

Constitutional Rights and Legislation

JOLYNN SHOEMAKER

In a society recovering from violent conflict or one transitioning from an authoritarian regime, the creation of a new constitution and legislative framework is a key step toward a democratic governing structure. The constitution and legislation are the foundations of the rule of law. The **Rule of law** means that the same constitution and set of laws govern and protect everyone (see chapter on democracy and governance). In the last several decades, countries around the world have created new constitutions, established new governing institutions and enacted new legislation as part of the process of peacebuilding and democratic transformation. More than half of all the written constitutions in the world have been drafted since 1974.¹

Transition periods offer brief windows of opportunity to review and redraft constitutions and laws. The manner in which this is done, the principles that are embraced and how the legal structure is enforced have long-term repercussions for peace, security and democratic development. They can also have significant effects on the social, political and economic status of different sectors of society (e.g. ethnic, racial and religious groups), including women. This chapter is divided into two sections, highlighting the major elements of constitutional reform and legislative creation with a specific focus on the challenges and opportunities for women in societies emerging from conflict.

1. WHAT IS A CONSTITUTION?

The **constitution** provides the overarching legal framework for a country. It is the highest form of legal authority in a state, and no other laws enacted by the government can contradict it. Constitutions are usually, but not always, written documents. The constitution contains the fundamental principles of government and enshrines the basic rights of individuals in relation to the state. It also establishes the basis for political and judicial systems.

Constitutions vary widely in structure and substance. There is no single model for achieving the perfect document for a democratic foundation. However, the constitution should embody core values, including fundamental freedoms, human rights and a separation of powers within the government. The Constitution should be **gender sensitive**—it should include the rule of law, gender equality and the human dignity of every citizen.²

2. WHO DRAFTS A CONSTITUTION?

In the past, constitutional drafting processes were usually closed to the public and conducted almost entirely by elites. However, there is a growing trend to expand participation in these processes with increasing involvement of civil society groups.

THE PARTICIPATORY APPROACH

The recent participatory approach to constitution creation is based on international legal instruments and decisions that emphasise the right of democratic participation. For example, the **Universal Declaration of Human Rights** (Article 21) and the **International Covenant on Civil and Political Rights (ICCPR)** (Article 25) provide for the right of democratic participation. In addition, the **United Nations (UN) Commission on Human Rights** has articulated the specific right to participate in constitution making.³

Various mechanisms can be used for the constitutional drafting process. They include, but are not limited to

roundtable meetings, independent constitutional commissions, legislative commissions, national conventions and public referenda. Some of these mechanisms provide less opportunity for broad participation than others (e.g. entrusting the drafting and approval process to the legislature or a commission of the legislature does not involve the public directly). Public referenda offer a more direct approach, but the public can only vote on the proposals that have already been put forward and have limited ability to influence what is included in the final document.

Alternative approaches such as special, independent commissions and assemblies with public input throughout the process can increase the level of public participation and build public support for the final document. Such bodies can be appointed or elected or a combination, and more than one may be established to handle each phase of constitution making. In **Afghanistan**, a constitution-drafting commission was first appointed to prepare a preliminary draft, followed by a constitution review commission that engaged with the public for suggestions. Finally, a Constitutional Loya Jirga was convened by a combination of presidential appointments and direct elections to adopt the final document.⁴ In **Uganda**, a commission was appointed based on merit to consult with the public and draft the constitution. A constituent assembly was then elected, representing various interest groups (including women), to discuss and approve the final document.⁵

Whatever method is chosen, it is essential for it to be fully representative of the social groups and political interests within society. No party or interest should have a dominant voice. Women should be represented in bodies formed for constitution making and approval. In **East Timor**, at least 40 percent of the constitutional commissioners were women.⁶ In **Afghanistan**, women were represented on both commissions (although not in equal numbers with men), and the mechanism for selecting the Loya Jirga included a minimum of 20 percent seats for women.⁷ In **Zimbabwe**, the process failed because it was not inclusive. The appointed constitutional commission was controlled by one party and did not adequately include women. When the constitution was voted on by referendum, the public rejected it.⁸

The process for creating the constitution should include at least three steps: civic education, public consultations and drafting.

- **Civic education** is an essential first step. The goal is to increase public understanding of the drafting process and the importance of the constitution in a democracy. This process can also help identify the issues of concern for local populations and various interest groups. Special initiatives can be implemented to reach out to rural and urban areas, utilising a variety of media. In **Eritrea**, this was done through songs, poems, stories, radio and local theatre in various languages.⁹ These could include efforts to improve the education of women regarding the constitution.
- During public consultations, the drafters could present specific questions and issues to the public to solicit views.¹⁰ The drafters could meet with representatives from various civil society groups, including women, to develop the central principles of the document. In **Nicaragua**, this was done by distributing drafts, televising debates and holding town-hall open forums.¹¹ In **Rwanda**, consultations were held throughout the provinces. Consultations should continue throughout the drafting process to ensure that there is transparency and that suggestions are incorporated. The consultations should not be rushed—sufficient time is needed to develop a constitution that is supported and understood by the public.
- Constitution drafters should not assume that women's views or rights would be included without special measures, such as separate meetings with women or other mechanisms to support their participation. In **East Timor**, a working group was formed on women and the constitution, which organised consultations around the country.¹² In **Rwanda**, a women's committee conducted training, awareness and sensitivity programmes on the constitution around the country.¹³

WOMEN'S CONTRIBUTIONS TO CONSTITUTION MAKING

The participatory approach to constitution making has created new opportunities for women to make a direct contribution to the process and to influence the text. Women have been instrumental in demanding a

more participatory approach and in utilising openings for public input to press for their concerns. In **Nicaragua**, women were vocal in their opposition to the first draft of the constitution because it did not specify equal rights for women and men. Nicaraguan women insisted that such language be included in the final draft.¹⁴ In **Uganda**, women spoke out as members of the constitutional commission and the constituent assembly and through their involvement in NGOs.¹⁵ In **Cambodia**, civil society played a pivotal role in making the constitution through public meetings and demonstrations, and women were the driving force behind this civil society movement. Women discussed their suggestions for the constitution, organised workshops and meetings, participated in public demonstrations and worked with legislators to get their recommended language into the document.¹⁶

International and regional institutions have provided support for various programmes that involve women in the constitutional process. In **Afghanistan**, the UN Development Programme (UNDP) and the UN Assistance Mission to Afghanistan (UNAMA) worked to support the development of Afghanistan's Constitution and to involve the broad participation of women through such methods as consultations with women's civil society organisations.¹⁷ In **Rwanda**, the UN Development Fund for Women (UNIFEM) provided funding to the Legal and Constitutional Commission to mobilise, educate and involve women in the process of drafting the new constitution and helped increase the percentage of women at the national convention to review the draft constitution.¹⁸ In **Rwanda** the Inter-Parliamentary Union (IPU) provided technical and financial support to facilitate a dialogue among women's groups and parliamentary members on how to incorporate gender considerations into the constitution.¹⁹

Where women have played a significant role, the resulting constitutions have incorporated language on gender equality and women's rights. In **South Africa**, women's and other civil society groups had access to the process, and equal rights and non-discrimination are reflected in the final document.²⁰ In **Uganda**, women participated in the constitution process, and the final constitution included strong language on the promotion and protection of women's rights.²¹ In **East Timor**, as a result of women's participation in the process, non-

discrimination on the grounds of gender is one of the fundamental objectives of the state.²²

3. WHAT ARE THE CORE COMPONENTS OF THE CONSTITUTION?

Just as processes for creating constitutions vary from case to case, so do the structures and texts of constitutions. Constitutional documents usually include the following basic elements: preamble; fundamental rights and freedoms; division of powers to prevent the concentration of power in one branch of government; structure of government institutions (executive, legislative and judicial); and the political system (presidential or parliamentary).

One of the preliminary considerations when drafting a constitution is the level of detail to be included. The level of detail directly corresponds to the degree of flexibility for interpretation and change. The constitution is a document that must have some capacity to evolve as time passes. However, because it embodies core principles of the state and fundamental rights of the individual, it should not be too easy to modify or reinterpret. A more detailed document provides more stability and leaves less room for differing interpretations. The drafters need to determine how much detail to include, how much flexibility to allow for interpretation and how to define requirements for changing it in the future.

