

10 Steps to Ensure a Gender-Responsive and Inclusive Constitution-Drafting Process

Constitutions enshrine the rule of law, system of governance, and protection of human rights. A constitution is the foundation for establishing the social contract between the state and the society, thereby influencing and shaping many of the norms and common values of a society. A good constitution arises from a participatory process enabling diverse groups of citizens to provide their insight and input. These principles are enshrined in a range of international laws, covenants, and policies including:

- The Universal Declaration of Human Rights¹ and the International Covenant on Civil and Political Rights², which establish the right of democratic participation;
- The UN Commission on Human Rights, which articulates the specific right to participate in constitution making;³ and
- UN Security Council Resolution 1325 on Women, Peace and Security (WPS), which calls for a gender perspective in constitutions and related processes.⁴

Post-conflict states often shift to a democratic system through the adoption of a new constitution. This can provide a clear blueprint of the state and society that is being created, reflective of the aspirations of its people, and is an opportunity for a country to articulate and protect the rights of its citizens. A new constitution and legislation can promote political transparency, good governance, and a pluralistic society. Typical constitutional reforms also include protections for all minority and historically marginalized groups and notable provisions for the equal rights and participation of women.

To ensure basic human rights and adhere to the principles of UN Security Council Resolution 1325 and the global women, peace and security agenda, the constitution-drafting process must be inclusive and gender responsive at all stages. From participating in consultations to drafting gender-sensitive provisions, women have a key role to play in developing constitutions that will ensure equal rights for all.

These 10 steps can be taken to ensure a gender-responsive and inclusive drafting process and outcome:

Civic Education and Public Consultations

1. Mobilize women's groups and civil society organizations early in a political or transition process to inform them of the purpose and process and ensure their participation in constitution-making bodies and all phases of the process.

In Tunisia, the Tunisian Association of Democratic Women formed a coalition of 16 like-minded organizations to establish a strong support base for women's rights. The coalition drafted a five-point declaration on issues that concerned women to inform the upcoming constitutional debate.⁵

2. Include women in developing a civic education program to help the public gain an understanding of the constitution-drafting process, the importance of a gendered perspective in the constitution, and the social contract in a state.

1. Universal Declaration of Human Rights, United Nations, December 10, 1948, Art 21.
2. International Covenant on Civil and Political Rights, United Nations Human Rights Office of the High Commissioner, December 16, 1966, Art 25.
3. Vivien Hart, "Democratic Constitution Making," Special Report 107, Washington, D.C., US Institute of Peace, September 2004, 5, <<http://www.usip.org/pubs/specialreports/sr107.html>>.
4. United Nations Security Council Resolution 1325 on Women, Peace and Security (2000), Operative paragraph 8c.
5. Nanako Tamaru and Marie O'Reilly, "How Women Influence Constitution Making After Conflict and Unrest," Inclusive Security, January 2018.

- Specifically involve women-led civil society organizations, women's centers, mothers' associations, religious groups, and schools.
- Consult with them to determine issues that are most important to the public for discussion.
- Collaborate with the media to help educate society about the constitution.

In Rwanda, a civic education program determined essential questions/responses and opinions of the population which the Constitutional Commission took into consideration.⁶

3. Recognize women's leadership and participation, especially of women peacebuilders, in conducting inclusive, public consultations to feed into the formal processes. Through workshops and dialogue, citizens can develop recommendations for a constitutional assembly.

- Public consultations create a sense of common ownership of the constitution, lend legitimacy and credibility to the government and its laws, and promote healing in post-conflict societies.
- Include women's groups, religious groups and other civil society organizations in the participation, organization, and facilitation of community consultations.

In South Africa, women mobilized to consolidate and share their views with the organizations responsible for drafting the constitution. The Women's National Coalition drafted the Women's Charter for Effective Equality and were able to influence the constitution drafting.⁷

4. Provide financial resources and timely information to women's organizations so they can participate in a sustainable way in all stages of the process.

For instance, ICAN's Innovative Peace Fund and the Women's Peace and Humanitarian Fund (WPHF) provide rapid-response funding to support women's participation in various stages of peace processes.

Inclusivity and Gender Expertise in the Formal Constitution-Drafting Mechanisms

5. Consider a combination of mechanisms to ensure an inclusive constitution-drafting process, including public consultations, legislative commissions, national conventions, roundtables, constitutional commissions, drafting committees, and public referenda. For example, representatives of local women's organizations can provide technical input as members of a drafting commission and monitor and report back to the community on the process.

In Uganda, the government appointed a commission to consult with the public and then a constitutional assembly, representing different interest groups, to approve the final document.⁸

6. Set clear criteria for those nominated to the constitutional assembly or drafting body to ensure knowledge and expertise. The constitution-drafting process should be a technical and expert process rather than one subject to membership based on political affiliations.

- Negotiate on the guiding principles, structure, membership, and procedures of constitutional assemblies and/or constitution-making processes to guarantee a balance of men and women with the necessary knowledge and expertise, particularly on human rights including women's rights.

