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# CONSTITUTIONAL APPROACHES TO DECENTRALIZATION: ELEMENTS, CHALLENGES AND IMPLICATIONS

Fourth Women Constitution-Makers' Dialogue, 2022



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Fourth Women Constitution-Makers' Dialogue, 2022

*Erin C. Houlihan and Sharon P. Hickey*

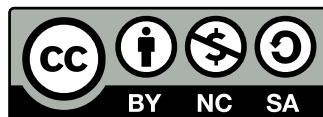


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# EXECUTIVE SUMMARY

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

The fourth event in the series was held in October 2022 and focused on elements, challenges and implications of constitutional approaches to decentralization. The participants included 28 women and men constitution-makers, advocates, researchers and international constitution-making and peacebuilding experts from Armenia, Botswana, Chile, Ethiopia, Kenya, Myanmar, Nepal, South Africa, Syria, Tunisia and Yemen, and representing international organizations and institutes. Discussions explored experiences in the negotiation, design and implementation of decentralization schemes at the country level, with a primary focus on states in which decentralization is linked to democratic and/or conflict transitions.

Whether decentralization, and particularly devolution and federalism, is advantageous or disadvantageous for women is a long-debated issue. The effectiveness of decentralization in promoting gender equality goals or providing potential advantages depends on how the system is designed, the quality of implementation planning and the adequacy of resources. In negotiations about decentralization, it is often difficult to reach agreement on the core principles of the decentralization scheme and its implications, the choice of decentralization arrangements, and the procedure by which decentralization decisions will be made and by whom. These challenges are

often particularly complex when the decentralization process follows a period of conflict, as in Nepal or Somalia (Saunders 2018).

Moreover, once the scheme is agreed, experience suggests that a great deal of work is still necessary both to encourage women's participation in local governance and to make local governments accountable to female constituents (UNRISD 2005). As is the case at the central level, women's participation in local government is not in itself sufficient to guarantee responsiveness to women's interests and needs. Informal systems and beliefs that operate to keep women out of governance at the centre and/or that diminish the responsiveness of government institutions to women's needs also function at the local level—and may be more strongly held. Indeed, at the local level, the risk of capture by patriarchal elites is often higher than at the central level (UNRISD 2005; Bulmer 2017b).

Furthermore, in many cases women are excluded from influential decision-making roles related to negotiations over decentralization arrangements. In part this is because decentralization is commonly considered a 'technical' issue rather than a women's rights issue and because women are generally less often included in technical constitution-making committees (as compared with committees on rights and values). Consequently, the 2022 Dialogue picked up a common thread across previous years of the Women Constitution-Makers' Dialogues—the importance of technical and capacity-building assistance for women to have a stronger voice in constitution-making. The Dialogue focused accordingly on decentralization from a technical and empirical perspective to support women constitution-makers engaged in constitution-building processes and constitutional implementation through knowledge transfer and comparative experience sharing.



# KEY FINDINGS

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

- 1. Decentralization processes are particularly fertile ground for enhanced and systematic women's engagement.** When such processes arise, women at the table and their allies in civil society should recognize and seize the opportunity to shape the approach to decentralization to better meet their needs. In part, this is for the obvious reason that lower levels of government are closer to home and are often easier for women to engage with and influence. Accordingly, having a voice in the design of, and influence over, the allocation of substate government responsibilities—and mechanisms for holding them accountable—is crucial for women. Another reason is that lower levels of government tend to be the primary interface for issues that impact women's daily lives. As demonstrated during the Covid-19 pandemic, it is often the lower levels of government, rather than the centre, that are the most relevant for supporting people—or responsible for neglecting them—in times of need. As women disproportionately bear the burden of shocks (such as a pandemic or economic crisis), they should assert their views as to how a decentralized system would operate in both normal and extraordinary circumstances.
- 2. Terminology surrounding decentralization is ambiguous, so negotiations might proceed more smoothly if it were possible to focus on desired outcomes, particular powers and interests of concern for stakeholders, rather than labels.** The danger is that people tend to think that common terms have fixed meanings. Even when using the same terms at the negotiating table, in practice they mean different things to different stakeholders. Such discrepancies in understanding not only cause confusion, but they can also exacerbate perceived differences and further entrench negotiating groups' respective positions. A potential strategy to address this issue—for women and others—is to refocus discussions on desired outcomes, particular powers and interests of concern for different

groups. For example, while a particular group may demand ‘federalism’, their core concern may be for the constitutional entrenchment of territorial autonomy and guarantees of self-rule with authority over specific governance issues and responsibilities. Focusing on the practicalities of decentralization arrangements may increase the likelihood that different groups desiring similar outcomes will find common ground, even if they use different labels or ascribe their demands to different conceptual bases. The language can often be more difficult to agree upon than the substance. A focus on substance can also provide the potential for actual compromise because, while it is difficult to compromise on concepts, it is often easier to compromise on mechanics and to imagine alternatives around which it is possible to build political bargains.

- 3. While decentralization is not a panacea for complex governance problems, many actors at the country level still view it as an important tool to address a range of problems.** Decentralization, like peace- and constitution-building, is a long-term process, not an end state. Accordingly, it is crucial that decision makers consider and seek to understand not only the symbolic and normative importance of decentralization but also the risks and drawbacks of decisions at various points in a negotiation and in their specific context. Further, where decentralization negotiations are part of a constitution-building or peace process, it is important to support public education and participation opportunities around these issues to enhance the depth and quality of public understanding and public inputs so that the development of devolved institutions will remain ongoing.
- 4. Because the process of decentralization continues over time, aspects of implementation are somewhat pliable, which can be beneficial for women.** This means that avenues for mobilization and advocacy remain open throughout the long period of interpretation, implementation and enforcement that can be harnessed by women to shape what decentralization will look like in practical terms. All negotiations involve compromises, and decisions around an approach to decentralization will necessarily involve wins and losses. Yet, there is always space to shape the way that such decisions are interpreted and applied, the nature of conventions built over time and the culture of decentralization itself. In most contexts, this long process of implementation is crucial for women, in part because it takes place in less highly charged political circumstances where women, and others, can potentially benefit from continued and systematic engagement.
- 5. Effective decentralization has the potential to yield particular benefits for women and girls,** including in terms of women’s political participation and increased access to services and decision making about those services. A key component of effective decentralization is ensuring that the allocation of responsibilities and revenues between the central and substate governments is viewed through a gender lens. Further, subnational governments and officials must be sensitized to, and capable of understanding, the needs of women and girls; there must be engagement with local women’s organizations and other stakeholders to

ensure that their priorities and perspectives are integrated into policies and programmes; and there must be robust monitoring and evaluation systems at the subnational level that track progress on key gender indicators—women’s political participation, women’s economic empowerment and women’s access to services.

- 6. Conversely, decentralization can create conditions leading to the infringement of women’s human rights.** In some cases, the division of subject matter authority between central and substate governments and the allocation of powers across substates can result in varying laws that have a disproportionate and disparate impact on women. Within a context of religious and legal pluralism, the minimum age for marriage, property rights and rules around divorce, child custody and inheritance can be vastly different for women in different regions and substates.
- 7. In complex and protracted conflicts, decentralization can have the counterintuitive effect of decentralizing a *lack of governance*.** If applied in a cynical way, decentralization can serve as a means for a dysfunctional central government to avoid addressing complex governance challenges by instead pushing such problems (and decisions about potential solutions) onto substate units, and perhaps also into the realm of identity politics operating in different areas of the state. This phenomenon, which is currently under-researched and not well understood, can be observed in protracted conflicts, such as in Syria.

## Chapter 1

# INTRODUCTION

On 27 and 28 October 2022 the International Institute for Democracy and Electoral Assistance (International IDEA)—together with the [Edinburgh Centre for Constitutional Law](#) and as part of the [Peace and Conflict Resolution Evidence Platform](#) (PeaceRep)—hosted the fourth annual Women Constitution-Makers' Dialogue in The Hague, the Netherlands.<sup>1</sup>

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### 1.1. THE WOMEN CONSTITUTION-MAKERS' DIALOGUE SERIES

The Women Constitution-Makers' Dialogue was initiated as a platform for women constitution-makers from ongoing and past constitution-building processes to discuss their experiences, successes and challenges with peers from other constitutional reform endeavours. Through these discussions, participants share lessons learned, exchange ideas, and identify comparative models and resources related to both constitution-making processes and constitutional design choices. These peer-to-peer exchanges are supported by colleagues from the international practitioner community and academia who focus on comparative constitution-building, peacebuilding, democracy and democratic transitions, and gender and politics. The annual events are premised on the mutual benefits of regular and structured engagement between these communities and individuals and represent a conceptual and practical response to documented needs for an organized, systematic and women-centred approach to constitution-building.

Conventional mechanisms to enhance women's involvement in, and influence over, constitution-building and peace processes tend to emphasize gender quotas and related special measures—both targeted at women's participation.

