

WOMEN PARTICIPATING IN THE FEDERAL DEMOCRATIC REPUBLIC OF NEPAL

Realizing Nepal's International
Commitments to Women's
Political Participation

26
Questions
and Answers



Support to Participatory Constitution Building in Nepal
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FOREWORD

After a successful Constituent Assembly election, Nepal is at a critical point in time. Even though Nepal has made significant progress by agreeing to become a secular, federal, democratic republic, it has yet to make changes to ensure the meaningful participation of women in the decision making and at all levels of the state structure. Indeed, there is widespread concern that the high level of women participation in the first Constituent Assembly will not be so high in the second Constituent Assembly.

In this context, it is important to reiterate the international and national commitments made to women's political participation in governance. The media can be an important vehicle to highlight this issue and facilitate an informed debate on its importance. The growth of the news media in Nepal has been one of the most encouraging developments on the country's journey to democracy and inclusion.

Media can help strengthening women's political participation by enhancing women's portrayal as active political participants and leaders rather than perpetuating stereotypes of women in their traditional roles.

This booklet with 26 questions and answers deal with the issues of women's political participation, women's rights and concerns in the context of the new constitution and state restructuring. The booklet also recalls progress that has been made in Nepal and that needs to be maintained and built upon, even in the current insecure political environment. The answers attempt to identify and explain some of Nepal's international commitments to women's political participation.

We hope that this booklet helps journalists, researchers and those interested in the topic to obtain information on the most pertinent women issues and help improve their understanding on some of the technical issues involved to promote positive media coverage and constructive criticism.

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INTRODUCTION

- Nepal is at a crucial, formative point in time. Following a civil war, people's movement and overthrowing of the monarchy, it is now taking its final steps towards becoming a new secular and federal democratic republic. While this stage of political transition has led to much instability and insecurity, it is also a unique opportunity to make positive changes.
- Strengthening women's political participation is crucially important because it will strengthen and enrich the democracy, and bring Nepal closer to having a society that is just, equal and respectful of all its citizens.
- This booklet aims to:
 - Outline the basics of women's political participation, what it means and why it is important
 - Place women's rights and concerns in the context of the new constitution and state restructuring
 - Recall progress that has been made in Nepal and that needs to be maintained and built upon, even in the current insecure political environment.

GENERAL/BACKGROUND

1 Why do women's rights deserve special attention?

- Across the world and in Nepal, women suffer structural disadvantage in all spheres of life. From health to education, to economic situation and rights: on the whole women tend to be worse off than men.
- Women do not form a uniform group. They come from diverse backgrounds, belong to different communities and do not always agree with each other. But, to some extent, all of them are expected to conform to ideas society has about what a woman should and should not, can and cannot do. Often, these views are unfavorable and discriminatory towards women. For example, they are expected to carry out hard, menial, unpaid labor in the house and on the land, while their brother is groomed for a respected, influential, well-paying job. Consider for example that in Nepal, of employed women, 60.8 percent receive no remuneration for their work. Among men, this number was only 11.9 percent. Of the women, only 23.5 percent were reimbursed for their work entirely in cash, against 65.5 percent of men.¹ No matter how talented and ambitious, women tend to have the odds against them in opportunities and life prospects, because of the simple fact of being a woman.

¹Ministry of Health and Population (MOHP) [Nepal] et al., 2012. Nepal Demographic and Health Survey 2011.

- One of the results of this disadvantage is that only a small percentage of women take part in political decision-making. Men make up about half of the population anywhere in the world, but they occupy about 80 percent of seats in parliament and up to 90 percent or more of more influential positions (Ministers, Heads of State and Government).² This is cannot be justified. In a democracy, everyone whose basic interests are affected by government decisions should be included in the process of making them. Clearly, that includes women. The low percentages of women's participation mean that a large pool of human potential is lost and that many women are not enjoying their right to take part in the government of their country. It means that women's perspectives are not taken into account in decision-making as much as they should. Increasing women's influence in politics is a crucial step towards achieving gender equality and empowering women. It can help pave the way for a more just and equal society where women's interests and rights are better protected.
- Like women, men also have to live up to certain gendered expectations that come with specific challenges. Men and their issues also need to be talked about. However, considering that women still have less opportunities and face more challenges, in this booklet the focus will be on women. At the same time, it should be understood that women are not separate from men, and men are not their natural enemy: women and men form relationships and live together in families and communities. Perpetrators of discrimination and violence against women include both men and women, and supporters of women's rights and empowerment similarly include men as well as women.

²UN Women, 2012. Women in Politics: 2012 [Map].

2 What are international human rights standards and why are they important for Nepal?

- The Universal Declaration of Human Rights (UDHR), in 1948 for the first time codified fundamental human rights that were to be universally protected. That means anywhere, regardless of local or national laws, values and practices. Human rights are also universal in the sense that they are exactly the same for all people, without any exception. Therefore, women have the exact same rights as men.
- Following UDHR, major international treaties have been adopted that legally bind signatory States to abide by their standards.³ They therefore are powerful legal tools. These universal instruments are developed within the UN system. Since almost all states are represented in the UN, instruments and texts adopted there tend to have a large degree of support globally. There are also non-binding resolutions such as the Beijing Platform for Action (on women's rights)⁴, that have a strong moral force. States who do not abide by its standards are prone to fierce criticism from the international community, as well as national human rights activists.
- The Nepal Treaty Act, 2047 (1990), Article 9 (1) states that if inconsistency occurs between an international treaty and national law, the provision of the treaty remains enforceable and the inconsistent law will be considered void. In stating this, the Treaty Act is an extremely progressive piece of legislation, unique in South Asia.

³For a list of key international human rights Treaties, see Annex I.

⁴The Beijing Declaration and Platform for Action was prepared and adopted by delegates at the Fourth World Conference on Women in Beijing, China in 1995. It is aimed at the empowerment of women and global achievement of gender equality.

