Resolution Evidence Platform ([www.peacerep.org](http://www.peacerep.org)), which focuses on rethinking peace and transition processes in a changing conflict landscape.

We would like to thank the people whose insights and suggestions helped shape the conceptualization of the 2020 Dialogue and the case studies that formed the backbone of our discussions. Logistical planning for the event was complicated by the Covid-19 pandemic, which made it impossible for us to meet in person at Edinburgh University. We are deeply grateful for the flexibility, patience and humour of our participants and moderators as we came together online.

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# EXECUTIVE SUMMARY

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## BACKGROUND

The annual Women Constitution-Makers' Dialogue series was established in 2019 as a platform for peer-to-peer exchange of experiences among women constitution-makers and peacebuilders from around the world. It supports structured engagement among national practitioners from past and ongoing processes and with international expert advisors and researchers. The series offers a conceptual and practical response to the need for an organized, women-centred approach to examine and support inclusive, participatory and gender-sensitive constitution-building and peace processes. Participants in the dialogues comprise a global network of women constitution-makers and peacebuilders linked through the organizing partners.

The second event in the series was held in November 2020 and focused on 'Constitution-Making in Response to Social Unrest'. The 20 participants included constitution-makers, peacebuilders, women's equality advocates and high-level officials from Chile, The Gambia, Kenya, South Sudan, Sudan, Syria and Yemen as well as international constitution-building, peacebuilding, and gender advisors and researchers. Discussions explored a range of issues related to the rise of social protest movements around the world, subsequent constitutional reform endeavours, and women's engagement and influence across these interrelated processes.

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## SOCIAL PROTESTS: THE CONTEXT

Since around 2006, mass social protests have been growing on a global scale. The rise of protest movements in nearly all regions of the world reflects a growing dissatisfaction with politics, politicians, and the institutions and processes of governance. People have taken to the streets to protest against

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**Since around 2006, mass social protests have been growing on a global scale.**

governments' real and perceived failures to address injustice, economic and social inequality, corruption, weak infrastructure development, poor service delivery, problems of recognition and inclusion, and other issues. Women and youth are often at the forefront of protest movements—at great personal risk—demanding fundamental reforms and pushing for transitions to democracy and peace.

In response to mass social unrest, governments employ a range of tactics and methods to stabilize the situation and strategies often change over time. Protests may be met with violence in an attempt to repress and disband movements, and to consolidate the status quo. In other cases (or over time), governments seek to contain unrest and forestall more extensive protests: often through co-option tactics involving rhetorical commitments to reform and limited concessions to protestors' demands. Yet sometimes, particularly where unrest is understood as having exposed key fault lines in the social contract between the people and the government, and where the state recognizes that its power depends on some level of popular legitimacy, the response involves structural reforms, often including constitutional change. In these cases, social unrest is a catalyst for constitution-building and members of the protest movement are often integrated into the constitution-making process in a variety of ways.

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**For women, constitutional reform in response to social unrest presents an opportunity to ensure that the right to substantive equality and other interests are entrenched in the revised constitution.**

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## **CONSTITUTIONAL REFORM AND WOMEN'S EQUALITY**

For women, constitutional reform in response to social unrest presents an opportunity to ensure that the right to substantive equality and other interests are entrenched in the revised constitution and new governance dispensation. At the same time, new and different challenges also arise. Women's participation and influence must often be (re)asserted as protest movements transition into a constitution-building process. Similarly, commitments to women's substantive rights—which are often at the heart of protestors' demands—are repeatedly at risk of being set aside or bargained away in exchange for other reforms during constitutional negotiations. So how and why do women's roles and influence tend to shift across protest movements and constitutional reform processes? What good practices and lessons learned can be gleaned from comparative experience to enhance women's voices and strengthen fundamental reforms to protect women's rights?

This report aims to unpack women's comparative experiences in seeking to ensure that their substantive interests—articulated as part of a protest movement—are incorporated into subsequent constitutional reforms in situations where governments are open to structural change in the face of mass social unrest. It considers:

- the differing roles that women play in interrelated social movements and constitution-making processes;



- the opportunities and obstacles women face in mainstreaming their inclusion and influence; and
- the ways in which women's engagement (or exclusion) impacts the efficacy of the constitutional reform endeavour—both procedurally and substantively—in addressing systemic problems underlying the civil unrest.

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## KEY FINDINGS

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

1. **Protests sparked by a particular issue often quickly transform to encompass a more fundamental set of dissatisfactions with the political settlement.** These issues cannot be effectively resolved without addressing the structures and institutions of the state that are perceived to be failing.
2. **A government's willingness to engage in constitutional change to address social unrest is not a foregone conclusion.** States use a range of tactics and methods to respond to social unrest and the state response often changes over time. Response decisions are not usually part of a cohesive strategy but are isolated reactions to different levels and escalations of the crisis, with states employing a mixture of confrontation and accommodation tactics to suppress further protests, which may include constitutional change.
3. **Women tend to be seen as agents of change but not as agents of governance.** Women's mass mobilization can be the tipping point that pressures a state to undertake structural reforms in the face of social unrest, but this does not always translate to influence when it comes to negotiating and implementing reforms. This experience differs somewhat from contexts in which constitutional change is primarily linked to a conflict transition, political dynamics or broader institutional or governance needs. In conflict contexts, women are generally already under-represented in decision-making roles in the groups and institutions driving such change, such as armed groups or elected legislatures, so their continued under-representation in constitution-building is a continuation of the existing situation of gender inequality in public life. In a context of social unrest, however, women are more often meaningfully involved in pro-reform movements, and their mass participation is more often foundational to the movement's success in triggering reform negotiations.
4. **Because the key actors at the negotiating table ostensibly represent the protest movements, in theory there should be more opportunities for women's participation.** Yet in nearly all cases, women and women's

interests are sidelined and they must work to reassert their place at the bargaining table.

5. **It is important that male dominance in structural reform processes is not assumed to be either 'natural' or 'necessary'.** Instead, it is important to question processes that are exclusively or predominately led by men, as these are often inherently deficient and contrary to democratic principles.
6. **Where a state is willing to engage in structural reforms, the transition presents both opportunities and challenges for women and a women's rights agenda.** On the one hand, reform processes are an opportunity for women to leverage their role as agents of change to entrench quota rules for their minimum inclusion in negotiation processes and to shape the reform agenda. This can open the door to broader conversations about the role of women in politics and society. On the other hand, such gains—and particularly the adoption of quotas in constitution-making or peacebuilding bodies—may be seen as sufficient to satisfy women's claims, leaving the broader women's rights agenda to stagnate over time. This risk is often compounded by difficulties in building consensus among diverse women's groups on minimum values, principles and objectives.
7. **When transitions are seen as long-term and multi-phased processes, women can more effectively allocate their energy and resources over time and have more opportunities to entrench their interests.** In comparison, when transitions are seen as an event, women tend to lose out because a minimal number of concessions are seen as a final result rather than an initial step towards mainstreaming women's participation and substantive concerns.
8. **Constitutional reform in a context of violent conflict impacts the roles and experiences of women in ways that differ from a context of social unrest, particularly in terms of the timing of constitution-making, who is at the table at different stages of decision making, and the institutions and elements of the transition processes.** Constitutional reform in a conflict situation is aimed at stopping the violence, so initial negotiations are usually limited to representatives of armed groups, who are predominately men. The functional exclusion of women from early negotiations impacts their influence in subsequent phases.
9. **Experiences of backlash against women's participation and the later unravelling of substantive commitments to a women's rights agenda are common.** Women should anticipate a future backlash from the outset, and plan to counteract and mitigate it, and to work strategically to entrench commitments made at the negotiating table. Key to this is anchoring their rights within the constitution and mechanisms for both enforcing the constitution's provisions and upholding normative commitments made at the bargaining table.
10. **International assistance modalities for engaging in reform efforts can sometimes divide and undermine women and create tensions between**

**national and international agendas.** While international assistance is often crucial for supporting women's advocacy and engagement, it is important that the international community coordinate its agendas and activities, both financial and technical. Such coordination can mitigate the risk of creating competition among women and sustain a sense of national ownership over the processes that are underway. Where the latter is perceived to erode, this enables actors who oppose gender equality to claim that women's inclusion is a foreign imposition or counter to local cultural norms.

11. **Effective participation requires broad engagement with women but also that at least some women at the table are gender sensitive and aware of the interests and concerns of women as a group.** Women's representation and participation are two different things, and the differences must be better understood. The presence of women in reform processes is not sufficient for women's effective participation. Perhaps the most effective strategy is for women to try to influence the structure and composition of the process from the start. While a general women's quota cannot ensure the inclusion of gender-sensitive women, other mechanisms—such as the representation of women's organizations—can be helpful in this regard. Another useful strategy is to **increase the level of support to, and coordination with, all women at the table—whether they are part of a particular movement or group, or not—as well as men.** Women's rights activists must help women and their male allies to champion women's concerns in negotiations by offering training, advice and support.
12. **It is important for women, as part of social protests and/or broader women's rights movements, to focus on creating an enabling environment for women's participation and equality.** This requires several things. First, ensuring that the people setting up the process understand the normative and instrumental benefits of women's participation, and thereby generate incentives for getting more women at the table. Second, fostering a space for meaningful public participation and orienting stakeholders to it—whether through official or unofficial channels. Public participation is viewed as a way to legitimate reform and democratization processes, so determining who speaks for particular constituencies is often hotly contested. Women in rural areas are often left out of these processes, so women activists must build links to learn about their concerns and elevate their voices. Third, building coalitions, fostering confidence, and sharing information with women and other groups. The more intersectional the movement, the more allies it will build and the more valuable women's participation will become.

# INTRODUCTION

On 17 and 18 November 2020, the International Institute for Democracy and Electoral Assistance (International IDEA)—together with the Edinburgh Centre for Constitutional Law (ECCL) and the Peace and Conflict Resolution Evidence Platform (PeaceRep) at the University of Edinburgh—hosted the second annual event in the Women Constitution-Makers’ Dialogue series. The Dialogue considered the ways in which constitutional reform processes arise as a response to social crisis, the comparative experiences of women engaged in both protest and subsequent constitution-building efforts, and the efficacy of constitutional changes in such contexts in addressing the root causes of the unrest.

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## THE WOMEN CONSTITUTION-MAKERS’ DIALOGUE SERIES

The annual Women Constitution-Makers’ Dialogue provides a platform for peer-to-peer exchanges of experience among women constitution-makers and peacebuilders from around the world. It supports structured engagement among national practitioners from past and ongoing reform processes, and with international constitution-building and peacebuilding advisors and researchers. The series provides a conceptual and practical response to the need for an organized, women-centred forum to examine and support inclusive, participatory and gender-sensitive constitution-building. Participants in the Dialogues comprise a global network of women constitution-makers and peacebuilders linked through the annual events and other engagements with the organizing partners.