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<sup>1</sup> The first event, 'Founding Women: A Dialogue with Women Constitution-Makers', took place in October 2019 at the University of Edinburgh. The second, 'Constitution-Building in Response to Social Unrest', was held online in 2020. The third event, 'Constitutions, Customary and Religious Law and Women's Equality', was held in 2021, also online.

While these are important avenues to ensure women a seat at the decision-making table, they cannot generally guarantee the inclusion of women (or men) who are committed to furthering the protection of women's rights and equality. Moreover, by presenting women as a homogenous, marginalized group, such mechanisms tend to reinforce limiting assumptions, including the idea that women are expected to speak *for* women and hold a set of common interests, and that women should use their often-limited political capital to advocate chiefly for women's rights.

Yet many of women's most fundamental concerns—on the rights to citizenship, to own assets, to be protected from violence, to seek redress in court and to access public services—can be addressed by either men or women, though men are rarely asked to explain their positions on these issues. Placing the burden of women's rights advocacy on the shoulders of women at the table regardless of their backgrounds, intersecting identities or interests often comes at the expense of other issues of fundamental concern not only to women but to broader society and to the transition to peace or democracy as a whole. While quotas and other special measures remain invaluable tools for women's inclusion, it is important to consider other approaches to ensure that women can access and influence processes and shape the new governance dispensation in a variety of ways and from a variety of perspectives.

One approach is to support women in harnessing and leveraging their expertise in the technical aspects of state transformation while simultaneously infusing existing conventional understandings of change with a gender perspective. Expertise provides an additional pathway to claiming a seat at the table. It can also shape or reshape perceptions of women's leadership so that the value of women's representation in decision making in complex transitions is not seen as primarily linked to their gender identity, but to their expert knowledge of the substantive issues at the heart of the reform agenda and the comparative networks they can access. Put another way, when women are the experts at the table, people cannot help but listen to them—even in the face of resistance from some segments of society.

As one step towards harnessing and leveraging women's substantive constitutional expertise, the fourth Women Constitution-Makers' Dialogue focused on elements, challenges and implications in constitutional approaches to decentralization. Held in person and online, the Dialogue welcomed 28 participants with diverse backgrounds and experiences, including from countries experiencing conflict or undergoing peace or political transitions. These included women constitution-makers and advocates from Armenia, Botswana, Chile, Ethiopia, Kenya, Myanmar, Nepal, South Africa, Syria, Tunisia and Yemen, along with senior international advisors and academic researchers in the fields of constitution-building, peace processes, and gender and democracy.

Over seven sessions participants unpacked and explored the building blocks and key decision points involved in decentralization processes, and the complex ways that particular approaches play out at the country level. In

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particular they examined (a) the concepts and elements of decentralization, including issues related to terminology; (b) the political economy of negotiating approaches to decentralization; (c) common implementation challenges; (d) the role and influence of local voices in demands for decentralization; (e) the institutional and practical aspects of fiscal devolution; (f) key considerations in decentralizing natural resource governance; and (g) the implications of decentralization for the rights of women, Indigenous peoples and minority communities.

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## 1.2. STRUCTURE OF THE REPORT

This Report proceeds as follows. Chapter 2 provides an overview of the elements and building blocks of decentralization arrangements that framed the discussions. It highlights the common assumptions and pitfalls involved with decentralization terminology as well as the objectives and forms of decentralization. Chapter 3 considers issues around negotiating decentralization and the key building blocks or decision points involved. It also considers the impacts of context on the voices and influence of women and other marginalized groups at the table. Chapter 4 looks at how decentralization processes are performing in some of the contexts represented in the discussions and highlights key implementation issues and mechanisms for accountability. Chapter 5 looks at decentralization from the perspective of women, minority communities and Indigenous peoples with respect to political participation and group rights. Chapter 6 offers brief concluding observations.

## Chapter 2

# CONCEPTUALIZING DECENTRALIZATION

### 2.1. THE PROBLEM OF AMORPHOUS TERMINOLOGY

Despite its pervasive use, the term ‘decentralization’ (like the terms ‘devolution’ and ‘federalism’) is both amorphous and controversial. It is used to capture a wide range of phenomena and encompass a number of concepts. Decentralization takes many forms in design and practice, and efforts towards simple categorization can be misleading. The lack of an agreed definition affects not only the comparative study of decentralization and its impact across countries but, perhaps more importantly, also the efficacy of negotiations at the peacebuilding or constitution-making table when the utilized term may signal very different things to different actors (see, for example, Murray and Simeon 2012).

Decentralization operates on a spectrum, but the term may be used to describe a range of forms—both weak and strong—of decentralization. For instance, the term ‘decentralization’ may refer only to the central state setting up offices outside the capital without transferring any decision-making power to people in the vicinity of these ‘decentralized’ offices. The term may also be used to refer to devolving political, fiscal and sometimes judicial power from the central government to lower levels of government.

For the purposes of this Report, the term covers any arrangement in which not all government functions are carried out in the capital; such arrangements may range from mere administrative de-concentration to the dispersal of governmental authority and responsibility from the national centre to other levels of government, resulting in multiple decision-making centres organized geographically across the territory of a state (Böckenförde, Hedling and Waihu 2011; Saunders 2018).

Given the often-amorphous terminology involved, it is sometimes more productive to consider first the desired results or outcomes of a

**Decentralization takes many forms in design and practice, and efforts towards simple categorization can be misleading.**

decentralization process in a given context, and the underlying motivations for these outcomes. In South Africa, for example, the issue of federalism dominated the constitutional negotiations in the early 1990s. The outgoing apartheid government supported strong devolution of authority and autonomy for provincial governments to entrench previous power structures, while parties like the African National Congress advocated a unitary state as part of a process of transforming state institutions and equalizing resources. Progress proved elusive until the word 'federalism' was dropped from the negotiations. South Africa's decentralized model is defined as 'co-operative government' in the 1996 Constitution.

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**The decision to decentralize is often driven by a combination of political, economic and social pressures, as well as bureaucratic incentives.**

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## 2.2. COMMON OBJECTIVES OF A DECENTRALIZATION PROCESS

Since the late 1980s the constitutional entrenchment of various forms of decentralization has been increasing around the world (Fombad and Steytler 2019; Fombad 2018; Eaton, Kaiser and Smoke 2011; Bossuyt 2013; World Bank 2005). The decision to decentralize is often driven by a combination of political, economic and social pressures, as well as bureaucratic incentives. These domestic pressures are multifaceted and sometimes conflicting, and may be buttressed or reinforced by pressure from the international community.

Decentralization is broadly considered a solution to a range of problems facing a country. For example, decentralization was seen as an essential element of democratic transitions in the aftermath of centralized authoritarian rule in **Brazil, Mexico, Nigeria, South Africa** and many other countries in Latin America and Africa, as well as in former Soviet states. In **Nepal** and **Papua New Guinea**, decentralization was a response to civil conflict in order to meet demands for increased autonomy and self-determination. In **Hungary, Poland** and **Vietnam**, decentralization was part of a market transition or economic development strategy. In **Bolivia, Indonesia** and **the Philippines**, decentralization was a response to pressing political and/or economic crises (Eaton, Kaiser and Smoke 2011; Faguet 2012; Steytler 2016; Faguet and Shami 2022). In large countries such as **China**, decentralization is an important means to provide services across geographic areas.

Like constitutionalism itself, the notion of decentralization and the corresponding principle of subsidiarity, which holds that political and social matters should be dealt with at the lowest level of government able to effectively address them, is both value-laden and idealistic; it encapsulates a set of goals that are, in practice, contested and uneven (Steytler 2016).

Although the theoretical and practical objectives of decentralization vary from country to country, decentralization can be a boon if designed appropriately for the context, for example by:



- enhancing development through increasing efficiency and responsiveness in planning and service delivery;
- enhancing transparency and accountability in the use of public resources;
- deepening democracy through expanding opportunities for public participation and representation in government and public life;
- facilitating innovation in different parts of a country that may be replicated if successful (a 'race to the top');
- mitigating corruption by breaking up centralized power and authority, creating competition between levels of government and improving the ability of local people to monitor officials;
- managing conflict by accommodating diversity and enhancing autonomy, and therefore catering to diverse preferences and conditions; and
- supporting power sharing.

However, achieving these goals depends on a number of enabling factors:

- The arrangements, particularly the responsibilities and powers assigned to different levels of government, are clear and understood.
- Institutions and office holders at all levels of government can meet their responsibilities not only in terms of skills and capacities but also with regard to infrastructure and sufficiency of financial resources.
- Governments at all levels can be held to account in whatever way is appropriate for the context, meaning there must be controls and accountability mechanisms in place.
- There is a cultural willingness to share power and to respect and work with other governments, supported by coordination and cooperation mechanisms established among and across different levels of government.
- Subnational units enjoy a degree of equity with regard to fiscal transfers and access to resources, and have the ability to develop their own revenue streams.
- The process does not try to do too much too quickly and accurately evaluates the cost implications of the selected approach.
- Transparency is built into all aspects of the system to support the exposure of corruption through, for example, active civil society monitoring.
- Citizen engagement is encouraged (OECD 2019; Saunders 2018).