3 What political rights for women has Nepal committed to through international treaties?

- Various international treaties contain clauses about women's right to equality and non-discrimination, as well as specific mention of their rights to take equal part in the government of their country.
- Nepal has ratified the major international treaties that outline women's rights with regard to political participation, including the Convention on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In doing so, it has recognized the universal importance of these rights and the need to ensure that all Nepal's citizens enjoy the rights outlined in these treaties. Moreover, it has legally bound itself to respecting and protecting them.
- ICCPR (ratified by Nepal in 1991) recognizes amongst others the universal and equal right of all citizens⁵ to vote and be elected, have access to and take part in public affairs. While these rights are important, one may note that in many countries including Nepal, women have these rights, but still they stay behind.
- The main universal treaty with specific reference to women is CEDAW, ratified by Nepal in 1991. It outlines provisions for the elimination of all forms of discrimination on the basis of sex in the enjoyment of civil, political, economic, social and cultural rights and highlights the need to protect and further the fundamental rights of girls and women.
- In Article 1, CEDAW adopts a comprehensive definition of discrimination that goes beyond basic de jure equality: 'any

⁵This is a somewhat problematic term in the context of Nepal as there is – occasionally fierce – debate about who can and cannot claim Nepali citizenship.

distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.' Article 7 specifically highlights States' responsibility to take all appropriate measures to eliminate discrimination against women in the political and public life of the country. (See question 4 for some information on the CEDAW Committee Concluding Observations for Nepal).

- Additionally, an important international instrument for women's rights is the Beijing Platform for Action (BPfA), also supported by Nepal. The Beijing Platform for Action asserts that 'equal participation of women and men in decision-making will provide a balance that more accurately reflects the composition of society and is needed in order to strengthen democracy and promote its proper functioning.' The text identifies women's equal participation in decision-making as both a demand for justice/democracy, as well as something that is necessary in order for women's perspectives and interests to be taken into account. In 190 (a) it also recommends governments to set specific targets and implement measures to increase the number of women, aiming to achieve equal representation in all governmental and public administration positions. If necessary, this is to be done through positive action.
- While no specific form of quotas or other measures are prescribed, according to CEDAW (Article 4.1) 'temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination [...]'. These measures, as stated, are temporary and should be discontinued when equality of opportunity and treatment is achieved. Similarly, paragraph 186 of the Beijing Platform for Action, states that positive measures are needed to address the low proportion of women among economic and political decision makers.

- Most recently, the UN General Assembly reaffirmed commitment to strengthening women’s political participation through a resolution adopted in March 2012. Guided by CEDAW and reaffirming UDHR and the Beijing Declaration and Platform for action, it again encourages States to set targets and implement measures, if appropriate ‘positive action’ measures, to increase the number of women in order to achieve equal representation.

4 How are international standards incorporated at the country level?

- International standards are adopted into national instruments and frameworks, including the constitution, laws, policies and programmes.
- As mentioned, under Nepal’s Treaty Act, if inconsistency occurs between a ratified international treaty and a national law, the provision of the treaty prevails over the domestic law.
- The CEDAW Committee, in its concluding observations urges the Nepali State to focus on the priority areas outlined by the committee in implementation of activities and report to the Committee on actions and achievements. It also stresses that the Convention is binding on all branches of Government.
- The CEDAW Committee also calls on CA/Parliament to take into account the Convention and the recommendations when drafting the new Constitution.
- In line with CEDAW and other international standards, discriminatory laws are to be repealed and the Constitution is expected to be free of discriminatory provisions.

5 What is the current implementation status of standards on women's (political) rights in Nepal?

- As outlined under question 3, Nepal has committed to all major international standards on women's political participation.
- However, in practice, there is still a way to go before women in Nepal can truly enjoy equality in the political arena.
- The achievement of approximately 33 percent women's representation in the 2008 Constituent Assembly (CA) was considered a major step forward.
- However, 33 percent is still a distance away from reaching equal representation (as women in Nepal make up 52 percent of the population, not 33).
- When looking at the indicator of Women in Ministerial Positions, Nepal quickly drops down the list. With the meager 15.4 percent it reported as of January 2012 it already did worse than over 80 other countries. Currently, as of July 2013, the percentage has dropped down to an ominous zero percent, falling back even further.
- The representation of women in public life is low with around 14% in civil service, 1.8% judges in the judiciary, 5.6% in the Nepal Police 1.2% in the Armed Police Force and 1.2% in the Nepalese Army.⁶
- In the 2011 Concluding Observations for Nepal, the CEDAW Committee expresses concern about the extremely low representation of women (in particularly Dalit and indigenous) in high-level decision-making positions, public service, judiciary,

⁶Renaissance Society Nepal (RSN), 2009. Women's Political Participation, Empowerment and Inclusion in Nepal: A Survey Report and Strategic Action Plan.

diplomatic service, National Human Rights Commission and at the local level. It recommends the adoption of temporary special measures and establishment of concrete goals and timetables to increase representation. It also calls for awareness-raising activities on the importance of women in decision-making and programmes for capacity development of current and future women leaders.

- Details of provisions for women's (political) rights within current and past constitutions are discussed under question 5.

6 What provisions for women are there in the Interim Constitution (2007) of Nepal?

- The 2007 Interim Constitution guaranteed equality before the law, prohibiting discrimination on any ground, including gender. It specifically prohibited discrimination between men and women for the same work with regard to remuneration and social security (article 13). In article 20, it prohibited discrimination on the basis of gender and guaranteed women's reproductive rights, the right to be free from violence (making violence against women punishable by law) and equal rights to ancestral property. It also gave oppressed groups, including women, the right to participate in state structures on the basis of principles of proportional inclusion (article 21).
- The CEDAW Committee, while welcoming the 2007 Interim Constitution, also commented that 'the Constitution does not embody the principle of equality between women and men and does not prohibit discrimination against women in line with article 1 of the Convention, which covers both direct and indirect discrimination [...].' The Interim Constitution was also found lacking in obliging the State to take all appropriate measures

to eliminate discrimination against women by any public or private actors (as described in Article 2 (e) and Committee general recommendation No. 28). The Committee therefore recommended that the principle of equality between men and women be adopted in the constitution, as well as provisions to prohibit discrimination in line with a definition that encompasses both direct and indirect discrimination and discrimination in the public and private spheres.