INTERIM CONSTITUTIONS

In many countries transitioning to democratic rule, an **interim constitution** may be a necessary step. Interim constitutions vary in length and depth. At minimum, it should describe the structure of the government, its powers and responsibilities, the fundamental rights of individuals and the procedures for creating a permanent government. In **Rwanda**, **Ethiopia**, **Eritrea**, **Cambodia**, **South Africa**, and, more recently, **Afghanistan** and **Iraq**, interim constitutions and arrangements were created in the transition period leading up to democratic elections.

The **South Africa** interim constitution included all the basic principles that went into the final version. It specified that the Constitution was the supreme law of the country and included chapters on citizenship,

fundamental rights (including equality), branches of government, the process for adopting the final constitution, law enforcement and defence and transitional arrangements. It was so comprehensive that there were few changes in the final version.

In March 2004, Iraq adopted an interim constitution called the Transitional Administrative Law. It briefly details the phases and deadlines of the transitional period, specifies that the interim constitution is the supreme law of Iraq, describes the system of government and defines the official religion as Islam. It also outlines fundamental rights (including equal rights and non-discrimination) and the structure of the transitional government. The document is not as detailed as the South African interim constitution and leaves ambiguities in many areas. These ambiguities leave it open for change and reinterpretation before the permanent constitution is finalised.

INDIVIDUAL RIGHTS

The constitution should guarantee fundamental rights and freedoms of individuals, both men and women. Civil, political, social and economic rights are embodied in international human rights instruments, particularly the **Universal Declaration of Human Rights** (see appendix for full text). The Declaration was created as a non-binding instrument, but it is not a treaty. Generally, binding instruments refer to international agreements, both bilateral and multilateral, signed and ratified by individual states. The **International Covenant on Civil and Political Rights (ICCPR)**, the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, and the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** are binding on signatory states. Although the Universal Declaration of Human Rights is not a treaty, through general practice and a sense of obligation among states it has become customary international law.²³

Constitution drafters can draw specific language from each of these instruments for inclusion in their constitution. For civil and political rights, these include, but are not limited to, dignity, equality and non-discrimination; bodily integrity and security; fundamental freedoms; political participation; residency, citizenship, nationality, detention and criminal trial.²⁴ Examples of how various constitutions have incorporated these rights are included below.

Human dignity refers to the respect each person deserves as a member of the human race.

- The **Universal Declaration of Human Rights**, Article 1: “All human beings are born free and equal in dignity and rights.”
- The Constitution of **Rwanda**, Article 12, articulates the rights of human dignity and personal freedom.
- The Constitution of **Afghanistan**, Article 24, defines liberty and dignity as inviolable rights.

Equality and non-discrimination refers to equal treatment under the law.

- The **Universal Declaration of Human Rights**, Article 2: “Everyone is entitled to all rights and freedoms set forth in this declaration, without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- Article 7 of the **Universal Declaration** stipulates the right of equal treatment and protection of the law.
- **ICCPR**, Article 26, guarantees equal protection before the law and prohibits discrimination.
- The **Namibian** Constitution, Article 10: “All persons shall be equal before the law. No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.”
- The **Cambodian** Constitution, Article 31: “Every Khmer citizen is equal before the law.” Article 45: “All forms of discrimination against women are abolished.”
- The **South African** Constitution, Section 9, includes a broad explanation of equality before the law, equal protection and non-discrimination. This section also provides for affirmative action to “protect or advance persons, or categories of persons, disadvantaged by unfair discrimination.”
- The **Indian** Constitution, Article 15, prohibits discrimination on the grounds of religion, race, caste, sex or place of birth.
- The Constitution of **Bangladesh**, Article 28: “Women shall have equal rights with men in all spheres of the State and of public life.”

Bodily integrity and security means that every person has the right to feel secure and to be free from mistreatment and abuse.

- **The Universal Declaration of Human Rights**, Article 3: “Everyone has the right to life, liberty and security of person.”
- **ICCPR** Articles 7–10 prohibit torture and cruel, inhuman or degrading treatment or punishment and slavery and delineate the rights of liberty, security and dignity. Article 4 prohibits slavery and Article 5 prohibits torture and cruel, inhuman or degrading treatment or punishment.
- The **South African** Constitution, Sections 11–13, articulates the right to life, freedom and security of person and prohibits slavery, servitude and forced labor.

Political participation refers to the right to actively engage in the civic and political affairs in a country.

- **The Universal Declaration of Human Rights**, Article 21, articulates the right to participate in government, equal access to public service and periodic and genuine elections.
- **ICCPR**, Article 1, delineates the right of self-determination. Article 25 articulates the right to take part in public affairs, to vote and be elected in elections and to have equal access to public service.
- The **Eritrean** Constitution, Article 7: “It is a fundamental principle of the State to guarantee its citizens broad and active participation in all political, economic, social and cultural life of the country. Any act that violates the human rights of women or limits or otherwise thwarts their role and participation is prohibited.”
- The interim constitution in **Iraq** sets a target of 25 percent participation by women in the national assembly.²⁵

Residence, citizenship and nationality rights mean that every person has the ability to live in a place of his or her choosing and to claim certain rights as a resident, citizen or national.

- **The Universal Declaration of Human Rights**, Article 15, guarantees the right of nationality.

- The **Cambodian** Constitution, Article 33, protects against deprivation of nationality.
- The **South African** Constitution, Article 3, outlines equal rights to citizenship and its benefits.
- **Due process** refers to the right to equal treatment under the law and to fair judicial procedures.
- **The Universal Declaration of Human Rights**, Article 9, prohibits arbitrary arrest, detention or exile. Articles 10–11 stipulate the right to a fair and public trial and the presumption of innocence until proven guilty.
- **ICCPR**, Articles 14–15, cover rights in the determination of criminal charges.
- The Constitution of **Fiji**, Sections 26–29, detail freedom from unreasonable searches and seizure, rights of arrested or detained persons, rights of charged persons and access to courts and tribunals.
- The Constitution of **Slovakia**, Articles 46–50, include the right to an independent and impartial court hearing, right to refuse to testify and rights in a criminal trial.
- The Constitution of **Bangladesh**, Article 33, articulates rights pertaining to arrest and detention, and Article 35 covers rights pertaining to trial and punishment.

Additional fundamental rights and freedoms in international human rights law include those listed below:

- **The Universal Declaration of Human Rights** stipulates the right to privacy (Article 12), freedom of movement and residence (Article 13), marriage (Article 16), property ownership (Article 17), freedom of thought, conscience, and religion (Article 18), freedom of expression (Article 19) and freedom of assembly and association (Article 20).
- **ICCPR** articulates freedom of movement (Article 12); privacy (Article 16); freedom of thought, conscience and religion (Article 18); freedom of expression (Article 19); peaceful assembly (Article 21); association (Article 22); and marriage and family (Article 23).
- These rights are articulated in constitutions in **South Africa, Rwanda, Fiji, Cambodia** and other recent constitutions.

Economic, labour, social and cultural rights include many other rights outside of the political sphere that impact work, family and community life.

- The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, Article 3, obligates states to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”
- Articles 6–11 recognise labour rights, including the right to work, the right to favourable conditions of work and the right to form and join trade unions.
- Article 10 recognises the protection and assistance to the family, including maternity benefits.
- Articles 11–13 recognise the right to adequate standard of living, physical and mental health and education.
- The **Cambodian Constitution**, Article 45, protects women from losing jobs due to pregnancy and provides for the right of maternity leave without loss of benefits. The article creates an obligation for the government and society to create opportunities for women to receive employment, medical care, education for children and decent living conditions.
- The **Constitution of Slovakia**, Part 5, guarantees the right to a choice of profession and training, equitable and adequate working conditions, health, education, marriage and family.
- The **Constitution of Afghanistan**, Article 44: “The state shall devise and implement effective programmes for balancing and promoting education for Minority Rights.”