The 2020 Dialogue took place in a milestone year for the international women’s equality agenda. It was the 25th anniversary of the Beijing Declaration and Platform for Action; the 20th anniversary of United Nations Security Council Resolution 1325 (UN 2000) and the initiation of the Women, Peace and Security agenda; and the 5th anniversary of the 2030 Agenda for Sustainable

Development, which includes Goal Five on achieving gender equality (see UN Women 2020). These initiatives build upon the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW, UN 1979) and stress, among other points, the importance of women's meaningful participation in decision making in governance and society. They emphasize the value of women's contributions to democracy, democratization and peace, and the imperative of mainstreaming gender in all aspects of peacebuilding and governance, including constitution-building (CEDAW 1997, 2013, 2018; O'Rourke and Swaine 2020; Suteu and Bell 2018).

While important progress has been made towards fulfilling these commitments, developments have been uneven and serious gaps remain (Houlihan 2021; UN Women 2020). These gaps reflect the endurance of patriarchal norms underpinned, and reinforced, by structural inequalities and gender-based violence that continue to inhibit both the protection and fulfilment of women's rights—including in decision making at the peacebuilding or constitution-making table. Concerningly, there is evidence of stagnation regarding women's equality, and even erosion of past gains, on a global scale. This erosion of women's rights is linked, in part, to the ongoing trend of democratic backsliding and the concurrent rise of nationalist agendas promoting a return to 'traditional' values (Roggeband and Krizsán 2020).

Popular discontent and protest is partially explained by governments having failed to deliver on core democratic values and the provision of justice (economic development, civil rights) and collectively failing on global issues like climate change and trade agreements. Since around 2006, frustrations with these shortcomings have sparked a wave of mass protests around the world. Protesters are demanding systemic governance and institutional change and, in many contexts, a renegotiation of the social contract. Women's rights, along with a range of cross-cutting issues of substantial concern to women, are often at the heart of these demands.

Given this context, and the diversity of women's experiences in catalysing change by taking to the streets, the theme for the 2020 Dialogue was constitutional reform in response to social crisis.

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## **KEY QUESTIONS ON THE ROLE OF WOMEN IN CONSTITUTION-BUILDING IN RESPONSE TO SOCIAL CRISES**

Key questions that framed the dialogue discussions included:

1. Where, when and how are women involved in interrelated social movement, negotiation and structural reform processes, particularly constitution-building? If women are engaged in the initiation of a protest movement, but then less so during subsequent political negotiations, peace processes, constitution-building projects or even transitional justice processes, why is this?
2. What obstacles do women face in maintaining momentum and influencing lasting constitutional reform from a country-specific and comparative perspective?
3. Where and in what ways can women's participation be most effective in securing gender-sensitive outcomes, including in democratization and building stable peace?
4. How do negotiation/choices about interim or transitional arrangements and women's participation therein, impact women's participation in decision making about subsequent (permanent and substantive) commitments to women's interests?
5. How do the sequencing and timelines established for constitutional reform in the wake of social crisis impact women's engagement and gendered constitutional outcomes?
6. What timelines and sequencing patterns tend to be most effective in fostering women's meaningful participation and making democratization reforms 'stick'? (e.g. transitional government and interim constitution? Amendment? Wholesale constitutional replacement?)
7. What is the optimal role of international bodies in these processes? How do external actors—such as the United Nations, regional intergovernmental organizations, and other states—engage in and influence the domestic context? How do they influence the respective positions and strategies of engaged factions and institutions? What about the content of various agreements and processes? How can the international community more effectively support women at a substantive and operational level?
8. What are the key areas for investment—both technical and financial—to support effective and inclusive constitutional reforms in response to social crisis and political upheaval?

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## **STRUCTURE OF THE REPORT**

This Report proceeds as follows. Chapter 1 examines the situation of rising social unrest around the world. It considers some of the key demands and grievances that can be loosely identified as common themes across different countries. It also examines the different ways that states respond to social crisis. Chapter 2 examines women's shifting experiences across protest and reform processes and the opportunities and challenges for women in maintaining their participation and influence to champion their diverse interests. It considers the ways that context, institutional and procedural decisions and other factors influence the roles that women play across these processes and shape outcomes for women's substantive equality. Chapter 3 offers concluding observations.

## Chapter 1

# SOCIAL CRISIS, COMMON DEMANDS AND STATE RESPONSES

**In the opening decades of the 21st century, countries around the world have experienced a marked increase in social unrest on a scale not seen since the close of the Cold War.**

## SOCIAL CRISIS ON A GLOBAL SCALE

In the opening decades of the 21st century, countries around the world have experienced a marked increase in social unrest on a scale not seen since the close of the Cold War. This ranges from organized social movements to spontaneous demonstrations, various forms of mass uprisings, and popular revolutions, both non-violent and violent (Ortiz et al. 2022; ACLED n.d.).<sup>1</sup> The trend is felt across a diverse range of places, from those facing protracted instability, long-standing challenges with democracy or authoritarianism—such as Belarus, Egypt, Guinea-Bissau, Hong Kong, Iran, Iraq, Lebanon, South Sudan, Sri Lanka and Sudan—to democracies that have successfully transitioned over time, and even older ‘consolidated’ democracies—such as Canada, Chile, France, Germany, the Netherlands, Spain and the United States (Beaujouan et al. 2020).<sup>2</sup> Since around 2006, rates of unrest have increased in nearly every region of the world except the Middle East and North Africa (MENA), which has seen a slight decrease compared to the height of the mass social protest and reform movements beginning in 2010 (see e.g. Volpi 2013; IEP 2020).

In 2019 alone, 96 countries experienced at least one violent demonstration and 114 experienced mass protests (IEP 2020; Brannen, Haig and Schmidt 2020). While some of these crises began to abate in 2020, they were replaced with a new wave of tension and insecurity resulting from the Covid-19 pandemic. The pandemic altered and in many ways exacerbated the nature of civil unrest—including with regard to measures undertaken by governments to curb the

<sup>1</sup> Databases and studies that examine social crises, unrest, violence and/or war around the world each define these events in different ways. For the purposes of this Report, ‘social unrest’ or ‘social crisis’ refers broadly to both violent and non-violent protests, mass movements, uprisings, and popular revolutions. For data on such events see e.g. World Protests Platform, <<https://worldprotests.org/#>>; the Armed Conflict Location & Event Data Project (ACLED n.d.); and Global Peace Index (IEP 2020), among others. See also Brannen, Haig and Schmidt (2020); and Ortiz et al. (2022).

<sup>2</sup> For a classification of political regimes based on 29 aspects of democracy, see International IDEA’s Global State of Democracy Indices, <<https://www.idea.int/gsod-indices/democracy-indices>>.



spread of the virus (Youngs and Panchulidze 2020; see also Molloy 2021; and Houlihan and Underwood 2021).

The roots of social crisis vary considerably by context and the triggers for social movements often change over time. Challenges commonly relate to economic and social inequality; government corruption; the distribution of and access to political power and resources; rising cost of living; poor service delivery or infrastructure; issues of identity, recognition and inclusion; and performance failures by the government to deliver on development and justice obligations. Particular events or scandals—such as revelations of large-scale acts of corruption, the enactment of draconian legislation, sudden spikes in prices or fees, or gross violations of human rights by state authorities—often spark protests which can quickly expand to encompass a wider set of dissatisfactions with the political settlement and overarching social contract (Beaujouan et al. 2020; Carothers and Youngs 2015).

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**The roots of social crisis vary considerably by context and the triggers for social movements often change over time.**

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## COMMON DEMANDS

A defining characteristic of the ongoing wave of social unrest is its diversity. Protestors themselves come from across the political and identity spectrum: from the ideological left and right, Indigenous communities, civil society organizations, trade unions, women and youth, but also, increasingly, unorganized and unaffiliated middle class individuals (Ortiz et al. 2022). Their demands reflect a wide range of grievances, concerns and issues—from calls for ‘real’ democracy and strengthened human rights, to better services, better wages and social justice, to climate justice, among others. Some movements are coordinated around a set of concrete programmatic demands. In other cases, protests are more fractured and demands vary—and often conflict—across a wide range of ideological, economic and institutional issues. They also change over time and across succeeding waves of protest.

While it is difficult to develop a typology of demands, researchers have identified several trends. A study by Ortiz et al. (2022) examined 2,809 protests under 900 protest movements in 101 countries between 2006 and 2020. The researchers found that, while the overall frequency of protests has increased steadily since 2006 and they have become more political over time, by 2020 the number of protests about specific issues (such as education policy reform) actually decreased compared to ‘omnibus’ protests seeking broad change and all-encompassing demands for ‘real’ democracy. This transition in the nature of demands coincides with the growing phenomenon of democratic backsliding, defined as a severe and deliberate type of democratic erosion, which has expanded over the last decade (International IDEA 2021).<sup>3</sup>

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<sup>3</sup> As of 2021, more than a quarter of the world’s population lived in democratically backsliding countries. Combined with those living in outright non-democratic regimes, they constituted over two-thirds of the world’s population (International IDEA 2021).

While most protests during this period involved more than one grievance or demand, the study (Ortiz et al. 2022: 15–20) found that claims typically addressed the following categories of issues, in order of frequency:

- *Failure of political representation and political systems.* Demands for ‘real’ democracy were the overall most frequently occurring theme throughout the period, followed by demands to curb corruption and hold perpetrators to account. Other issues in this category relate to rule of law and the quality of justice systems, sovereignty and patriotic issues, transparency and accountability, the perceived ‘deep state’ or oligarchy, anti-war and anti-military complex positions, and issues about privacy and citizen surveillance.
- *Economic justice and austerity policies.* These grievances relate primarily to employment, wages and/or labour conditions as well as problems with public services, corporate influence in policy and issues with deregulation and privatization, economic inequality, tax and fiscal justice, land and agriculture reform, high fuel and energy costs, pension reforms, housing crises, and high food prices.
- *Civil rights.* Protests that featured civil rights in a prominent way included both those *for* increased respect and protections and those seeking to *deny* (equal) rights to particular groups such as minorities. Key issues on both sides related to ethnic/Indigenous/racial rights; right to the commons (including digital, land, cultural and atmospheric); freedom of assembly, speech and press; women and girls’ rights; labour rights; sexual and gender minority rights; rights of immigrants; personal liberties; prisoners’ rights; and freedom of religion issues.
- *Global justice.* Among surveyed protests, global justice movements involved demands for coordinated transnational action on issues like climate change, globalization and sustainable development, and against the unequal influence of powerful countries in setting global policies.