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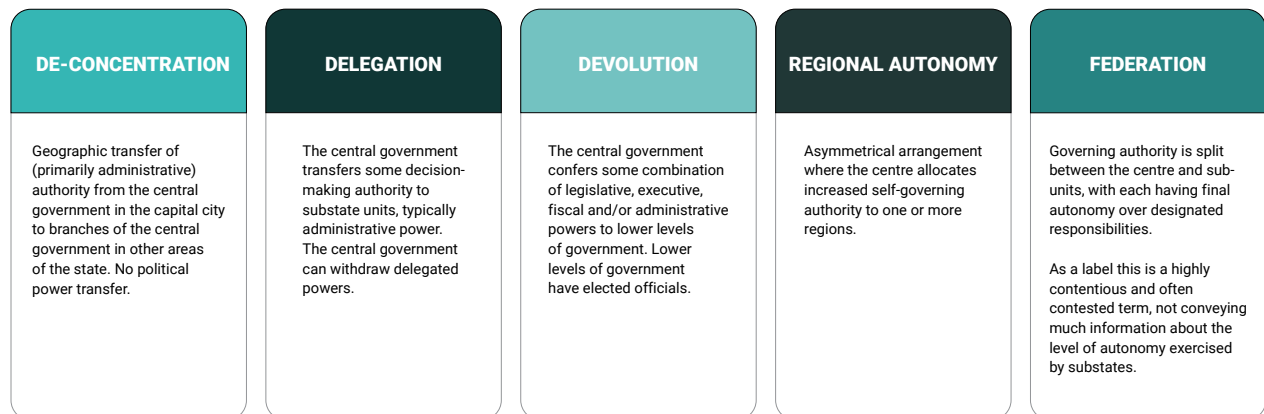
### 2.3. DECENTRALIZATION ARRANGEMENTS—STRONG AND WEAK FORMS

There is significant variation around the world in decentralization arrangements, and no two models are alike. The depth of decentralization varies depending on the type of arrangements used and the extent of authority and autonomy exercised by the different levels of government. The terms commonly used to describe these arrangements are not always consistent, and the implications for the depth of decentralization are not always clear. For example, while it is commonly assumed that ‘federal’ arrangements are the strongest form of decentralization, in practice some federal states are highly centralized, while lower levels of government exercise a high degree of power in some non-federal, statutorily devolved states, and these powers are a respected part of the governance and political culture.

It is more useful to understand decentralization as operating on a spectrum involving varying degrees of autonomy for lower levels of government over administrative, political and fiscal powers, as shown in Figure 2.1.

- **De-concentration** involves the redistribution of administrative decision-making authority and sometimes financial management responsibilities from among different levels of the *central* government operating in the capital city to different levels of the central government operating across the territory of a state (rather than to subnational governments). De-concentration is most frequently used in unitary states and is the weakest form of decentralization.
- **Delegation** involves the allocation of power by the central government to one or more lower levels of government. The level of autonomy and types of powers that may be delegated to substate governments vary extensively and may provide for relatively shallow or quite extensive decentralization. This level of decentralization usually involves various administrative responsibilities—such as for health, education, water or policing—but sometimes also executive or minor law-making power. Key in this approach is that the central government retains authority to withdraw the delegated power from the lower levels or to direct its use, and while the lower levels are semi-autonomous, they are ultimately accountable to the central government.
- **Devolution** involves the central government conferring some combination of legislative, executive and sometimes judicial power, administrative responsibility and fiscal authority to lower levels of government in a way that provides the lower-level governments with substantial autonomy. In devolved systems, lower levels of government usually have legally established geographic boundaries and elected office holders, can raise their own tax revenues, and make budget and expenditure decisions. Devolution may be rooted in constitutional or statutory instruments.

Figure 2.1. Spectrum of decentralization arrangements



Source: Based on Saunders, C., 'Constitutional Design: Options for Decentralizing Power', Constitution Transformation Network, University of Melbourne, Policy Paper No. 2, March 2018, <[https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0006/2698854/CTN-Policy-Paper-2-Decentralisation-Approaches-Feb-18.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0006/2698854/CTN-Policy-Paper-2-Decentralisation-Approaches-Feb-18.pdf)>, accessed 23 May 2023.

- **Regional autonomy** involves decentralization at the regional level in an asymmetrical way, meaning that the same powers and authorities are not conferred on all regions. Regional autonomy is typically provided for by statute as a form of devolution, but the basis for regionalization may be protected at the constitutional level. Unlike federalism, regional autonomy arrangements typically do not provide for the regions to participate in the exercise of national legislative power through their own representation, though there are typically multiple institutional cooperation mechanisms (OECD 2020).
- **'Federation'** is a term used to describe a form of constitutional devolution but, as a label, is not very useful and is often contentious. A generally expounded difference between so-called federal (or semi-federal) and (unitary) devolved systems is that substate units enjoy some degree of constitutionally guaranteed autonomy over certain policy areas. Many states, however, have constitutionally secured substate units that would not call themselves federal. Moreover, calling a country 'federal' does not necessarily mean that substate governments have more devolved power than those in states that label themselves as unitary. In the unitary United Kingdom, for example, **Scotland** enjoys significant devolved powers (though these are reversible). Similarly in **Spain**, which is not formally federal, many autonomous communities have extensive constitutionally entrenched autonomy. Formal federations such as **Austria**, **Malaysia** and **Russia**, in comparison, are highly centralized (Bulmer 2017b).

Decentralization may be countrywide, with every subnational unit exercising the same powers (as in the **United States**), or asymmetrical, with some subnational units exercising more powers than others (as in **Australia**). Less often, only one or two areas may have autonomy. **Tanzania** is an example of the latter: Zanzibar is the only constitutionally protected subnational unit in

Tanzania and has a high level of autonomy. In practice, these forms and types of decentralization appear in different combinations across countries, but also within countries and even within sectors (see Bulmer 2017b).

## Chapter 3

# NEGOTIATING AND DESIGNING DECENTRALIZATION

Decentralization occurs in both democracies and non-democracies, indicating that the pressures for decentralization are multiple and complicated. The conditions under which decentralization evolves and a country's institutional and governance legacies shape the nature and efficacy of the decentralization scheme(s) adopted. Political elites, armed groups, tribal or religious leaders, and other actors at the decision-making table face diverse and often conflicting incentives to pursue or constrain decentralization, as do the bureaucrats and civil servants charged with implementing the agreed dispensation. These factors, in turn, influence the scheme's potential efficacy and durability, and its capacity (or lack thereof) to deepen democracy, enhance equality, and improve the status of women and other marginalized groups within a polity.

The following key questions must be addressed (Saunders 2018):

- *How will the different units be configured?* This involves determining how many levels of government there will be, how many constituent units there will be within each level, and whether all units at a particular level will be treated equally or if there will be asymmetry by design. A threshold issue which can be exceptionally contentious is the number and borders of subnational units.
- *How deeply should power be decentralized?* This involves determining the level of autonomy that substate units will have in the exercise of their powers—meaning whether they are accountable only to the people within the unit or also to the central institutions—and also determining what kinds of power (political, administrative and fiscal) will be decentralized.
- *How is power distributed?* This involves determining which powers (including executive, legislative and administrative) will be allocated to the substate units, which will be retained by the centre and which will be shared (concurrent), as well as *how* these powers will be divided or shared (through

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**Decentralization occurs in both democracies and non-democracies, indicating that the pressures for decentralization are multiple and complicated.**

constitutionalization or legislation), and which level of government claims unspecified (residual) powers.

- *How will levels of government cooperate?* This involves determining mechanisms for shared rule—for example, through substate representation in central institutions such as a second house of the legislature, through joint or shared institutions, through the entrenchment of constitutional values for cooperation and/or through equalization schemes.
- *How will the decentralization scheme interact with other aspects of the system of government?* This requires consideration of how the horizontal arrangement of power across the legislative and executive branches will impact mechanisms for vertical cooperation, whether any power-sharing arrangements need to be taken into account, how the choice of proportional or majoritarian electoral systems may affect decentralization, and which mechanisms for protection of individual and minority rights will be put in place, particularly concerning the challenge of ‘minorities within minorities’.

In peace negotiations, a commitment to decentralization can be an important tool for conflict transformation, particularly where conflicts involve territorially concentrated minority communities or where unequal treatment of ethno-political identity groups is a key conflict driver (Töpperwien 2010). Decentralizing measures were introduced in disparate post-conflict negotiations and related constitution-building processes in **Afghanistan, Angola, Bosnia and Herzegovina, Cyprus, Ethiopia, Iraq, Mozambique, Nepal, Nigeria, Somalia, South Africa, South Sudan, Sudan, Syria and Ukraine**. Yet, in protracted conflicts, representation at the negotiating table is often limited to conflict protagonists, who are usually men and who often lack the technical skills to effectively design a decentralized state (Saunders 2018; Tamaru and O’Reilly 2018; Houlihan 2020; Suteu and Bell 2018).

