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Sudan's constitutional process: A gender inclusive approach

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Research shows that including women in constitutional processes secures more durable and long-lasting outcomes. Yet women have been excluded from the discussions about Sudan's future. What steps can the transitional government take to include women, thereby increasing the chances of viable peace? This brief lists specific steps that can be taken towards a more gender-inclusive approach.

In April 2019, the Sudanese Armed Forces (SAF) removed President Omar al-Bashir from power, dissolved government, and launched Sudan into a transitional process that includes the drafting of a new constitution.

While the resistance movement was led by different groups, including professional associations, unions, and opposition political parties, women played a large role in the protests. Reports estimated that women accounted for as much as 70 percent of the protestors despite facing considerable physical threats for their civil disobedience.¹ These women came from all walks of life and included political elites, students, youth, senior citizens, upper- and middle-class women, and food and beverage vendors. Women took leadership roles in District Resistance Committees (DRCs), organized neighborhoods against the regime, and led mass protests.

However, when it was time to negotiate for Sudan's future, women were noticeably absent from the negotiating table—only one woman,² Mervat Hamadaneel, a civil society representative, participated in the peace talks between the military and the Forces of Freedom of Change (FFC) after the only other woman was replaced during the first month of the negotiations.

Women are still being sidelined

The absence of women's involvement in the transition has continued during the implementation of the Constitutional Charter for the Transitional Period³ of 2019 Sudan's 39-month path to a civilian-led government. The Charter requires the drafting of a permanent constitution through a national constitutional conference before the 39-month transitional period ends. Similar to a permanent constitution, the Charter lays out the roles and responsibilities of the state apparatus as well as the rights, roles, and responsibilities of citizens. On the government side, the Charter establishes three key transitional bodies: the Sovereignty Council, the Transitional Cabinet, and the Transitional Legislative Council (TLC).

Because these formal bodies will guide Sudan through the transition process, it is crucial that they include women to ensure that women's issues are addressed in the new constitution.

Women's groups, which were instrumental in the revolution, have advocated for at least 50 percent of women on these bodies, in contrast to the 40 percent gender quota (120 seats) that the Charter specifies for the TLC. To date, only two women (of 11 members), Aisha Musa and Raga Nichole Abdul Massih, have been selected as members of the Sovereignty Council, while only four of the 21 members of the Transitional Cabinet are women. Women have faced resistance, especially within the Forces of Freedom and Change (FFC), the political incubator for the transitional government. It has been claimed that there is a lack of competent and

qualified women to fill high-ranking positions. This was clearly demonstrated when state governors were to be appointed: FFC refused to nominate women, this time justifying it with a conservative Sudanese culture.

Going forward, women's groups are not optimistic that the current Sudanese prime minister, Abdallah Hamdok, will be able to ensure equity in representation in constitution-making bodies. In fact, they are weary that the gender quota for the TLC, which is yet to be appointed, will not be honored.

How to involve women in constitutional process

During transitions from war to peace, thorough discussions about constitutional design are pivotal in carving out the legal foundations of a new peaceful state. Transitional periods are a window of opportunity for new actors to partake in discussions about the future direction of a country, including women's movements. Indeed, research shows that when women are formally engaged in peace or constitutional processes, outcomes are more durable and long-lasting.⁴

Women's political position in many post-conflict countries reflect the opportunity that lies within transitions: Post-conflict countries tend to have higher rates of women's political representation and have also made more constitutional changes relating to women's rights than countries that have not undergone major conflict.⁵

A review of recent comparative constitutional processes identifies certain points in the constitutional process where women's inclusion has had a positive effect.⁶

While women's participation in such processes remains low – of the 75 constitutional processes born out of conflict or peace negotiations between 1990 and 2015, only 19 percent of the members of constitutional bodies tasked with drafting a constitution were women – there are several lessons that Sudanese women can use to increase their participation in the constitutional processes.