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**Mass protest movements at a country and regional level tended to resurge when initial grievances were not addressed through structural reforms.**

The frequency of protests about particular sets of issues varies by region; trends have also changed over time both within and across regions. Notably, mass protest movements at a country and regional level tended to resurge when initial grievances were not addressed through structural reforms. This is evidenced primarily in the MENA (Middle East and North Africa) and Latin America regions through protests for economic justice in 2010–2014, which returned in a more politicized way in 2016 and 2017 (Ortiz et al. 2022: 100).

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## STATE RESPONSES TO SOCIAL UNREST

When faced with large-scale social unrest, governments employ a number of institutional and political responses in an attempt to forestall further protests or an escalation of the crisis. As Beaujouan et al. (2020) explain, the

state can either confront or accommodate protestors and, in practice, often combines tactics of repression, co-optation or concession in various ways over time. Governments often do not have a coherent strategy. Rather, they tend to address different dimensions or levels of escalation with different techniques, as a series of individual decisions made in a reactive way. Few states contemplate substantial political and legal restructuring—at least at first. Yet the government's initial reaction to unrest often determines whether the crisis escalates or de-escalates, and whether and how it will mutate over time. Importantly, commitment to longer-term reforms through constitutional change is not a foregone conclusion.

A state's decisions about how to respond will depend on a number of context-specific factors and are often part of an underlying objective of stabilizing the situation and retaining—or even consolidating—the status quo. Key factors include (Beaujouan et al. 2020):

- whether the government understands the basis of state power to rest on a monopoly on violence or a social contract;
- what the government sees as being potentially at stake in using force or offering reforms; which route presents the greatest existential threat to the government or the state;
- the extent of societal divisions in terms of identity, and whether competing 'reformer' and 'status quo' positions align with or cut across such divisions;
- the extent to which security forces exercise political autonomy and will take their own decisions on the use of force, with or without government request, sanction or support;
- levels of trust between the government (and parliament) and citizens with regard to a credible history of past reforms; and
- the role and influence of external actors in asserting diplomatic pressure, sanctions or other coercive incentives, and/or other offers of mediation or dialogue.

The role of the military and its relationship with the regime in a context of social uprising is critically important. The military may remain neutral; intervene to support the overthrow of the existing political order; or support the government against the protestors. Where negotiated structural reforms are on the table or governance ceases to function, the position of the military on the politics of the transition is thus critical to whether or not democratic reform occurs.

In Tunisia, a key factor in the success of the uprising in overthrowing the dictatorial regime of Ben Ali was the unwillingness of the military to engage in its defence. Subsequent to the collapse of the regime, the military's refusal to get involved in politics enabled civilian actors from across the political and

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**A state's decisions about how to respond ... are often part of an underlying objective of stabilizing the situation and retaining—or even consolidating—the status quo.**

ideological spectrum to negotiate the transition and permanent Constitution of 2014. In Egypt, by comparison, the military's intervention on behalf of the protestors was instrumental in overthrowing the regime of Hosni Mubarak, but its continuing intervention in politics extended through the counter-revolution, leading to a military coup that overthrew the democratically elected Islamist government of Mohammed Morsi. A further example is Sudan, where the military similarly intervened on behalf of the uprising and arrested President Omar al-Bashir. In that case, however, the military undertook to govern during the transition by establishing a junta known as the Transitional Military Council. The military leadership engaged with civilian representatives of the protest movement as to the nature, composition and principles of the transition, but has subsequently reneged on agreements and orchestrated a number of coups to preclude progress on the ostensive democratic transition.

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**In a context of mass unrest, some states embrace overt or covert repression through ... criminalization, violence, restricting rights, electronic and physical surveillance, and/or shutting down the media.**

In a context of mass unrest, some states embrace overt or covert repression through among others criminalization, violence, restricting rights, electronic and physical surveillance, and/or shutting down the media. Repressive tactics and methods can affect different segments of society, such as women, in different ways. In other cases, governments try to contain the protests through short-term de-escalation measures that may include rhetorical commitments to reform, making limited concessions to gain time, or leveraging financial or political resources to buy off protestors and/or fragment protest movements. In some situations, however, accommodation becomes the preferred approach over time (Amnesty International 2019; Carothers and Youngs 2015). This occurs when social unrest is understood as having exposed key fault lines in the social contract between the people(s) and the government, and where the state recognizes that its power depends on some level of popular legitimacy. In such circumstances, governments are more likely to offer longer-term substantive concessions to protestors or the wider public by (at least partially) satisfying demands for structural reforms and/or integrating members of the movement into state institutions (Beaujouan et al. 2020). Social unrest therefore serves as a catalyst for constitution-building, and (some) members of the protest movement become integrated into the constitutional reform process in a variety of ways.

In practice, the methods operate on a continuum between containment and accommodation; when they do occur, reforms may or may not address the root causes of social unrest or the key grievances of particular groups involved. For women in particular, both containment and accommodation tactics used by a government present opportunities for further engagement and to entrench substantive demands in the reform agenda. On the other hand, particularly in societies where women face historic and systemic marginalization, their demands and claims to representation and participation in the reform process may be set aside or negotiated away in exchange for other interests. There is also a risk that their representation at the table in a reform process may come to be seen as itself sufficient to address women's demands, such that the event of inclusion operates as a substitute for sustained and cross-sectoral attention to women's concerns as articulated during the protests.

### Quotes

'We tend to think of women as a category, but they have many intersecting identities, such as women with disabilities, women from different political parties. We therefore need to change our perception about the inclusion and exclusion of women, about their interests and needs, to account for all of these different women and links with other identity groups.'

'There is an inherent problem in the continuing normalization of minority male rule because, in many countries, women continue to be the majority of the

population. This means that there are anti-democratic aspects to the structure of these processes, and we need to change the direction of these conversations.'

'...it's not enough for them to say "I have a wife, I have a sister, I have a daughter and therefore, I know what women want." No. *Women* know what women want.' [emphasis added].

—Participants, 2020 Women Constitution-Makers' Dialogue

## FOUR SCENARIOS IN WHICH CONSTITUTIONAL CHANGE AND SOCIAL PROTESTS ARE LINKED

Protest is a human right and an important exercise of political expression. As of 2013, approximately 20 per cent of the world's constitutions included a 'right to resist', which often serves both as a forward-looking tool to constrain government abuse and as a backward-looking justification for having overthrown the former order (Ginsburg, Lansberg-Rodriguez and Versteeg 2013). Notably, constitutionalization of the right to resist has slightly decreased over time from around 25 per cent prevalence in constitutions in the 1800s. Mass mobilization usually indicates that the social contract—a notion at least normatively embodied in a country's constitution as 'an act of the people constituting a government' (Paine 1791: 57)—is not really working.

In many cases, the new or amended constitutional texts that follow social unrest reference the people's mobilization as marking a new constitutional founding and as bestowing legitimacy on the new constitutional order (see, for example, Egypt 2012; Mali 1992; Tunisia 2014). Such references seek to symbolize and underscore the establishment of a new social contract concretized through the new constitution. There are generally four scenarios in which constitutional changes and social protest go hand in hand, though outcomes vary.

In the first scenario, the suggestion of constitutional reform can itself trigger protests in defence of the existing constitution. This can happen where people rally in defence of particular constitutional issues, such as term limits, that are threatened with change or removal. Examples include **Burkina Faso**, **Guinea** and **Mali**, though with different results. In these states, proposals to alter the constitution gave rise to 'touche pas à ma constitution' movements across West Africa. In the case of **Burkina Faso**, the sitting president in 2014 attempted to amend the Constitution to remove presidential term limits so he could stand for a third term. This triggered a popular revolution that overthrew the president and led to a subsequent constitutional reform process (Lamoussa 2018).



Photo: Demonstrators in Mali. ©Antè Abana, Touche Pas À Ma Constitution

A second scenario is where protests are ignited by another cause, but constitutional demands become a key driver of continuing and expanding mobilization. In **Chile** and **Iceland**, for example, the triggers for mass movements were economic: in Chile, a hike in transport prices and wider economic inequality, and in Iceland, the 2008 financial crisis. In **Chile**, calls for constitutional change were long-standing and had previously been unsuccessful in replacing the 1981 Constitution. Protestors' demands about economic inequality in 2019 rapidly broadened to encompass calls for a new constitution and enhanced democracy. Initially, then-President Sebastián Piñera responded by announcing a state of emergency and deploying military forces. As the crisis escalated, however, the administration was pressured to negotiate an alternative response with opposition and minority parties. The result was a political and legal commitment to a binding national plebiscite in 2020 on whether and how to undertake constitutional change. Chileans overwhelmingly voted to initiate a constitutional reform process through an elected Constitutional Convention which would produce a draft to be approved or rejected in a mandatory referendum. Though

Chileans ultimately rejected the Convention's draft in September 2022,<sup>4</sup> the government's willingness to undertake structural reforms in an inclusive and participatory way successfully quelled the protests and translated public energies away from mass protest and into a constitution-making process.

In **Iceland**, which was one of the first countries hit by the global financial crisis, the deterioration of living conditions and increasing mistrust of political elites and politics sparked mass protests in 2008 (Ortiz et al. 2022). As initial demands against financial mismanagement and corruption morphed into calls for a redistribution of power and a new social contract, the movement started pursuing constitutional change as the vehicle through which to achieve these aims. Following elections in 2009, which brought to power the first left-leaning coalition in Icelandic political history, the new government established a constitution-making process using an elected constitutional assembly. As in Chile, the Iceland process faced a number of political and legal challenges and ultimately failed to replace the existing constitution. Also like Chile, however, the government's response successfully served to quell the protests and transform protest into political debate (see Houlihan and Bisarya 2021; Hudson 2017).



Photo: Protest in the Austurvöllur square in front of the Icelandic parliament house, 27 March 2009, ©Oddur Benediktsson, <<https://commons.wikimedia.org/w/index.php?curid=6349300>>, CC BY-SA 3.0 via Wikimedia Commons, accessed 27 March 2023.