MINORITY RIGHTS

For minority groups, guarantees of non-discrimination, equality and other individual rights may not provide sufficient protections. In a governing system where the majority rules, there is a danger of “tyranny of the majority,” when the majority ignores the rights of the minority. In order to avoid this scenario, it is important for the constitution to address the rights of minorities. In a constitutional democracy, the majority rules, but the majority should be constrained by protection for minorities.²⁶

In religious states, marginalisation of religious minorities can be a problem. Religious states include **Israel (Jewish)**, **Nepal (Hindu)**, **Iran, Pakistan, Saudi Arabia, Malaysia, Sudan and Afghanistan (Islamic)**.²⁷ A religious state can be a democracy. However, it is a unique challenge to ensure non-discrimination and full participation by minority religious groups in this type of state.

The constitution can provide mechanisms for minority participation and protection of minority interests. Some constitutions include specific provisions that recognise various languages, cultures and religions. The **South African Constitution** has a section on languages (Section 6) that establishes a language board to promote and facilitate the development and use of different languages. The **Constitution of Belgium** recognises linguistic regions (Article 4) and linguistic groups (Article 43). The constitution may also include provisions that recognize cultural, religious and linguistic rights for various communities. Section 31 of the **South African Constitution** protects the right to enjoy culture, religion and language, insofar as these activities do not violate the Bill of Rights. The **Constitution of India** gives minorities the right to conserve distinct spoken and written language and culture (Article 29). The Indian constitution also provides minorities with the right to establish and administer educational institutions (Article 30).

There are ways to structure parliamentary representation to promote minority participation in the government. The constitution can include special procedures, institutional arrangements and legislative and administrative processes that promote the participation of certain groups, such as minorities and women. Plurality and majority systems generally do not help to elect minorities, except where the minorities are concentrated. Proportional representation is a more favourable system to encourage participation by minorities and women. In some countries, such as **Nepal**, political parties are required to nominate a certain number of minorities.²⁸ Some countries set aside seats for minority representation; in **Slovenia**, two seats are reserved for minorities in the parliament.²⁹ The constitution should explain the procedures for electing parliamentarians, including special procedures to ensure that minorities and women are adequately represented (see chapter on democracy and governance).

In addition, arrangements for power sharing can be devised to facilitate minority participation and to limit conflicts between minority groups and the central government. A federal system in which power is shared between a central government and subordinate provincial and regional governments is one way to structure power sharing and can be articulated in the constitution (see chapter on democracy and governance).³⁰

In some types of decentralised systems, ethnic or other types of groups are considered political entities with autonomy over certain issues, while common issues are handled at the national level.³¹ Federalism includes the following elements: shared executive power among groups; autonomy within each group; proportional representation; and a minority veto on specific issues. Countries as diverse as **Belgium, South Africa, Zimbabwe, India, the Netherlands, Austria, Switzerland, Cyprus, Lebanon and Northern Ireland** have established these types of systems.³² It is important that power-sharing arrangements are explained in the constitution. For example, in the **South African Constitution**, the composition, election, procedures and powers of the National Assembly, the provinces and the local municipalities are described in detail.

WOMEN'S RIGHTS

A constitution's language should reflect equal rights for men and women. Inclusion of this principle throughout the constitution is sometimes referred to as "engendering the constitution."³³ Women should advocate for the inclusion of fundamental rights and freedoms based on international law. Language from international legal instruments, including the Universal Declaration on Human Rights, the ICCPR, the ICESCR and CEDAW, as well as other recent constitutions, can be used as a basis for women to argue for the inclusion of these rights.

The constitution may also provide for affirmative action for women and disadvantaged groups. The **Ugandan Constitution**, Article 33, provides that "women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom." The **Indian Constitution**, Article 15, and the **Bangladeshi Constitution**, Article 28, allow specifically for affirmative action for women. The **South African Constitution**, Section 9, provides that "legislative and other measures designed to

protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken."

INCORPORATING INTERNATIONAL LAW INTO THE CONSTITUTION

The constitution should explain how international law relates to the country's legal system. In some cases, the incorporation is not automatic: When the government signs a treaty, the legislature must pass a law incorporating the treaty into the law. In other states, the treaty automatically becomes part of the country's laws, a process referred to as "self-executing." Recent constitutions reflect a growing recognition that international law should be incorporated into domestic law (the law of the country).

Another central question is how to resolve conflicts between domestic law and international law when they arise. If an act of parliament is contrary to a provision in an international instrument, which source of law is enforced? There is a growing trend to recognise that international law should trump domestic law where they conflict.

The former **Soviet Union** illustrates these trends. Many constitutions in the former Soviet republics incorporate international law into domestic law and provide for the primacy of international law where it conflicts with domestic law.³⁴ The **South African constitution** goes further, recognising both treaty-based and international customary law.³⁵ Both the interim and the final constitutions consider international human rights law, including international customary law, as part of domestic law.³⁶

The direct application of international law in the legal system of a country and the primacy of international law over domestic law can benefit women. When international laws and standards such as the ICCPR, CEDAW or Resolution 1325 are integrated into national law, the state is obligated to enforce them.

ADDRESSING CUSTOMARY AND RELIGIOUS LAW IN THE CONSTITUTION

Customary law refers to traditions, practices and cultural beliefs that function as law.³⁷ **Religious law** is a set of laws dictated by a religion,³⁸ such as Hindu law and Sharia law. In countries with entrenched customary and religious laws, constitution drafters

will have to consider and seek to reconcile these issues. Problems arise when a constitution does not address possible conflicts between cultural or religious rights and fundamental rights and address how such conflicts could be resolved.

Drafters may want to develop language that recognises these informal sources of law and attempts to reconcile them with fundamental rights based in international law. This is a challenging task. The constitution may reaffirm the importance of cultural and religious traditions, but it should also reaffirm that these sources of informal law must conform to international law. CEDAW recognises a state obligation to take measures to abolish laws, regulations, customs and practices that discriminate against women (Article 2) and to modify social and cultural patterns to eliminate discriminatory practices (Article 5).

Some constitutions have attempted to clarify the relationship between customs and practices and fundamental rights. The **Ugandan** Constitution (Chapter 24) states, “Cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy, and with the Constitution may be developed and incorporated in aspects of Ugandan life.” The **South African** Constitution (Section 31) outlines the rights of cultural, religious and linguistic communities, but it qualifies these rights by stating that they “may not be exercised in a manner inconsistent with any provision of the Bill of Rights.” In other words, communities are not allowed to enforce customs and practices that violate fundamental rights embodied in the constitution.

The question of how to reconcile Sharia law and international human rights remains controversial. **Sharia law** refers to traditional Islamic law; it is based on the Koran, the holy book for Muslims, and the summa, or teachings of the Prophet Mohammad. The central problem is that Sharia emphasises the obligations of the believer as a member of the religious community, while international human rights law emphasises the rights of the individual, and the state’s obligation to protect those rights.³⁹

The interpretation and application of Sharia varies by country; in some it is the supreme law, while in others it is applied selectively.⁴⁰ Some countries, such as **Turkey**, separate Islam from the political sphere

altogether. Some Muslim countries choose not to create constitutions because they consider the Sharia to be the constitution, and some of them have a “basic law,” such as **Saudi Arabia** and **Oman**.⁴¹ However, most Muslim countries today have written constitutions.⁴² In some countries with constitutions, such as **Bangladesh**, Sharia law takes precedence over constitutional rights in practice.⁴³ In **Pakistan**, the constitution was originally a secular document, but religious amendments have been integrated into it over the years, thus Sharia law takes precedence over the constitution.⁴⁴

In the recent cases of **Iraq** and **Afghanistan**, attempts were made by drafters to reconcile Islamic and international law by creating hybrid constitutions. These constitutions allow for the application of Islamic law in certain situations but attempt to make governments accountable to international norms. However, these experimental arrangements do not clarify completely the relationship between Sharia and international human rights laws. Some of the ambiguities leave women’s rights open to interpretation. The **Afghanistan** Constitution, for example, has no provision addressing possible contradictions between Islamic law and gender equality.⁴⁵ In addition, the Afghanistan Constitution provides that “no law shall contravene the tenets and provisions of the holy religion of Islam” (Article 3), which means that Islamic law takes precedence over any other law that is inconsistent.

There is increasing recognition that women’s rights under international law should be placed above traditions and beliefs that discriminate on the basis of gender. The validity and interpretation of such discriminatory customary and religious laws are being debated, as countries attempt to reconcile these various sources. Women continue to press for constitutions that not only recognise the importance of traditions, customs and religious beliefs, but also clearly place women’s rights of equality and non-discrimination above inconsistent customary and religious law.