7 What progress did the 2008 CA make on drafting a gender responsive constitution?

- The proposals developed by the CA thematic committees promised to ensure gender equality and the end of gender discrimination in the future Constitution's preamble. The equality clause guaranteed the right to equality and non-discrimination on the basis of sex, sexual orientation, pregnancy, marital status etc. The draft specifically prohibited gender discrimination in remuneration and parental property inheritance. It also included provisions on women's rights to reproductive health, violence against women, proportional representation and the right to special measures in education, health, employment and social security.
- The principle of Proportional Inclusion was adopted in the draft Constitution, guaranteeing women's proportional participation in all state mechanisms and public services. As a result of strong advocacy from the women members of the CA, the draft included the provision of at least 33 percent women in federal legislature and the guarantee of a minimum of four high political positions for women (President or Vice President; Head or Deputy Head of Federal and Provincial legislatures; Speaker or Deputy Speaker).

- The proposals gave constitutional status to the National Women's Commission.
- Contentious: Women members of the CA demanded 50 percent representation at all levels of State institutions rather than 33 percent.
- Contentious: Women CA members have been fighting discriminatory provision of citizenship to foreign nationals marrying Nepali nationals (where the foreign spouse of Nepali men can obtain citizenship immediately, while those of Nepali women have to stay in the country for 15 years first). Also, while the 2007 Interim Constitution entitles citizenship by descent if either the mother or the father is a Nepali citizen, within new proposals both the father and the mother have to be Nepali to bestow Nepali citizenship.⁷
- Challenge: the draft made a number of rights, including affirmative action, subject to specific legislation. This means that implementation can only take place after the political transition is completed and laws in line with the constitutional provision enacted. Additionally, some of the provisions will require significant State resources and capacity, as well as capacity development among women.
- Challenge: In the previous CA, about 70 percent of women CA members indicated that there was a lack of seriousness among male CA members about women's issues. More than 35 percent even indicated there was a lack of support from the male members on the inclusion of a gender perspective in the new constitution.⁸

⁷For more detailed info on contentious issues women CA members have been fighting for, see Constituent Assembly Secretariat [Nepal] et al. 2011. Women Members of the Constituent Assembly: A Study on contribution of Women in Constitution Making in Nepal, p. 95-97.

⁸Constituent Assembly Secretariat et al., Women Members of the CA.

8 Can women's rights be realized when the country's resources are limited?

- A government can only fulfill its responsibilities and effectively implement legislation when policies are supported with sufficient resources. The government is responsible for mobilizing and allocating adequate resources to fulfill its obligations. How the government plans to do this, is reflected in its yearly national budget.
- As Ortiz et al. have argued, even the poorest countries have various options to mobilize and re-allocate resources in order to find the fiscal space for critical economic and social investment necessary for equitable outcomes.⁹
- The Committee on Economic, Social and Cultural Rights has specified that 'even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.' (General Comment 3, para 11)
- A government is accountable to all citizens and needs to address the concerns of all. Similarly, its budget needs to be used in a way that it benefits all groups of the population, including the most disadvantaged.
- By ratifying CEDAW and other international standards on women's rights, the government becomes obliged to secure women's rights by drawing on available resources to the maximum possible extent.
- Additionally, gender equality and women's empowerment are smart investments as studies have found that gender

⁹Ortiz, I. et al., 2011. Identifying Fiscal Space: Options for Social and Economic Development for Children and Poor Households in 184 Countries. New York: UNICEF.

inequality, violence against women etc. come with high costs for the economy and society. For example, according to an ESCAP estimate, restrictions on labor force participation for women cost the Asia-Pacific region up to USD 42-47 billion per year.¹⁰

- Gender Responsive Budgeting (GRB) refers to tools that help adopt a gender perspective in budgeting processes, in order to ensure that the way the budget is used, it addresses gender inequality and contributes to the realization of women's rights.
- The Nepal Ministry of Finance has initiated the implementation of a GRB system in 2002. A GRB Committee was established as a permanent body at the Ministry and all formats and forms revised to make them compatible with GRB. The Three Year Plan for 2010/11 – 2012/13 has set a target of making 33 percent of the budget directly gender responsive.¹¹

9 What is meant by 'affirmative action', 'reservations' and 'quotas'?

- There is no uniform agreement on the definition of these terms and how they relate to each other.
- Affirmative action may be defined as 'preferential access to social resources for persons who are members of groups which have been previously disadvantaged by adverse discrimination.'¹² In situations where groups have been structurally discriminated against, simply banning discrimination is not enough. Discrimination, and its long-term effects may continue, even after explicit legal constraints are removed and discrimination

¹⁰ ESCAP, 2007. Economic and Social Survey of Asia and the Pacific 2007: Surging Ahead in Uncertain Times. New York: United Nations.

¹¹ UN Women, 2013. GRB Concept Note [unpublished].

¹² Smith, N, 1992. 'Affirmative Action: Its Origin and Point'. South African Journal on Human Rights, Vol 8, pp 234-248, 234.

officially banned. In such cases, “reverse discrimination” is sometimes considered necessary in order to create a more equal and just society. It can also be seen as a way to compensate certain groups for past wrongdoing, or more adequately meeting the needs of a society.¹³ Affirmative action measures are appropriately implemented where one group or multiple groups have suffered systematic exclusion and discrimination such that they are in need of specialized policies or laws to ensure that they can participate in political, social and economic processes on equal footing with other groups from society. Affirmative action policies are implemented under the assumption that it is the Government’s responsibility to ensure that equality of opportunity is realized in practice.