A third scenario is when demands for constitutional change emerge alongside other reform demands. An example is **Ukraine**. In 2013, the mass 'EuroMaidan' protests developed in response to then-President Viktor Yanukovich's refusal

<sup>4</sup> There are many debates about why Chileans opted (by a comfortable margin of 68 to 32 per cent) to reject the draft constitution, which would have enshrined gender parity, entrenched substantial rights for Indigenous peoples, addressed social issues and the threats of climate change, and reformed the structure of the state through enhanced decentralization, among other matters. For a diverse range of analyses that consider issues with the design of the process and the content of the draft, see Carrasco (2022); Concha Bell (2022); Stuenkel (2022); and Titelman (2022).

to pursue accession to the European Union despite broad public support for that course. Protestors' demands came to encompass not only calls for EU accession, but also for improvements in key services like education, as well as broader constitutional change. The government's initial response in early 2014 involved violent police repression. As the situation escalated, parliament condemned the actions of the government and negotiated a compromise to settle the crisis. Through a simple majority vote, parliament undertook constitutional change by reinstating the 2004 amendments to the 1996 Constitution (enacted as a response to social unrest during the Orange Revolution), which had weakened the office of the president and strengthened the role of the parliament. These amendments had been reversed during the Yanukovich presidency. In 2019, parliament further amended the Constitution to commit the country to pursuing North Atlantic Treaty Organization (NATO) and EU membership, fulfilling the demands of the 2014 protestors.

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**The dynamics of the transition—and whether it occurs—often depend significantly on the role of the military.**

The fourth scenario is when demands for constitutional reform arise *after* protests. Sometimes this happens when protests are successful in achieving their primary goal—essentially a change in power—and a need to reform the constitution subsequently arises. Examples include **Armenia** (2018), **Egypt** (2012), **Kyrgyzstan** (2010) and probably **Tunisia** (2010). In these situations, two trends are observable. First, constitutional change is generally put on the table as an elite-driven, rather than popular, demand for structural reform following a change in power. Second, the dynamics of the transition—and whether it occurs—often depend significantly on the role of the military. When the military leadership sides with the protestors and removes the government, as it did in Egypt, the military has often needed (or chosen) to take political power. This creates a situation of inherent constitutional rupture requiring the making of a new constitution.

These four scenarios demonstrate the complex relationship between social unrest and constitutional reform. They also highlight the fact that, even where social protests are tied to a constitution-making process, it does not necessarily result in the types of systematic reforms needed to resolve the roots of the crisis. In practice, such constitution-making endeavours often fail—either through non-adoption of the new draft, as in Chile and Iceland, or through serious gaps in implementation and the inability to build a constitutional culture, as in Egypt and Tunisia. As the next section highlights, the context in which social crisis and constitutional reform arise and play out significantly impacts the roles that women play across the processes, their ability to sustain engagement and influence, and the substantive outcomes for women's equality.



## Chapter 2

# WOMEN'S SHIFTING EXPERIENCES ACROSS PROTEST AND REFORM PROCESSES

Where a government engages in constitutional reform in response to unrest, it presents both opportunities and challenges for women and a women's equality agenda. On the one hand, women's engagement in mass movements can open the door to broader conversations about the role of women in politics and society, and can serve as a step towards changing patriarchal underpinnings of women's unequal access to public and political participation. The transition from protest to reform presents an opportunity for women, very often on the margins of decision making, to instead leverage their role as agents of change during the protest movement and entrench their continuing engagement and influence in reform negotiations. A common approach is to push for quotas for women's minimum inclusion in negotiating bodies and to present a set of core demands to be included in the reform agenda.

But protest and reform processes also present a number of complicated risks. In authoritarian transitions, for example, the extent of women's participation in reform negotiations is often largely based on the willingness of the regime or new power holders to include them. Although this may be partially offset by normative pressure and institutional options provided by international actors, the political will of a dominant stakeholder—military or civilian—to tolerate or endorse women's representation can be more important than any social or cultural factor (see Box 1). It is also more difficult to overcome in the face of resistance. There is a related risk that women's inclusion can be instrumentalized by power holders as a means of inserting additional loyalists at the bargaining table.

Important but incremental gains made by women—such as the adoption of gender quotas for constitution-making or peacebuilding bodies—can also be treated or perceived as sufficient to satisfy women's claims, leaving the broader women's rights agenda to stagnate over time. This risk is often compounded by difficulties in building consensus among diverse women's groups on minimum values, principles and objectives, though such an agenda is necessary to translate the often general (and potentially conflicting)

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**Where a government engages in constitutional reform in response to unrest, it presents both opportunities and challenges for women and a women's equality agenda.**

### Box 1. Lessons from Yemen

The space for women in public life in Yemen has shifted dramatically over time. In the 1960s and 1970s under socialist and later communist regimes, women were generally educated, participated in civil society, and joined political parties. Following Yemeni unification, the 1992 Constitution entrenched equality and prohibited discrimination on the basis of sex. This space began to shrink, however, following civil war and a new Constitution in 1994. The influence of Wahhabism impacted women's rights, particularly in family law. During the 2011 uprising, women broke cultural taboos by joining with men—often with the urging of male relatives—on both sides of the divide. This helped destroy the notion that women are not capable of decision-making roles or that their participation in public life is taboo.

As a result, women comprised around 20 per cent of the National Dialogue Conference (2013–2014), the outcomes of which were to regulate the work of the constitutional drafting committee. Women members were highly influential and productive—more so than their male colleagues—proposing around 1,989 provisions and cemented agreements on key rights, protections and special measures. However, during the civil war in

2015, women's concerns were set aside, and they were marginalized from peace negotiations.

This shifting experience of women's participation and influence in Yemen over the past six decades reveals several important points. First, in some contexts, the will of the authority, and not social or cultural taboos, is the determining factor for whether women gain and retain a seat at the table. Cultural barriers to women's participation were broken during the uprising, but reasserted by male power-holders during the civil war. Second, coordination among women is crucial but can be challenging to maintain during resurgent conflict and humanitarian crises. Third, women's representation in decision making will always be questioned, regardless of their expertise on technical issues. Fourth, the international community has an important role to play in ensuring women a seat at the table in complex transitions, but this must be done carefully to mitigate the risk that regressive forces will claim that women's participation is a foreign intervention. Fifth, the international community's efforts to create alternative avenues for women's participation (such as through advisory councils) may be useful but is often problematic and can limit their link to the formal negotiating body.

demands set out during social protests into a clear programme for concrete reforms.

When such transitions are seen as a discrete event rather than a process, either by women themselves or by other key stakeholder groups at the negotiating table, women tend to lose out. This is because a minimal number of concessions made by the government to protestors (however defined and represented) can be seen as a 'final' result that should satisfy *all* protesting groups rather than as an initial step towards mainstreaming women's participation and substantive concerns. In comparison, when transitions are seen as long term and multi-phased, women can more effectively allocate their resources over time and have more opportunities to access institutions, shape agendas and entrench their interests.

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## ASSERTING AND REASSERTING WOMEN'S PARTICIPATION

In nearly all cases, women's participation at the bargaining table and the substantive representation of their interests must often be asserted and reasserted across social protest movements and constitution-building

processes. This need is frustrating given that most of the grievances and demands at the heart of mass movements are particularly salient for women. Women are disproportionately impacted by economic underdevelopment, weak institutions, discriminatory legal frameworks, predatory and corrupt politicians, and inadequate public services and social safety nets. Women's experiences of these challenges are shaped by their intersectional identities, including their gender, socio-economic status, national or ethnic origins, personal status and geographic location, among other identities and factors.

Women have been key actors in, and are often the public face of, mass social movements in dozens of countries around the world. In taking to the streets, women often face significant personal risk not only for their role in the uprisings, but also for breaking cultural taboos. Women protestors frequently face sexualized violence and torture at the hands of state authorities when arrested, but they also face harassment, threats, assault, and physical and psychological attacks by counter-protestors and even fellow protestors and their own families. Many of these violations are intended to humiliate women, to objectify their sex and diminish their agency, and thereby to reassert patriarchal power through the state and in society. Despite these risks, from Egypt to Sudan, Syria to Belarus, women have acted as agents of change, risking their personal security and defying social constraints to protest oppressive laws, demand the ouster of autocrats and push for structural reforms of unjust institutions.

In **Syria**, for example, a woman from the Druze minority was among the first public figures in 2011 to call on Bashar al-Assad to step down; women from across the country's diverse ethnic and religious communities took to the streets—and were arrested—alongside men to demand reform (Ghazzawi 2014). Similarly in **Egypt**, women faced significant reprisals and gross violations of their dignity and physical security in order to protest by the thousands during successive periods of revolution and counter-revolution from 2011 to 2014 (Amnesty International 2011). In **Sudan**, women made up an estimated 60–70 per cent of demonstrators who facilitated the ouster of Omar al-Bashir in 2019, and a woman became the iconic image of the

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**In taking to the streets, women often face significant personal risk not only for their role in the uprisings, but also for breaking cultural taboos.**

### Quotes

'Often, women's resistance, development and emancipation is not strong enough to counter structural abuses. There are women resisters but it is hard to compete with traditions and customs that make us tools for propaganda, weapons for war, or seen as the property of men. The mass protests were an opportunity to show that women from all walks of life demand to be free, no matter that we pay a higher price for freedom than men.'

'We are often at the tipping point that makes movements for change unstoppable, but we're not seen as agents for governance... There's a way in which women's work is co-opted, and this is structural. ... The way that we are analysing and examining these issues continues to create a male default. We have here an opportunity to reframe this view, from donors to mediators to actors in the process.'

—Participants, 2020 Women Constitution-Makers' Dialogue

Sudanese revolution (Tønnessen and al-Nagar 2020). In **Georgia**, a woman's image similarly became iconic after she lost an eye to rubber bullets in mid-2019. More recently in **Belarus** in 2020–2021, women became the face of the political opposition and took to the streets—often wearing white and carrying flowers—to form human chains in protest against state violence and electoral corruption. In 2022, social protest in **Iran** was triggered by the death in custody, allegedly as a result of torture, of a young woman accused of violating 'morality' rules about how to wear the hijab, a mandatory covering for women. Women and women's rights were at the forefront of protests and demands for change, resulting in non-enforcement of the hijab rule (Iran International 2022).



*Photo:* Women in Egypt protesting, 6 February 2011. ©Wild\_atHeart on Flickr, published under a creative commons licence (BY-NC-SA).

In these and other contexts, the mobilization of women at the forefront of protest movements often serves as the tipping point that garners national and international attention and pressures a state to undertake structural reforms. But while women tend to be seen (and indeed symbolized) as agents of change, they are less often seen as agents of governance. When states undertake constitutional reform in response to unrest, women are often re-marginalized and their efforts set aside when it comes to negotiating and implementing those reforms.