Additionally, it can be difficult to persuade parties that seek greater autonomy to consider the role of central institutions. In **Yemen** historical identities linked to disagreements on the structure of the state—federal or unitary structure, the number of states, more or less regionalization or local autonomy—are central to the current conflict and were key debates in the 2013–2014 National Dialogue Conference; the outcomes of those disagreements formed the basis of a new constitution. In the negotiations for the 2015 draft constitution, it was difficult to convince members of the Constitutional Drafting Committee interested in gaining more autonomy to be equally invested in the design of the central institutions.

The essential elements of decentralization (along with a host of other reform commitments) are often determined during peace negotiations, leaving limited room for women and other groups to influence subsequent decision making. Sometimes the essential elements of decentralization remain a long-term matter of contestation, contributing to delays in developing a permanent constitutional arrangement, as in **South Sudan**. Yet, even where key decentralization decisions remain on the table, women and others may not initially recognize their importance for advancing equality or may have

### Quotes from participants at the 2022 Dialogue

'The loss of political negotiation does not mean the loss of the entire concept [of decentralization]. For the people who are focused on design, they sometimes get so caught up in getting the perfect design, and nothing is going to be perfect. So, once you're clear that you're not going to get exactly what you want, how do you shift to make sure that you can get as much of what you want through less politically charged and sometimes less visible processes? I think it is an important route, especially for women.'

—Participant from Kenya, 2022 Women Constitution-Makers' Dialogue

'Design is nothing if it doesn't work in practice. So there are so many bits and pieces of any system of decentralization that there's plenty of room for moving the deckchairs around if that's likely to be helpful. And there's plenty of room for compromise and reaching agreements on a whole range of things.'

—Participant from Kenya, 2022 Women Constitution-Makers' Dialogue

'I see a competition between men and women and men refusing to give space to the women in the political sphere. And they take advantage of the fact that you will have women's movement, you have the intersex movement, we have the children's movement, the persons with disabilities movement, elderly, young people's movement, and faith-based organizations ... Now, the question is, what should women do to take this movement to a level where the men will just appreciate women not just as an interest group?'

—Participant from Botswana, 2022 Women Constitution-Makers' Dialogue

'A lot of times the international community is like "where are the women?" and you have to bring a certain number of women. A lot of those who are opposing the change use this as an excuse to say, "These are not normal to our culture—women want to stay at home, to be a mother or a wife. And it's just because the West is asking for it." You know, sometimes our answer was like, "No, it's the right thing to do ... I don't care who's asking for it."'

—Participant from Syria, 2022 Women Constitution-Makers' Dialogue

to choose between competing priorities—such as the design of central institutions—when directing attention and advocacy resources (Beall 2005). An interesting model for increasing women's participation in peace negotiations is **Syria's** Women's Advisory Board, a body of women which was formed to increase the inclusion of diverse women's perspectives, including on issues related to decentralization. While this body was criticized for its level of representativeness and inclusivity, and questions were raised about its ability to exert influence, it did succeed in bridging political and geographical divisions between women to reach consensus positions.

In transitions to democracy, decentralization is often a means to de-concentrate and share power, enhance political participation and representation, and improve responsiveness and service delivery. In countries with a history of colonial rule, particularly in Africa and Latin America, governance systems were often decentralized and were commonly inherited at independence. Over time, however, these governance and economic systems were increasingly centralized and personalized. The process of decentralization then became a central element of state reform and modernization during the 'third wave' of democratization, which started in the mid-1970s. It is seen both as a solution to the ills of highly centralized power and, increasingly, as a fundamental democratic principle (Diamond 2004).

### Box 3.1. Evolving demands for federalism in Myanmar

Federalism is a long-standing demand of ethnic minorities in **Myanmar**, and the term ‘federalism’ has come to be a byword for self-determination among ethnic minority leaders (in both political parties and ethnic armed organizations) and as a way to protect their rights and interests against the Bamar ethnic majority.

The call for decentralization dates to 1947, when various ethnic groups signed the Panglong Agreement to join the Union of Burma on the condition that they would receive a certain level of autonomy. This condition was never fully realized, and the country fell to military rule for over six decades. The 1974 and 2008 constitutions reinforced the power of the military, with little room for decentralization.

Opposition to federalism generally centres on fears that ethnic minorities will secede, causing the disintegration of unity in the country. Ethnic minorities tend not to favour the term ‘decentralization’, stemming from the perception that it implies the granting of limited power from the centre to the states. As a result, ethnic minorities view federalism, and only federalism, as the way to embrace their distinct cultural, linguistic and religious identities, as well as claims of recognition. The National League for Democracy, headed by Aung San Suu Kyi, promised ‘genuine federalism’, and won in a landslide in the 2015 elections.

Following the military coup in February 2021, pro-democracy forces established interim institutions, such as the National Unity Government, which declared the 2008 Constitution invalid. Federalism, once primarily a demand of ethnic minorities, became a common goal among pro-democracy actors, as reflected in the Federal Democracy Charter released by the interim institutions.

In other cases, decentralization arises in the context of political, economic or social crisis. Incentives often involve some combination of pressure from below, such as mass protests demanding reform, substate authorities or interest groups calling for further devolved powers, calculated self-interest on the part of political parties with more opportunity to consolidate power at the substate level than at the centre and/or a normative belief in the benefits of decentralization to address the problem(s) at hand (Faguet and Shami 2022; Eaton, Kaiser and Smoke 2011).

In designing a decentralization scheme, the fiscal framework should be a key component of negotiations to avoid a misalignment between the division of responsibilities between levels of government and the resources allocated to fulfil their mandates. States with significant natural resources (such as oil, natural gas, diamonds, minerals, forests and water) face a particular set of risk management considerations when negotiating decisions about who will own these resources, which level(s) of government will manage them and how the revenues will be shared. There are several reasons for this: first, ownership and control of natural resources can be a trigger for conflict, or it can complicate and prolong conflict when it occurs; second, the extraction and utilization of natural resources is a great generator of wealth, which creates potential problems of inequity between regions; and third, local decision making and environmental protection must be integrated and balanced. Further, natural resource decentralization must be informed by principles, laws and regulations that establish minimum standards of environmental protection, ensure coordinated governmental efforts towards combating climate change and prevent environmental degradation. Consensus on these issues is key to



### Box 3.2. Debates on decentralization at Chile's Constitutional Convention

In **Chile** mass protests starting in 2019 sparked a constitution-making process in which decentralization was a key issue and a key demand coming from the country's regions. A fully elected constituent assembly, which started its work in July 2021, was unique in its gender parity by design, number of independent delegates and representation of Indigenous peoples.

The proposed constitution was drafted by thematic committees and approved in plenary. In the committee negotiating decentralization, there were no obvious cleavages between delegates of varying political affiliations—unlike in other committees, such as the environmental committee—but there was internal party pushback.

The committee nevertheless reached consensus on the core issues of decentralization and proposed a significant restructuring of the state that gained wide acceptance during plenary voting. The agreed 'regional state' model comprised territorial entities—featuring autonomous regions, autonomous local governments, Indigenous territorial autonomies and special territories—with political, administrative and financial autonomy. The draft constitution further adopted a 'local-first approach', where issues would be addressed at the lowest level if possible, followed by the regional level and then the national level if needed. This approach aimed to prioritize local decision making and problem solving. Fiscal redistribution was a highly debated topic, with the draft constitution aiming to balance centralized and decentralized competencies, stating that the duty and power to ensure macroeconomic and fiscal stability would remain centralized.

There was, however, a much more polarized debate about the formation of the second house of the legislature, in the committee that negotiated the political system, which finally proposed asymmetrical bicameralism with a weaker second house (replacing the Senate) that would represent the regions. The draft constitution, which would have transformed Chile from a highly centralized to a decentralized state, was ultimately rejected via referendum in September 2022 by a majority of almost 62 per cent.

supporting the sustainability of the pact and the durability of the constitutional arrangement (Haysom and Kane 2009; Bulmer 2017a; on Nigeria, see also International Crisis Group 2006).

Lastly, introducing a system of decentralization is a process, not a singular decision or one-time act. Constitution-makers must therefore consider what the constitution can do to set the process in motion, taking into account that constitutionalized elements of decentralization, like other parts of the constitution, will be subject to interpretation and implementation.

## Chapter 4

# IMPLEMENTING DECENTRALIZATION AND MEASURING PERFORMANCE

The performance of decentralization in achieving purported ends is mixed at best. In **Argentina, Brazil, Ethiopia, the Philippines, Tunisia** and **Zimbabwe**, some functions and powers that had initially been decentralized through constitutional reform or laws were recentralized following a series of implementation challenges despite political will for decentralization at the time the schemes were adopted. Some scholars suggest that these reverses might have stemmed, in part, from trying to 'do too much too quickly' (Smoke 2003: 14; Kulipossa 2004). Others note that the side effects or unintended consequences of decentralization when undertaken to achieve short-term or self-interested aims can exacerbate existing challenges and lead to recentralization upon regime change (Faguet and Shami 2022). This leads to a range of implementation challenges, ranging from weak capacity and insufficient resources to poor coordination and conflicts across governments (Kulipossa 2004; Böckenförde, Hedling and Wahiu 2011). Other times, like in the case of **Armenia**, security issues can stall democratization and decentralization progress by diverting the attention of the people and government.