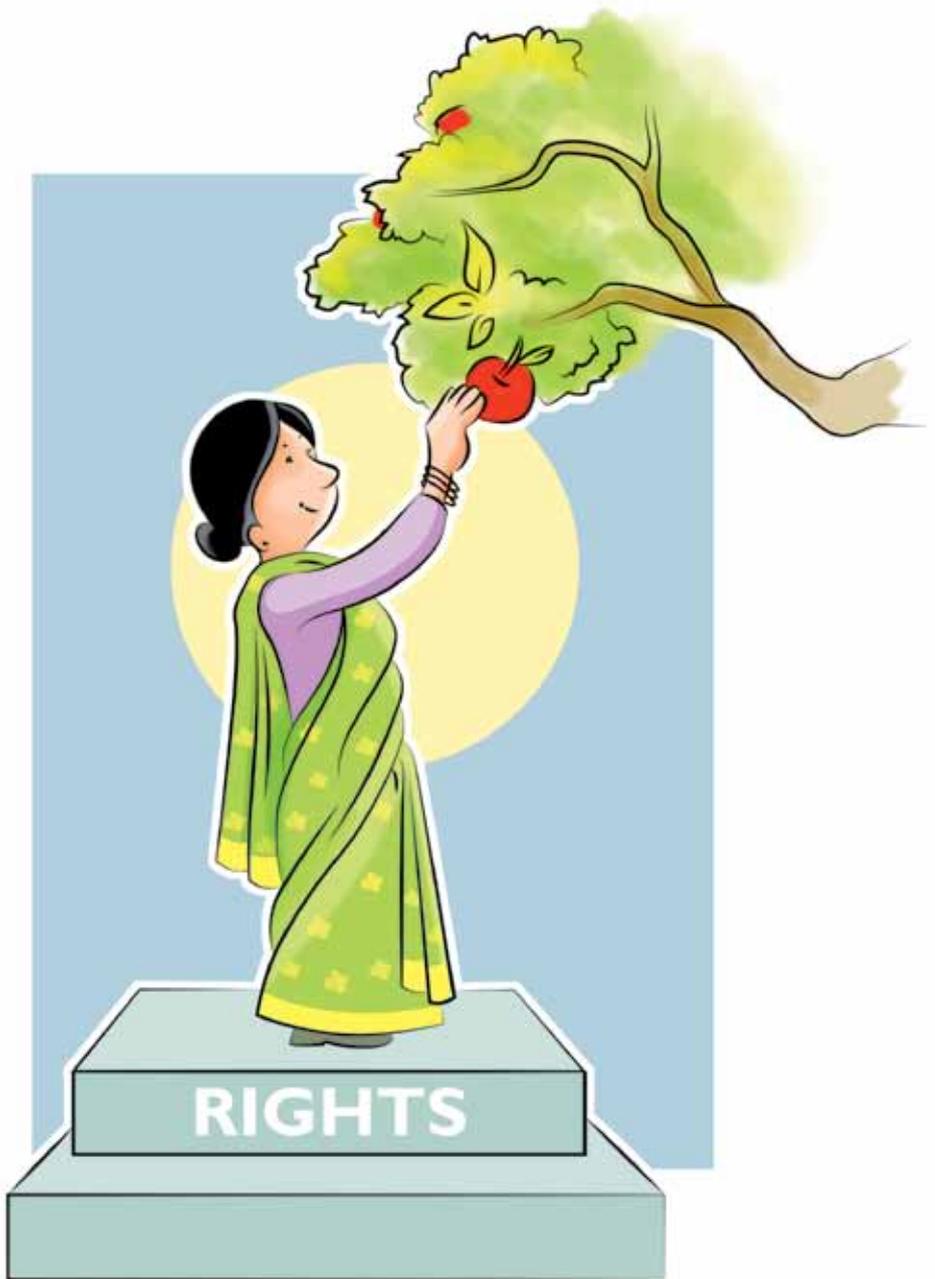
- Affirmative action (sometimes also referred to as ‘positive discrimination’, although this term is controversial because of the negative connotation that the word ‘discrimination’ carries) can take on different forms. Gender quotas in parliament are a common form of affirmative action that aim to rapidly increase women’s participation and leadership in politics. Quotas involve the adoption of a (minimum) percentage or number for the representation of a certain group, in this case women.
- “Reservations” are a specific form of quota that regulates the number of women elected, by reserving a specific number of seats in parliament or other Government bodies, as opposed to other forms such as candidate and political party quotas that do not guarantee election for women. Recent years have seen an increasing number of countries across the globe adopting some sort of quota system.¹⁴ Quota systems should not be confused with the “proportional representation” electoral system used in Nepal for the Constituent Assembly elections. Proportional

¹³ Smith, Affirmative Action.

¹⁴ For more information on gender quotas, see <http://www.quotaproject.org>.

representation as used in Nepal means that all groups in society should be guaranteed representation in Parliament in accordance with their proportion of the population. As such, there is no one target group in proportional representation systems.

- As mentioned earlier (question 3), international norms prescribe no specific form of quotas or other affirmative measures. However, CEDAW, BpFA and the 2012 GA resolution all promote the implementation of what they refer to as ‘temporary special measures’, ‘positive measures’ and ‘positive action’ if and where appropriate. Moreover, in its Concluding Observations for Nepal, the CEDAW Committee specifically recommends that ‘the quota system for women’s representation in the Constituent Assembly be increased in the future Parliament,’ and that the State adopt temporary special measures to accelerate the full and equal participation of women in public and political life.
- Regardless of the specific form of affirmative action, affirmative action measures should be specifically designed to accomplish their end goal of “leveling the playing field.” As such, the categories of beneficiaries should be scientifically determined with reference to census and other relevant data and narrowly defined. Categories of beneficiaries should, as much as possible, not be over or under inclusive. Affirmative action policies should also be temporary and should have a sunset period once they have achieved their objective, i.e. once women or other target groups have attained a level of participation that indicates they are no longer in need of special measures to ensure their inclusion.



STRENGTHENING WOMEN'S POLITICAL PARTICIPATION

10 Does Nepal need a PR system in order to have a significant number of women representatives in government?

- No electoral system is entirely neutral. Even if there are no quotas involved, the electoral system as dictated by national law will influence the allocation of seats between parties, regions, men and women and different social groups.
- Under Nepal's FPTP system, each of the 240 constituencies elects one member to the CA. Under this system, women are likely to be underrepresented. Because there is only a single winner and usually only a single candidate per party, there is no possibility of balancing the seat (also making it very difficult to introduce quotas under this system). In practice this means that few parties are willing to place their bets on a female candidate, because this would exclude the most powerful male politician in the same district from the race and/or because they fear that voters will be less likely to vote for their candidate when presented with a female candidate.¹⁵

¹⁵ Bylesjö et al. 2010. Electoral System and Quotas in Nepal. Stockholm: International IDEA; Matland, R.E., 2005. 'Enhancing Women's Political Participation: Legislative Recruitment and Electoral Systems'. In: Ballington, J. and Karam, A. (eds.), 2005. Women in Parliament: Beyond Numbers. pp. 93-111.