6. Neil Kritz, "Testimony: Constitution Making Processes, Lessons for Iraq," Joint Hearing of Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Property Rights and the Senate Committee on Foreign Relations, Subcommittee on Near Eastern and South Asian Affairs, June 25, 2003.
 7. Sheila Meintjes, "Reflection: The women's struggle for equality during South Africa's transition to democracy," Transformation 75 (2011) ISSN 0258-7696.
 8. Hon. M.R.K. Matembe, "Women and Constitution Making in Uganda," Nairobi, Kenya: Constitution of Kenya Review Commission, 12 July 2001. Referenced in Jolynn Shoemaker, "Constitutional Rights and Legislation", in "Justice, Governance, and Civil Society," 17, chapter 4 of Inclusive Security, Sustainable Peace: A Toolkit for Advocacy and Action, International Alert and Women Waging Peace (2004).

7. Ensure women's leadership in drafting bodies and all other committees, including in key positions by, for example, instituting minimum quotas. Provide technical training where needed to ensure issue expertise and understanding of the constitution-making process and key actors. In particular secure attention to hidden forms of discrimination that can become embedded in a constitution, particularly if/where religion is the only source of law used.

In Somalia, the 2012 Garowe II agreement stated that "At least 300 (1/3) of the 1000-member National Constituent Assembly "shall be women" and that "the remaining 700 men and women shall be selected from a cross section of society, including: youth/students, business people, religious and traditional leaders, the diaspora, ... professionals..."⁹

8. Support women outside (as well as inside) the constitutional assembly and other bodies to coalesce around shared interests and work towards common goals. The combined strength of women's coalitions can overcome deadlock, improve constitutional outcomes, and ensure accountability. Effective coalitions can serve as a model for policymakers for how to collaborate and develop consensus on priority issues.

In Rwanda, women's groups mobilized to ensure the inclusion of principles of gender equality in the constitution, notably their participation in decision-making spaces, reserved seats for women in parliament, and a gender monitoring unit. They also disseminated the draft constitution to women's organizations around the country.¹⁰

Gender-Responsive Text and Substance

9. Use clear language to ensure that provisions that protect women from discrimination are not undermined by vague or imprecise language.

- Advise drafters on the importance of human rights being inclusive of people of all genders. Where needed ensure gender-inclusive references (e.g., mentioning women and men explicitly) instead of gender-neutral language. The constitution lays the groundwork for future legislation and should set the tone for inclusivity and equality for all.

The Afghan constitution states: "The citizens of Afghanistan, man and woman, have equal rights and duties before the law."¹¹

10. Align the constitution with international standards, enshrine equal rights, and assert minority and gender-based equality throughout different sections, including in topics such as (but not limited to) the following:

- Equal rights in the Preamble guaranteeing gender equality, diversity, women's dignity and freedom, respect, inclusion, justice, and partnership;

The Preamble of Nepal's Constitution commits to "Protecting and promoting social and cultural solidarity, tolerance and harmony, and unity in diversity by recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural and diverse regional characteristics, resolving to build an egalitarian society

9. Second Somali National Consultative Constitutional Conference, 15-17 February, 2012, Garowe, Puntland, Somalia. (Emphasis added.)
 10. Priscilla Yachat Ankut, "The Role of Constitution-building Processes in Democratization," International IDEA Democracy-building & Conflict Management (DCM), Case Study Rwanda (2005).
 11. Constitution of the Islamic Republic of Afghanistan (2004), Art 22, Ch II.

founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability.”¹²

- The prohibition of discrimination by civil or customary law particularly on the basis of race, sex, and/or gender;

The South African Constitution states: “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”¹³

- Provisions for individual rights and freedoms equally for women and men, minorities, and indigenous communities pertaining to political, economic, and social rights and protection from violence, including domestic violence;

Cambodia’s constitution guarantees citizens “of either sex” the right to full and active participation in political life.¹⁴

- Provisions for the right to equal participation in politics including the right to access positions of responsibility in the state and in official bodies, such as the Supreme Court, Parliament, Senate, Presidency, etc.;

Ecuadorians benefit from the rights “To hold and discharge public office and duties on the basis of merits and capacities and in a transparent, inclusive, equitable, pluralistic and democratic selection and designation system that guarantees their participation, on the basis of criteria of gender equity and parity, equal opportunities for persons with disabilities, and intergenerational participation.”¹⁵

- Citizenship, including the equal right to grant nationality to spouses and children;

Iraq’s constitution states: “Anyone who is born to an Iraqi father or to an Iraqi mother shall be considered an Iraqi. This shall be regulated by law.”¹⁶

- The separation of religion from the state, as the constitution must not rely on religion as a source of legislation particularly in terms of the personal status law; and

The Philippine constitution states: “The separation of Church and State shall be inviolable.”¹⁷ In addition, “No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.”¹⁸

- Provisions for the right to adequate sexual and reproductive health and rights.

Key health care provisions of the South African constitution comprise “the right to bodily and psychological integrity which includes the right:

- To make decision concerning reproduction
- To security in and control over their body.”

12. Constitution of Nepal (2015), Preamble.

13. Constitution of the Republic of South Africa (1996), Para 9 (3) Ch 2.

14. Constitution of the Kingdom of Cambodia (1993), Art 35, Ch III. Amend 1999, 2008.

15. Constitution of the Republic of Ecuador (2008), Num 7, Art 61, Ch 5, Tit II.

16. The Constitution of the Republic of Iraq (2005), Art 18.2, Ch 1, Sec 2.

17. Constitution of the Republic of the Philippines (1987), Art 2, Sec 6.

18. Constitution of the Republic of the Philippines (1987), Art 3, Sec 5.