### Quotes from participants at the 2022 Dialogue

"One of the initial proposals [in Kenya was that] new subnational units should only acquire responsibilities when an independent institution had attested to their capacity to fulfil them. That rather elaborate and, in retrospect, far too complicated proposal was scratched out by politicians for various reasons. But the question remains, can we avoid setting up subnational units for failure by not dumping a large number of powers on them from the very outset?"

—Participant, 2022 Women Constitution-Makers' Dialogue

'Kenyan people have supported devolution and protected devolution in a way that they haven't done for anything else politically. And in fact, what we have is they have been the defenders of devolution. We've had attempts and discussions about amending the Constitution, but they've not been able to touch devolution, even though the government has been and the politicians have really been seeking to centralize power again.'

—Participant from Kenya, 2022 Women Constitution-Makers' Dialogue

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## 4.1. RISKS OF POOR DESIGN OF DECENTRALIZATION SCHEMES

The risks and potential impacts of a poorly designed or executed decentralization scheme are significant. Challenges include the following:

- reducing government effectiveness through lack of competence, lack of sufficient resources and/or poor resource management;
- losing economies of scale;
- fragmenting public policies;
- contributing to a 'democratic deficit', where voters are confused about which level of government or agency is responsible for an issue;
- increasing inequality and rivalries between regions through inequitable distributions;
- reducing incentives for responsible fiscal management through a high degree of reliance on central government transfers;
- supporting a 'race to the bottom', where substate units compete by lowering labour and/or environmental standards, or where regressive or illiberal policies and laws are replicated across substate units;
- enabling territories and functions to be captured by local elites and private interests;
- increasing corruption through multiplication at the local level; and
- entrenching divisions between the peoples of a state and exacerbating conflict.

Poor performance and issues such as increased corruption are linked both to the conditions under which the decentralization scheme is developed and implemented and to the structure of the scheme itself given the conditions and context. Some of these factors are under the control of constitution-makers and implementers, while others are not. In **Tunisia**, for example, constitution-makers during the 2011–2014 constitution-making process were aligned on the push for decentralization as a means of addressing the legacy of strong centralization under the previous authoritarian regime. Initially, a special commission with regional representation was suggested for drafting the decentralization code, but due to political crises the responsibility fell to the Ministry of the Interior, which led to concerns about 'centralization of decentralization' (Yerkes and Muasher 2018).

Once the decentralization scheme is agreed, experience suggests that institutional engineering is still necessary both to encourage women's participation in local governance and to make local governments accountable

to female constituents (UNRISD 2005). Women comprise just 5 per cent of mayors worldwide and just 34 per cent of elected officials in local deliberative bodies globally (UN Women n.d.). As at the central level, women's participation in local government alone is not usually sufficient to make it more responsive to women's interests and needs. Informal systems and beliefs that operate to keep women out of governance at the centre and/or which diminish the responsiveness of government institutions to women's needs also function at the local level—and may be more strongly held. Indeed, at the local level the risk of capture by patriarchal elites is often higher than at the central level (UNRISD 2005).

**Any change from a centralized system to a decentralized one will entail implementation challenges.**

#### 4.2. IMPLEMENTATION CHALLENGES: RESISTANCE, LACK OF CAPACITY AND ROLE UNCERTAINTY

Any change from a centralized system to a decentralized one will entail implementation challenges, including in terms of technical implementation, interpretation of the division of powers and cultural change needed to successfully enact the new constitutional arrangement (International IDEA and Constitution Transformation Network 2018).

A common implementation challenge is resistance by the centre, which needs to adapt to new limitations on its power (International IDEA and Constitution Transformation Network 2018). A related issue is that of a centralized 'mindset' within the government and/or within political parties which may be focused on conserving their power at the national level. This mindset, witnessed in **Kenya**, **Nepal** and **Tunisia**, hampers the effective implementation of decentralization and can lead to disputes as leaders continue to maintain centralized control over resources and decision making, potentially undermining the initial objectives of the agreed decentralization scheme. **Botswana** has two tiers of government (central and local) and has been moving towards decentralization for a long time as a strategy to enhance citizen participation in governance and improve public service delivery. The process has been slow and piecemeal. Coupled with the lack of human, technical and financial resources at the local level, the central government maintains conditions that perpetuate the centre's dominance. During the 2023–2024 constitutional reform process, however,

#### Quote from participant at the 2022 Dialogue

'Decentralization is really a process. And I think that it really is a transversal process that involves a cultural shift in how all state institutions work. And I think sometimes the problem is it's approached as a kind of sectoral reform, like there's this ministry called Local Affairs Ministry, which is going to implement decentralization, but actually, decentralization has to be something that the whole state or the state institutions from top to bottom and horizontally are going to get on board with, otherwise, it's not really going to work very well.'

—Participant from Tunisia, 2022 Women Constitution-Makers' Dialogue

participants in public consultations voiced their desire for local authorities to be recognized in the constitution, which could strengthen their mandate.

When creating new decentralized arrangements, a variety of institutions, systems and processes need to be established. A second common implementation issue, therefore, is lack of technical capacity at the subnational level (International IDEA and Constitution Transformation Network 2018). In **Tunisia** the 2014 Constitution laid the foundations for regional and local autonomy within a unitary state, complete with complementary provisions on participatory democracy at the local level. The first-ever local elections, in 2018, marked a milestone in the operationalization of the decentralization process, leading to the establishment of 350 municipal councils. Challenges in the decentralization process include a lack of resources and capacity at the local level, whereby 90 per cent of local government staff in 2018 were unskilled, and the need for training outstripped the capacity of the central government to provide it (Tarchouna 2019).

Even if a decentralized system is well designed in a particular country context, there will inevitably be issues relating to the interpretation of powers and responsibilities of the different levels of government when the system goes into effect. There will also likely need to be adjustments to ensure coordination and alignment—a third common implementation challenge. **Nepal's** transition to a federal and democratic state under the 2015 Constitution established three levels of government—central, provincial and local. The state's restructuring from unitary to federal entailed delineating the authorities and responsibilities for the different levels of government, with the central government responsible for national security, central planning, foreign relations and other central-level matters; the provincial government responsible for provincial police administration, statistics and other regional issues; and local governments responsible for local services, education and local development plans. It quickly became clear that there was confusion about which level of government could direct certain officials to act, with one provincial minister writing an open letter to the prime minister expressing concerns about central officials interfering in his work (International IDEA and Constitution Transformation Network 2018; Poudel 2018).

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### 4.3. MECHANISMS FOR IMPLEMENTATION AND ACCOUNTABILITY

Clear lines of accountability are crucial in all governance systems, but decentralization brings its own set of risks in ensuring downward, upward and horizontal accountability. A lack of accountability can lead to governance lacunas, corruption and deficient service provision. Monitoring, which can take various forms, is necessary to maintain a decentralization scheme's progress, even if political will weakens. In **Tunisia**, for example, the parliament was responsible for an annual review of decentralization progress, with a report from the Ministry of Local Affairs on the implementation of the

country's decentralization strategy. Another example is **Kenya**, where the Commission for the Implementation of the Constitution was established under the 2010 Constitution with a mandate to monitor the development of legislation and administrative practices to implement the Constitution. It also informed a corresponding parliamentary oversight committee on progress and impediments to the implementation of the Constitution. Alternative options would be to empower independent bodies or civil society representatives to evaluate the progress of the realization of the agreed scheme. Such mechanisms can be useful in promoting transparency and accountability in the implementation of decentralization.

## Chapter 5

# CONSIDERATIONS RELATING TO WOMEN, ETHNIC MINORITIES AND INDIGENOUS PEOPLES

### 5.1. GENDER EQUALITY—INCREASED OPPORTUNITIES FOR BOTH PROGRESS AND REGRESSION

Political scientists and gender equality experts have long debated whether decentralization, and particularly devolution and federalism, is advantageous or disadvantageous for women. Theoretically, politically and administratively decentralized systems present more opportunities for women's participation in public life simply by virtue of the increased number of positions available in public office, the civil service and sometimes the judiciary. This opportunity can be further strengthened where substate units can create their own electoral systems, particularly if proportional representation and gender quotas are adopted (Williams 2018). A successful example is **Tunisia**: after the first local elections under the 2014 Constitution, almost half of local representatives were women and almost a third were young people. This result came after the adoption of the 2016 election law embedding both horizontal and vertical parity in election lists.

On a related matter, local campaigns have lower costs, meaning there may be fewer financial hurdles for women candidates to overcome—though social and cultural barriers may persist. Other barriers to entry—such as the need to travel and spend time away from home or the necessity of having significant disposable income, a higher level of education, experience with political competition and social connections—are also lower at the local level, making it easier for women to engage. Women who gain political experience at the local level also presumptively have a better chance of being elected to the provincial or central level (Forster 2020; UNRISD 2005).

