



# Gender and Rules of Procedure in Constituent Processes

A Comparative Discussion in Support of the Chilean  
Constitutional Convention

Seminar Report, 6 August 2021



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Convention. Seminar Report, 6 August 2021

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## Acronyms and abbreviations

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<b>AC</b>	Asamblea Constituyente [Constituent Assembly] of Bolivia
<b>CCC</b>	Chilean Constitutional Convention
<b>CKRC</b>	Constitution of Kenya Review Commission
<b>CMB</b>	constitution-making body
<b>CSO</b>	civil society organization
<b>LGBT</b>	lesbian, gay, bisexual, transgender
<b>NCA</b>	National Constituent Assembly of Tunisia
<b>NCC</b>	National Constitutional Conference of Kenya
<b>NGO</b>	non-governmental organization

## 1. Executive summary and key findings

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On 6 August 2021 International IDEA, in partnership with the Law Faculty of Universidad Adolfo Ibáñez, Corporación Humanas and ComunidadMujer, Chile, held a virtual seminar on gender and rules of procedure in constituent processes. Its objective was to share comparative information about designing rules of procedure (regulations) for constituent processes from a gender-equality perspective with members of the newly constituted Chilean Constitutional Convention, Chilean civil society, academics and legal practitioners.

The open-invitation online event brought together a panel of women constitution-makers from constituent processes in Bolivia, Kenya, South Africa and Tunisia. The experts discussed their respective experiences and the benefits and drawbacks of the rules of procedure that guided their constituent processes. Representatives from the implementing partners moderated expert panel sessions and question-and-answer discussions.

Key findings and recommendations from the seminar include the following:

- Making a constitution involves hundreds of decisions that must be negotiated among members of a constitution-making body. The rules of procedure need to regulate how these discussions and decisions will take place and ensure participation and fairness in members' access to decision-making opportunities. This is especially important for women, Indigenous peoples, minorities and other historically marginalized groups.
- Rules of procedure not only regulate the constituent process; they are also symbolic. They provide a signal to the people about the priorities and values of the constitution-making body.
- Rules of procedure should organize four key elements of the work of the constitution-making body: (1) providing an agreed basis for how the process will be structured and organized; (2) ensuring that the work is orderly and constructive; (3) promoting deliberation rather than confrontation among members; and (4) promoting good decisions with regards to the constitutional text.
- It is important that, while negotiating the rules, members do not lose sight of their primary objective: to negotiate and draft a new constitution for the country. Rules must be detailed enough to enable the process to take place in an organized, constructive, participatory and transparent way, but flexible enough to respond to changing needs over time without having to use time and resources to amend the rules and without leading to a situation where members ignore unworkable rules.

- The way in which rules may reflect a gender perspective depends on the country context. Common rules that can facilitate or hinder women's influence include those on member access to information and agendas ahead of commission and plenary meetings, regulation of speaking times, working hours, committee and leadership assignments, and whether voting must always be public or will include secret ballot opportunities.
- Emphasizing public participation in the rules can help ensure a participatory process and signal to the people that the constitution-making body will prioritize their views. There is a risk, however, that the time and attention needed from members to implement extensive participation activities will take away from negotiating and deciding on the constitutional text. This risk is particularly high for women, who often prioritize activities involving public participation and may thus be sidelined from other decision-making opportunities.
- It is common for constitution-making bodies to include thematic commissions or committees as the 'engines' of the work, though the number of commissions varies significantly across cases (from 6 in Tunisia to 21 in South Africa). It is helpful if the rules enable the establishment of ad hoc commissions and subcommissions, as needed, and permit the reorganization of standing commissions as the work progresses.
- In the comparative country cases, membership on multiple commissions or bodies was sometimes permitted, as in Tunisia. However, workloads often proved difficult to manage.
- Rules on transparency were consistently flagged as important to ensure regular engagement among civil society and the people, and to promote accountability among members in their decision-making on the text.
- In all comparative cases, the secretariats were crucially important to the process. Secretariat leadership was commonly approved by the constitution-making body (or at least the leadership board) and tasked with organizing its internal divisions. Common tasks performed by the secretariat include organizing and managing public participation, analysing and collating public submissions, sharing this information with the commissions and the plenary, managing the day-to-day business of the constitution-making body (as a bureaucracy), developing and disseminating daily agendas and other materials, and regularly reporting to the full assembly about its work.
- There was significant variation across comparative cases in how speaking opportunities were organized in the plenary. Of key importance were the availability of the day's agenda in advance of the meeting and the ability to coordinate with allies within the constitution-making body. This ensured that allies could speak for each other so that prioritized issues were raised to the floor. Often, this involved formal or informal caucusing—for example, among women and members representing LGBT, youth and/or civil society interests.
- There was also significant variation in voting rules, though a two-thirds threshold for approving a final draft text (organized in different ways) was common. In South Africa and Tunisia, rules emphasized consensus rather than direct voting throughout most of the process. This was helpful in the lead-up to the final text. While consensus sometimes gave way to compromise, it facilitated forward progress and clarity among members as they negotiated and ultimately voted on the final draft constitution.

- All comparative processes involved a harmonization body of some form to develop the proposals from various thematic commissions into a cohesive final text. The establishment of such a committee or commission within the rules is advisable. There was variation across cases in whether the harmonization body was politically balanced and comprised of members or of neutral, non-member technical experts. It is recommended that the harmonization body coordinates on a regular basis with thematic commissions and the plenary to ask questions and explain any suggested edits or changes. This can ensure transparency and understanding among members. The work of the harmonization body should not, however, necessarily involve full transparency with the broader public.
- Gender parity and rules on inclusion and diversity in the composition of thematic commissions, the leadership board or council, technical advisors and secretariat staff were useful in all cases, though the level of parity and inclusion varied. In some cases, parity and inclusion requirements were not specified in the rules but operated as a matter of convention. This sometimes led to lower levels of women's representation in leadership roles or to inconsistency in representation across various internal bodies. Specification of inclusion and diversity criteria within the rules is advisable.



## 2. Background and context

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Chile's transition to democracy began with the December 1989 presidential election of Patricio Aylwin, who succeeded General Augusto Pinochet. By 2010, in recognition of 'nearly two decades of democratic reform and sound economic policies' (OECD 2010), Chile became a Member State—the first in the Latin American region—of the Organisation for Economic Co-operation and Development (OECD).

By 2018, Chile's income inequality gap was more than 65 per cent wider than the OECD average, 'with one of the highest ratios between the average income of the wealthiest 10% of its population and that of the poorest 10%' (OECD 2018). On 18 October 2019, an increase in the price of metro tickets in Santiago de Chile triggered a mass social outburst (*el estallido social*) among youth. This outburst spread rapidly throughout the country to encapsulate a more fundamental set of wider discontents that denounced inequality and the role that the 1980 Constitution had played in hindering social and economic progress. The protestors requested the initiation of an inclusive, participatory and democratic process to develop a new constitution for the country.

In early November 2019, President Sebastián Piñera initiated a negotiation process with opposition parties. This resulted in the Agreement for Social Peace and a New Constitution, signed on 15 November 2019. The Agreement established a road map for constitutional reform and pledged, among other commitments, to hold a plebiscite in 2020 to address the following two questions:

1. *Do you want a new constitution?* (yes or no)
2. *What type of body should carry out the elaboration of a new constitution?* (a mixed convention including members of parliament or a body elected solely for this purpose)

The road map was concretized in Law No. 21.200 in December 2019 and through an amendment to Chapter XV of the Constitution of Chile. In the 25 October 2020 plebiscite, 78.27 per cent of voters supported the drafting of a new constitution and categorically preferred the establishment of a specially elected constitution-making body (CMB).

The original Agreement and subsequent laws on convoking the CMB, however, did not envisage specific mechanisms to guarantee the inclusion of women and Indigenous people. In response, the legislature adopted commitments in March and December 2020, respectively, to mandate gender parity and reserve 17 seats for the Indigenous people.