- To balance out the shortcomings of the FPTP system for ensuring gender and social inclusion, Nepal implemented a mixed/parallel voting system in which there are two races—one FPTP and one proportional representation (PR). The idea is that the PR race will compensate for the failure of the FPTP race, and will ensure the proportional representation of all groups in Nepal. Under Nepal's PR system, the whole country is considered one constituency for which a large number of members (335 in the last CA) are elected. Voters vote for one political party as a whole and have no influence on the candidates. Seats are divided among the winning parties, with each party receiving a number of seats that approximately equals the percentage of votes it received. Parties can choose which candidates from their list are assigned the seats that they have won.
- Even without quotas, under the PR system parties have better incentives to balance their ticket. Apart from adhering to standards of justice and (gender) equity, it is also a strategy to attract more voters, as different candidates can appeal to specific sub-groups of voters. Women candidates can attract certain groups of voters without the need to eject popular male candidates and losing the votes they attract. Often, once one party starts to nominate women in prominent positions, other parties adopt the same policy in order not to stay behind and lose their sub-groups of voters.¹⁶
- Under Nepal's quota system, parties have to assign a certain percentage of their PR seats to women (as well as to Dalits, indigenous groups etc.).
- A criticism on this form of PR system is that apart from having to adhere to the specified quotas, party leaderships have all the power to determine who from their party will occupy the seats (meaning that candidates may need to please their party leaders in order to be chosen).¹⁷

¹⁶ Matland, *Enhancing Women's Political Participation*.

¹⁷ Bylesjö et al., *Electoral System and Quotas in Nepal*.

- In some PR systems a threshold is adopted in order to discourage the creation of mini-parties. While a threshold proposal was fought in Nepal on the basis of potentially lowering women's representation, experts in fact believe that thresholds are important for increasing women's chances.¹⁸ Based on the same principle as the selection of single candidates under the FPTP system, mini-parties with only one or two representatives will usually assign their seats to male representatives. In Tunisia, 2011 elections under a closed-list PR system required parties to include women in their electoral list in strict alternation with men. However, most of the more than 80 competing parties won only one seat, going to the male candidates inevitably heading the list. This resulted in a slight decline in the percentage of female representation (though still quite high at 26.3 percent).¹⁹

11 Does Nepal need quotas in order to have a significant number of women representatives in parliament?

- There is ample evidence that without quotas, women do not fare well in elections in Nepal. In those that took place in 1991, 1994 and 1999 women won respectively 3 percent, again 3 percent and 6 percent of seats. Due to special measures in the 2006 Interim Constitution, this went up to 17.3 percent women in the reinstated Interim Legislature Parliament, which then passed a resolution requiring 33 percent women's participation in all state organs. This resolution eventually led to the drastically increased women's participation in the 2008 CA. Even the 2008

¹⁸ Matland, *Enhancing Women's Political Participation*.

¹⁹ Inter-Parliamentary Union, 2011. *Women in Parliament in 2011: The Year in Perspective*. Geneva: Inter-Parliamentary Union.

elections confirmed the necessity of quotas, as only 30 women (5 percent of the total number of CA seats) were elected through FPTP, and even that happened with the help of the candidate list quota requiring a minimum of one-third women candidates. The PR system on the other hand helped 161 women to win seats (27 percent of the total number of seats).

12 What are some arguments for and against the adoption of gender quotas?

- In situations where women have been structurally discriminated against, it may not be sufficient to ban discrimination and adopt the principle of formal equality. Discrimination, or its long-term effects may continue long after such measures are taken. This is the case in Nepal and elsewhere, where even though women are in theory equal as gender discrimination has been legally banned, the reality is that their participation remains unequal. Therefore, in order to speed up the process of achieving substantive equality, societies are increasingly calling on quotas as a fast-track measure to include women (as well as other disadvantaged groups) and ensure that equality is realized in practice and not just in theory.
- While it is difficult to measure exactly how many countries have adopted gender quotas (as there are many different forms and the number constantly changes), at least around 70 countries have adopted legislated gender quotas and around 40 more have voluntary political party quotas.²⁰

²⁰ www.quotaproject.org

- One argument against quotas is that quotas are discriminatory and against the principle of formal equality i.e. absolute equal opportunity for all-- as they restrict the opportunities available to non-target groups. Another concern is that they focus on identity rather than political views. It is argued that democratic representation should not be based on social categories, but on political views and ideologies without interference of group identities. Moreover, it can be argued that if quotas fail to challenge prejudices, they can add stigma because winning a seat through a quota can highlight a candidate's disadvantaged identity and suggest that the seat was won based on this identity rather than on professional merit.
- On the other hand, there is undeniable evidence that without quotas, the outcomes of democratic processes are far from just and quotas are the surest and fastest way of rebalancing the scales. In the strictest sense of the word, quotas do indeed 'discriminate' (differentiate) based on gender, to the disadvantage of men. However, they discriminate in favor of women because they are disadvantaged, not because they are female, and because they have suffered years of discrimination, which yields lower levels of experiential and educational skills, which in turn further inhibits opportunities and capacities for political participation. As for men, there is no denying that some of them will lose opportunities. However, it is questionable whether those who lose opportunities because of quotas had a right to these opportunities in the first place.
- The argument that quotas stress identity over political views is an important concern and should be examined and discussed. However, the reality is that women are excluded from political processes based on their identity as women, not based on their political ideas and views. It is therefore not useful or fair to simply ignore the dynamics and importance of social group identity. It needs to be acknowledged before it can be addressed.²¹

²¹For a more detailed discussion, see 'Increasing Women's Political Participation in Nepal; Debating Gender Quotas Within the International Rights Framework' (N. Guinée/SPCBN 2013)

13 Will PR seats and gender quotas ensure inclusion of women from disadvantaged groups such as indigenous groups, Dalits, Madhesis etc.?