Additionally, the more levels of government and subnational institutions there are, the more access points women have to lobby for their desired law and policy reforms, particularly if the central government or some subnational governments are resistant to women's rights. On the other hand, multiple

**Political scientists and gender equality experts have long debated whether decentralization, and particularly devolution and federalism, is advantageous or disadvantageous for women.**

### Quotes from participants at the 2022 Dialogue

'I think that it is particularly important for women in all communities that are marginalized from these processes more historically and systemically that the mobilization activities don't stop once the constitutional design or the legislation comes out—there is always space to shape the way that it looks in the conventions.'

—Participant, 2022 Women Constitution-Makers' Dialogue

'Another challenge is the extent to which women's or minority groups will influence lawmaking and at the substate level, which will depend on the electoral system

design, quota system, party systems and how much constitutional space is given for the substates. So even if powers and guarantees are provided in the Constitution, there is a need to build capacity for these groups from the substates also, as in the past women and minorities have had very limited access to educational, social and political opportunities. So in order for them to make informed decisions, we need capacity building and empowerment for women to have a meaningful role at the decision-making table.'

—Participant from Myanmar, 2022 Women Constitution-Makers' Dialogue

access points also present more opportunities for conservative actors to block gender equality progress or provide opportunities for the resurgence or entrenchment of harmful customary and traditional practices (Forster 2020; Slack, Spicer and Montacer 2014).

The notion that different governments within a state can act as 'laboratories' of innovative policies that may be adopted elsewhere has the potential for a 'race to the top'. Conversely, conservative policies may also be innovated and replicated, creating a potential 'race to the bottom'. There are also cases in which the allocation of powers can result in varying laws across substates that have a disparate impact on women. In **Syria**, for example, the Constitution stipulates equality between all citizens and non-discrimination, but it also enshrines personal status laws for religious communities. The de facto division of the country and legal pluralism mean that the minimum age for marriage, property rights and rules around divorce, child custody and inheritance, among other things, are vastly different for women in different regions and states. Much depends on how subject matter authority, including for religious and customary law, is divided between the central and substate levels of government, the implications of this division given the context and whether the responsible level of government has sufficient resources to implement policy (Ainsworth and Hickey 2022; Williams 2018).

Under the principle of subsidiarity, decentralized systems are better positioned to respond to local needs, including the interests of women. Further, proximity to the locus of decision making makes it easier for women to get involved in the policies and services they care most about within their communities, though this must be balanced against the need for economies of scale and coordinated strategic planning (Forster 2020; Slack, Spicer and Montacer 2014). Many of these advantages can also be applied to minorities and other disadvantaged groups within a state.



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## 5.2. ETHNIC MINORITIES—ACCOMMODATING DIVERSITY OR ENTRENCHING DIVISIONS

Devolved systems are also arguably better able to manage ethnic diversity and conflict, and thereby provide an indirect advantage to women, who are disproportionately impacted by conflict. However, some forms of decentralization—particularly ethnic ‘federalism’ or asymmetric/regional autonomy—can entrench divisions, result in real or perceived differential treatment, and exacerbate conflict. There is also a risk of undermining protections for ‘minorities within minorities’ (Bisarya 2020). This is seen in **Ethiopia**, where the decentralization process has faced various challenges, including the promotion of ethnic-based politics and limited protection of minorities at the substate level. Also in **Myanmar**, ethnicity has been a central criterion for creating substate units, meaning that women’s intersectional identities (and other aspects of identity) have been sidelined and potentially marginalized.

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**Devolved systems are also arguably better able to manage ethnic diversity and conflict, and thereby provide an indirect advantage to women.**

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## 5.3. INDIGENOUS PEOPLES—ISSUES OF SELF-DETERMINATION, LAND AND LIVELIHOOD

Constitutionalized protection for Indigenous populations varies significantly across states and creates unique questions about how to protect and promote Indigenous peoples’ rights within the complex institutional structures that decentralization creates. In considering decentralization, a key issue for Indigenous peoples relates to the ownership of land and natural resources. Renewable natural resources, specifically forests, land and fisheries, are not only sources of income for government and private companies but also the source of livelihoods and well-being for Indigenous peoples and local communities. Pastoralist communities also challenge conceptions of private land ownership and the pro-sedentary bias of states, and they can come into conflict with authorities for traditional practices of cultivation.

Indigenous peoples have historically been excluded from federalizing negotiations, arguably resulting in poor representation of Indigenous peoples in federal national institutions as compared with unitary states (Papillon 2023). In general, Indigenous peoples tend to seek asymmetric arrangements that safeguard their sovereignty and traditional governance, and recognize their close relationship to the land. In **Chile** Indigenous peoples had reserved seats in the 2021–2022 Constitutional Convention and special public participation mechanisms. The first president of the Convention, elected by the delegates, was the Indigenous scholar and activist Elisa Loncón. The 2022 draft constitution established a plurinational state with Indigenous territorial autonomies, safeguarding territory that had been subject to a proliferation of mining, logging and water projects. It also enshrined Indigenous collective rights, the right to autonomy and the right to self-government. The draft constitution was ultimately rejected at a referendum in September 2022: the second-most-cited reason for rejection was plurinationalism and Indigenous

autonomy (Bauer 2022). Nevertheless, Indigenous peoples' leadership and participation in the Constitutional Convention, and the resulting constitutional text, demonstrate Indigenous peoples' sustained efforts for recognition through institutional channels in Chile despite continuing political and economic exclusion.

## Chapter 6

# CONCLUDING OBSERVATIONS

From the discussions at the Women Constitution-Makers' Dialogue, it is clear that decentralization processes must be understood and approached holistically across political, economic and security issues. For example, while the boundaries of substate units may be among the most contentious issues at the bargaining table, failure to adequately address the fiscal components of decentralization will severely compromise the efficacy of the approach, likely exacerbate extant governance challenges during implementation and lead to unintended consequences. This is an area where both women's and men's expertise needs to be built, and technical assistance made readily available. At the same time, decentralization processes are always about power and influence, and the political dynamics and implications of decentralization must be carefully considered. It is not possible, in a context of either conflict or peace, to approach planning as a checklist of issues.

Given these dynamics, the following steps/considerations may be useful to guide a more comprehensive and orderly approach for constitution-makers:

1. Where possible, encourage stakeholders to set out what they want to achieve with decentralization in concrete terms rather than focusing on concepts or symbolic issues.
2. Take into account that all levels of government need to have financial and human resource capacities to perform the roles and responsibilities assigned to them.
3. Ensure that the design of the central government receives adequate attention, keeping in mind that the centre must itself be structured to operate in a decentralized system.
4. Test the proposed system from a variety of viewpoints by considering scenarios that can help identify gaps and explore unintended challenges. For example, propose a situation in which a person accused of a crime

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**Decentralization processes must be understood and approached holistically across political, economic and security issues.**

would need to be extradited, either internally or to another country, and consider how the proposed system would facilitate or hinder this process. Alternatively, examine the impacts on revenue generation at all levels of government and on the operation of fiscal transfers in the context of a natural disaster.

Constitution-makers must think critically about how each decision point fits within the country context and balances against competing poles. For example, in any decentralized system there is a need to balance the powers assigned to the substate (and/or local government) units with the need for solidarity at the national level. What is the history and nature of demands for autonomy by (potential) substate units in a given context? What are the needs around building or rebuilding a political community and establishing or re-establishing national sovereignty? What is the situation of trust both vertically and horizontally across different state institutions? Similarly, how does the context shape the way that the rigidity and flexibility of the decentralization scheme should be balanced in the constitution? Why might the capacity to change over time be necessary, and on what basis, and why might stability be important? Given the dynamics on the ground, how can the system ensure that change is possible with adequate safeguards?

As the relationship between decentralization and women's equality can be complex and ambiguous, Dialogue participants emphasized the need for constitution-making processes to assess which *precise* aspects of decentralization would tend to promote (or obstruct) gender equality under the conditions at play in a country at a particular time.

While highly context-specific, a compilation of examples could aid constitution-makers in thinking through the various gendered aspects of constitutional design choices relating to decentralization, including forecasting potential unintended and gender-disparate consequences in implementation. Further research on effective strategies to ensure that fiscal policy more broadly supports women's rights, including through gender budgeting, would also be a useful tool.

Ultimately, the likelihood of a gender-sensitive decentralization scheme is increased by the substantial and meaningful participation of women from various backgrounds and viewpoints during constitutional negotiations and continuing throughout implementation. Much like the development of institutions and conventions that build a culture of constitutionalism, decentralization is a lengthy and intricate process that women can aim to shape and guide over time.