4. HOW ARE CONSTITUTIONAL RIGHTS GUARANTEED?

PROTECTING CONSTITUTIONAL RIGHTS

It is essential that constitutional rights be enforced and protected. All levels of government should be

required to enforce the constitutional provisions and apply international standards in decisions and policies. The constitution should detail this requirement in a provision on implementation and interpretation.

Specific procedures need to be established to consider whether legislative, executive and administrative acts conform to the constitution (constitutionality). In some countries, all courts at all levels have the authority to consider constitutional issues through a process called judicial review. In many countries, the power of constitutional review is restricted to one court—a supreme court, special chamber of a supreme court or constitutional court. Other countries delegate this responsibility to non-judicial entities. Increasingly, separate constitutional courts are the favoured mechanism for constitutional review. The mechanism of review must be entirely independent of the executive and legislative branches.

The judiciary is required to protect constitutional rights, including those of minority groups that may be underrepresented in the political process. In the US, for example, the judiciary applies “heightened” or “strict” scrutiny when considering the constitutionality of laws that may discriminate against certain groups because there is a recognition that the majority controls the decision-making process and can disadvantage the minority.

The constitution may provide for various commissions to monitor specific constitutional rights. Some constitutions establish a human rights commission or an ombudsman for this purpose. The constitution of **Fiji** established a public education commission to inform the public about the nature and content of the bill of rights and to make recommendations to the government about compliance with human rights standards. The **South African** Constitution provides for a human rights commission to promote human rights, monitor the observance of human rights, investigate cases of human rights violations and take steps to secure redress for individuals in cases of violations. In the Constitution of **Nepal**, the Commission for the Investigation of Abuses of Authority conducts inquiries and investigations relating to improper conduct or corruption by public officials.

The constitution may establish an ombudsman’s office to advocate on behalf of minority groups and

to investigate cases of discrimination.⁴⁶ Article 32B of the Constitution of **Hungary**, for example, establishes a Parliamentary Ombudsman for the Rights of National and Ethnic Minorities; the ombudsman is elected by parliament based on a recommendation by the president.

Monitoring and enforcement mechanisms for the protection of constitutional rights should be gender sensitive. Women should be represented on the constitutional court or other body that determines constitutionality questions, and equality provisions should be considered important aspects of constitutional review. In **Uganda**, for example, the constitution provides that “the state shall ensure gender balance and fair representation of marginalised groups on all constitutional and other bodies.” Entities that are established to review questions of constitutionality or monitor the implementation of constitutional rights should receive gender training.

ENFORCING RIGHTS DURING A STATE OF EMERGENCY

Special protection for constitutional rights should be established in case of a state of emergency, which occurs when a government suspends normal procedures in response to a serious threat or crisis. Under international law, the situation must be a public emergency that threatens the existence of the state.⁴⁷ In some cases, constitutions are suspended and legislative power is curtailed. In these situations, human rights and constitutional rights are at risk of violation.⁴⁸

The first step in protecting constitutional rights under these conditions is to include specific rules for the declaration, approval, maintenance and termination of a state of emergency in the constitution itself. The power of the executive branch in emergency situations should be defined and limited in the constitution (e.g. prohibiting the extension of terms in office, suspending elections, obstructing political competition, altering the constitution or dissolving the legislature).⁴⁹ The constitution should also set out the authorities and responsibilities of the other branches of government; it may provide for the legislature to be notified, consulted for approval or issue a declaration to establish a state of emergency.⁵⁰ The constitution should also establish a time limit on the state of emergency and how it can be extended. For example,

the **South African** Constitution, Section 37, specifies that a state of emergency can be declared only in cases where “the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency.” In such cases, a declaration of a state of emergency is only valid for 21 days unless the parliament extends it for no more than 3 months at a time.

Many constitutions have specific provisions that describe the procedures and powers of the executive and legislative branches of government during national emergencies.

The constitutions of **Hungary, Switzerland, the Netherlands** and **South Africa** require a state of emergency to be declared by Parliament. In the **US, France, Nigeria, Nepal** and **India**, the executive declares a state of emergency, in which case the constitution usually requires that the legislature approve the executive declaration within a short period of time. Generally, it is the prerogative of the legislature to decide whether to extend the state of emergency before it expires.

During a state of emergency, a government may have the authority to curtail certain constitutional rights. This is called derogation of rights. The derogation of rights is strictly limited under international law in the **International Covenant on Civil and Political Rights (ICCPR)**. Article 4 states that in a public emergency, state parties may derogate certain rights “to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin.”⁵¹ Thus, a state party to the ICCPR must take into account all of its international obligations—both in treaties and in general international law—before derogating any rights and is prohibited from implementing discriminatory laws or policies.

The ICCPR prohibits derogation of certain fundamental rights, including right to life; prohibition against torture or cruel, inhuman or degrading treatment or punishment; prohibition against slavery; legality in criminal law; and freedom of thought, conscience and religion. In addition, the **UN Human Rights Committee**, in its General Comment 29 on States of

Emergency, added the following rights that must be protected in emergencies: the right to be treated with humanity and respect for the inherent dignity of the human person; prohibitions against taking hostages, abductions or unacknowledged and unexplained detention; rights of persons belonging to minorities; prohibition against forced displacement; prohibition against advocating national, racial or religious hatred; requirement for state parties to provide remedies for violations of rights; and the right to a fair trial.

Section 37 of the **South African** Constitution reflects these limitations by stipulating that “any legislation enacted in consequence of a declaration of a state of emergency may derogate the Bill of Rights only to the extent that the derogation is strictly required by the emergency; and the legislation is consistent with the Republic’s obligations under international law applicable to states of emergency.”⁵² This Constitution also articulates the right to seek redress for violations of rights through the court system and the obligation of the judicial branch to promote the Bill of Rights. The Constitution of **Fiji**, Section 187, allows the derogation of some specific rights if certain conditions are satisfied during a national emergency. The Constitution of **Fiji** also specifies that laws made under a state of emergency must be consistent with the country’s obligations under international law.

At a minimum, a provision should be included in the constitution that addresses a state of emergency situation. The provision should specifically define a state of emergency, the procedures for declaring an emergency and the process for extending it, as well as the possible areas of derogation of rights, availability for individual redress if rights are violated and the responsibility of the state to uphold its obligations under international law, including those relating to non-derogable rights and non-discrimination. In addition, the legislative and judicial branches of government, civil society and the general public should monitor the situation closely to protect their rights from unnecessary restrictions and to prevent the executive from abusing its power. Women and NGOs should play a central role in ensuring government accountability during any state of emergency.

Priorities for Women in Constitution Making

Constitution-Making Process

- a high level of public participation in the constitution-making process; and
- special initiatives to include women in the education, consultation, and drafting phases.

Constitutional Language

The constitution provides a legal framework for all aspects of a country's social, economic and political life. Women need to understand the implications of the provisions and the language. Key issues to focus on include:

- separation of powers among the branches of government;
- criminal liability of members of government or parliament;
- individual rights that reflect international standards;
- incorporation of international law;
- limitations on customary and religious law in cases where it is inconsistent with international human rights;
- rights of minorities or diverse ethnic groups and power-sharing arrangements to promote their participation in decision-making;
- constitutional review and other monitoring mechanisms to protect rights; and
- protections in cases of emergency.

5. WHAT IS LEGISLATION?

Legislation refers to laws enacted by a legislative body (e.g. a parliament, congress or national assembly). The structure of the legislative branch, along with the other branches of the government, should be explained in the constitution. The constitution may describe in detail the basic structure, composition, authority, elections and procedures of the legislature. All legislation affects women, and in turn women legislators can be influential in a number of ways. This section focuses primarily on legislative issues that have a direct impact on women's rights.