- It is important to remember that identity is multifaceted and that women are not only women, but also representative of the ethnic and religious diversity in Nepal. Ensuring participation of women cannot be a blanket commitment; it should be more nuanced and account for the diversity of women's backgrounds and perspectives. Gender quotas must be paired with other forms of affirmative action mechanisms and policies to ensure that all women are equally able to benefit from quota systems.
- As dictated by Nepalese law, all seats reserved for certain groups in Nepal (i.e. Madhesis, janajatis and Dalits) had to be split equally between men and women. This ensured that there would be a diversity of backgrounds in the CA and that women from both advantaged and disadvantaged communities would be included in the CA. Due to this, among the 197 women CA members elected in 2008, 35.7 percent were Janajati/indigenous, 22.4 percent Brahmin, 15.8 percent Madhes, 10.7 percent Dalit, 10.7 percent Muslim and 2 percent others.²²

²² Constituent Assembly Secretariat et al., Women Members of the CA.

14 Will a high number of women ensure women's fair and equal participation?

- The mere fact of holding seats does not automatically mean that women participate equally, or even that they have any significant influence at all. Especially in the case of women elected through quotas, there is a concern that their representation is more symbolic than substantial.
- A gender insensitive environment will not only discourage women from entering politics, but also make it more difficult for them to participate fully and equally once they hold a seat.
- In Nepal's previous CA, it was found that male CA members made many decisions during informal sessions that very seldom involved women.²³
- Of the women members of Nepal's CA, 70 percent reported that they had faced some form of violence during their political career.²⁴ They also reported gender-unfriendly meeting times that cause security concerns when forcing them to commute after nightfall, as well as being difficult to combine with even a minimum level of childcare.²⁵
- However, across the world as well as in Nepal, female politicians, including those selected through gender quotas, have also been successful in participating and making an impact.
- Numbers do matter, and are a necessary step in increasing women's representation but efforts cannot stop there. Continued work is needed to secure more gender-sensitive political environments and strengthen women's equal participation.

²³ Constituent Assembly Secretariat et al., Women Members of the CA.

²⁴ Including physical violence (55 women), threats and coercion (96 women), sexual violence (7 women) and psychological violence such as social stigma, public humiliation and character assassination (116 women). See "Women Members of the CA", pp. 67-68.

²⁵ Constituent Assembly Secretariat et al., Women Members of the CA

15 Will a high number of women in parliament ensure that women's concerns are addressed?

- Not necessarily. Women who win seats, even under gender quotas, do not primarily have a mandate to represent women. They generally have a party mandate they need to adhere to. As a society, we need to understand the different loyalties that women representatives may juggle with, as they may be expected not only to speak for and defend the views of women, but also their party, their ethnic group or caste, class, geographical identity, etc. This can lead to tension. If the interests or standpoints differ, loyalty struggles can arise.
- When pressurized to include more women, it is not uncommon for influential male leaders to push forward wives, daughters and other female family members. Through them, they can continue to exercise their own will and power.
- However, in practice and regardless of their family ties, women representatives do influence political decision-making. They have experiences that are helpful to bring in gender perspectives. Many, though not all of them do feel a responsibility to further women's social position. In Nepal's previous CA, a women's caucus was formed in an effort to specifically address women's interests, bringing together women from across party lines and social/ethnic/caste/geographical backgrounds. Despite many challenges, it was found that they made significant contributions to putting women and women's interests on the political agenda.²⁶

²⁶ Constituent Assembly Secretariat et al., Women Members of the CA.

- As Karam and Lovenduski have stated: ‘An especially telling indication of women’s impact will be an increase both in men raising women’s issues and in men’s deferring to women’s voices on all legislative debates which would exhibit a concern for women’s perspectives.’²⁷

16 What other measures can be taken to increase the number of women participating in politics?

- Virtually everyone who is in favor of gender quotas agrees that only quotas are not enough to bring about women’s equal participation and gender equality. They need to be supported by a variety of other measures that aim to develop capacity, change negative social attitudes, create an enabling environment for women to participate (both at home and in the political sphere) etc.
- While supporting positive measures if and when necessary, BPfA, the GA resolution and other international standards outline a variety of other measures such as: actions to eliminate gender prejudices in society, relevant data collection and dissemination, measures to promote equitable sharing of family responsibilities, development of women’s capacities etc.²⁸
- Free and fair elections without violence, rigging of the votes and other irregularities are a crucial pre-requisite for women’s equal participation.
- Political parties play an essential role in furthering gender equality in the political arena. This will be discussed in more detail in questions 19 and 20.

²⁷ Karam, A. and Lovenduski, J., 2005. ‘Women in Parliament: Making a Difference’. In: In: Ballington, J. and Karam, A. (eds.), 2005. Women in Parliament: Beyond Numbers. p. 187-212, 207.

²⁸ See especially GA Resolution 66/130 on Women and Political Participation for a detailed outline of actions to be taken to promote women’s political participation.

17 What percentage of women's representation should Nepal strive for?

- Women make up around 50 percent of the population (52 percent in Nepal²⁹). From a justice and equity perspective, it would make sense to have around 50 percent women's participation in politics. However, some argue that it is not realistic to try to achieve 50 percent participation over night, as it will take time to overcome obstacles and make social changes. Since 30 percent is considered the 'critical mass' necessary for women to make a visible impact, some countries choose to first aim for a more easily achievable minimum standard of around 30 percent (in Nepal 33 percent) women's representation.
- While around 30 percent women's participation is a positive achievement, especially for countries with a recent history of much lower percentages, it should not be an excuse to lose sight of the goal that lies beyond. The 'parity zone' is reached only when there is between 40 and 60 percent participation of either sex (neither having less than 40, or more than 60 percent).
- In Nepal, there is ongoing debate on whether there should be a minimum standard of 33% or 50% women's representation in government, and whether or not this number should be mentioned in the constitution.
- No ultimate conclusion has been drawn in this debate, other than that in the end the goal is to achieve equity and thus 40 percent or more women's representation. How soon this can and should be achieved continues to be debated.

²⁹ Central Bureau of Statistics [Nepal], 2012. National Population and Housing Census 2011 (National Report).