This experience differs somewhat from situations in which constitutional change is primarily linked to an overt conflict transition: there the emphasis on inclusion of armed actors, who are mostly male, means that women are generally under-represented in the groups driving change. In a context of social unrest, however, women are more often meaningfully involved in leadership roles and more broadly present in pro-reform movements. Moreover, women's mass participation in these movements is often

foundational to the movement's success in triggering reform negotiations, not only in terms of bringing absolute numbers but also by adding symbolic weight and legitimacy (despite, or even because, such participation breaks cultural taboos in certain contexts). Specifically because the key actors at the negotiating table ostensibly represent the protest movements, there should be more opportunities for women's participation, as compared to, say, when key negotiating actors are armed groups. Yet in nearly all cases, women and women's interests are sidelined as negotiations get underway and they have to work to reassert their place at the bargaining table. This problem is structural and, at the country level, is reinforced by the continuing normalization of male domination over reform processes and governance systems (despite the fact that men constitute a minority in many countries, particularly in states impacted by violent conflict as well as mass protest).

These dynamics mean that in most situations, the space for women's engagement tends to diminish as reform processes get underway. Be it peace negotiations, talks to establish interim or transitional arrangements, transitional justice process planning, or constitution-making, women's participation and influence must often be (re)asserted and (re)negotiated over time regardless of their prominence or leadership in protest movements.

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## CONTEXT MATTERS: HOW CONDITIONS OF CONFLICT AND UNREST SHAPE WOMEN'S PARTICIPATION

Between 1990 and 2015, women comprised around 19 per cent of constitution-making bodies globally (Tamaru and O'Reilly 2018). The reasons for women's under-representation are linked to both the underlying structural inequality between men and women, and the context in which the constitution-making process takes place. As mentioned, situations of upheaval and their gender dimensions differ as between conditions of violent conflict, like civil war or invasion, and conditions of social unrest. While these phenomena exist on a continuum and are not mutually exclusive, it is an important distinction. In practice, the effective disruption of social and political life may be more widespread during mass protests than during armed conflict, as the latter may be limited to particular areas of a country. Large scale social protests may also involve violence, but usually on a lower scale, and importantly, protest leaders are not armed groups. While both social unrest and violent conflict can lead to rupture and regime change, the mechanisms differ, as do implications for women and their participation in social or political dialogue.

In a situation of armed conflict, constitution-making is seen as a way to end the fighting. It is often a core element of the peace process as a means to entrench the negotiated political settlement, which often involves structural changes to the distribution of power and resources. Opportunities for bargaining typically only arise when warring parties have themselves reached the conclusion that they cannot 'win' through violence alone at an acceptable

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**The reasons for women's under-representation in constitution-making bodies are linked to both the underlying structural inequality between men and women, and the context in which the process takes place.**

price, and that negotiations involving political and legal solutions are therefore necessary to secure their interests.

This means that the situation of armed conflict affects the *timing* of constitution-making and also *who* is at the table at different stages of decision making. As the purpose of constitutional reform in these contexts is to stop the violence, initial negotiations are usually limited to representatives of the armed groups. Since women are rarely leaders of armed groups, they are largely excluded from the bargaining table. Being functionally excluded from these early negotiations negatively impacts women's ability to set the constitutional reform agenda and their subsequent influence in later phases.

**From 1992 to 2018, women comprised only 4 per cent of signatories to peace agreements.**

Data bear this out: from 1992 to 2018, women comprised only 4 per cent of signatories to peace agreements (Council on Foreign Relations 2019; UN Women n.d.). The vast majority of agreements during this period do not reference women or women's concerns. As a result, women's rights are often seen as apolitical or treated as bargaining chips during subsequent phases of constitution-making. An example is **Myanmar** prior to the 2021 coup where, despite decades of negotiations among the government, military and ethnic armed groups, very few women participated in these at a high level. Similarly in **Indonesia**, peace talks between the government and the Free Aceh Movement (GAM) in 2005 included only a single woman on the GAM side and none from the government. Where peace negotiations are facilitated by an external third party such as the UN or, as with South Sudan, the Intergovernmental Authority on Development (IGAD), the international community is often able to expand women's inclusion. This can occur through pressuring parties on normative grounds, including special measures in the process design, or establishing women's advisory groups such as the Women's Advisory Board created under the **Syria** peace process.

By comparison, constitution-making under conditions of social unrest is primarily seen as creating a new social contract or political order to respond to the causes of unrest. As earlier noted, it may be part of a government strategy aimed at forestalling, containment or accommodation, though this framing often changes over time. A common challenge is determining who speaks for 'the people'? Whose interests, as revealed during the protests, will be included in the agenda during subsequent negotiations with the government? Which protest leaders and representatives will have a seat at the table and be responsible for articulating demands for constitutional change? Further, how do the various players affect the bargaining power, but also the legitimacy, of people on the street? Women and other groups—such as civil society, labour unions, political parties, Indigenous peoples and even local government officials—have a better chance of being meaningfully involved in subsequent negotiations, though this plays out differently in different places.

In **Tunisia**, for example, significant numbers of women mobilized in 2010 and 2011 to overthrow the old regime and were able to maintain this momentum throughout the constitution-making process. Other groups, including organized civil society and labour unions, also played a significant role in mediating

disputes. As a result, women comprised approximately 31 per cent of seats in the constitution-making body, including in key leadership roles, and were able to secure important substantive interests in the 2014 Constitution such as a commitment to parity between women and men in all elected assemblies.

Similarly in **Chile** in 2019, as noted above, women and men from different identity and political groups mobilized to pressure the government to initiate constitutional reform through a plebiscite. Building on this momentum and an extant culture of feminist advocacy, women from across political parties were able to negotiate a commitment to gender parity in the constitution-making body and to include feminist objectives in the draft constitution (Arce-Riffo 2020). **Yemen** provides another example. During the 2011 uprising women protested in public squares in huge numbers, on both sides of the divide. This undermined the traditional notion that women have no role in public life and helped propel women's participation in the National Dialogue Conference (2013–2014) during the transitional period. Despite long-term challenges in sustaining reform processes and/or enacting fundamental structural changes in Chile, Tunisia and Yemen, these experiences demonstrate that the space for women's engagement is often easier to (re)assert in a context of unrest than one of violent conflict.



*Photo: Feminist protest march, Chile, 17 December 2018. ©Patricio Hurtado on Pixabay.*

Yet other contextual factors can shrink the space for women. Even without armed conflict, general unrest can undermine women's participation and effectiveness by polarizing society and creating a breakdown in basic trust and communication across groups. This erodes foundations of cooperation more broadly, whereas women and other groups need to cooperate in order to build transformational social change.

Particularly when the military is a key transition player, bargaining dynamics also tend to push women away from the table. In **Sudan**, for example, though

thousands of women participated in the revolution, it is very difficult to translate this significant shift in social norms to the everyday (see Box 2). In part this is because women were largely excluded (Tønnessen and al-Nagar 2020) from later negotiations on the Constitutional Declaration, which were held between the Forces of Freedom and Change coalition (representing protestors/civil society) and the military. Though the resulting 2019 Declaration affirms the active participation of women in the revolution and commits to equality and non-discrimination, only two members of the 11-person transitional Sovereignty Council—a joint executive body charged with appointing the members of the envisaged constitution-making commission—were women (Reuters 2021).

This reflects a perennial problem in such negotiations between civilian and military actors. A key objective of a civilian coalition is usually to limit military dominance in transitional institutions. As these coalitions tend to be relatively diverse, it is often difficult to build consensus among the various actors on who their representatives should be. Military membership in such institutions effectively serves as a quota for men, so demands for women's representation on the civilian side are often seen as taking away seats from civilian men.

Even where the military is not involved, in a context of social unrest political parties can also sometimes play a gatekeeping role that excludes women. In **Ukraine**, though women were highly active in the 2013 and 2014 EuroMaidan uprising, they were effectively excluded from subsequent formal negotiations. Unlike with earlier mass movements, protestors initially tried to avoid associating with any particular political symbol or label, but eventually

### Box 2. Challenging systemic gender injustice in Sudan: Challenges and opportunities

Women's mass participation in the 2019 uprising represented a seismic shift in norms of behaviour. Despite this, the women's movement has not been able to transform the discriminatory cultural and customary traditions that cause their marginalization, and men continue to hold the reins of public power both at the state level and in clan or tribal institutions. Women face systematic injustice in both the formal/state and customary systems. They also shoulder heavy and often dangerous domestic work, such as gathering wood from the forest and water from community wells where they risk violence and rape. Girls are undervalued and lack access to education. They are also subject to harmful customary practices such as female genital cutting and early marriage.

Women in Sudan are systematically subjected to two further types of abuse: they are used as propaganda tools for political, commercial and economic advertising

and as weapons of war, such as for blackmail, shields for safety, or rewards for soldiers. Despite some relief in the form of modern conveniences for women in urban settings, which enable them to exercise more influence in public decision making, the cultural norms that contribute to their marginalization remain strong.

Despite these difficulties, opportunities also exist. Strong women advocates have begun linking urban and rural women across the country and building intersectional coalitions with youth and other groups, all of which mobilized during the uprising. Women have also gained limited roles in the government, though their influence remains minimal. The status of the 2019 Constitutional Declaration and democratic transition remain in question since the 2021 coup (Eltayeb 2022), but women's mobilization capacity and country-wide networks provide a foundation to work from.



many demands were channelled through opposition political parties. These parties, which are themselves largely male-oriented, ultimately negotiated the framework for constitutional change with the government, with virtually no women members at the table. Similarly in **Syria**, over many years, parties have served to limit women's roles. Typically, whenever a political bloc has been given a set number of representatives as part of a negotiating platform, seats have been filled primarily by men even when women are members of the group. This has led to women participating in political opposition bodies mainly as independents rather than as representatives of a specific group or party.

While the Sudan, Syria and Ukraine experiences are not unique, neither are they commonplace. The capacity of women's organizations and their allies to maintain momentum and claim a seat at the table in reform negotiations varies from context to context and depends on a myriad of factors. These include women's access to resources and links to coalition networks within the country, region and internationally; traditional attitudes and practices; the role and influence of the international community; the position of the ruling party, political parties, civilian coalitions and/or the military on women's participation; women's past experience with transition processes in the country, and their preparedness to pursue a cohesive strategy; and a host of other factors and considerations.

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## THE EFFECTS OF INSTITUTIONAL AND PROCEDURAL CHOICES DURING REFORM PROCESSES

Just as the context in which constitution-making takes place has broad implications for the (continuing) role and influence of women, it also shapes decisions about the institutions involved and procedures that follow. Particularly important for women are decisions about the design, formation and mandate of the constitution-making body; whether and how interim arrangements will be used to bridge the transition process; the nature and extent of public consultation; and the nature of women's political mobilization during this period.

Decisions about the constitution-making body are shaped by the legal, historical, social and security context in which the process is taking place. Generally, constitution-making bodies may be representative or independent and, while these are not mutually exclusive options, each approach impacts women's participation and level of influence in different ways (see e.g. Saunders 2002).