6. HOW CAN WOMEN'S RIGHTS BE INTEGRATED INTO THE LEGISLATIVE PROCESS?

There are various ways of promoting women's rights in the daily functions of the legislature. Some countries have tried to improve **gender balance** in their legislatures by reserving a certain number of seats for women or by establishing quotas for the

percentage of women in the legislature. These requirements should be described in the constitution. For example, the Constitution of **Afghanistan** provides for at least two female delegates from each province in the house of representatives. Of the one-third of senators selected by the president, 50 percent must be women. The **Rwandan** Constitution allows quotas and reserved seats for women in both houses of its parliament.⁵³ In **Bangladesh** a constitutional amendment was passed after years of lobbying by women that increased women's reserved seats in the legislature to 45 seats. However, these seats are filled using a system of indirect election while women continue to advocate for direct elections.⁵⁴

Although attaining gender balance is one step toward ensuring the inclusion of women's rights in legislation, it is by no means enough. Indeed many women legislators are not always conscious of the gendered dimensions of their work or in some instances prefer to address other issues, as they do not want to be limited to a single issue. Furthermore, when there are few women in the legislature, they do not have sufficient support to address women's rights issues. One way of overcoming

this is by creating cross-party women's caucuses or committees. Legislatures often create small groups of members—committees or caucuses—that focus on specific topics such as the environment, foreign affairs or defence. Women's perspectives can be incorporated into these activities by requiring gender equity on parliamentary committees or by ensuring that women's caucuses follow the agenda and policy developments of the committee and insert gender perspectives. In **Rwanda**, a parliamentary subcommittee on gender examines each law to determine its impact on women.

Another approach is to create gender focal points within parliamentary committees. For example, the **Guatemalan** Congress created the Congressional Commission on Women, Minors and Family, which is working on reforming provisions of the criminal code that affect women's rights.⁵⁵ In order to ensure that women representatives are not marginalised from the voting process, one option is to require a certain minimum number of women legislators to be present for a vote on a bill.

7. HOW CAN WOMEN PROMOTE GENDER EQUALITY THROUGH LEGISLATION?

Discrimination can occur in the letter of the law (in the words drafted) or in the application of law. In many countries, laws discriminate against women in one or both of these ways. In addition, women often face discrimination in customary and religious laws and practices. Legislatures should review legislation, amend outdated laws and enact new laws to address these problems. CEDAW includes provisions on eliminating gender discrimination in such areas as politics, nationality, education, employment, health care and marriage and family. The following is an explanation of some areas of law that often discriminate against women. It is not an exhaustive list. It is important to recognise that all areas of law can include discriminatory provisions that affect women thus each piece of legislation should be examined and modified to eliminate gender discrimination.

CITIZENSHIP AND NATIONALITY LAWS

Laws governing nationality and citizenship are extremely important because they define the requirements for a person to be considered a citizen

and to be entitled to all the benefits that accompany citizenship. Some citizenship and nationality laws discriminate against women by recognising citizenship only through paternal lines, depriving women of their nationality if they marry foreign nationals, or failing to allow for naturalisation of foreign spouses of women. These types of provisions restrict a woman's capacity to maintain her citizenship and to pass it along to her children.

Legislation should give women equal rights regarding all aspects of nationality and citizenship and equal rights to pass on citizenship to children, specifically when women are denied rights because they marry a citizen of another country.

One of the major successes for women's equal citizenship rights occurred in **Botswana**. A woman challenged the country's Citizenship Act under which children of women married to foreigners were not entitled to citizenship, whereas children of men married to foreigners were entitled to citizenship. The Botswana Appeals Court invalidated the law as unconstitutional. As a result, the government passed the Citizenship Amendment Act in 1996, which eliminated discrimination against women with respect to transmission of citizenship to their children.⁵⁶

Some Muslim countries have made improvements to citizenship laws in recent years to allow a woman who marries a foreigner to pass on citizenship to her children. In 2001, **Pakistan** amended its citizenship law to provide a woman married to a foreign man with the right to claim citizenship for her children. **Tunisia** modified its nationality legislation, allowing a Tunisian woman married to a non-national to pass on her nationality to her children, provided that they are born in Tunisia. **Jordan** changed the law to grant the right of Jordanian nationality to the children of Jordanian mothers married to non-Jordanian foreign nationals.⁵⁷

FAMILY LAW

One of the most important sections of the civil code for women is **family law**. These laws set out rights and obligations regarding the family, including marriage and dissolution of marriage and child custody. In many cases, family law based on civil, customary and religious sources discriminates against women by placing them in a subordinate status within the family and limiting their legal rights in marriage.

For many women's rights activists, ideally family law articulates the equality of men and women in marriage, provides for the voluntary consent of both parties to enter into a marriage agreement and requires the same minimum age for marriage. Equal rights of divorce and fair divorce procedures, including the division of property and provision of maintenance, could also be stipulated in the law.

In January 2004, **Morocco** adopted a new family law supporting women's equality and marriage and divorce rights. Specifically, the new law provides that spouses share equal responsibility for the family; the wife is not required legally to obey her husband; the wife is entitled to self-guardianship; and the minimum age for marriage is the same for men and women—18 years. Both spouses have the right to divorce, and divorce is by mutual consent. Polygamy is regulated strictly, making it almost impossible; a woman can prevent her husband from taking additional wives.⁵⁸

In **Nepal**, amendments to the civil law in 2002 established a woman's right to seek divorce on several grounds, including physical or psychological harassment by her husband; increased the penalty for polygamy; and improved women's rights to marital property.⁵⁹

A new civil code in **Turkey** revised an outdated legal approach to women in the family. The new family law recognises that spouses are equal in the family, with equal decision-making powers, equal rights over the family abode, equal rights to property acquired during marriage and equal representative powers.⁶⁰

In countries where customary marriages are prevalent but the state does not recognise them legally, women in these unions are denied marital rights. Some countries have attempted to address this problem by passing legislation that gives women in customary marriages legal rights.

In **South Africa**, the Recognition of Customary Marriages Act was passed to protect the legal rights to property, maintenance and inheritance rights of spouses in customary marriages. The law recognises customary marriages as valid if they satisfy a number of criteria, including that both prospective spouses are at least 18 years old and both agree voluntarily to the

marriage. Under this law, spouses share equally in all property, money, assets and debts. Both spouses have equal status in making decisions affecting the property. These rights are protected even if the husband subsequently takes additional wives.

In 2003, **Mozambique** passed a new family law that legalised customary marriages and entitled women who live with partners for more than a year to inherit property. The law stipulates that both spouses share responsibility for the family. It creates an equal minimum age for marriage of 18 years for both sexes.⁶¹ Polygamy is not recognised as legal, but the law entitles women in such marriages to full marital rights.⁶²

PROPERTY AND SUCCESSION LAW

In many countries, statutory and customary laws of ownership and inheritance discriminate against women. Women's rights to land ownership and inheritance are restricted or denied. Some laws provide that women lose access to property upon the death or divorce from spouse, prevent women from holding non-land property because it is considered property of the family, prevent women from gaining additional property aside from dowry, allow a woman to retain only personal effects after divorce, restrict the percentage of inheritance that daughters receive compared with sons and limit the ability of widows to sell or exchange property.⁶³ In many countries, multiple sets of laws (civil, customary and religious) conflict with one another regarding the property and inheritance rights of women.

Divergent property and succession laws need to be brought into conformity, while eliminating provisions and practices that are discriminatory against women. Property and inheritance laws should not provide for different rights based on gender. Women should have equal legal rights to attain, own, transfer and inherit land and personal property. Some countries have passed new property laws that improve women's rights, often in response to pressure from women activists.

In many countries in **Africa**, recent legislative enactments have addressed gender inequalities in property and inheritance rights. In **Tanzania**, the Land Act (1999) and the Village Land Act (1999) give women the right to acquire, hold, use and deal with land; require women to be represented in land

administration bodies; and protect women's rights to co-occupy land. The Land Act overrides customary laws that restrict women's rights to use, transfer and own land.⁶⁴ In **Eritrea**, the Land Proclamation (1994) gives women the legal right to own and inherit land. In **Rwanda**, the Inheritance Law (1999) grants female children equal inheritance rights with male children and allows a wife to inherit a husband's property.⁶⁵

LAWS ADDRESSING VIOLENCE AGAINST WOMEN

Violence against women is prevalent around the world in various forms, including domestic violence, rape, sexual harassment, trafficking, female genital mutilation, dowry-related violence and honour killings (see chapter on human rights). Unfortunately, violence against women is often considered to be less serious than other types of violence. In some countries, domestic violence, including spousal rape, is not considered a crime; crimes against women to maintain the family honour are tolerated; and female victims of sexual violence carry the burden of proof in a court of law.