The election of members of the Chilean Constitutional Convention (CCC) took place on 15–16 May 2021. The CCC was elected by popular vote and comprises 155 members. Of these, 138 were elected by district through Chile's proportional representation electoral

system. Seats were divided among 28 districts with 3 to 8 seats each depending on population. The remaining 17 were reserved seats elected by Indigenous people. Both political parties and independent candidates with a common programme compiled the electoral lists. The candidates were presented to voters through eight lists of political parties or party coalitions and over 70 lists of independents. Women comprised 51 per cent of all candidates and headed all lists under the gender-parity rule, with women and men alternating in equal numbers. Turnout was 43 per cent of eligible voters (Fuentes 2021).

The election resulted in a plurality of independent representatives to the CCC (around 42 per cent), with the centre-right governing coalition gaining around 24 per cent of seats; the centre-left, around 16 per cent; and the left, around 18 per cent (Fuentes 2021). Women had such strong electoral support that the parity rule favoured 11 male candidates and only 5 females, resulting in a body comprising 77 women and 78 men.

The inauguration of the CCC in July 2021 marked a tremendous achievement in the whole of Chile's republican history and for the world. Chile's new Constitution will be the first ever to be drafted by an equal number of women and men, likely setting a precedent for other countries to follow. Moreover, the inclusion of 21 Indigenous people (17 through reserved seats and 4 through regular constituencies) marks a turning point in Chile's political and social history. The CCC plenary's subsequent election of an Indigenous (Mapuche) woman to chair the body further reflects commitments within the CCC itself and society more broadly to ensuring a more inclusive, participatory and socially just Chile for the future.

At the time this webinar took place, and like any constitution-making body, the foremost priority of the CCC was to develop, negotiate and adopt operating regulations, or rules of procedure. These rules determine how the Convention is organized and the procedures for its operations. They address the road map for the process, including civic education and public outreach; the role of the president and vice president; the role of the secretariat; the internal structure of the body and the way in which political parties and independent candidates, as well as identity groups, are represented on the different commissions; decision-making procedures within the commissions and the plenary; the rules on debate in the plenary; a code of conduct for representatives; quorum requirements; needs for notice; and any deadlock-breaking mechanisms for the upcoming negotiations.

Rules of procedure, whether intentional or not, often reflect gendered practices. There are a range of critical decisions that often differentially impact whether and how women and men members of a CMB are able to meaningfully engage in decision-making and influence the CMB's work. The fact that the drafting of the rules of procedure should ensure effective participation of the many diverse members of the CCC, and the fact that the resulting rules should adopt a gender perspective, motivated the organization of this webinar and the sharing of comparative experiences regarding both gendered process and content of rules of procedure worldwide.

### 3. Seminar objectives

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To support women's effective participation and influence within the CCC, and to connect women members with allies and resources outside the CCC, a group of civil society organizations (CSOs) are promoting a series of activities focused on women constituents. The idea is to ensure that both their work in the drafting of this new constitution and its content transversally incorporate a gender approach, taking into account international experience.

This first seminar on gender and the rules of procedure is part of this support programme. It was organized by the International Institute for Democracy and Electoral Assistance (International IDEA), the Law Faculty of Universidad Adolfo Ibáñez and the organizations ComunidadMujer and Corporación Humanas, Chile, which work together to promote gender equality.

The objective of this virtual seminar was to identify and discuss key issues in designing rules of procedure for a constituent process from a gender-equality perspective. The specific aims were to:

- improve conceptual understanding of the role of rules of procedure in constituent processes, key considerations and challenges, and gendered impacts;
- introduce good practices and lessons learned with rules of procedure from other constituent processes from around the world; and
- provide an opportunity for members of the newly constituted CCC, civil society, academia and legal practitioners from Chile to ask questions of women experts from constituent processes in Bolivia, Kenya, South Africa and Tunisia.

## 4. Panellists, moderators and participants

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A total of 33 participants took part in the virtual seminar. Participants included members of the CCC, leaders from civil society and academia, university students and youth, and legal practitioners.

María Jaraquemada, Programme Officer for Chile and Southern Cone Countries at International IDEA, welcomed the participants and made introductory remarks.

The moderators of the three substantive discussion sessions were:

- Session 1: Erin C. Houlihan, Programme Officer, Constitution-Building Programme, International IDEA;
- Session 2: Julieta Suárez Cao, Associate Professor at the Institute of Political Science of the Pontificia Universidad Católica de Chile; and
- Session 3: Verónica Undurraga, Professor of Constitutional Law at Universidad Adolfo Ibáñez, former Director of the Women and Human Rights Programme at the Human Rights Center of the University of Chile

Expert panellists from comparative countries included:

- Atsango Chesoni, attorney, human rights advocate, former Deputy Chair of the Committee of Experts that finalized the current Constitution of Kenya, former delegate to the National Constitutional Conference of 2005, and former Executive Director of the Kenya Human Rights Commission;
- Lobna Jeribi, President and Founder of Solidar Tunisia; former member of the Tunisia Constituent Assembly and Vice President of the Committee on the Preamble, Fundamental Principles and Amendments;
- Christina Murray, Professor Emeritus, University of Cape Town, South Africa; member of the Panel of Experts elected to advise the South African Constitutional Assembly (1994–1997); member of the Committee of Experts that finalized the current Constitution of Kenya (2008–2009); member of the Fiji Constitution Commission (2012);
- María del Rosario Ricaldi Sandi, lawyer and Executive Director of the Training and Research Centre for Peasant Women of Tarija (CCIMCAT), former member of the Bolivian Constituent Assembly.

## 5. Sessions

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### Session 1: Framing the issue—gender perspectives and considerations in designing rules of procedure for a constitution-making body

The first session provided an overview of the issues at stake when designing rules of procedure for a CMB both in general and from a gender perspective.

Making a constitution requires that hundreds of individual decisions be negotiated and agreed. The rules of procedure frame how these discussions and decisions take place. Accordingly, the key question when developing rules of procedure is *how to enable good decision-making in a constitution-making body*. How can the rules ensure participation and fairness in members' access to decision-making spaces and opportunities, especially since women often struggle more than men to be heard in such bodies?

With this in mind, rules of procedure seek to frame four key aspects of a CMB's work:

- providing an agreed basis to structure the process and organize the CMB's work;
- ensuring that the work not only proceeds but is both orderly and constructive;
- promoting deliberation and negotiation rather than confrontation among members; and
- promoting good decisions at each step and with regards to the constitutional text.

Beyond their functional value, rules of procedure are also deeply symbolic and convey messages to the public about the CMB's priorities and its commitments. Notably, initial draft versions of the rules of procedure produced by the CCC emphasized the importance of public participation as part of the process. This emphasis not only helps to operationalize the CCC's plans for public consultation but also signals to the Chilean people that they will have a meaningful voice.

Critically, rules of procedure also have informational value. They provide a road map for the people about how the internal processes of the CMB will work and the ways in which the people can observe and engage in the process.

A key role of the rules is to sort out the different institutional aspects of the CMB. It is common to see commissions (or committees), rather than the plenary, doing the main work; they are the 'engine rooms' of the constituent process. This is because it is often easier in these smaller forums to have subtle, nuanced conversations and a meaningful exchange of

ideas. Accordingly, rules often arrange for some kind of committee or commission structure, and enable new committees or subcommittees to be set up as needs change.

Rules also set up an agreed mechanism for planning, agenda-setting and problem-solving—crucial mechanisms for leading and managing the CMB. It is important that these mechanisms, bodies and processes be transparent and accessible to all members of the CMB. In South Africa, for example, the CMB consisted of 450 people, and any member could attend meetings of the leadership committee, which was composed of around 10–15 people. This is to protect against backdoor dealing and to foster equal access to information.

Rules also set out how time is going to be managed. Time is often an important issue in any process and particularly so under the Chilean road map, given its 9–12-month window for completion.

Rules may also provide a framework for engaging with the broader public and the media in terms of their rights to observe CMB activities, speak and ask questions, and share expertise and support.