Representative bodies are generally fully or partially elected. For women, the choice of electoral system is crucial, as are decisions about whether to use quotas or other special measures. Such tools can be effective in ensuring women a seat at the table, but much depends on how the mechanisms will function. In particular, there are risks for the credibility and legitimacy of so-called 'quota' women and the common phenomenon of public backlash.

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**Particularly important for women are decisions about the design, formation and mandate of the constitution-making body.**

Notably, there is no way to structure a general quota to ensure that women committed to a women's equality agenda gain seats. Nested quotas are used in a handful of countries to explicitly recruit women from ethnic, religious or other minority identity communities. They require that some portion of seats or positions on a candidate list go to a targeted subset of members. In theory, this means that nested quotas can accommodate the inclusion of ethnic minority groups while at the same time ensuring that these groups are represented by both men and women. In practice, there are several different arrangements for nested quotas and these interact with general women's quotas in different ways (Hughes 2018).

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**The recent experience in Chile provides the most successful example to date of ensuring women's equal representation in an elected constitution-making body.**

The recent experience in **Chile**, as noted above, provides the most successful example to date of ensuring women's equal representation in an elected constitution-making body. Within a context of social unrest and a long history of feminist activism, cross-party feminist alliances within the legislature were able to coordinate with grassroots movements in civil society to secure agreement on a 50:50 gender parity rule for the elected Constitutional Convention (Box 3). In other cases, such as **Tunisia**, women were able to negotiate the use of a zipper system to achieve vertical parity on political party candidate lists for the elected constitution-making assembly, contributing to around one-third women's representation.

In modern constitution-making, it is exceedingly rare for an appointed commission to feature no women members at all. This attests, in part, to the normative success of international, regional and national campaigns on women's equality and political rights in constitutional reform processes. But formal presence is often not enough to ensure women's meaningful influence over the work of constitution-making commissions. Representation from a variety of perspectives and groups can be beneficial for pooling skills, influence and networks: not only from political parties but also from civil society, women's organizations, youth organizations, and others. While such an approach can create its own challenges (for example, around determining which civil society organizations will be entitled to send representatives), it can create more opportunities for progressing gender equality across different sectors. In particular, representation for women's organizations (rather than for women as a general category) can help ensure that at least some women at the table have experience with gender issues and gender advocacy.

An important and related set of considerations is whether the process will be multi-phased, use more than one constitution-making/negotiating body, and/or involve transitional arrangements such as an interim constitution. Because interim arrangements are often part of a conflict transition, women tend to be excluded from initial negotiations for reasons already outlined. However, interim arrangements are also increasingly used in transitions stemming from social unrest, particularly where mass protest movements succeed in unseating the sitting regime and thus create a governance void, as in Tunisia.

In **Sudan**, as noted above, the two groups negotiating the structure of the transition and its interim arrangements were the military and the Forces

### Box 3. Chile: from protests to parity

The progressive consolidation of gender parity in political processes in Chile stems from persistent and sustained feminist activism and coalition building. The capstone of these efforts came in 2019 with the establishment of an elected constitution-making body with equal representation of both men and women, the first in the world. While Chile's transition to democracy began in 1990 with the first free and contested elections held since 1973, the 1980 Constitution created under the former authoritarian regime has been moderately amended but never replaced. Its arrangements have obstructed the democratic ideals of the country and enabled increased privatization and reduced public services that have contributed to growing inequality and social unrest. During Michelle Bachelet's second presidency (2014–2018), a broad and participatory constitution-making process aimed to replace the 1980 Constitution, but without political backing from Congress this eventually failed.

Continuing dissatisfaction with social and economic equality coalesced in 2019 to a mass protest movement that called again for the replacement of the 1980 Constitution. Momentum had been building in the years prior, starting with student groups in 2006. Feminist groups were at the forefront of political demonstrations in the 2010s, highlighting systemic issues related to gender-based violence, reproductive rights, and the gender pay gap. In parallel, feminist leadership in Congress pushed for legislative gender quotas and former president Bachelet appointed the first Cabinet with gender parity in Chile's history. This move bolstered the conviction that female representation was not just necessary, but natural, in all areas of political life.

In November 2019, the majority of parties with representation in Congress concluded an agreement

to pursue a path towards a new constitution but did not specify how inclusion considerations would be addressed. To bridge this gap, women politicians across partisan divides, feminist non-governmental organizations and feminist social movements worked together to garner the support of the qualified majority (three-fifths) necessary for Congress to adopt a gender parity rule for the constitution-making body. In April 2020, voters chose a fully elected constituent assembly, and in May 2021, elected 155 members with parity. In the elections for the Constitutional Convention, 51 per cent of all candidates were women, illustrating how women's leadership roles in the protest continued and effectively translated to running for election. The Convention election rules required that women headed the lists, with male and female candidates alternating. Women's success in the elections led to the parity rules favouring 11 men and only 5 women. There were a further 17 reserved seats for Indigenous peoples. The diversity of the elected delegates was notable, as many came from various non-elite backgrounds, including feminist and environmental activism, with at least six members from the LGBTQIA+ community.

Alternatively, constitution-making can be assigned to an independent commission, which is usually appointed. Since women remain under-represented in political office in most countries, whether members will consist of existing politicians (such as members of parliament or ministers) or will be chosen solely for the constitution-making role, has implications for female representation and outcomes. Depending on context, there is a related risk that the women appointed will be entirely or primarily from the ruling party, and therefore not representative of women's diverse interests and concerns, including within the mass protest movement.

of Freedom and Change coalition, representing many (but not all) of the protestors. As a military bloc nearly always functions as a quota for men, no women were represented on that side, while only one woman negotiated on behalf of the civilian coalition. The Sovereignty Council was created as the joint executive during the transition and, importantly, was tasked with appointing a commission to make the permanent constitution. However, only two members of the Council were women. **South Africa's** transition also involved a multi-stage process with interim arrangements, but the military was not involved. There, an unelected negotiating forum developed the interim constitution, which established transitional political arrangements and would come into

effect following the first democratic elections. Notably, the first attempts to negotiate the transition involved over 200 delegates from nearly 20 parties, but women comprised only 5 per cent of members. Following a push by women political leaders and civil society actors, subsequent negotiations saw increased female representation (Barnes and de Klerk 2002).

Beyond this, the substantive agenda for interim arrangement negotiations will have implications for gender equality, particularly where they focus mainly on the task of apportioning power. The focus on power-sharing is inherently elite-focused rather than citizen-centred and therefore functions to minimize the importance of women's interests. While the focus on power sharing is generally framed as necessary for the 'greater good' (primarily to end the fighting), in effect it does not countenance women's demands as national/'big picture' concerns of half (often over half) of all citizens in a country. Additionally, the use of transitional arrangements can create path dependency, particularly through these power-sharing elements, by providing more powerful conflict or political parties with significant leverage over the nature of the future dispensation. Other challenges for women relate to the inherent fragility of many transitional arrangements. They are difficult to both negotiate and implement and, because the primary aim of such arrangements in a conflict situation is to curb the violence, they are often inconsistent not only with the current constitution but also with core democratic norms.

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**Decisions about timelines for constitutional reform are also important, not only for women but for the efficacy and sustainability of the reform endeavour as a whole.**

Decisions about timelines for constitutional reform are also important, not only for women but for the efficacy and sustainability of the reform endeavour as a whole. A timeline that is too short to facilitate meaningful participation and public debate can challenge the legitimacy of the process, which may be based on its being perceived as an earnest attempt to examine and address root causes of social crisis. A rushed process can also undercut the capacity of women and other marginalized groups to learn about it and engage in a meaningful way, and further compromise its status by increasing the likelihood that key deadlines are missed or ignored. On the other hand, a timeline that is too long, complex or ambiguous risks perpetuating instability and entrenching the interests of a small number of political elites that benefit from such instability.

The timeline challenge is particularly well demonstrated in **South Sudan**, where a multi-phased peace agreement sets out detailed procedural and institutional plans for constitutional reform involving a number of sequencing and timing rules. These obligations have repeatedly been missed, set aside or ignored for various reasons, and the transitional phase remains ongoing. For women, this has resulted in both benefits and drawbacks. As the process drags on, the interests and priorities of key elites have shifted, as have the resources and programming offered by the international community to support women and other groups involved. This means that women (and others) have had to regularly adjust their strategies and priorities, including to secure and retain funding to sustain their activities. On the other hand, the long duration has created opportunities for women and their allies: to learn and gain expertise, build intersectional and cross-sectoral alliances, foster networks and

### Quote

'[One benefit of the long and many phased process of the transition in South Sudan is that] women have gained experience. They are more aware of the issues at hand, they can make more realistic demands, and they have more realistic expectations in terms of what can come out of this constitution-making process... Women, and all people, now have a better understanding that this transitional period will not necessarily achieve all that we anticipated at once.'

—Participant, 2020 Women Constitution-Makers' Dialogue

partnerships with international experts and donors, and consolidate positions on key substantive issues under negotiation.

Another crucial set of decisions relate to the nature and extent of formal public consultation opportunities that will be provided. Most modern constitution-making processes involve some degree of public consultation, which significantly impacts women's overall participation and can be important for securing women's substantive concerns within the constitutional text (Houlihan and Bisarya 2021). But several factors impact women's ability to effectively engage in public consultations.

First, again, is the question of context. Situations of violent conflict obviously limit the scale of public participation in general, but they tend to impact on men's ability to engage to a lesser extent than that of women. Where a reform process follows social unrest, the preconditions for public consultation are often more generally favourable and accessible for both women and men. Second is the availability and quality of public education about the constitutional issues being discussed. This is often particularly important for women's effective engagement because in most countries, women have lower levels of education than men and may be less confident to contribute. A third factor is the way in which public hearings/consultations are structured. The methodology needs to consciously facilitate the participation of marginalized groups—which often includes women. This may require holding women-only meetings in order to accommodate social conventions that would restrict their ability to speak in front of men. A good example of such an approach was the token system used during the constitution-building in **South Africa** in the early 1990s, which aimed to ensure that the more marginalized participants of public consultation meetings had multiple opportunities to speak.<sup>5</sup>

<sup>5</sup> At the opening of a meeting, organizers would ask a series of questions related to proxies of socio-economic privilege. People were asked to raise their hands, for example, if they owned a car. All those who did not raise their hands were given a token. The same process was followed for subsequent questions, such as who has an educational degree. At the end of this exercise, the people with less socio-economic privilege therefore had more tokens. Every time a participant spoke, they needed to hand in a token, so more tokens meant more opportunities to speak.