The Committee on the Elimination of Discrimination against Women recognised violence against women as a form of discrimination in CEDAW General Recommendation 19.⁶⁶ The **UN Declaration on the Elimination of All Forms of Violence Against Women** ("the Declaration") defines violence against women broadly and recognises that violence against women can occur in the family or in the community or can be condoned by the state.⁶⁷ The Declaration states that governments should "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons" (Article 4). This Declaration is not a legally binding treaty, but is recognised as a source of international law.⁶⁸

Violence against women should be prohibited under criminal law and punishable with the same severity as other crimes. These crimes should not require additional evidence or testimony to reach a conviction. The criminal law should delineate the elements and penalties for violence against women, including sexual assault, domestic violence, trafficking in persons and honour killings and allow

adequate legal redress for victims. The state should be required to establish witness protection programmes and make other assistance available to women.

Because domestic violence occurs in the private sphere, it has often been dismissed by governments as a family issue and outside the reach of the state. However, there is growing recognition that a state's obligation to protect equal rights also extends to those rights within the family. Increasingly, countries are passing laws specifically aimed at tackling domestic violence. International organisations, such as the UN, have supported the adoption of legislation against domestic violence. For example, a report by the **UN Special Rapporteur** indicated the importance of domestic violence legislation to address the problem.⁶⁹ The **Inter-Parliamentary Union** has also recommended that member states adopt measures to improve the capacities of their criminal justice systems, to investigate and prosecute domestic violence cases and to impose appropriate sentences for offenders.⁷⁰

Some countries are amending outdated legislation and passing new legislation that improves the legal recourse available to domestic violence victims. Domestic violence laws have been passed in Africa, Europe, Latin America, Asia, the Middle East and North America. In **New Zealand**, a new law broadens the definition of domestic violence to include psychological abuse, threats, intimidation and harassment for protection orders, education programmes and improved legal services for women.⁷¹ In the **Czech Republic**, the criminal code was amended in 2002 to recognise domestic violence as a distinct crime, punishable by up to eight years in prison.⁷²

Some countries have enacted new criminal laws pertaining to rape and sexual assault. The laws in **Namibia** and **Croatia** define rape broadly and include spousal rape as a crime.⁷³ Chile amended its law to increase the penalties for sexual abuse.⁷⁴

Bangladesh has legislation on violence against women, trafficking of women, dowry and, most recently, passed legislation prohibiting sexual harassment.

In many cases, cultural and traditional values have been used as a justification for violence against

women. The Declaration specifically provides that “states should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination” (Article 4). In some countries, criminal law continues to discriminate against women on this basis. In some countries, the law provides exemptions or more lenient sentences for husbands who commit honour killings. In 2001, **Jordan** repealed a section of its criminal code that exempted from the death penalty men who killed their wives or female relatives. However, a major defect is that judges are still allowed to commute sentences for these crimes.⁷⁵

In Muslim countries, a major debate continues regarding “huddud” crimes and how these laws treat women. Huddud is the part of Islamic law, Sharia, that stipulates punishments for crimes, including “illegal sex” or sex outside of marriage. Women in **Pakistan, Sudan and Nigeria** have been sentenced to death by stoning under these laws.⁷⁶ In **Pakistan**, the huddud does not differentiate between rape and adultery.⁷⁷ A victim of rape carries the burden of proof. She is required to produce four male witnesses to prove rape; if she fails, she can be charged with adultery and slander. In **Pakistan**, the Women’s Action Forum was formed in the 1960s to address discriminatory laws against women.⁷⁸ Recently, the Women’s Action Forum introduced a bill to abolish the huddud ordinance and other laws that discriminate against women—but the law was not yet passed.⁷⁹

IMPLEMENTING LEGISLATION

Enacting legislation that conforms to constitutional rights and international standards is a preliminary step for consolidating democratic rule of law. The implementation of the law is just as important as the law itself. The law loses credibility with the public and becomes meaningless if it is not applied and enforced.

It is essential to establish an independent judicial system capable of applying the law correctly and consistently. Judicial reform programmes should be used to improve the functioning of judicial institutions and people’s access to legal redress. Judicial reform may include structural reforms to make the judiciary more independent, training for judges and other personnel, public relations and improved

administration of cases. In **Guatemala**, the World Bank provided a judicial reform loan to support the following reforms: improving court functions and institutional procedures, improving citizens’ access to justice, fighting corruption and restoring public confidence in the justice system.⁸⁰ Training programmes for the judicial branch should integrate a gender component, so that judges, lawyers and court personnel understand international law, constitutional law and legislation as they affect women directly.

In order to change entrenched cultural, religious and traditional laws and practices that discriminate against women, public outreach is necessary. The public could be educated about legal rights through awareness-raising programmes. Such programmes should be designed to reach out to women, especially in rural and remote areas, who are often unaware of their legal rights, and to local authorities and leaders who enforce rights and responsibilities in local communities. Successful outreach efforts have educated communities about legal rights. For example, in **Rwanda**, such efforts helped local populations understand inheritance law.

Specific legislation must conform to the provisions of the constitution. The constitutional review process determines whether laws are in conflict with constitutional provisions. When legislation violates constitutional rights, the law can be challenged and perhaps changed. In some countries, advocates have used constitutional review processes to bring “test cases” to challenge the constitutionality of a statute.⁸¹ This is an important source of redress available to women and other groups; it can be used to challenge a particular law and to push the legislature to enact new laws.

8. TAKING STRATEGIC ACTION: WHAT CAN WOMEN PEACEBUILDERS DO TO SHAPE THE CONSTITUTION?

1. Mobilise women to participate in drafting and ratifying the constitution and to organise input for the constitution.
2. Establish contacts with international women’s rights groups and legal experts for support in the constitution-making process.

Key Issues for Women to Consider

Legislative Process

- gender balance in the legislature and special committees on gender
- elimination of discrimination in the letter, and the application of all laws

Family Law

- equality of men and women in marriage
- voluntary consent of both parties to enter into a marriage agreement
- equal minimum age for marriage for men and women
- equal rights of divorce and fair divorce procedures
- protection of legal rights in customary marriages

Property and Succession Law

- equal rights to acquire, hold, transfer, exchange and sell property
- equal rights to inherit land
- equal access to all property upon the death or divorce from spouse
- equal rights to hold non-land property

Citizenship and Nationality Laws

- right to pass citizenship through both paternal and maternal lines
- equal rights to retain nationality if a spouse is a foreign national
- equal rights to naturalisation of foreign spouses of women

Laws Addressing Violence against Women

- adequate criminal penalties and procedures and legal redress for acts of violence against women
- fair procedures relating to evidence and testimony that do not discriminate against women
- adequate laws and programmes for the protection and assistance of victims

Enforcing Legal Rights

- an independent and gender-sensitive judicial system
- gender training for the judicial branch
- public education about legal rights
- mechanisms available to challenge legislation that is inconsistent with rights
- training for police and legal professionals to ensure enforcement of laws

3. Circulate sample constitutional language founded in international standards, including:
 - equality and non-discrimination clauses;
 - provisions allowing for affirmative action and providing for minority protections; and
 - qualifying language stating that women's rights under international law have primacy over inconsistent cultural, social and religious laws and practices.
4. Press for independent mechanisms, with equal representation of women, to monitor and protect constitutional rights, such as:
 - human rights commissions or ombudsman offices to evaluate human rights practices, consider individual cases and provide redress for violations;
 - constitutional review procedures to evaluate and issue decisions on the constitutionality of laws; and
 - an independent judiciary to consider cases fairly throughout the legal system.
5. Work with local media to raise awareness of the importance of the constitution and women's involvement in constitution making.
6. Educate women and their communities, especially in rural areas, about constitutional rights.
3. Utilise international and regional expertise and experiences drawn from other countries to ensure that gender is considered in legislation.
4. Create civil society/governmental/parliamentary alliances to shape policies and legislation collaboratively and to disseminate information at the grassroots level.
5. Organise seminars and workshops for members of the legislature and judiciary (men and women) to highlight critical issues of concern, how and why they affect women and what legal provisions are needed.
6. Design and initiate education efforts through media or local dance and theatre groups to ensure that women, especially in more remote or rural areas, and relevant authorities and leaders understand the legal rights of women.
7. Create a network or support group of men in civil society, parliament and government to emphasise the importance of gender equality for society.
 - Lobby religious leaders to discuss the issues in their weekly sermons and addresses.
 - Find public figures with media appeal who will speak out on behalf of women.
 - Reach out to local male leaders in rural communities to raise their awareness of issues as they impact women and build support.