With regards to integrating a gender perspective throughout the rules, country context matters. Given the extraordinary achievement of gender parity in Chile's CCC, challenges common to women in similar constituent processes will likely be less of a factor here. However, there are both practical and principled issues to consider. Many of these practical matters with significant gender implications—such as access to information and agendas, regulation of speaking times, working hours, committee and leadership assignments, and the like—will be discussed in more detail in the coming sessions. It is important, however, to flag one area where (sometimes profound) gender issues are discussed less often: the gendered implications of how rules of procedure deal with public participation.

While public engagement is crucial, the time and attention needed from members to implement participatory activities and to review public feedback must be balanced against the CCC's many other competing priorities. Public participation is not a mechanism to gather direct instructions for constitutional drafting, and indeed the complexity and diversity of views mean that much public feedback will likely be contradictory. In drafting the constitutional text, the CCC must balance public opinion against other research, comparative information, and deliberation and negotiations within thematic commissions and the plenary.

Given this need to balance many tasks and data, there is a risk that an overemphasis on public participation can sideline women from engaging with the CCC's other priorities in decision-making roles. Comparative experience shows that groups that have often been marginalized from political decision-making in the past—such as women; LGBT people; Indigenous people; ethnic or religious minorities; youth; etc.—understandably devote considerable energy to matters of inclusion and participation in constituent processes. This may come at the expense of women members, their allies and others in the CCC being sidelined from leadership roles and substantive decision-making.

One thing rules of procedure can do to mitigate this risk is to ensure that there is a strong framework for public participation, but a framework that ensures that the organizing work is primarily led by the secretariat and that draws civil society and the media into the process. This is preferable to relying on CCC members to lead the planning, logistics, administrative and subsequent organizing and reporting functions, as this would leave them unable to participate in other negotiations and decisions within the CCC.

There are three main benefits of rules of procedure requiring that public participation be primarily the administrative and organizational responsibility of the secretariat in coordination with civil society. First, it provides clarity so that the broader public can understand the CCC's plans and approach to public participation as well as how the planning process will take place. Second, it enables members of the CCC, including women, to focus on how they should use the public consultation feedback and what decisions they

should make with regard to the constitutional text. Third, it helps ensure an opportunity for civil society to become more involved in the constitution-making process, and it provides the CCC with access to civil society expertise and networks.

Finally, a few general points to keep in mind when designing rules of procedure for a constituent process:

- Writing a constitution takes a lot of time, and many Chileans have noted that the timeline for the process in their country is not very long. There is a lot to do in a short period, so the rules need to be framed, and work needs to get under way as soon as possible.
- As the process develops over time, the needs of CCC members and the focus of their work will inevitably change. The rules need to be flexible enough to be able to adjust without delays to new needs and new demands. In South Africa, for example, the initial construction of the CMB established eight or nine thematic committees, but over time it became more efficient to consolidate these bodies in order to pull the issues together. The CMB did not need to amend the rules of procedure to do this because the rules enabled the establishment of ad hoc committees and subcommittees. Along with this flexibility, the rules also, importantly, specified criteria on inclusion and diversity in composition.
- Writing a new constitution is a big job, and the rules should focus on the main task—writing the constitution. Members should not be too distracted by other matters that support this process (such as public participation, ethics and behaviour management) because these are not the core focus of the work. These issues should not be neglected or overlooked, but they should not dominate the rule-making process.
- Similarly, members should ensure that the process to develop the rules does not itself distract from the main job, and work to mitigate opportunities in which debates on the rules will delay getting on with the work.

## Session 2: Comparative experiences—successes, challenges and key considerations

The second session featured four women former members of CMBs from other countries—Bolivia, Kenya, South Africa and Tunisia. The experts spoke as a panel to provide insights and share their comparative experiences working under different types of rules of procedure within their respective constituent processes. See Annex C for a list of key issues/question.

### Comments by Atsango Chesoni on the 2001–2005 Kenya process

Kenya's constituent process spanned at least 20 years. It arose from a popular movement for constitutional reform initiated by human rights organizations, faith-based organizations and the political opposition. Through this movement, women's rights organizations were able to influence the main regulatory framework that guided the constitutional review process—the Constitution of Kenya Review Act of 2001 (subsequently amended).

The process involved the National Constitutional Conference (NCC) as well as the Constitution of Kenya Review Commission (CKRC). The NCC was similar in some ways in composition and function to the CCC. The NCC, like the CCC, comprised independents and politicians with broad inclusion and representation, was organized into a plenary and thematic committees for deliberation and decision-making, emphasized public participation and principles of equality and human rights norms, and was charged with adopting a new



draft constitution ahead of a ratification referendum. While there are also key differences in the mandates and functions of the two bodies, the parallels are worth noting for the purposes of gender and rules of procedure.

Regarding NCC background and operations, it is notable that the members themselves did not draft the rules of procedure; instead, the CKRC determined them in advance. Second, the NCC did not draft the constitutional text itself but debated, deliberated and amended the draft developed by the CKRC. The underlying legal framework required that the CKRC drafting process be participatory and inclusive, and that the new constitutional text respect the principle of gender equality, among other issues. Third, the NCC was large, with over 620 members. The (appointed) CKRC members were included as *ex officio* non-voting delegates, except the head, who served as the voting chairperson of the NCC. The remaining delegates comprised three groups:

- all members of the National Assembly;
- district representatives (3 from each of 74 districts)—one of the three had to be a woman, and only one could be an elected member of a local government;
- mixed representatives from different specified interest groups, including religious organizations, trade unions, CSOs, non-governmental organizations (NGOs), women's organizations (with 23 representatives as a category themselves), persons with disabilities and others.

Organizations with representation on the NCC included many allies of the women's rights movement, and many sent women to the NCC. Combined, this helped ensure around one-third women's participation.

Some of the rules that particularly supported gender-sensitive NCC operations included the following:

- gender parity in leadership roles and committee composition;
- rotation of plenary chair positions among the three delegate groups;
- where members sat within the plenary body;
- allocation of speaking opportunities in plenary sessions;
- rules on caucusing;
- transparency and information-sharing rules; and
- rules on observers from the public and access to informal external expertise.

Regarding parity, the rules of procedure mandated women's access to leadership roles within the NCC. While the body's chairperson was predetermined to be the head of the CKRC (a man), the vice chairs were elected from among the delegates, with the requirement that at least one be a woman. Additionally, at least one-third women's membership was mandated for other key NCC bodies, such as the standing Steering Committee. The Steering Committee approved the NCC work plan, monitored progress, made recommendations to amend the rules of procedure and provided other oversight and management functions (article 44 of the NCC regulations of 2003).

A rule mandating rotational chairing of plenary sessions also supported women's participation and influence. The two vice chairs—one man and one woman elected on the first day the NCC convened—were part of the Steering Committee and also chaired plenary debates. While these chairs were permanent, the Steering Committee resolved that individual



plenary sessions would be co-chaired by an NCC vice chair and a regular delegate nominated for that purpose. This enabled delegates representing different constituencies (such as representatives of the women's movement, persons with disabilities and others) to chair the plenary sessions on a rotational basis, including Ms Chesoni.

The same inclusive approach extended to committees and working groups. The NCC included 13 technical working groups organized thematically around the different chapters of the draft constitution under review. These bodies were allowed to have a maximum of 60 delegate members and were chaired by two co-convenors (one man and one woman); there were also two rapporteurs who were members of the CKRC. This composition ensured that women's voices were represented not only in the plenary but also on the technical committees.

Regarding seating arrangements and speaking opportunities, the rules leveraged the physical meeting space. The round amphitheatre used for plenary sessions was organized into nine sections. Seating in each section included a mixed group of delegates from each of the represented constituencies (parliamentarians, districts and the different mixed-group representatives). When a plenary session took place, the plenary chairs were required to provide an opportunity to delegates from each of the nine sections to speak, including to each of the three categories of delegates within the sections. For example, in Section A, the plenary chairs had to provide a speaking opportunity to each parliamentarian representative, each district representative and each representative of the mixed groups (the latter as a single, collective group).

Because of this rotational arrangement, women were able to leverage the diversity within the sections and among the different delegate groups to ensure that identified priorities made it to the floor during debates. This was done through caucusing with the different constituent groups. Because all of the constituencies had women and/or allies among them, women would caucus, for example, with NGO representatives, with representatives of persons with disabilities, with district representatives and with others to ensure that prioritized views were raised whenever the caucusing partner was given the floor to speak. This relationship was reciprocal and enabled various caucusing allies to speak for each other.