## FACTORS IN WOMEN'S INFLUENCE AND OUTCOMES FOR EQUALITY

Choices about procedural and institutional arrangements noted above impact levels of women's participation in constitution-building and, by extension, shape their ability to influence the process towards desired substantive outcomes. But a number of other factors also contribute to the content of reforms undertaken in response to social crises and whether those reforms are sustained.

**One challenge is that, in nearly all contexts, it is typically only women who are asked to speak on women's issues during a reform process.**

One challenge is that, in nearly all contexts, it is typically only women who are asked to speak on women's issues during a reform process. While during social protests, diverse groups tend to coalesce around a set of demands that often include women's equality aims, these alliances tend to unravel or realign during reform negotiations. This means that women at the table are expected to speak *for women*, particularly if quotas or other special measures have been used to secure women's representation in formal negotiating bodies. This expectation tends to apply regardless of an individual woman's background and interests, and often challenges her ability to focus on other elements of the reform agenda that are equally important. While women are often agents of the broader reform agenda, expectations about their concerns and their roles thus tend to narrow during subsequent reform negotiations.

Importantly, many of women's most fundamental concerns—on rights to citizenship, to own assets, to be protected against gender-based violence—can be addressed by either women or men; but men are rarely asked to explain their positions on these issues during reform negotiations. Accordingly, it is necessary to shift expectations and find ways to ensure that men also share in the responsibility for, and conversations about, advancing women's rights.

Women at the negotiating table need to be equipped with the knowledge and skills to address not only women's substantive concerns, but also the broader range of technical, administrative, justice and economic issues at the heart of the protest and/or reform agenda. Just as women are expected to speak for women whether or not they have experience in gender equality matters, women are generally *not* expected to be experts in other aspects of governance transitions. Of course, they vary widely across contexts, but challenging

### Quote

'Only women are asked to speak about women's issues. This continues to be a problem. We know that women's rights to citizenship, women's right to own assets, on gender-based violence—all of these issues can be spoken about by women or men. Why aren't we asking men for their positions on these issues? By forcing these conversations on men, we can give women a bit of breathing room because if every time a woman stands up she is expected to speak about women's issues, then she can't talk about some of the other things that she really wants to discuss.'

—Participant, 2020 Women Constitution-Makers' Dialogue

stereotyped expectations is part of building expertise and influence over reform processes—as well as reinforcing awareness and recognition. To this end, training can be a particularly powerful tool when key agenda issues are complex and not well understood by either men or women at the bargaining table, such as fiscal federalism or justice sector reform. By becoming experts in these issues, women can enhance their bargaining power and better forge and influence cross-group alliances.

Even where women have substantial representation at the table, they (like men) often need research support; training on a range of administrative, management and substantive issues; and communication and media outreach assistance. The availability of this assistance has a significant impact on women's ability to do their jobs effectively and influence the outcomes of negotiations. Women's civil society organizations and grassroots movements are crucial in providing it. Importantly, such support should target all women at the table, regardless of background or affiliation. Relatedly, women at the table always need to be connected to and supported by women and allies who exercise bargaining power from *outside* the constitution-making or other negotiating body. Linking them to grassroots feedback and mobilization can provide women negotiators with further power and leverage.

At a substantive level, the ability of negotiators to resolve contentious agenda issues can have significant impacts on outcomes for women. In a context of social unrest, contentious issues commonly involve things like devolution or federalism, regulating executive power, designing the electoral system, restructuring oversight of the military, and mechanisms of representation for different identity groups, women included. When such issues cannot be resolved at the bargaining table, they tend to be set aside in a number of ways. They may be removed from the constitutional agenda, or else constitutionalized as a matter for the legislature to address at a later time. Often, these issues are not picked up again after enactment, or are otherwise not adequately addressed. An example is the two-thirds gender rule in **Kenya** which requires that no public institution can comprise more than two-thirds of either men or women. In the decade since the Constitution's enactment in 2010, however, the legislature has failed to enact a law for implementing this rule.

Alternatively, when agreements are reached on women's substantive interests, where commitment is weak they still run the risk of under-enforcement, rollback, or backlash. The problem can occur both when the core of the agreement is ambiguous and, conversely, when it is clear. In **South Sudan**, for example, clear commitments to 35 per cent women's representation across all institutions have not been effectively enforced, and no mechanisms have been developed for the realization of the quota. Beyond this, more ambiguous commitments under article 16 of the Transitional Constitution to 'enact laws to combat harmful customs and traditions which undermine the dignity and status of women', have not gained purchase in either policy or law.

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**When agreements are reached on women's substantive interests, where commitment is weak they still run the risk of under-enforcement, rollback, or backlash.**

### Quote

'A key consideration for all contentious issues, especially women's rights issues, is to anticipate a backlash. Women know this but we should think about it strategically. We should anticipate that a win is just a win for now, and everybody is giving a wink and a nod and thinking that, as soon as we get out of here, we're going to roll back as much as we can. If women anticipate this, then we are better able to build in mechanisms for both enforcing the constitution's provisions and continuing to promote constitutional changes that were agreed to in those bargaining moments, but which some people at the table may not really have intended to follow through on. This is why a gender quota becomes so important; it is an anchor against backlash.'

—Participant, 2020 Women Constitution-Makers' Dialogue

Since the problem of weak commitments and rollback on women's substantive gains is common across contexts, it is important to work strategically to anchor their rights within the constitution in a way that can support future enforcement. This may include, for example, institutionalizing gains through the establishment of independent commissions on gender equality or human rights; ensuring broad standing for judicial review and, as context and the legal system allow, enabling abstract review; entrenching normative commitments made at the bargaining table within the constitution, such as through provisions on principles; and ensuring that provisions on women's rights are realizable, attainable, actionable and justiciable.



## Chapter 3

# CONCLUDING OBSERVATIONS

At the time that the 2020 Women’s Constitution-Makers’ Dialogue was held, the levels and nature of social protest globally were being reshaped by the Covid-19 pandemic. The impacts of the virus and governments’ responses served to curb some forms of social protest—particularly through restrictions on assembly and movement—but also intensified others, such as protest and coordination online. The impacts of the pandemic have also (re)shaped the substance of protestor demands and public perceptions of, and trust in, governments and politicians around the world—in many cases by further entrenching ideological and political divides.

Covid-19 notwithstanding, large-scale protests continue to be part of the political landscape in conflict-affected and transitioning states, in older ‘consolidated’ democracies, and in authoritarian regimes alike. In many cases, the pandemic also impacted on constitution-making and related reform processes already underway in response to social unrest or conflict. This included not only procedural delays, but also changes in the relative bargaining power of parties to the negotiations as a result of the pandemic (see Molloy 2021; Houlihan and Underwood 2021).

For women, the impacts of the pandemic have been severe, particularly on their economic, social and political situation, as well as their safety and security (UN Women 2020; Roggeband and Krizsán 2020; Wenham 2020). This, in turn, will likely impact on women’s ability to mobilize en masse and to retain and assert influence across social protest and reform processes in ways that are not yet well understood. The increasing digitalization of speech and protest, for example, likely offers new ways for women to sidestep cultural taboos that complicate, or threaten, their ability to mobilize in the streets, and may provide new avenues for their organization and influence. On the other hand, cyberviolence against women is an increasing problem worldwide and can be used to harm women and girls physically, psychologically and professionally. The digital turn thus serves to transform, rather than diminish, sexual and gender-based violence.

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**For women, the impacts of the pandemic have been severe, particularly on their economic, social and political situation, as well as their safety and security.**

However, as history demonstrates, women's resilience and courage will undoubtedly continue. Opportunities to share experiences, gain comparative knowledge, and build alliances across borders and with the international community remain invaluable, and are urgently important in a post-pandemic world. The Women Constitution-Makers' Dialogues series represents one such platform for these activities.

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# Annex A. Programme

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## DAY ONE: 17 NOVEMBER 2020, ONLINE

Time	Session
13:30–13:45	<p><b>Session I: Welcome, objectives, introductions</b></p> <p>Hosts will open the event and provide a brief background on the purpose and development of the Women Constitution Makers Dialogue Series' the objective of this year's event; review the agenda; and address logistics for the webinar.</p> <p>Participants will be asked to briefly introduce themselves (name, position title and country or organization) as called upon by the moderator.</p> <ul style="list-style-type: none"> <li>• <b>Kimana Zulueta-Fülscher</b></li> <li>• <b>Erin Houlihan</b></li> <li>• <b>Christine Bell</b></li> </ul>
13:45–14:30	<p><b>Session II: Setting the Stage—Constitution Building in Response Social Crisis: Global Trends and Implications for Women, Democracy and Peace</b></p> <p><i>This session will conceptualize the theme of the event and frame key considerations and questions related to women and constitution-making following situations of significant social unrest and instability. Panelists will speak to these issues from the perspective of emerging global trends.</i></p> <p><i>Women today are engaging in social protest movements more than ever before, and such protests increasingly demand substantial reforms to governance that require a (re) negotiated political settlement and constitutional change. Yet there seems to be only limited links between the level and significance of women's participation in protest/unrest and their inclusion in decision-making roles in subsequent political or peace negotiations and constitution building processes. Why is this? What are the issues on the table not only for women but for system change more broadly? How can women maintain and expand their seats at the table?</i></p> <p>Moderator: <b>Erin Houlihan</b>, International IDEA</p> <p>Panelists:</p> <p><b>Christine Bell:</b> Framing the issue of social unrest as an emerging global trend and potential government responses. What can constitutional reform do to address social unrest and how have reform processes been used in this way? Observable trends, common approaches and common challenges for women's engagement, systemic reform and sustainable peace.</p> <p><b>Sumit Bisarya:</b> Where, why and how are social crises driving constitution making? Overview of the role of the international community in constitutional reform processes and links to crisis mitigation and stabilization priorities. Key considerations in the ways external actors influence state responses, opposition strategies and approaches to reform to address civil unrest and instability. Potential implications for women's participation and interest representation.</p> <p><b>Susan Williams:</b> Overview of the process of constitution building as the development and entrenchment of a political settlement. Brief examination of the parties and common institutions involved and key trends observed—particularly for women's participation and interests—when constitutional reform occurs in response to a social crisis and/or peace process.</p>