When women are included in the constitution drafting bodies, they advocate for constitutional provisions for more equitable, inclusive societies. For example, during the ten-year peace process in the Philippines between the government and the Moro Islamic Liberation Front (MILF), women's organizations were successful in advocating for the inclusion of women in the peace talks, resulting in 50 percent of the government's team being women. However, women often have to mobilize for their rightful inclusion. Protests by women's groups in Nepal over the lack women in the drafting body resulted in the reorganization of the committee and the appointment of four women to the 16 seats (25 percent). The women on this committee were later successful in

advocating for a formal quota of 33 percent for women in the Constituent Assembly in the Interim Constitution.⁷

Such mass action campaigns initiated by women's groups can be effective to secure women's representation in constitutional committees. During South Africa's peace process, the Women's National Coalition organized national conferences on women's issues and pushed for greater inclusion in all political processes during the transition. Its work and influence led to the creation of the Women's National Coalition (WNC) which organized protests and demonstrations to gain women's representation on negotiating teams. As a result of its efforts, women were included in the technical committees and the decision-making body that drafted, debated, and finalized the interim constitution.

During Tunisia's constitution drafting process, Tunisian women organized and led protests to pressure the transitional government and constitution drafters to stick to the principles, which included equal rights and protections for women, of the revolution during the drafting process. This pressure was consistent and immediate: When initial drafts of the constitution contained language contrary to these principles, thousands of women took to the streets in protest, resulting in amendments to draft clauses recognizing women as equal to men in the Tunisian constitution.

In Sudan, women mobilized heavily after getting marginal representation in the negotiations between the transitional military council and the FFC. Several social media campaigns were launched for women's equal political participation and street protests outside the negotiation venues put women's political representation on the agenda. Without this mobilization the 40% gender quota in the transitional legislative assembly would probably not have been achieved. Initially hopes were high that Hamdok's transitional government would ensure women's representation in the upcoming constitutional drafting bodies. Yet after getting only marginal representation in the Juba peace negotiations and in the nominees for state governors, women are now weary.

Still, experiences from other constitutional processes in Africa and beyond suggest that women's mobilization in events of exclusion have been successful. In cases where women have been barred from direct participation in the constitutional processes, observer status have oftentimes been granted. Such status gives access to meetings and documentation produced by the drafting body. Critical information can be obtained first-hand while engaging with stakeholders in the hallways and breakout rooms during the negotiation process. For example, during the South African constitutional process, the Women's National Coalition (WNC), a group of women from various political parties and civil society organizations, was granted observer status during the Multi-Party

Negotiation Process (MPNP) which drafted, negotiated, and adopted the interim constitution, and formulated and adopted the 34 Constitutional Principles that guided Constitutional Assembly (CA) during the drafting of the permanent constitution.⁸ During the MPNP, the WNC established the MPNP Collective, a group of women that maintained close coordination between the WNC and the MPNP.⁹ In addition, the WNC drafted briefing papers on key concerns of women and circulated them to the members of the MPNP. While these briefing papers focused on women's issues, they also included issues facing other marginalized groups including equal education for all and poverty alleviation.

Problem-solving workshops designed exclusively for women have also been an effective method to ensure women's engagement in constitutional processes. During the Inter-Congolese Dialogue from 2001 to 2003, several civil society groups and the UN Development Fund for Women (UNIFEM) organized workshops for women to increase the number of female representatives at the negotiating table. The women at these workshops drafted of a common agenda that outlined women's issues and recommendations. By the time the first formal negotiation was held, the number of women delegates had increased to eight (11 percent). Experiences elsewhere have demonstrated the importance for women to create broad coalitions across divides and agree on a minimum agenda. Failure to maintain a united front, on the other hand, results in minimal participation of women. Prior to the 1990 constituent assembly elections in Colombia, women's groups were divided on the best strategy to ensure inclusion. This lack of consensus by women's organizations resulted in only four of the 74 (five percent) seats in the election going to women.

Even when women are excluded from constitution-making, they can provide input during public consultations, which are a way for drafting bodies to gain legitimacy and increase participation in the process. For example, during the 2012 constitution drafting process, the Fijian Constitution Commission conducted public consultations, seminars, and group discussions throughout the country. The Fijian Constitution Commission also encouraged citizens to submit recommendations and issues of concern to them through a variety of methods including in person, in writing, and online, resulting in approximately 7,100 written submissions, one-third of these submissions from women.

Implications for Sudan

As Sudan transitions out of conflict and into a civilian-led government, the country must navigate the complexities of a constitution drafting process. The question of a permanent constitution has haunted the country since independence. Involving women in the process will

ensure that its constitution is durable and long-lasting.¹⁰ Strong gender provisions will also aid women's rights activists' future mobilization for legal reform.¹¹

There are several steps the transitional government can take to include women in the process, the most important being the formal inclusion of women in the drafting of the constitution. This can be done by ensuring that the 40 percent quota for the formation of the Transitional Legislative Council flows through to the Constitutional Commission.