Rules on transparency and information-sharing were also pivotal for planning and coordination ahead of debates. The day before any plenary session, an order paper would be published and made accessible to all delegates. This ensured that members were aware of what would be discussed the next day in plenary and that they would have time to prepare talking points and to coordinate with their caucusing partners.

Another useful transparency rule related to observers. The NCC was open to the public in general and to accredited observers from diverse organizations and groups. While observers were not allowed to speak on the floor, they could observe and sometimes act as informal, de facto advisors on technical issues during preparation phases. Women's NGOs, for example, provided training for women delegates on the sidelines of the conference to support their understanding of the issues and various implications of constitutional design choices from a gender perspective. This helped ensure a gender-sensitive constitutional draft.

The NCC also adopted an informal practice that, while not codified in the rules of procedure, was particularly helpful. The body set up a women's tent, which acted as a safe and private space for women to meet, discuss their issues and informally caucus.

Finally, a word of advice: never underestimate the power of simply showing up. There will always be delegates that do not feel the need to attend every committee or plenary meeting. See this as an opportunity to get priority motions carried and to influence the tenor of debates.

### Comments from Lobna Jeribi on the 2011–2014 Tunisia process

Tunisia's constitution-making process followed a popular revolution triggered by decades of authoritarian rule. This context influenced the process of transformation and the operations of the National Constituent Assembly (NCA). The 217-member NCA was directly elected in 2011 under a new election law that required gender parity in political party candidate lists and the alternation of men and women candidates (vertical parity). While the law change was strongly influenced by women's mobilization and advocacy, it did not mandate horizontal parity on the lists or guarantee equal representation of elected women. Most political parties did not nominate women as the heads of candidate lists; as a result, women won around 25 per cent of NCA seats but comprised 50 per cent of candidates. Of the 49 women elected, 42 belonged to a single party.

Notably, the NCA served as both the CMB and the regular legislature until 2014. Its rules and operations accordingly reflected this two-pronged responsibility.

Under the rules of procedure, the NCA was organized into seven committees for constitution-building. This included six permanent committees corresponding to the six (planned) chapters of the constitution—(1) Preamble, Fundamental Principles and Constitutional Amendment; (2) Human Rights and Freedoms; (3) Legislative and Executive Branches; (4) Legal, Administrative, Financial and Constitutional Jurisdiction; (5) Constitutional Authorities; and (6) Municipal and Public Authorities—and one Constitutional Drafting and Coordination Committee. The latter body was tasked with coordinating the work of the thematic committees and preparing a general report for the NCA plenary. The rules of procedure did not specify in detail the methods or pace of work for the different thematic committees, and in some cases it lacked details on committee prerogatives. Each committee was composed of 22 members proportionately allocated according to political representation in the NCA.

While gender parity was considered with regard to the composition of the executive board of each committee and in NCA leadership, the rules of procedure did not expressly mandate parity requirements. Women accessed important leadership roles, but this did not reflect parity with men. The first vice president of the NCA, the head of one of the six thematic committees, three deputies and six rapporteurs were women. Importantly, a woman headed the Committee on Human Rights and Freedoms, which was tasked with drafting a number of provisions that are crucial for women's substantive equality.

NCA members could serve on multiple committees provided they were not within the same thematic category. This opened up further opportunities for women's leadership. For example, Dr Jeribi served both as the Vice President of the Committee on Preamble and Fundamental Principles and as the main rapporteur of the Finance Committee. However, the combined responsibility of these dual roles often proved challenging to manage.

Given the context of the reform process, the rules of procedure prioritized transparency as a key principle (see articles 54 and 76 of the NCA rules). Committee meetings were open to the public, while closed-door meetings were allowed only upon the request of a majority of committee members. Plenary meetings were similarly open for observation.

To support access to information, the rules of procedure required that the dates of meetings and the agendas of all committee and plenary events be published on the NCA website, along with plenary debates, decisions, voting and polling results. Debates were also broadcast on radio and television. The rules of procedure further provided reserved seats in the plenary space for public observers and the media, to be determined by procedures specified by the NCA Bureau, the NCA's leadership body.

Rules on transparency were buttressed by provisions mandating NCA engagement with citizens in the country's regions for at least one week per month. This ensured that both civil society and average Tunisians throughout the country would have access to NCA members

to discuss their views and priorities. The rules of procedure did not specify the mechanisms for public participation beyond mandating member outreach, nor did they detail how the NCA would support the process with logistical, financial and administrative support. In many cases, civil society played a role in fostering citizen engagement and linking the public to NCA members.

The NCA's ability to connect with civil society was itself a significant achievement given Tunisia's recent authoritarian history and lack of transparency in government processes. It was also significant because of differing views within Tunisia's Arab and Muslim society on the role of civil society and the relationship between society, the state and religion.

While in practice the rules on public committee meetings were open to interpretation as to implementation procedures (e.g. while the media was generally allowed, some committees restricted civil society access), overall civil society was highly engaged. Some NCA members proactively encouraged CSO engagement, particularly as a means of ensuring that the voices of women, human rights advocates and others would be heard. Through the NCA rules on transparency and participation, women in particular were able to mobilize connections between NCA members and external women's rights advocates to influence public opinion about developments with the draft and thus the content of the constitutional text.

Caucusing within the NCA was also important, but, unlike in the Kenya process, this sometimes proved challenging. Women members were deeply divided along ideological lines and by loyalties to political party agendas. These cleavages barred consensus on important issues. The challenge was to identify, among the dominant conservative groups, people who were sensitive to human rights approaches, women's rights and related priority issues.

Caucusing, along with rules on civil society and media access and public participation, helped entrench provisions on women's substantive equality (article 46), the state obligation to combat violence against women and other accomplishments in the final text. Without the capacity to caucus and mobilize, the conservative parties that dominated the NCA would have framed women's equality as complementary to that of men.

Another benefit of the rules of procedure was their flexibility in responding to crises by establishing new internal structures as needed. In 2013, for example, after a 'Quartet' of CSOs led a national dialogue to resolve a political impasse that threatened to unravel the work of the NCA and the democratic transition, the NCA created an ad hoc consensus committee. The consensus committee ensured equal representation of all parties in the NCA regardless of the proportion of seats held, with each party sending two representatives. This facilitated a dialogue among parties on equal standing and enabled meaningful deliberations that resulted in important compromises and progressive decisions on the final text.

Though planned for one year, Tunisia's constitutional drafting process eventually took three years to complete. While there were many aspects of the rules of procedure that facilitated women's mobilization, public participation, transparency and consensus-building, a few additions would have been helpful. Primarily, the use of vertical parity in elections to the NCA, while a significant and progressive development, proved difficult to move beyond; efforts to entrench a requirement for horizontal parity within the constitution, which would have ensured that women and men headed party lists on equal terms, was not successful. Had the rules of procedure mandated 50-50 gender parity for NCA leadership across the board, it would potentially have been easier to negotiate agreements to instill horizontal parity in the final constitution. Such a rule might also have supported a more progressive framework for constitutional interpretation, particularly of article 46 and related state obligations, which to date have proven difficult to implement.

#### Comments from María del Rosario Ricaldi Sandi on the 2006–2009 Bolivia process

Women's representation and influence in the Bolivian constitution-making process was framed by both the law establishing the Asamblea Constituyente (Constituent Assembly, or

AC) and the body's rules of procedure. The development of the establishing law was itself controversial; despite calls from the political opposition and many social groups for broad inclusion—including for gender parity and direct representation of Indigenous peoples—the design of the AC favoured established political parties. This created a barrier for political outsiders, independents and social movements.

The law required that women's participation be regulated through political party candidate lists: candidate presentation had to alternate between men and women, but, like in Tunisia, there was no requirement for horizontal parity or a minimum quota for women's ultimate membership in the AC. As a result, men headed most party lists, with women coming second. In order for women to be elected, the competing party had to gain enough votes to send at least two candidates to the AC. The result was around 35 per cent women's representation, or 88 of 255 seats. Many AC members, though elected through party lists, had little or no previous political experience or specific skills with regard to substantive constitutional topics. This made training an important issue throughout the process.