9. TAKING STRATEGIC ACTION: WHAT CAN WOMEN PEACEBUILDERS DO TO STRENGTHEN LEGISLATION?

1. Monitor proposed and existing legislation and judicial decisions to make sure they conform to constitutional principles and international standards.
2. Establish a special committee in the legislature or other mechanisms to systematically analyse all legislation from a gender perspective to determine how it affects women.
8. Use available legal mechanisms to challenge and overturn laws that discriminate on the basis of gender. Advocate for judicial reform and institute gender-training programmes for judges, attorneys and other relevant people from the judicial branch.
9. Establish contacts and support among the media—newspaper, radio and television journalists—to cover legislative issues as they affect women and to raise awareness about new laws, rights and options for legal recourse.
10. Document and share information and experiences with women in other countries.

WHERE CAN YOU FIND MORE INFORMATION ON CONSTITUTION MAKING?

“The Constitution and its Relationship to the Legislature.” United Nations Development Programme, n.d. 8 September 2004 <<http://magnet.undp.org/docs/parliaments/Constitutions.htm>>.

Constitutional Democracy: An Outline of Essential Elements. Center for Civic Education, n.d. 8 September 2004 <www.civiced.org/constdem.html>.

Constitutions from Around the World. n.d. 13 September 2004 <<http://www.oefre.unibe.ch/law/icl/>>.

Feldman, Noah. “Constitutionalism in the Muslim World” 2 April 2004. Washington, DC: US Department of State, 2004. 8 September 2004 <http://malaysia.usembassy.gov/wf/wf0402_feldman.html>.

Gvosdev, Nikolas K. “Collective Rights.” n.d. 8 September 2004 <www.geocities.com/Athens/Olympus/5357/ihr6a.html>.

“Human and Constitutional Rights: Comparative Constitutional Rights.” Columbia University. n.d. 8 September 2004 <www.hrcr.org/chart/categories.html>.

Links on Constitution Making: n.d. 13 September 2004 <www.usip.org/library/topics/constitution.html>.

McDaniel, Charles. *Shariah and Constitution: Twin Pillars for Islamic Societies?* Baylor University, n.d. 8 September 2004 <www3.Baylor.edu/Church_State/edit2.htm>.

“The Rules and How to Change Them: Constitutions.” Dublin: Trinity College, n.d. 8 September 2004 <<http://www.politics.tcd.ie/courses/undergrad/bcc/pdf2.pdf>>.

“Women’s Rights in Islamic Societies.” Open Society Initiative for West Africa, n.d. 8 September 2004 <<http://www.osiwa.org/en/programs/special/women>>.

WHERE CAN YOU FIND MORE INFORMATION ON LEGISLATION?

Improving Women’s Rights Around the World. American Bar Association, n.d. 5 September 2004 <www.abanet.org/publiced/youth/sia/women/map.html>.

“Legislation: Family Laws.” Women’s Learning Partnership, n.d. 5 September 2004 <http://www.learningpartnership.org/legislation/family_law.phtml>.

“The Recognition of Customary Marriages Act”. Women’s Legal Centre, n.d.. 5 September 2004 <www.wlce.co.za/advocacy/publication2.php>.

“Registration of Customary Marriages.” South African Department of Home Affairs, n.d. 8 September 2004 <http://home-affairs.pwv.gov.za/custom_marriage.asp>.

Shari’ah Law, Adultery and Rape. International Society for Human Rights, n.d.. 5 September 2004 <www.ishr.org/activities/campaigns/stoning/adultery.htm>.

“Stop Violence Against Women.” United Nations Development Fund for Women, n.d.5 September 2004 <www.stopvaw.org>.

ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPU	Inter-Parliamentary Union
NGO	Non-Governmental Organisation
UNAMA	United Nations Assistance Mission to Afghanistan
UNDP	United Nations Development Programme
UNIFEM	United Nations Development Fund for Women

ENDNOTES

1. Hart, Vivien. "Owning the Constitution: A Path to Peace?" Senior Fellow Project Report. United States Institute for Peace. Washington DC. 30 April 2003. 5 September 2004 <http://www.usip.org/fellows/reports/2003/0430_RPThart.html>
2. Opar, Diana, Regional Gender Advisor, UNIFEM,. "The Inclusion of Principles of Gender Equality and Human Rights for a Gender-Sensitive Constitution," 49 <www.un.org/womenwatch/osagi/features/postconflict/opar-IPU.pdf>.
3. Hart, Vivien. "Democratic Constitution Making," Special Report 107. Washington, DC: US Institute of Peace. 5 September 2004 <<http://www.usip.org/pubs/specialreports/sr107.html>>.
4. *The Constitution-Making Process in Afghanistan*. September 2003. United Nations Development Programme. 5 September 2004. <<http://mirror.undp.org/afghanistan/projects/Update-Sep-03/The-Constitution-Making-Process-of-Afghanistan.html>>.
5. Matembe, Hon. M.R.K. "Women and Constitution Making in Uganda." Nairobi, Kenya: Constitution of Kenya Review Commission, 12 July 2001.
6. *Fact Sheet 11: Gender Equality Promotion*. April 2002. United Nations Transitional Administration in East Timor (UNTAET) Press Office. 5 September 2004 <<http://www.un.org/peace/etimor/fact/fs11.PDF>>.
7. *Women's Participation in the Constitution-Making Process in Afghanistan*. 15 September 2003. US Department of State, Office of International Women's Issues. 5 September 2004 <<http://usawc.state.gov/news/24277.htm>>.
8. Hart. *Democratic Constitution Making*.
9. Ibid. 7.
10. Kritz, Neil. *Congressional Testimony* 25 June 2003. 5 September 2004 <http://www.usip.org/aboutus/congress/testimony/2003/0625_kritz.html>.
11. Reding, Andrew. "By the People: Constitution Making in Nicaragua," *Christianity and Crisis* 18. (December 8, 1986). 434-441.
12. *Fact Sheet 11: Gender Equality Promotion*.
13. Kantengwa Juliana, D. Paper presented at panel discussion "Women's Participation in Electoral Processes in Post-Conflict Countries: The Case of Rwanda." New York: UN Headquarters, 3 March 2004.
14. Reding.
15. Matembe.
16. McGrew, Laura, Kate Frierson, and Sambath Chan. *Good Governance from the Ground Up, Women's Roles in Post Conflict Cambodia*. Washington, DC: Women Waging Peace Policy Commission, 2004. 4 September 2004 <<http://www.womenwagingpeace.net/content/articles/CambodiaFullCaseStudy.pdf>>
17. *The Constitution-Making Process in Afghanistan*.
18. "Rwanda." New York: UNIFEM, 2004. 4 September 2004 <<http://www.womenwarpeace.org/rwanda/rwanda.htm>>.
19. Kantengwa Juliana 5.
20. Hart, *Democratic Constitution Making* 8.
21. Hart, *Democratic Constitution Making* 10.
22. *Fact Sheet 11: Gender Equality Promotion*.
23. Buergenthal, Thomas. *International Human Rights*. Eagan, MN: West Publishing, 1995. 33.
24. *Comparative Constitutional Rights Chart*. Human and Constitutional Rights. 5 September 2004 <<http://www.hrct.org/chart>>.
26. Preston, Caroline. "Iraq Minister Calls Constitution a Triumph for Women." *UN Wire* 9 March 2004. 5 October 2004 <http://www.unwire.org/UNWire/20040309/449_13821.asp>.
26. *Constitutional Democracy: An Outline of Essential Elements*. Center for Civic Education. 5 September 2004 <www.civiced.org/constdem.html>.
27. Khan, Muqtedar, "The Islamic State and Religious Minorities." <www.islamfortoday.com/khan06.htm>.
28. Ghai, Yash. *Public Participation and Minorities*. London: Minority Rights Group International, 2003. 15.
29. Deets, Steven. "Nationalism and Constitutionalism in Eastern Europe." *Minorities and Tolerance: Central and Eastern Europe and the NIS* Ed. Sabina Crisen. Washington, DC: Woodrow Wilson International Center for Scholars, 2001. 17. 5 September 2004 <<http://wwics.si.edu/eess/special/2001/mdeets.pdf>>.
30. *Constitutional Democracy: An Outline of Essential Elements*.
31. Ghai 19.
32. Gvosdev, Nikolas K. "Collective Rights." 5 September 2004 <<http://www.geocities.com/Athens/Olympus/5357/1hr6a.html>>.
33. Opar.
34. Vereshcetin, Vladlen S. "New Constitutions and the Old Problem of the Relationship between International Law and National Law." *European Journal of International Law* 7. 1996. 13. 5 September 2004 <<http://ejil.org/journal/Vol7/No1/art2.pdf>>
35. International customary law refers to standards that are widely accepted by states and that states follow through general practice. See Forrest, Martin, Francisco and Mark V. Tushnet. *The Rights International Companion to Constitutional Law*, The Hague: Kluwer Law International, 1999. 4. 5 September 2004 <http://www.rightsinternational.org/con_comp.html>.
36. Dugard, John. "International Law and the South African Constitution." *European Journal of International Law* 8. 1997. 5 September 2004 <<http://www.ejil.org/journal/Vol8/No1/art4.pdf>>.
37. Note that customary laws are not related to the concept of international customary law, referenced previously. Wahome, Alice M. "Gender Equality under Customary Law," Paper presented at annual workshop in Namibia on the Role of Civil and Customary Law in Relation to Women's Property Rights. 5-6 March 2001.
38. Salbi, Zainab. Testimony on "The Lack of Women's Property and Inheritance Rights in Africa." Before the Congressional Human Rights Caucus. 10 April 2003.
39. Boyle-Lewicki, Edna. "Need World's Collide: The Hudad Crimes of Islamic Law and International Human Rights," *New York International Law Review* 2 (Summer 2000). 43-86, 49.
40. "Case Study: Sharia Law." *Article 7: Right to Equal Protection by the Law*. BBC World Service. 5 September 2004 <http://www.bbc.co.uk/worldservice/people/features/ihavearighttofour_b/casestudy_art07.shtml>.
41. Boyle-Lewicki 53.
42. Boyle-Lewicki 53.
43. International Alert South Asia Consultation on Toolkit, Colombo, Sri Lanka, 2-4 September 2004.
44. Ibid.
45. McDaniel, Charles. "Shariah and the Constitution: Twin Pillars for Islamic Societies?" Waco, TX: Baylor University, n.d.
46. Deets 19.
47. Organization for Security and Cooperation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR), States of Emergency, <www.osce.org/odihhr/?page=human_rights&div=sol>