If Hamdok's transitional government continues to exclude women from important political decision-making events and positions, women's groups can mobilize and still manage to substantially influence the process. As Mollie Pepper puts it,¹² women are 'key players in peacebuilding because of their civil society activism', something that 'places them around the table, if not at the table'.

The lesson is that mobilization works and that women can in fact instill themselves into the core constitutional debates. However, in order to succeed women's groups must agree on and establish a minimum agenda. Considering the historical political divisions in the Sudanese women's movement, that is not an easy task. However, women of Sudanese Civic and Political Groups, MNSM, is a coalition of various unions, political parties, civil society organizations, youth groups and academic groups which has emerged after the revolution. Women's groups, including MNSM and other groups, have been able to come out with a clear demand for 50% representation of women in decision-making structures within the transitional government.

MNSM is an attempt to build a political alliance across political divides, but early on groups like No to Women's Oppression and Sudan's Women's Union decided to leave. They have still decided to collaborate. Thus far, MNSM and other old and new women's groups and the campaigns continue to be primarily Khartoum based. Whether the current minimum agenda will go beyond process oriented demands for women's political representation (gender quotas etc.) and materialize into a more content oriented agenda (violence against women, family law etc) also depends on these groups' ability to engage the historically marginalized groups of women in Darfur, Eastern Sudan and along the border to South Sudan. It is imperative that key issues for women of different ethnic, religious, class, regions and generations

going into the constitutional process are mapped. In order to do this, the historical legacy of an elitist and Khartoum based women's movement must be overcome. There is an urgent need to create trust and solidarity in what is currently a divided women's movement.

The international community, with UN women at the forefront, can help facilitate dialogue and learning across borders. Through an interrogation of recent constitutional processes in the region, exemplified with women's successful mobilization in the region, can provide important lessons for Sudanese women's groups in identifying advocacy strategies and messaging to more effectively engage in the drafting process. This could for example involve the establishment of a consultative committee of women from comparative constitutional processes that can act as a resource for Sudanese women's groups like MNSM.

Endnotes

- ¹ Rachel George, Mashair Saeed, & Sara Abdelgalil, *Women at the Forefront of Sudan's Political Transformation: Recommendations from a Workshop on Women's Rights, Representation and Resilience from a New Sudan*, ODI Working Paper 566 (Nov. 2019).
- ² Tønnessen & al-Nagar 2020, Patriarchy, *Politics and Women's Activism in Post-Revolution Sudan*, available at <https://www.cmi.no/publications/7267-patriarchy-politics-and-womens-activism-in-post-revolution-sudan>
- ³ Constitutional Charter for the Transitional Period of 2019, available at: https://www.constituteproject.org/constitution/Sudan_2019?lang=en
- ⁴ Liezelle Kumalo & Cassie Roddy-Mullineaux, Sudan needs women at its negotiating table, reliefweb, Aug. 6, 2019, available at <https://reliefweb.int/report/sudan/sudan-needs-women-its-negotiating-table>.
- ⁵ Tripp 2015.
- ⁶ Nanako Tamari & Marie O'Reilly, How Women Influence Constitution Making After Conflict and Unrest 4 (Jan. 2018).
- ⁷ Id.
- ⁸ Inclusive Peace & Transition Initiative (IPTI), The Graduate Inst. Of Int'l and Dev. Studies, *Women in Peace and Transition Processes: South Africa's Democratic Transition (1990-1998)* 7-8 (Nov 2018) [hereinafter IPTI, South Africa].
- ⁹ See id. (describing how WNC utilized its observer status).
- ¹⁰ Nanako Tamari & Marie O'Reilly, How Women Influence Constitution Making After Conflict and Unrest 4 (Jan. 2018).
- ¹¹ Lambert and Scribner 2020, *Constitutions and women's rights advocacy: strategic uses of gender provisions in Argentina, Chile, Botswana, and South Africa*.
- ¹² Mollie Pepper, 2018, 61, Ethnic Minority Women, Diversity, and Informal Participation in Peacebuilding in Myanmar.