Like with the CCC, Bolivian law required the support of two-thirds of AC members to adopt the new draft constitution, which would be ratified by a referendum called by the president of Bolivia. However, it required the support of only 'present' members and not all members, which meant that it operated as a supermajority rule only if no members were absent; it did not specify the mechanism for voting on the draft. The law also granted the AC the power to transform Bolivia's fundamental law. This latter issue was interpreted by some as providing the AC with original, sovereign power; others saw the AC as holding derived power. These gaps in understanding held implications for the development of the rules of procedure.

Decisions about interpreting the nature of the AC under its establishing law, the type of voting mechanism that should be used to approve the draft constitution when it was completed, and other basic procedural issues and internal structures were the subject of eight months of debate to formulate the AC's rules of procedure. This process reflected political polarization within the body and the country. After months of negotiation and the use of temporary rules, the final rules of procedure were approved.

The rules of procedure included a relatively complicated process to resolve controversial matters through a qualified-majority vote of members backstopped by direct application to the people via referendum. The rules specified that the new draft constitution would be approved on an article-by-article basis and in its entirety; some articles would be approved by a simple majority, while controversial articles would require two-thirds approval from minority and majority reports. If controversial articles did not gain two-thirds support, they would be passed to a special committee of balanced composition to seek consensus. The special committee would send its report and any proposed revisions back to the plenary to again seek two-thirds approval. If the article still did not achieve two-thirds support, it would be put to the people in a referendum (article 70 of the General Regulations of the Constituent Assembly of Bolivia). Notably, however, there was no indication within the rules of procedure regarding which articles (none of which had yet been drafted) would potentially be classified as 'controversial' and subject to the two-thirds approval threshold and potential intermediate referendum rule, and which could be approved by a simple majority.

Leadership was provided by an 11-person Board of Directors, the composition of which had to be pluralist and had to respect the principle of majority and minorities; it ultimately included two women. The rules of procedure also created 21 thematic commissions organized into 5 groups on nation-building, social development, economic and sustainable development, and international affairs and security. There was an obligation to guarantee gender parity on the commissions, but membership was mainly determined through political party affiliation. Women led only 4 of the 21 bodies.

Regarding public participation, the rules of procedure mandated the Board of Directors to stimulate and facilitate public engagement and created two components in the secretariat to manage relationships between the AC and civil society. Commissions and subcommissions were also mandated to request and receive information from government authorities, civil society and the people on issues within the commission's mandate, to organize public hearings and to produce publications on issues within their competence. Reports from these hearings prepared by the commissions then had to be shared with the plenary.

The rules of procedure organized the work of the AC into three phases, the first of which involved the formation of the internal structures and the receiving of proposals. In this phase, the Board of Directors oversaw processing of all public proposals and suggestions and forwarded them to the commissions and subcommissions. The commissions and subcommissions would then analyse the information to begin the process of debating, deliberating and drafting the initial articles. The national consultations in the first phase resulted in the submission to the AC of at least 3,000 documents with a wide range of suggestions.

The work of the commissions and subcommissions was fundamental to the AC process and the development of substantive constitutional articles. This included key provisions and mechanisms related to women's substantive equality and prioritized good-governance issues. The subcommissions were key to influencing the debate and to including provisions related to gender issues in the draft text. Each member of the AC could register in only one commission or subcommission with a right to speak and vote. Members could also register in other commissions and subcommissions with the limited right to speak but not to vote. This enabled women to participate in a larger number of groups that were important for gender issues and to influence the debate. Additionally, given the importance of these matters and the fact that the composition of commissions and subcommissions was rooted in political affiliation, a coalition of women and their allies worked to influence commission agendas, but this was largely informal. A formal women's caucus struggled to gain traction, in part due to the role of parties within the body.

A few important lessons can be shared from the Bolivia process. First, it is important that the rules of procedure set clear criteria for commission composition and commission staff. Rules should ensure parity between men and women and broad inclusion of diverse identity groups. In Bolivia, the 30 per cent inclusion of women and the representation of Indigenous peoples was important for establishing and maintaining norms within the broader AC, but this was somewhat diluted at the commission level.

Second, it is important that the rules of procedure provide norms to strategically protect the internal debates of the constitution-making body in order to facilitate meaningful negotiations and deliberation. Members will need to build pluralist agreements among themselves in order to write a new constitution, but there is a risk that observers and the media can use information about this process in a counterproductive way to spark controversy, boycotts and even violence. Thus, the rules should balance the importance of transparency with opportunities for members to discuss and build consensus among themselves—potentially by managing public communications through a spokesperson. Ultimately, this is an issue of accountability. Members must work not only to block debate on issues they oppose but also to negotiate solutions and build consensus. The rules of procedure are crucial for framing this work and establishing this balance.

Third, it is important that the rules of procedure mandate gender and multicultural criteria and approaches for the profiles of technical assistance providers for the commissions. There needs to be a strategic relationship between the substantive work of the commissions and the diversity composition and skill sets of these providers. Without this, it could constitute a barrier to making women's voices heard.



Finally, it would have been helpful in Bolivia if the rules of procedure had included some specific mechanism of accountability to ensure that the members upheld their mandates—for example, to ensure accountability for those who went only to boycott the process of constitutional change and not to propose any articles or contribute meaningfully to the deliberations.

### Session 3: Open Q&A discussion

The open Q&A session provided an opportunity for participants and moderators to ask questions of the expert speakers and to share their own insights and suggestions.

**Question 1:** Elaborate on representation of the LGBT community in Kenya’s NCC.

(**Atsango Chesoni**). LGBT representation was partially considered within the NCC, but the LGBT community was underrepresented overall. This gap was addressed through links between LGBT activists outside the NCC and NCC members, who formed alliances and exchanged advice and expertise on specific constitutional design issues to defend developments from conservative retraction. Key issues related to provisions on equal marriage, reproductive rights and a range of other human rights. Alliances were not always successful in preserving prioritized provisions within the final constitutional draft.

**Question 2:** How did the rules of procedure address the selection or appointment of the technical advisors who supported CMB members? What, if any, criteria were specified for skills and experience, gender composition and other requirements?

**Question 3:** There is a proposal for the CCC to establish a harmonization committee to bring the various drafts developed in thematic commissions together. This would be an important body, as it would necessarily have the power to interpret and potentially change the meaning of provisions as agreed within the various commissions. How did your CMBs address the harmonization process?

(**Atsango Chesoni**). The Kenya process progressed somewhat differently from how the CCC will operate. As noted earlier, the appointed Constitution of Kenya Review Commission prepared the constitutional draft before the establishment of the NCC. The CKRC went around the country collecting public views and developed a participatory draft over a period of about two years. This draft was then deliberated and debated within the NCC. The NCC had the power to make proposals for the inclusion of new provisions in the draft and to amend existing provisions.

For a new provision to be included, it needed two-thirds support among NCC members. If less than one-third of members objected, the new provision could still also carry with less than two-thirds support due to a foundational rule on consensus. An example of this was the provision on the right to marry, which was drafted to be unqualified and held by all adults. During the NCC review, someone objected and carried a motion to instead qualify this right as limited to members of the opposite sex. LGBT rights advocates and their allies were unfortunately not able to overcome the motion objecting to the original provision. A similar debate arose around reproductive rights under the provision on the right to life. Some of the ultimate outcomes resulted purely from how the numbers played out in the decision-rules established to approve the final draft.

(**Christina Murray**). Like other CMBs, the South African Constitutional Assembly had thematic committees mandated to draft relevant constitutional provisions within their competence. At some point in the process, the Assembly managers recognized that the various provisions needed to be pulled together into a final harmonized draft for consideration by the plenary. Rather than giving the task to a group of Assembly members, it was assigned to a technical team of non-members, called the Technical Refinement Team. This helped segregate the technical work of harmonization from the political and negotiating work of the members, who still had to agree on the harmonized final constitutional text.