18 Are there enough capable female politicians in Nepal to fill a significant number of seats?

- One argument against quotas is that there are simply not enough qualified women to fill those seats, resulting in incapable female politicians occupying seats at the expense of much better-qualified male candidates.
- It is maintained that women candidates are less educated, have less relevant experience in political and leadership roles, are less interested in politics and are not up-to-date on current issues in their constituencies and in the country.
- It may be true that through previous exclusion, women have had less opportunity to gain experience; and through gendered prejudice many women themselves believe that politics is not their thing. Because of this cultural bias, they stick to traditional gender roles.
- However, the only way to change that is to engage them more, not less.
- Moreover, nowadays there are many well-educated women, while it is also important to acknowledge that uneducated, even illiterate women can be great leaders too. Joining politics is much more about being able to represent constituents and their issues than it is about educational certificates.
- While, as mentioned, women may be at a historical disadvantage in terms of gaining experience and being actively involved in politics, to a great extent it is also a convenient myth that there are not enough qualified female candidates. To counter this prejudice, ahead of 2008 CA elections Jagaran Nepal, with support of UNIFEM conducted a mapping of potential women candidates and submitted a list with names of 1000 women from 14 districts to the political parties.



- Another argument is that, while it is easy to look for flaws in a candidate's cv and background, male politicians' capacity and suitability seems to be questioned much less, even if their track record and performance are less than perfect.
- That said, it is indeed important that continuous efforts are made to strengthen the capacities of potential female candidates through training and mentorship, while constantly engaging women in the political debate. Political parties play a crucial role in this, as will be discussed in the next question.

POLITICAL PARTIES

19 What role do political parties play in ensuring women's equal political participation?

- Political parties play a crucial role in selecting and grooming future candidates. They provide role models, mentors, a political network and key resources. If and how political parties nurture women's involvement is therefore a key determinant for women's political empowerment.³⁰
- Political parties are gatekeepers. In most cases, a candidate needs to be selected by a political party before the voters can select him or her. If women already start losing out at this early stage of the political selection process, it dramatically decreases their chances of gaining office.
- In practice, it has been shown that political parties across the world have a tendency to exclude women. Although this is slowly changing, in many societies women are still believed to attract fewer votes and therefore considered potential 'liabilities'. Lower visibility in the community, less access to external funds and less dominance in party activism can also play a role, all of these factors being related to wider issues of gender stigma.³¹ Some make an effort to correct this through self-imposed quotas,

³⁰ UNDP and National Democratic Institute for International Affairs, 2012. Empowering Women for Stronger Political Parties: A Guidebook to Promote Women's Political Participation.

³¹ UNDP, Empowering Women for Stronger Political Parties.

but in practice the surest way to include women on party lists is through strictly enforced legal party quotas.³²

- Public pressure and internal pressure from party members are important ways to motivate parties to include more women.
- BPfA and the GA resolution urge State parties to encourage political parties to encourage and strengthen women's equal participation within their parties. BPfA (191 a-c) recommends political parties, amongst others, to remove all barriers to women's participation, develop initiatives that allow women to participate fully in all internal policy-making and leadership structures, and adopt gender issues in their political agenda.

20 What is the current state of women's participation in political parties in Nepal?

- Article 142.3 (c) of the Interim Constitution (2007) requires that political parties have provisions for the inclusion of members from neglected and oppressed groups, including women, at various levels of the executive committee.
- Women's representation in the Central Committees of major political parties varies from 13.95 percent (UCPN-M). 13.10 percent (CPN-UML) to 21.79 percent (Nepali Congress).³³ Women rarely hold the posts of President, Vice-President, Secretary, Joint Secretary and Treasurer at central level, and only between 1.5 and 8 percent of these posts at district level.³⁴

³²Inter-Parliamentary Union, 2011. Women in Parliament in 2011: The Year in Perspective. Geneva: Inter-Parliamentary Union; Inter-Parliamentary Union, 2013. Women in Parliament in 2012: The Year in Perspective. Geneva: Inter-Parliamentary Union.

³³SPCBN Nepal, 2013. A Report on Diversity Representation of Women in Nepal. [unpublished]; updated statistic gathered from the UCPN-M secretariat, NC and CPN-UML's secretariat.

³⁴Renaissance Society Nepal (RSN), 2009. Women's Political Participation, Empowerment and Inclusion in Nepal: A Survey Report and Strategic Action Plan.

- Major political parties have made provisions for inclusiveness in their governing statutes. Nepali Congress mentions in its party statute that the Central Committee should have at least 7 elected women members plus two women each from Dalit, Madhesi and Indigenous groups, resulting in a total of 13 women (16 percent of the total).
- The statute of CPN-UML clearly states that all the elected party committees should be inclusive and should have at least 33 percent women (Article 66 (4)). However, the article also states that the seats allocated for women will remain vacant if the candidate does not meet the minimum qualifications and standards. Other provisions for marginalized groups include Article 38 (b) 5, which states that for the Convention Representative, only 10 years of experience is required for Janajati, women and Dalits, whereas for others it is 15 years. Similarly, for the members of party organizations at least 10 years of party work is a prerequisite, while for Dalits, women and other marginalized groups 7 years is considered sufficient.
- UCPN-M, after the 7th general convention held in February 2013 and following the Maoist women leaders' memorandum to increase women's representation, a decision was taken to have at least 23 percent women in the Central Working Committee. However, at present women's representation hovers around 13 percent³⁵.
- The UCPN (Maoists)'s CA election 2013 election manifesto mentions of equal participation of women in executive, legislature, judiciary and army-policy along with all the state structures with special rights will be guaranteed. NC has reiterated in its election manifesto of special initiatives will be taken to ensure at least minimum 33 percent of women representation in all the state structures. While CPN-UML has mentioned of ensuring at least 33 percent women's participation

³⁵ Personal interview with UCPN (Maoist) leader Sashi Shrestha



in all the national structure and to initiate 50 percent women's participation in local bodies' representation. CPN-UML also mentions of introducing constitutional provision in the new constitution to have atleast one women in one of these important positions such as President, Prime Minister and Speaker.

- Only 10 women candidates won under the First-Past-The-Post for the 2nd CA election held on Nov 19, 2013*. Of the 10 seats, Nepali Congress got 6, CPN-UML got 3 and UCPN (Maoist) got 1 seat. The overall nomination of women, was only 10.8 percent. The UCPN (Maoist) had nominated only 11.2 percent, CPN-UML had nominated 12.58 and NC had nominated only 9.58 percent women for FPTP.³⁶ In the last CA, women made 32.8 percent in which 12.5 percent women were elected in the FPTP and 48.05 percent were elected through PR.