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# Annex A. Programme

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**27 OCTOBER 2022**

<b>Time</b>	<b>Session</b>
08:30–09:00	Registration and coffee
09:00–09:30	<p>Welcome, objectives and introductions</p> <ul style="list-style-type: none"> <li>• <b>Sumit Bisarya</b>, Head of Constitution-Building Programme, International IDEA</li> <li>• <b>Christine Bell</b>, Co-Director, Global Justice Academy, Professor of Constitutional Law and Assistant Principal (Global Justice), University of Edinburgh School of Law</li> <li>• <b>Erin Houlihan</b>, Programme Advisor, Constitution-Building Programme, International IDEA</li> </ul>
09:30–10:30	<p><b>Session I. Conceptualizing and framing the issues</b></p> <p><i>Decentralization has been a trend in governance development for over 40 years, but the process, elements and outcomes of decentralization look very different across countries. Decentralization, and particularly devolution, involves a well-known set of potential advantages and risks, but also a range of side effects and unintended consequences.</i></p> <p><i>This session provides an overview of the dimensions of decentralization and its core building blocks, or decision points, as a foundation for further sessions.</i></p> <p>Expert panel presentation followed by moderated discussion.</p> <ul style="list-style-type: none"> <li>• <b>Christina Murray</b>, member, United Nations Mediation Support Standby Team; Professor Emeritus of Human Rights and Constitutional Law, University of Cape Town</li> <li>• <b>Cheryl Saunders</b>, Laureate Professor Emeritus, Melbourne Law School; Co-Convenor of the Constitution Transformation Network</li> </ul>
10:30–10:45	Break



Time	Session
10:45–12:15	<p><b>Session II. The politics of decentralization and division of powers: negotiating around different incentives</b></p> <p><i>As with all decisions about power sharing, decentralization involves political choices incentivized by a range of normative, self-interested and practical motives. Calls for decentralization often arise during peace processes, transitions to democracy, and in situations of economic or political crisis. Key decisions involve not only what and how to decentralize, but who is at the decision-making table. Choices about which powers to decentralize, which to share, and which level of government shall claim residual powers are highly consequential and shaped by country context. Experience indicates, for example, that the impact of decentralization on politics and the political party ecosystem is often both a motivating factor and an outcome of the process. Moreover, the nature of politics and political parties as centralized or fragmented contributes to decisions about the forms and extent of decentralization.</i></p> <p><i>This session focuses on the political economy of decentralization negotiations and comparative impact on politics, political parties, peace, and the political opportunities of women and others.</i></p> <p>Moderator: <b>Sumit Bisarya</b>, International IDEA</p> <p>Panellists:</p> <ul style="list-style-type: none"> <li>• <b>Amaya Alvez</b>, former member of the Chile Constitutional Convention; Professor of Law, University of Concepción</li> <li>• <b>Rim Turkmani</b>, Research Fellow and Director of the Syria Conflict Research Programme (CRP), Department of International Development, London School of Economics; member of the Women’s Advisory Board to the UN Special Envoy to Syria</li> <li>• <b>Antelak Al-Mutawakel</b>, Co-founder of the Youth Leadership Development Foundation; former member of the Yemen National Dialogue Conference; former member of the Yemen Committee for Drafting the Constitution</li> <li>• <b>Lobna Jeribi</b>, founding President, Solidar Tunisie; former Minister of Major National Projects/Reforms; former member of the Tunisian National Constituent Assembly</li> </ul> <p>Moderated discussion</p>
12:15–13:15	Lunch

Time	Session
13:15–14:45	<p data-bbox="555 389 1082 418"><b>Session III. Common implementation challenges</b></p> <p data-bbox="555 450 1406 680"><i>Decentralization is a process, not a singular act. Constitution-makers need to consider what the constitution can do to set the process on its way, taking into account (as with all elements of a constitution) the country context, legacies and aims for the future. Like all systems in a constitution, decentralization requires resources, capacity and coordination to function. Yet implementation is often challenged by a range of common issues—from fiscal restrictions on local governments to weak institutional capacity, poor coordination, limited downward accountability, poor performance incentives and others.</i></p> <p data-bbox="555 712 1401 797"><i>This session will focus on common implementation challenges, the benefits and drawbacks of various approaches to constitutionalization, and the ways that constitutions can foster more effective and efficient decentralization processes.</i></p> <p data-bbox="555 828 1029 857">Moderator: <b>Erin Houlihan</b>, International IDEA</p> <p data-bbox="555 889 667 913">Panellists:</p> <ul data-bbox="555 920 1410 1151" style="list-style-type: none"> <li>• <b>Marilyn Kamuru</b>, lawyer and gender expert, Kenya</li> <li>• <b>Asma Nebil</b>, Project Manager—Policy Dialogue, Setaweet feminist movement, Ethiopia</li> <li>• <b>Lila Nyaichyai</b>, Assistant Professor, Central Department of Library and Information Science, Tribhuvan University; former member of the Interim Parliament; former member of the first Nepal Constituent Assembly</li> <li>• <b>Intissar Kherigi</b>, Assistant Professor of Law and Political Science, Sciences Po University; expert on decentralization, Tunisia</li> </ul> <p data-bbox="555 1182 794 1211">Moderated discussion</p>
14:45–15:00	Break

Time	Session
15:00–16:00	<p><b>Session IV. Local voices in demands for decentralization</b></p> <p><i>Decentralization processes are often initiated from the top down—for example, through political settlement negotiations following a period of conflict or unrest, or in response to economic or political crises. But pressures for decentralization—or for particular approaches to decentralization—also often arise through bottom-up demands at the regional or local level. Popular demands for decentralization commonly arise in relation to claims to self-determination, enhanced autonomy and related group rights, but also because decentralization is perceived as a solution to a range of governance challenges that communities may be facing. For example, demands for decentralization are often seen as a means to improve the quality and availability of public services, to mitigate corruption by breaking up (centre-level) patronage networks and increasing accountability to local-level constituents, or to enhance substate-level infrastructure development, among other aims. Bottom-up demands can also focus on the way that decentralization takes place—particularly to ensure that subnational governments and constituents have a say in boundary delineation, the types of powers and responsibilities that are allocated to the substate level, fiscal powers and sufficiency of resource allocation, and ensuring the capacitation of local officials.</i></p> <p><i>This session focuses on comparative experiences with the ways that bottom-up pressures for decentralization (or particular approaches to decentralization) interact with top-down decision-making processes to shape the nature and scope of a country’s decentralization scheme and its implementation over time. The discussion will consider good practices and lessons learned in engaging the public in decision-making around decentralization and various government response to public inputs.</i></p> <p>Moderator: <b>Nanako Tamaru</b>, peace and security consultant; former Senior Program Officer, Research and Training, Inclusive Security</p> <p>Panellists:</p> <ul style="list-style-type: none"> <li>• <b>Lousineh Hakobyan</b>, attorney, founding member and President, Europe in Law Association; member of the Armenia Expert Commission on Constitutional Review</li> <li>• <b>Pearl Ramokoka</b>, Head of the Secretariat for the Presidential Commission of Enquiry into the Review of the Constitution of Botswana</li> <li>• <b>Gobopamang Letamo</b>, member, Presidential Commission of Enquiry into the Review of the Constitution of Botswana</li> </ul> <p>Moderated discussion</p>
16:00–16:30	Wrap-up

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**28 OCTOBER 2022**

Time	Session
09:00–10:30	<p data-bbox="544 524 1439 577"><b>Session V. Institutional and practical issues with fiscal decentralization and fiscal federalism</b></p> <p data-bbox="544 613 1439 958"><i>Fiscal decentralization is both a remedy for a range of challenges facing a country and a development strategy. The justifications and approaches to fiscal decentralization, including fiscal federalism, vary widely across countries, yet the architecture is not well understood outside technical circles. Choices about the depth and comprehensiveness of fiscal decentralization have significant impacts on the capacity of substate governments to meet their responsibilities, on levels of equality across substate units and different groups within society—including women, corruption and many other issues. Evidence suggests that fiscal decentralization may be best understood as a bargain involving the executive, legislators and subnational politicians as filtered through the nature and structure of political parties. This also has implications for related design elements, such as intergovernmental coordination mechanisms.</i></p> <p data-bbox="544 994 1439 1106"><i>This session focuses on the architecture of fiscal decentralization and fiscal federalism through the lens of bargaining dynamics. It considers the institutional and practical implications of these bargains at a country level, including outcomes for development, equality, service delivery and accountability.</i></p> <p data-bbox="544 1142 1206 1164">Expert panel presentation followed by moderated discussion</p> <ul data-bbox="544 1200 1331 1294" style="list-style-type: none"> <li>• <b>Christina Murray</b>, United Nations Mediation Support Standby Team</li> <li>• <b>Susan Williams</b>, Walter F. Foskett Professor of Law; Director, Center for Constitutional Democracy, Indiana University Maurer School of Law</li> </ul>
10:30–10:45	Break