The Technical Refinement Team was a small group of six people agreed to by the Assembly. They gathered the various drafts from the thematic commissions and put them together into a single, cohesive draft. This was a complex process that required regular and ongoing discussions with the thematic commissions to ask questions, explain suggested edits and revisions, and seek agreement. The thematic commissions remained the final decision-makers concerning any edits or revisions to the provisions they had prepared. The members of the thematic commissions did not always agree the changes proposed by the Technical Refinement Team, so further solutions had to be sought. Importantly, all documents produced by the Technical Refinement Team were available to all members of the Assembly, not just the relevant thematic commission. This helped ensure transparency, accountability and understanding in the harmonization process.

(**María del Rosario Ricaldi Sandi**). In Bolivia, the thematic commissions submitted their final reports to the AC Board in July 2007, just ahead of the end of the AC's mandate period. These reports and the various provisions had not yet been subject to a process of systematic harmonization. A government secretariat took steps to identify agreements and disagreements. The resulting combined original draft contained over 700 articles and needed to be reduced to round 400 articles. This required significant internal negotiations among the members, though others were also involved, as there was significant political disagreement across parties within the AC and in society more broadly.

After an extension of the AC's mandate and a complex period of broad political debates, the plenary reconvened. The body amended the rules of procedure in order to facilitate the creation of the Commission for Report Integration and Compatibilization, which was entrusted with preparing a draft text of the constitution based on the majority reports. The thematic commission reports were read aloud to plenary members, and the broad outlines of the constitutional text was approved, though without detailed debate. Shortly thereafter, the plenary met to approve a final document. This text had been pulled together by a special drafting commission led primarily by Presidential Representation to the AC and comprised representatives from each (electoral) department and external advisors.

Following approval by the plenary of all articles save one, the text was sent to the Style and Concordance Commission pursuant to the rules of procedure. The Style Commission made editing changes to the original text, after which the draft was submitted to the government for referral to a popular referendum.

(**Lobna Jeribi**). In the Tunisian process, the consensus committee led the job of harmonizing the final draft. They were in charge of balancing and correcting the text in a manner that was responsive to growing social mobilization demanding more progressive reforms. Initially, for example, harmonizing the debate on substantive gender equality was not on the agenda of the consensus committee. The provisions

on women's complementarity with men had survived to this point. Women caucus members prepared a petition that was signed by around 80 NCA members, including conservatives, mobilized through the caucus and external pressure from civil society. This succeeded in getting the issue on the consensus committee's agenda and introducing the change that would become article 46 in the final text. The change was ultimately approved by the plenary, but the consensus committee provided a politically balanced and smaller venue for the issue to be retabled and discussed. Notably, the consensus committee was the only body in the NCA that was not available to the media and the public for observation because of the sensitivity of its work. This was mitigated by regular dialogue between the consensus committee and the plenary in referring issues between them, and particularly contentious ideological issues. Individual members of the NCA remained available to the media and the public to discuss the overall consensus process, but the committee itself was closed to the public. Overall, the use of the consensus committee was helpful to resolve debates.

**Question 4:** Articles approved by the thematic commissions are often sensitive with regard to gender considerations. But when these articles are reviewed at the plenary level, they may be modified in a regressive way—either because there are fewer women in the plenary than on the drafting commission or because there are more factions that disagree with a gender perspective. Based on the Bolivia experience, what rules would be advisable to prevent the neutralization of gender-equality norms within the plenary debates?

(**María del Rosario Ricaldi Sandi**). Women developed and implemented an internal advocacy strategy, so they were working on how to reach out and generate alliances with the members of the directives/commissions so as not to hinder their proposals. It was internal advocacy, not based on the regulations, since the rules of procedure did not guarantee this approach or establish fundamental principles on gender equality for inclusion in the draft text. Through these informal advocacy efforts, women were able to guarantee that gender-related rights or provisions would be included in the various commission reports. In practice, the plenary was not afforded the opportunity to make substantive changes to commission proposals on draft constitutional provisions. Most of the gender-equality provisions that were consolidated in the committee reports were not modified by the negotiating committee and made it into the final document.

**Question 5:** Are there experiences with drafting provisions on combating political violence or gender-based violence, or with judicial rulings on constitutional interpretation? What mechanisms have been the most effective in preventing these types of violence?

(**Lobna Jeribi**). In Tunisia, article 46 of the final constitutional text creates a state obligation to combat violence against women, which includes undertaking measures to transform policies, laws and social attitudes and behaviours. This has led to a substantial transformation of Tunisian law to strengthen protections for women, combat violence and enhance women's access to opportunities and political participation, etc. This is also supported by growing court jurisprudence on women's rights and violence against women. Given continuing societal cleavages on these issues, however, many of the laws and policies have proven difficult to implement. It remains an ongoing struggle, but both the constitutional text and jurisprudence work in tandem.



**Question 6:** In Chile, there is an external ethics committee that sanctions gendered violent acts and develops protocols to address gender-based violence. In the Bolivia experience, how were these issues addressed? Were inflammatory comments defined as hate speech, for example, or permitted as freedom of speech? How did you balance the right to freedom of speech with the need to prohibit and sanction violent and abusive language?

(**María del Rosario Ricaldi Sandi**). In Bolivia, there was an ethics committee that could sanction acts of violence in general and against women in particular, but, despite the high levels of conflict experienced throughout the process, the committee did not really work effectively or fulfill its mandate.

**Question 7:** Elaborate on the role of the secretariat in organizing the logistical and administrative work of the CMBs, as this is crucial to taking burdens off of the thematic committees so they can focus on substantive and negotiating work.

(**Christina Murray**). The secretariat of the South African Constitutional Assembly did a massive amount of work. The secretariat's leadership was agreed upon by the Constitutional Assembly and was then responsible for organizing its structural units and hiring staff according to specific rules about diversity. It was ultimately highly diverse.

The secretariat was organized into sections that performed different roles. For example, it ran the public participation campaign, collected submissions, brought in people to speak to Constituent Assembly members and ordered public submissions. It also produced agendas, materials and other fundamental documents and ran the Assembly's day-to-day systems—all the things that a bureaucracy is needed to do. Critically, the secretariat regularly reported back to the Assembly on the various aspects of its work. This can only be effective if the CMB has a very accountable and transparent secretariat.

(**Atsango Chesoni**). In Kenya, the Constitution of Kenya Review Commission, which had its own secretariat, played an important role in administering and overseeing the work of the NCC; it effectively operated as the NCC secretariat. It was thus important that the composition of the CKRC was diverse and respected gender principles, but also that the leadership, and particularly the chairperson, had integrity. He ensured that the people brought on board, such as technical drafting advisors, also had integrity. Chesoni also ensured that the NCC rules guaranteed that no one could work secretly or unilaterally, that no technical advisor could sneak off by themselves or with a small number of members and make changes to the draft. This was crucial. Not only did it build trust among members and the logistical, administrative and technical support staff provided by the CKRC, but it also helped ensure the integrity and credibility of the process overall.

**Question 8:** How were the topics/issues organized into packages for voting in the plenary? Recognizing that the decision to package or segregate issues for voting is often strategic, who was in charge of this, and how was the decision-making structured?

(**Christina Murray**). In South Africa's Constitutional Assembly, the process of developing agreements on draft provisions did not really involve voting until the very end. Instead, there was a process to reach consensus. This was challenging and at times involved making compromises rather than reaching consensus. At the end, however, when the full constitutional draft was ready, it went to a final vote. The

voting mechanism was somewhat complicated but, like the CCC, involved a two-thirds majority requirement. Importantly, the consensus rule meant that all of the hard work of negotiating and preparation had been done before the vote, and members knew what to expect. Members had lost some debates and won some debates, but by and large the text was ultimately the product of consensus rather than compromise.

Notably, the Constitutional Assembly was party-bound, with very disciplined and respected parties. This differs somewhat from each of the other country cases under discussion except perhaps Bolivia, but even without such disciplined parties engaged in the negotiations, most processes could similarly use some sort of consensus rule in an effective way.