Time	Session
14:30–15:15	<p><b>Session III: The role of women in interrelated social movements and subsequent peacebuilding and constitutional reform processes</b></p> <p><i>Session focuses on the comparative experiences of women participating in catalyzing and negotiating political settlement processes and constitutional reforms. Where, when and how are women involved? At a country level, what do we observe about how and why levels of women's participation and their roles seem to change over time and across processes (e.g., from mass protest engagement to political or peace negotiations to constitutional reform processes)? What obstacles and opportunities can we tentatively identify to maintain momentum and exert influence? Why and in what ways is women's sustained and meaningful engagement particularly important for democratization and sustainable peace in these contexts?</i></p> <p>Moderator: <b>Nanako Tamaru</b></p> <p>Panelists:  <b>H.E. Aisha Musa Elsaid</b>, Sudan  <b>Antelak Almutawakel</b>, Yemen  <b>Dima Moussa</b>, Syria</p>
15:30–16:15	<p><b>Session IV: Examining the relationship between process design, women's participation, and outcomes for democracy, peace and women's rights</b></p> <p><i>Session focuses on comparative experiences in the ways that choices about the design of constitutional reform processes in the wake of social crisis—primarily regarding decisions on institutions, sequencing, and timelines—impact the depth and quality of reform processes. How do process design decisions impact levels of inclusion and participation for marginalized groups and women? How do they impact the ability to entrench women's substantive interests in the text? What institutions, timelines and sequencing patterns might be most effective for materializing women's interests in the new constitutional dispensation and broader democratization? What key considerations are relevant for negotiations on design? What can we observe more broadly about the relationship between these design decisions and outcomes for sustainable peace?</i></p> <p>Moderator: <b>Christine Bell</b></p> <p>Panelists:  <b>Amie Joof-Cole</b>, the Gambia  <b>Pamela Figueroa</b>, Chile  <b>Martha Karua</b>, Kenya</p> <p><i>Participants to share relevant reflections regarding their own experiences and insights and ask questions of panelists.</i></p>
16:15–16:30	<p><b>Wrap up of Day 1</b></p>



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**DAY TWO: 18 OCTOBER 2020, ONLINE**

Time	Session
13:30–13:35	<b>Welcome, recap and updates</b> <b>Erin Houlihan</b> , International IDEA
13:35–14:20	<b>Session V: Women's engagement in negotiating interim or transitional arrangements and impacts on inclusive constitution making</b> <i>Session focuses on the ways in which choices about interim or transitional arrangements (where these occur) and the scope and level of women's participation in these processes impact the participation of women in processes to make the permanent constitution and commitments to women's substantive interests. What are some opportunities and obstacles for women's engagement in negotiating transitional agreements in terms of process and substantive commitments? In what ways can women's participation be made most effective?</i>  Moderator: <b>Sumit Bisarya</b> , UN DPPA  Panelists: <b>Lorna Merekaje</b> , South Sudan <b>Mervat Elneil</b> , Sudan <b>Paleki Ayang</b> , South Sudan
14:20–15:15	<b>Session VI: Common contentious issues in constitutional reform to address significant social unrest. What issues related to women's political participation and rights are often contested? What broader constitutional design issues may be at issue in such circumstances?</b> <i>Session focuses on common contentious issues that arise during negotiations for substantive and systematic reform in the wake of social crisis. Public demands for systemic change, including among women, often focus on institutional reform, enhanced economic and political participation, and broader structural issues related to social justice, good governance and democracy. These issues matter not only to women but to all members of society. Over time, alliances and strategic reform priorities often change during the negotiation process. What are some common contentious issues in contexts of social crisis (e.g. federalization, regulating executive power)? What are some implications for women's political participation and a women's rights agenda during subsequent negotiations? How do women build consensus on substantive priorities while continuing to effectively engage on the broader reform agenda (i.e. to not be limited to being consulted only on 'women's issues')? What are some comparative experiences in dealing with issues that could not find consensus? Does understandings of and approaches to women's substantive interests change over time? What are the implications for implementation and potential backlash down the line?</i>  Moderator: <b>Susan Williams</b> , Indiana University  Panelists: <b>Amie Joof-Cole</b> <b>Nanako Tamaru</b> <b>Marilyn Muthoni Kamuru</b> <b>Balghis Badri</b>

Time	Session
15:30–16:30	<p><b>Session VII: Role of the international community, lessons, reflections and key insight</b>  <i>This session will consider the role of the international community and consolidate key insights from the previous sessions.</i>  <i>What are some of the various ways that external actors engage in and influence national processes? How do we understand these relationships and roles? What is the optimal role for the international community? How can the activities and services offered by the international community be made more effective for women and long-term peace within these contexts?</i>  <i>Drawing from this and discussions in previous sessions, what are some key reflections and insights about constitution building in response to social crisis and the engagement of—and impacts on—women?</i></p> <p>Moderator: <b>Erin Houlihan</b>, International IDEA</p> <p>Panelists:  <b>Cecile Van Manne</b>  <b>Beatrice Duncan</b>  <b>Christina Murray</b></p> <p>Additional thoughts on consolidated sessions:  <b>Sumit Bisarya</b>  <b>Christine Bell</b></p>
16:30–16:35	<b>Final wrap up and close</b>

## Annex B. List of participants

**Antelak Almutawakel**, Co-founder of the Youth Leadership Development Foundation; former member of the National Dialogue Conference; former member of the Committee for Drafting the Constitution, Yemen

**Paleki Ayang**, Rule of Law Consultant, UN Women; Special Advisor to UN Special Representative to South Sudan; Executive Director of South Sudan's Women's Empowerment Network; Member of the Taskforce for the Engagement of Women (Institute of Inclusive Security) for Sudan and South Sudan

**Balghis Badri**, Chair of the Institute of Gender, Diversity, Peace and Rights at Ahfad University

**Sumit Bisarya**, UN Department of Political and Peacekeeping Affairs (DPPA)

**Christine Bell**, Political Settlements Research Programme, University of Edinburgh

**Beatrice Duncan**, Rule of Law Advisor and Focal Point on Indigenous and Minority Issues, UN Women

**Mervat Elneil**, Member of the Forces for Freedom and Change (FFC) negotiating team for the Constitutional Declaration of Sudan

**Pamela Figueroa**, Professor, University of Santiago de Chile; former Head of Studies Division of Ministry Secretary General of the Presidency (2014-2018)

**Erin Houlihan**, Programme Officer, Constitution Building Programme, International IDEA

**Amie Joof-Cole**, former Member of the Constitutional Review Commission of The Gambia; Director of Inter-African Network for Women, Media, Gender and Development (FAMEDEV)

**Martha Karua**, Head, Narc Kenya Party; Former Minister of Justice and Constitutional Affairs, Kenya

**Marilyn Muthoni Kamuru**, Attorney; Journalist; Consultant and Researcher on Gender and Governance

**Rumbidzai Kandawasvika-Nhundu**, Senior Advisor, Democracy and Inclusion, International IDEA

**Dima Moussa**, Member, Syrian Constitutional Committee; Member and former Vice President of the Syrian National Coalition

**Christina Murray**, United Nations Mediation Support Standby Team

**Aisha Musa Elsaid**, Member of the Transitional Sovereignty Council of Sudan, Teacher, Educator, and Social Activist

**Merekaje Lorna Nanjia**, Secretary General of South Sudan Democratic Engagement, Monitoring and Observation Program (SSuDEMOP), Member of NCAC and NCRC of South Sudan

**Nanako Tamaru**, Peace and Security Consultant and Principal of Peace and Security Collaborative

**Cecile Van Manen**, UN DPPA Gender Peace and Security Unit

**Susan H. Williams**, Walter F. Foskett Professor of Law, Director, Center for Constitutional Democracy, Indiana University Maurer School of Law

**Kimana Zulueta-Fülscher**, Acting Head of Constitution Building Programme, International IDEA

## About the author

**Erin Colleen Houlihan** is a Program Director with the Democratic Governance team at the National Democratic Institute (NDI) based in Washington DC. She formerly served as a Programme Officer with International IDEA's Constitution-Building Programme in The Hague, where her research and advising work focused on democracy and conflict transitions globally. She provided technical support to in-country constitution reform processes in a range of contexts; developed global comparative knowledge products, policy and advocacy resources; and managed tools and databases related to constitution-building processes and constitutional design. She also spearheaded the conceptual development of the Women Constitution-Makers' Dialogue series and managed the annual forum events from 2019 through 2022. Prior to this, Houlihan served in a variety of senior advisor and management roles with country-based rule of law, human rights and governance assistance programmes, primarily in conflict-affected contexts. She holds a Juris Doctor and an MA in Foreign Affairs from the University of Virginia and an MA in Special Education from Loyola Marymount University.

# About the partners

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## INTERNATIONAL IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with 34 Member States founded in 1995, with an exclusive mandate to support and advance democracy worldwide.

### What we do

We produce comparative, policy-friendly knowledge and provide technical assistance on issues relating to elections, parliaments, constitutions, money in politics 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 reports. Our work is expanding to address issues related to climate change and democracy.

We use our knowledge to provide technical assistance and expert advice to governments and civil society around the world. We publish books, databases, and primers annually in several languages on topics ranging from voter turnout to Indigenous peoples' rights in constitution-building. Gender equality and inclusion are mainstreamed in all our work.

We engage in conversations and convene agenda setting dialogues and partner with likeminded organizations, including the African Union, the European Union and the United Nations, to achieve greater impact.

### 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.

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

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## EDINBURGH CENTRE FOR CONSTITUTIONAL LAW

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 providing 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>>

Email: [law@ed.ac.uk](mailto:law@ed.ac.uk)

Twitter: @UoELawSchool

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## PEACEREP

PeaceRep is a research consortium based at the University of Edinburgh. 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, Coventry University, Edinburgh Centre for Constitutional Law, International IDEA, LSE IDEAS, LSE Middle East Centre, Queen's University Belfast, University of St Andrews, University of Glasgow, and University of Stirling. PeaceRep is funded by the UK Foreign, Commonwealth & Development Office (FCDO).

PeaceRep: The Peace and Conflict Resolution Evidence Platform

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There is a rise in social protests globally due to dissatisfaction with governance, and women and youth often lead these protests. Governments respond to social protests with different tactics and methods, and some may engage in constitutional change to address the social unrest. Constitutional reform in response to social unrest presents an opportunity for women to ensure that their substantive interests—articulated as part of a protest movement—are incorporated into subsequent constitutional reforms. But women's participation and influence must often be (re)asserted when protest movements transition into a constitution-building process, as women tend to be seen as agents of change but not as agents of governance.

The annual Women Constitution-Makers' Dialogue series was established in 2019 as a platform for peer-to-peer exchange of experiences among women constitution-makers and peacebuilders. The second event in the series was held in November 2020, focusing on 'Constitution-Making in Response to Social Unrest'. Constitution-makers, peacebuilders, and women's equality advocates from Chile, The Gambia, Kenya, South Sudan, Sudan, Syria and Yemen discussed the differing roles that women play in interrelated social movements and constitution-making processes; the opportunities and obstacles women face in mainstreaming their inclusion and influence; and the ways in which women's engagement (or exclusion) impacts the efficacy of a constitutional reform endeavour in addressing systemic problems underlying the civil unrest.