Time	Session
10:45–12:15	<p><b>Session VI. Decentralization and the rights of women, Indigenous peoples and minority communities</b></p> <p><i>The relationship between decentralization and women’s equality is ambiguous; various approaches to devolution in particular can help or harm women’s equality aims. Much depends on country context and how powers are divided, resources are allocated and implementation is supported. Similarly, decentralization can be advantageous for Indigenous peoples and minority communities by providing some degree of autonomy to substate units substantially populated by these groups. Yet experience indicates that, like with women, poor design of decentralization policies can undermine protection efforts and contribute to the further marginalization of Indigenous peoples and minorities and the erosion of the institutional, cultural and natural resources on which they depend. Further, there are the challenges of protecting ‘minorities within minorities’ and the rights of women within substate units, as both groups may be subject to discrimination and oppression—the former by the local majority, and the latter through patriarchal customary or religious systems that operate in the substate unit, which may not be compatible with constitutional guarantees of equality.</i></p> <p><i>This session focuses on comparative mechanisms in the design of constitutionalized decentralization that can support the effective realization of rights held by Indigenous peoples and minority communities, while protecting the rights of ‘minorities within minorities’ and women in autonomous substate units.</i></p> <p>Moderator: <b>Susan Williams</b>, Indiana University Maurer School of Law</p> <p>Panellists:</p> <ul style="list-style-type: none"> <li>• <b>Dima Moussa</b>, member, Syrian Constitutional Committee; member and former Vice President of the Syrian National Coalition</li> <li>• <b>Amaya Alvez</b>, Professor of Law, University of Concepción; former member of the Chilean Constitutional Convention</li> <li>• <b>Naw Janet</b>, Programme Officer, MyConstitution Programme, International IDEA, Myanmar</li> <li>• <b>Leila Haouaoui</b>, Middle East and North Africa (MENA) Regional Director, Forum of Federations</li> </ul> <p>Moderated discussion</p>
12:15–13:15	Lunch

Time	Session
13:15–14:45	<p data-bbox="555 389 1225 416"><b>Session VI. Decentralization and natural resource governance</b></p> <p data-bbox="555 450 1439 824"><i>Decisions about whether and how to decentralize natural resource governance, including extractive resource revenues, is hugely consequential. A wealth of extractive resources in a country can lead to excessive rent-seeking and conflict. Provisions on natural resources are commonly found in peace agreements and are linked to issues around the environment and economy. Experience indicates that fiscal and political decentralization as a means of rent-sharing can mitigate the destructive effects of rent-seeking behaviour, but poorly designed decentralization can exacerbate conflict and predation. More broadly, natural resource governance is increasingly understood within the framework of human rights—ranging from Indigenous rights to rights to water, land, food and a healthy environment. This trend is evidenced through a proliferation of international instruments and the increasing constitutionalization of socio-economic and environmental rights, as well as state duties on climate change.</i></p> <p data-bbox="555 857 1407 972"><i>This session focuses on decentralization of natural resource governance and implications for human rights, conflict, effective environmental stewardship, economic development and service delivery. The discussion will also address the nexus of gender and natural resources.</i></p> <p data-bbox="555 1005 1241 1032">Moderator: <b>Christine Bell</b>, University of Edinburgh School of Law</p> <p data-bbox="555 1066 667 1093">Panellists:</p> <ul data-bbox="555 1095 1430 1267" style="list-style-type: none"> <li>• <b>Intissar Kherigi</b>, Assistant Professor of Law and Political Science, Sciences Po University; expert on decentralization, Tunisia</li> <li>• <b>Anne Larson</b>, Team Leader—Governance, Equality and Wellbeing, Center for International Forestry Research (CIFOR)</li> <li>• <b>Sharon Hickey</b>, Associate Programme Officer, Constitution-Building Programme, International IDEA</li> </ul> <p data-bbox="555 1301 794 1328">Moderated discussion</p>
14:45–15:30	<p data-bbox="555 1352 970 1379">Key take-aways and recommendations</p> <p data-bbox="555 1382 855 1408">Moderated open discussion</p> <p data-bbox="555 1411 836 1438">Wrap-up and end dialogue</p>

## Annex B. List of participants

**Elsie Alexander**, development and gender consultant and entrepreneur; Director, Putting Women First Trust Botswana

**Amaya Alvez**, Professor of Law, University of Concepción; former member of the Chilean Constitutional Convention

**Christine Bell**, Professor of Constitutional Law and Assistant Principal (Global Justice), School of Law, University of Edinburgh

**Sumit Bisarya**, Head of Constitution-Building Programme, International IDEA; former Constitutions Advisor, UN Department for Peacebuilding and Political Affairs

**Lousineh Hakobyan**, attorney, founding member and President, Europe in Law Association; member of the Armenia Expert Commission on Constitutional Review

**Leila Haouaoui**, Regional Director, MENA Women's Leadership Program, Forum of Federations

**Sharon Pia Hickey**, Associate Programme Officer, Constitution-Building Programme, International IDEA

**Erin Colleen Houlihan**, Program Director, Governance, National Democratic Institute; former Programme Officer, Constitution-Building Programme, International IDEA

**Naw Janet**, Programme Officer, International IDEA

**Lobna Jeribi**, founding President, Solidar Tunisie; former Minister of Major National Projects/Reforms; former member, National Constituent Assembly, Tunisia

**Marilyn M. Kamuru**, lawyer and gender expert, Kenya

**Intissar Kherigi**, Assistant Professor of Law and Political Science, Sciences Po University; expert on decentralization

**Anne Larson**, Team Leader on Governance, Equity and Wellbeing, Center for International Forestry Research and World Agroforestry

**Gobopamang Letamo**, Professor of Demography and Population Studies, University of Botswana; member, Presidential Commission of Inquiry into the Review of the Constitution of Botswana

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

**Mona-Lisa Danieli Mungure**, lawyer; Director of Molao Matters, Botswana

**Christina Murray**, member, United Nations Mediation Support Standby Team; Professor Emeritus of Human Rights and Constitutional Law, University of Cape Town, South Africa

**Antelak Muhammad Abdul-Malik Al-Mutawakel**, co-founder of the Youth Leadership Development Foundation; former member of the Yemen National Dialogue Conference; former member of the Yemen Committee for Drafting the Constitution

**Asma Nebil**, Project Manager, Setaweeet Movement (a feminist movement), Ethiopia

**Lila Nyaichyai**, Assistant Professor, Central Department of Library and Information Science, Tribhuvan University; former member of the Interim Parliament; former member of the first Nepal Constituent Assembly

**Pearl Nanikie Ramokoka**, Head of the Secretariat, Presidential Commission of Inquiry into the Review of the Constitution of Botswana; Coordinator, Drug Enforcement Agency, Ministry of Defense and Security

**Cheryl Saunders**, Laureate Professor Emeritus at Melbourne Law School and co-convenor of the Constitution Transformation Network

**Onalenna Selolwane**, development and gender expert; former faculty member, University of Botswana; founding member and former President, Emang Basadi Women's Association; Executive Committee member, Mosadi Khumo Women's Association

**Silvia Suteu**, Associate Professor and Athena SWAN Lead, University College London

**Nanako Tamaru**, peace and security consultant; former Senior Program Officer, Research and Training, Inclusive Security

**Rim Turkmani**, Research Fellow and Director of the Syria Conflict Research Programme, Department of International Development, London School of Economics; member of the Women's Advisory Board to the UN Special Envoy to Syria

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

**Kimana Zulueta-Fülscher**, Senior Programme Officer, Constitution-Building Programme, International IDEA



## About the authors

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

**Sharon P. Hickey** is an Associate Programme Officer in International IDEA's Constitution-Building Programme, where she generates knowledge on comparative constitutional process and design and supports constitution-building processes. She is also the editor of ConstitutionNet, International IDEA's platform dedicated to providing regular updates and original analysis on constitutional reform developments worldwide. Sharon P. Hickey graduated from the National University of Ireland, Maynooth, where she served as executive editor of its law review, and earned her LL.M. from Columbia Law School, where she was an editor of the *Columbia Human Rights Law Review*. She is a member of the New York Bar.

# About the partners

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## INTERNATIONAL IDEA

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

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## PEACEREP

PeaceRep is a research consortium based at the University of Edinburgh. Our research is rethinking peace and transition processes in the light of changing conflict dynamics, changing demands of inclusion, and changes in patterns of global intervention in conflict and peace/mediation/transition management processes.

Consortium members include Conciliation Resources, Coventry University, the Edinburgh Centre for Constitutional Law, International IDEA, LSE IDEAS, the LSE Middle East Centre, Queen's University Belfast, the University of St Andrews, the University of Glasgow and the University of Stirling. PeaceRep is funded by the UK Foreign, Commonwealth & Development Office (FCDO).

PeaceRep: The Peace and Conflict Resolution Evidence Platform

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Whether decentralization, and particularly devolution and federalism, is advantageous or disadvantageous for women is a long-debated issue. The effectiveness of decentralization in promoting gender equality depends on how the system is designed, the quality of implementation planning and the adequacy of resources.

Decentralization processes, nevertheless, are particularly fertile ground for enhanced and systematic women's engagement, with numerous avenues for mobilization and advocacy throughout the long period of interpretation, implementation and enforcement, which can be harnessed by women to shape what decentralization will look like in practical terms.

The Fourth Women Constitution-Makers' Dialogue focused on decentralization from a technical and empirical perspective to support women constitution-makers engaged in constitution-building processes and constitutional implementation through knowledge transfer and comparative experience sharing.