**(Atsango Chesoni)**. Perhaps the most important voting rule in the Kenya process that ended up sometimes working against women was the fact that there was no secret ballot. This was more important than how the issues were packaged. For controversial matters, like abortion, there was sometimes a significant difference between the tone of the debates and the actual voting record. Members might speak out against a particular provision in committee or plenary discussions, but since voting put members on record, broader political considerations dominated. Some members who were professional politicians or envisioned a future political career voted in ways that were politically strategic, even if this meant voting against their expressed personal views on the matter. For highly politicized topics like abortion and marriage, this often worked against women and other allied interest groups. The ability to vote through a secret ballot would likely have enabled these members to vote differently.

## Session wrap-up and next steps

Maria Jaraquemada of International IDEA provided brief closing remarks and thanked the participants. She noted that several key lessons from the experiences in Bolivia, Kenya, South Africa and Tunisia would be particularly important for the development of rules of procedure in Chile and for the work of the CCC more broadly. The ways in which the rules of procedure structure access to power, gender parity in leadership and commission composition, decision-rules, internal structures and the role of the secretariat require detailed consideration.

She also reminded participants that this seminar was the first in a series. International IDEA is planning future workshops to support the CCC and Chilean civil society, academics and jurists to gain comparative information on constituent processes and constitutional design from a gender perspective. This will proceed through the continuing collaboration with Chilean partners, including ComunidadMujer and Corporación Humanas, who were invaluable in organizing this event.

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## Annex A. Agenda

### Virtual seminar on gender and rules of procedure in constitution-making bodies

6 August 2021, Santiago, Chile	
Time	Session
10:00– 10:10	<p><b>Welcome and introductions</b> Brief welcoming remarks by the organizers and explanation of the aim of the event</p> <p>International IDEA Corporación Humanas ComunidadMujer</p>
10:10– 10:20	<p><b>Framing the issue: gender perspectives and considerations in designing rules of procedure for a constitution-making body</b> This session provides an overview of the issues at stake when designing rules of procedure for a constitution-making body from a gender perspective. The aim is to frame the main issues and considerations that the rest of the event will discuss from a comparative perspective.</p> <p><b>Moderator: Erin Houlihan</b>, International IDEA</p> <p><b>Christina Murray</b>, Professor Emeritus, University of Cape Town, South Africa; former member of the Panel of Experts elected to advise the South African Constitutional Assembly (1994–1997); former member of the Committee of Experts that finalized the current Constitution of Kenya (2008–2009); and former member of the Fiji Constitution Commission (2012)</p>
10:20– 11:00	<p><b>Comparative experiences: successes, challenges and key considerations</b> This moderated session features a number of women former members of constitution-making bodies from other countries. These experts will provide insights and share their comparative experiences working under different types of rules of procedure. Each expert will discuss a range of structural, procedural or operational issues that benefited or challenged their work—ranging from issues of parity in leadership roles, to decision-making procedures to rules on ethics and behaviours.</p>

6 August 2021, Santiago, Chile	
Time	Session
	<p><b>Moderator: Julieta Suárez Cao</b>, Associate Professor at the Institute of Political Science of the Pontificia Universidad Católica de Chile, PhD in Political Science from Northwestern University and Coordinator of the Network of Political Scientists #NoSinMujeres. She participated in the design of gender parity in the Chilean Constitutional Convention.</p> <p><b>Atsango Chesoni</b>, attorney, human rights advocate, former Deputy Chair of the Committee of Experts that finalized the current Constitution of Kenya, former delegate to the National Constitutional Conference of 2005 and former Executive Director of the Kenya Human Rights Commission</p> <p><b>Lobna Jeribi</b>, President and Founder of Solidar Tunisia, former member of the Tunisia Constituent Assembly and Vice President of the Committee on the Preamble, Fundamental Principles and Amendments</p> <p><b>María del Rosario Ricaldi Sandi</b>, lawyer and Executive Director of the Training and Research Centre for Peasant Women of Tarija (CCIMCAT), former member of the Bolivian Constituent Assembly</p> <p><b>Christina Murray</b>, Professor Emeritus, University of Cape Town, South Africa; member of the Panel of Experts elected to advise the South African Constitutional Assembly (1994–1997); member of the Committee of Experts that finalized the current Constitution of Kenya (2008–2009); member of the Fiji Constitution Commission (2012)</p>
11:00– 11:30	<p><b>Open discussion</b> This moderated session provides an opportunity for participants to ask questions of the expert speakers and to share their own insights and suggestions.</p> <p><b>Moderator : Verónica Undurraga</b> , Universidad Adolfo Ibáñez</p>
11:30	End

## Annex B. Concept note

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After the mass social protests of October 2019, Chile began an institutional path towards the drafting of a new constitution; the process is planned to continue until around the middle of 2022. Initiation involved a plebiscite in November 2020 in which approximately 80 per cent of the people who voted chose to have their new constitution drafted by an entity composed entirely of people elected for the purpose. Prior to the election of the members of the Constitutional Convention, both houses of the legislature adopted rules requiring gender parity within the 155-member body, as well as reserved seats for Indigenous peoples. The election procedure also favoured independent candidates. Table 1 below shows the election results. The body includes 77 women and 78 men after adjustments to meet the parity rule.

Table 1 Seats within the Convention by political orientation of the lists

	Seats	Percentage
Right-wing parties (ChileVamos)	37	23,9%
Moderate Center-pleft parties *Unidad Constituyente	25	16,1%
Moderate Center-left independents (INN)	11	7,1%
Left-wing parties (Apruebo Dignidad)	28	18,0%
Left-wing independents (Lista del pueblo)	27	17,4%
Other Independents	10	6,5%
Reserved Seats for Indigenous People	17	10,9%
TOTAL	155	100,0

Source: Servel

The Chilean Constitutional Convention began to meet on Sunday, 4 July 2021. Its first tasks included electing a president and determining other leadership roles. Its next, and top, priority will be to develop and approve its regulations via the rules of procedure. The rules of procedure will determine how the Convention will be organized, the procedures for its operations, the rules for transparency, and how issues of ethics and citizen participation will be handled, among other issues. After a maximum of one year of work, citizens must approve or reject the Convention's proposal for a new constitution through a plebiscite.

The significant participation of women and gender parity for members of the Convention is new for Chile, which has a rate of women's participation in Congress of around 23 per cent; this is even lower within local governments (17 per cent of mayors are women). To support women's effective participation and influence within the Convention, and to connect women members with allies and resources outside the Convention, a group of civil society organizations are promoting a series of activities focused on women constituents so that their work both in the drafting of the new constitution and its content transversally incorporate a gender approach, taking into account international experience. This first seminar on gender and the rules of procedure is part of this support programme.



## Annex C. Key questions/issues to guide panellists' talking points

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The overarching questions and the table below provide food for thought to guide your talking points. These are all issues that members of the Chilean Constitutional Convention will need to consider when designing its rules of procedure from a gender perspective. Not all themes/issues are relevant, and some are more important than others. Based on your experience, please select a few issues to share in your discussion.

Overarching questions:

1. What rules/regulations did you find the most helpful in facilitating your work in the constitution-making body?
2. What rules/regulations were the most problematic or hindered your work or the work of your colleagues?
3. What rules or regulations did you wish had been in place but were not?