48. "Protecting Human Rights in Times of Emergency." 24 June 1999. Association for the Prevention of Torture. 5 September 2004 <www.apr.ch/pub/library/pphr.htm>.
49. Ignatieff, Michael. "The Ethics of Emergency." *The Lesser Evil: Political Ethics in an Age of Terror* Princeton: Princeton University Press, 2004.
50. "Crisis Management, Emergency Laws and Human Rights." Fact Sheet for the Meeting of the PiP Consortium Security Sector Reform Working Group, Stockholm. Geneva Centre for the Democratic Control of Armed Forces. 25-26 Mar 2004.
51. For full text see <<http://www1.umn.edu/humanrts/instree/b3ccpr.htm>>.
52. For full text see <<http://www.polity.org.za/html/govdocs/constitution/saconst.html?rebookmark=1>>.
53. Provides for 24 women, two from each province, in the Chamber of Deputies, and at least 30 percent women in the Senate; Kantengwa Juliana 4.
54. International Alert South Asia Consultation on Toolkit.
55. Winship, Joan D. *Annual Report on Best Practices, Lessons Learned and Success Stories, Illustrations from Albania, Guatemala and Southern Africa*. Washington, DC: Chemonics International Inc., 2004. 5 October 2004 <http://gopher.info.usaid.gov/our_work/cross-cutting_programs/wid/pubs/wlr_bestpractices_020304.pdf>.
56. *Attorney General of the Republic of Botswana vs. Unity Dow*. 29 October 1990. 5 September 2004 <<http://www.law-lib.utoronto.ca/diana/fulltext/dow1.htm>>.
57. *Country Reports on Human Rights Practices*. Washington, DC: US Department of State, 2003. 5 October 2004 <<http://www.state.gov/g/drl/hr/c1470.htm>>.
58. "Morocco Adopts Landmark Family Law Supporting Women's Equality." 23 July 2001. Women's Learning Partnership, News Alerts. 5 September 2004. <<http://www.learningpartnership.org/events/newsalerts/morocco0204.phtml>>.
59. Pandey, Binda. "Women's Property Right Movement and Achievement of the 11th Amendment of Civil Code." 2001. 5 September 2004 <http://www.nepaldemocracy.org/gender/property_rights_movement.htm>.
60. "The New Legal Status of Women in Turkey" April 2002. Women for Women's Human Rights (WWHR) 5 September 2004. <<http://www.wwhr.org/images/newlegalstatus.pdf>>.
61. Maveneka, Leonard. "Mozambique's Family Law Passes!" 8 January 2004. Oxfam America. 5 September 2004 <<http://www.oxfamamerica.org/advocacy/art6728.html>>.
62. *Country Reports on Human Rights Practices*.
63. "Women's Property and Inheritance Rights: Improving Lives in Changing Times." March 2003. US Agency for International Development, Office of Women in Development. 5 September 2004 <http://www.usaid.gov/our_work/cross-cutting_programs/wid>.
64. Tripp, Aili Mari. "Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda." *Africa Studies Quarterly*, no. 4. <www.africa.ufl.edu/asq/v7/v7i4a1.htm>.
65. Salbi.
66. "General Recommendation 19, Agenda Item 7, Section 25." New York: Committee on the Elimination of Discrimination Against Women, 1992.
67. "Declaration on the Elimination of Violence against Women." New York: UN General Assembly, 1993. 5 October 2004 <<http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/A.RES.48.104.En?Opendocument>>.
68. Charlesworth, Hilary. "The Declaration on the Elimination of All Forms of Violence Against Women" *ASIL Insight* 3. 1994. 1-4.
69. *Report of the Special Rapporteur on Violence Against Women, Its Causes, and Consequences*. New York: UN Commission on Human Rights, 1996. 5 October 2004 <<http://heiwwww.unige.ch/humanrts/commission/thematic52/53-wom.htm>>.
70. *Policies to Put an End to Violence against Children and Women*. Pyongyang: 85th Inter-Parliamentary Conference, 1991. 5 October 2004 <<http://www.ipu.org/conf-e/85-2.htm>>.
71. Ibid.
72. Ibid.
73. *Country Reports on Human Rights Practices*.
74. Ibid.
75. "Legislative Reforms for Improving Women's Rights in Jordan and Kenya." Bethesda, MD: Women's Learning Partnership, 2001. 5 September 2004 <<http://www.learningpartnership.org/events/newsalerts/jordankenya1201.phtml>>.
76. Little, Jane. "Debate Rages over Women and Sharia." *BBC World Service* 6 June 2003. 5 September 2004 <<http://news.bbc.co.uk/2/hi/2977446.stm>>.
77. International Alert South Asia Consultation on Toolkit.
78. Ibid.
79. Abbas, Zaffar. "Women's Bill Splits Pakistan MPs." 31 March 2003. BBC World Service. 5 September 2004 <http://news.bbc.co.uk/2/hi/south_asia/3586017.stm>.
80. "Guatemala Embarks on Judicial Reform." Washington, DC: The World Bank, 2002. 5 October 2004 <<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0%2C%2CcontentMDK:20020132~menuPK:34459~pagePK:64003015~piPK:64003012~theSitePK:4607%2C00.html>>.
81. *Attorney General of the Republic of Botswana vs. Unity Dow*.