Theme/issues	Example questions to consider
<b>Convention operations</b>	<p>Were the hours of operation feasible for most members with caregiving responsibilities?</p> <p>How did procedures for calling special or emergency sessions work? Were there any special accommodations or considerations for members with caregiving responsibilities or related conflicts?</p> <p>How were speaking times allocated in plenary sessions? in thematic commissions/committees or working groups?</p> <p>Did all members have equal access to information, such as research materials, technical advising, learning or training opportunities, etc.?</p>
<b>Coordination/ Alliance-building rules</b>	<p>Did the rules permit or recognize cross-party coalitions within the constitution-making body (e.g. a women's coalition)?</p> <p>Did people join, and how did it work?</p> <p>Did the rules permit cross-party coalitions and/or thematic committees/commissions to work with external organizations such as civil society?</p>

Theme/issues	Example questions to consider
<b>Convention internal structures</b>	<p>What were the structure and composition of the body's leadership (e.g. presidency and vice presidency or presidencies, a board of directors or leadership council)?</p> <p>Was there a requirement for gender parity or the inclusion of women within the leadership? What was the highest position held by a woman?</p> <p>What were the structure and composition of the secretariat? How were women represented? Was the secretariat organized into sub-bodies or departments/units?</p> <p>What was the structure and composition of, for example, thematic committees/commissions, working groups, subcommittees?</p> <p>Were there gender-parity requirements for leadership in these sub-bodies (e.g. presidencies/chairs, vice presidencies / vice chairs, rapporteurs, etc.)?</p> <p>How was membership distributed across thematic committees and/or working groups? Was there parity across membership, or were women assigned to committees seen as focused on women's issues?</p> <p>Were women underrepresented in any thematic sub-body or technical working group?</p> <p>What were the rules about access to and selection of technical advisors among the members?</p>
<b>Transparency and communication rules</b>	<p>What transparency rules and practices were essential or helpful?</p> <p>How were progress, discussions and debates within the body communicated to citizens, particularly women?</p> <p>Did civil society or the media have access to the body's activities (plenary and commission meetings, agendas, etc.)?</p> <p>What was the composition of the communications team? Was there gender parity in the composition and leadership?</p> <p>Were there any rules about accessing and talking to the media?</p>
<b>Substantive and textual considerations</b>	<p>Did the rules of procedure use gender-inclusive, gender-neutral or gender-exclusive language in the text? Did this influence perceptions or working styles of members or the drafting of the constitutional text?</p> <p>Were there any rules about using gender-inclusive language within official documents and reports of the constitution-making body?</p> <p>Were there any mandates for the sub-bodies (thematic commissions/committees, working groups, etc.) to consider cross-cutting gender perspectives or other issues in their research, discussions, reports or drafts of the constitutional text?</p>
<b>Inclusion</b>	<p>Were there any rules about the official languages of the constitution-making body?</p> <p>What languages could be used in plenary discussions, within committees/commissions or working groups and other internal structures?</p> <p>What languages could be used, or had to be used, in official reports and documents?</p> <p>Were written materials provided in multiple languages for public transparency/sharing?</p> <p>Were there policies or protocols for Indigenous women, considering their relationship to nature, language, etc.?</p> <p>Was there access to childcare or facilities for compatibility with caregiving tasks and resources to support members?</p>

Theme/issues	Example questions to consider
<b>Decision-rules</b>	<p>How were issues packaged (aggregated or bundled) for voting at various levels?</p> <p>Did members have access to materials ahead of voting?</p> <p>What were the decision-rules at various levels (e.g. consensus, simple majority, qualified majority) in, for example, plenary, commissions/committees, working groups, committee of the whole? for what purposes/decisions?</p> <p>Was voting open or secret? in what circumstances?</p> <p>Did the constitution-making body use a committee-of-the-whole structure for some debates? for what purposes? in what circumstances?</p>
<b>Ethics and rules of behaviour or conduct</b>	<p>Did the body establish a code of conduct for members?</p> <p>What about a code of ethics?</p> <p>Did the rules establish mechanisms to facilitate complaints, investigations and accountability for any harassment, threats or violence against Convention members by other members? How did this work?</p> <p>Were there mechanisms to ensure protection of members from harassment, threats or violence by people outside the body? Who was in charge, and how did this work?</p>
<b>Public participation</b>	<p>Were there provisions in the rules on public participation requirements, including any inclusion requirements?</p> <p>Did the rules specify mechanisms that had to be used or mechanisms that might be used?</p> <p>What internal structures were set up (within the rules) to oversee or facilitate public participation and systematize information for members?</p> <p>Did the rules address any accountability, monitoring and evaluation mechanisms for public participation?</p> <p>Did the constitution-making body need to publish a final report on the participation process and results?</p>
<b>Other</b>	<p>Are there any other issues from the rules/regulations that members of the Chilean Constitutional Convention should consider?</p>

## Annex D. List of panellists and moderators

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### Panellists

1. **Atsango Chesoni**, attorney, human rights advocate, former Deputy Chair of the Committee of Experts that finalized the current Constitution of Kenya, former delegate to the National Constitutional Conference of 2005, and former Executive Director of the Kenya Human Rights Commission
2. **Lobna Jeribi**, President and Founder of Solidar Tunisia, former member of the Tunisia Constituent Assembly and Vice President of the Committee on the Preamble, Fundamental Principles and Amendments
3. **Christina Murray**, Professor Emeritus, University of Cape Town, South Africa; former member of the Panel of Experts elected to advise the South African Constitutional Assembly (1994–1997); former member of the Committee of Experts that finalized the current Constitution of Kenya (2008-09); and former member of the Fiji Constitution Commission (2012)
4. **María del Rosario Ricaldi Sandi**, lawyer and Executive Director of the Training and Research Centre for Peasant Women of Tarija (CCIMCAT), former member of the Bolivian Constituent Assembly

### Moderators

1. **Julieta Suárez Cao**, Associate Professor at the Institute of Political Science of the Pontificia Universidad Católica de Chile, PhD in Political Science from Northwestern University and Coordinator of the Network of Political Scientists #NoSinMujeres. Participated in the design of gender parity in the Chilean Constitutional Convention
2. **Erin Houilhan**, Programme Officer, Constitution-Building Programme, International IDEA
3. **Maria Jaraquemada**, Programme Officer for Chile and Southern Cone of Latin America, International IDEA
4. **Verónica Undurraga**, Professor of Constitutional Law at Universidad Adolfo Ibáñez, former Director of the Women and Human Rights Programme at the Human Rights Center of the University of Chile

## About the author

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**Erin C. Houlihan** is a Programme Officer with International IDEA's Constitution-Building Programme. Her research and advising work focuses on democracy and conflict transitions globally. She provides technical support to in-country constitution reform programmes in a range of contexts; develops global comparative knowledge products, policy and advocacy resources; and manages tools and databases related to both constitution-building processes and constitutional design. She has previously served in a variety of senior advisor roles 47 Annex with country-based rule of law, human rights and good governance assistance programmes, primarily in conflict-affected states. She holds a Juris Doctor and an MA in Foreign Affairs from the University of Virginia and an MA in Special Education from Loyola Marymount University.

## About International IDEA

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The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

### What we do

In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work.

International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge on democratic practices; offers technical assistance and capacity-building on reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

### Where we work

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

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

## About ConstitutionNet

ConstitutionNet is an online platform for resources, news and analysis on constitution-building processes worldwide. Curated by International IDEA's Constitution-Building Processes Programme, ConstitutionNet provides a range of free downloadable resources, including:

- up-to-date news articles relating to current constitution-building processes around the globe;
- Voices from the Field, a series of analyses of ongoing constitution-building processes from authors within the country;
- a collection of primary-source resources such as constitutions, draft constitutions, rules of procedures and public participation materials;
- a thematically-organized digital library of International IDEA's publications on constitution-building processes, including the Constitution-Building Primer series;
- videos in the Constitutions Made Simple series, explaining the fundamentals of constitution-building; and
- Country Profiles outlining major constitutional events in selected countries.

These resources are useful to the constitution-building community at all levels, including members of constitution-making bodies, international advisors and academics, as well as students, the media and civil society organizations seeking to understand or influence constitution-building processes.

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On 6 August 2021 International IDEA, in partnership with the Law Faculty of Universidad Adolfo Ibáñez, Corporación Humanas and Comunidad Mujer, held a virtual seminar on gender and rules of procedure in constituent processes. Its objective was to share comparative information about designing rules of procedure (regulations) for constituent processes from a gender-equality perspective with members of the newly constituted Chilean Constitutional Convention, Chilean civil society, academics and legal practitioners.

The open-invitation online event brought together a panel of women constitution-makers from constituent processes in Bolivia, Kenya, South Africa and Tunisia. The experts discussed their respective experiences and the benefits and drawbacks of the rules of procedure that guided their constituent processes. Representatives from the implementing partners moderated expert panel sessions and question-and-answer discussions.



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