³⁶<http://www.election.gov.np/oldecn/EN/ec/ca.php>

* When this document went to press the list of candidates elected through PR system had not been made public.

WOMEN AND THE CONSTITUTION

21 Should women necessarily be involved in constitution making processes? Why?

- It is essential that women, as a stakeholder group comprising just over 50% of Nepal's population, are included in its constitution-making process. A constitution is the embodiment of the basic principles by which a society will be governed in the future; constitutions are the foundations for governance systems, and are responsible for protecting women and other vulnerable/minority groups against the tyranny of the majority in a democratic system. As a social contract requiring peoples to sacrifice a degree of freedom in order to be a part of a functioning and safe society, it is vital that constitutions enjoy public legitimacy and respect and that they are representative of the aspirations of the peoples they will govern. The best way to ensure this is to include the peoples themselves in the making of a constitution. While this can be incredibly challenging in a society as diverse as Nepal, Nepal has committed itself to a participatory and inclusive constitution writing process, a commitment that could not be realized without the inclusion of women.
- Article 2 (a) of CEDAW specifies that States Parties have to 'embody the principle of the equality of men and women in their national constitutions or other appropriate legislation' as well as ensuring the practical realization of this principle.



The CEDAW Committee more specifically urged Nepal that the CA take into account the provisions of the Convention and the recommendations of the Committee when drafting the new Constitution.

- The GA resolution, clause o (8) encourages States to appoint women to posts within all levels of their Governments, including, bodies responsible for designing constitutional and electoral reforms.
- Based on the same principles of equality and non-discrimination that forbid that any distinction or restrictions be made on the basis of sex, women also have the right to participate equally in constitution-making processes. Apart from that, a constitution will affect the lives of women in Nepal as much as it will affect those of men and therefore the assumption sometimes still held by both men and women that constitution writing is no women's business, is wrong. It is important that the constitution will be written from both men and women's perspectives, informed by their various experiences and tailored to both their needs. (see also question 1 – the same arguments apply here)
- Considering their disadvantage, it may be even more urgent for women to ensure proper provisions in the constitution that will ensure their rights and mechanisms that will rebalance their position in society.

22 Do women's rights have to be enshrined in the constitution or can they also be secured through ordinary law?

- The principles of equality and non-discrimination should be enshrined in the constitution and include a comprehensive definition of what shall be considered discrimination. Constitutions are the supreme law of the land. Constitutions

provide a framework within which all other laws and policies must fit and to which they must comply. As such, it is key that the foundational principles of governance—like women’s rights and rights to political participation—be included in a constitution. This not only indicates the value placed on such principles, but also sets standards for all other pieces of national legislation. If women’s rights are enshrined in constitutions, they are sure to be reflected in domestic laws and policies as well and if they are not, the failure to adhere to constitutional standards can be challenged in a Supreme Court.

- Furthermore, laws are much more prone to be influenced by an instable political climate and changing political power dynamics whereas constitutionally enshrined rights tend to be more secure, stable and enforceable.
- Once the premise of women’s rights and prohibitions on discrimination are constitutionally protected, the procedures, implementation mechanisms, action plans etc. that are needed to realize these constitutional commitments can be elaborated upon through legislation, policy and Government programmes.

23 What happens when cultural values and practices contradict with the constitution or national law?

- The United Nations and other international bodies operate on the assumption that certain human rights are universal, meaning that they apply across all cultural and geographic regions. According to this school of thought, certain rights like those of equality and anti-discrimination, should never be abridged despite historic cultural practices. In other words, cultural practices cannot be upheld at all cost but have to be mitigated to ensure the protection of “universal rights.” An opposing

school of thought is known as “cultural relativism”. Cultural relativism rejects the notion that human rights are universal but rather asserts that understandings of human rights vary widely across different countries, religions and ethnic groups. Cultural relativists believe that it is not right to force certain cultures to change their practices and beliefs in order to comply with internationally dictated standards but rather that each culture should have the right to maintain and preserve its own traditions.

- The constitution and national law have to be respectful of cultural diversity, particularly in a country as diverse as Nepal. Nonetheless, it is important to strike a balance between protecting cultural practices and traditions and disallowing discrimination against women and other vulnerable sub-groups.
- The recognition of fundamental freedoms like the freedom of religion and belief can help to protect cultural values and practices. These freedoms must be protected and promoted until and unless they impinge on another person’s rights.
- Respect for cultural diversity cannot be used as an excuse to discriminate, harm or marginalize any individual or group of people, including women. It is for this reason that certain traditional practices that harm girls or women, such as sati and deuki (devaki) have been outlawed in Nepal. The Constitution and national law should balance Nepali citizens’ fundamental human rights with their fundamental freedoms.
- In other words: cultural values need to be harmonized within an overall commitment to human rights principles, norms and standards.
- The Supreme Court can play a key role in striking the proper balance.

24 Will the constitution address specific issues like violence against women, citizenship and inheritance rights?³⁷

- A constitution can and should ensure women's rights to equality and non-discrimination, which in itself has implications for issues such as citizenship and asset ownership.
- A constitution can lay down rules on specific topics related to women's rights. For example (similar to Article 20 (3) of the Interim Constitution), the last draft constitution of the previous CA addressed violence against women by explicitly prohibiting physical, mental, sexual, and psychological or any other type of violence or exploitation against women on the basis of religion, cultural tradition, social norms, custom, or any other grounds. Such acts would be punishable by law and victims would have the right to receive proper compensation.
- The constitution will also lay down rules on citizenship inheritance. This issue was a controversial one during the tenure of the previous CA and women members have been struggling for equal citizenship rights. The next CA will have to take up these issues.
- Similarly, the right to inheritance was raised by women members and incorporated in committee reports. How it will be incorporated in the constitution is as yet unsure.
- As argued in question 21, while specific measures can be left to legislation rather than the constitution, particularly in a politically insecure environment it is important that the constitution is explicit and specific in ensuring women's rights.

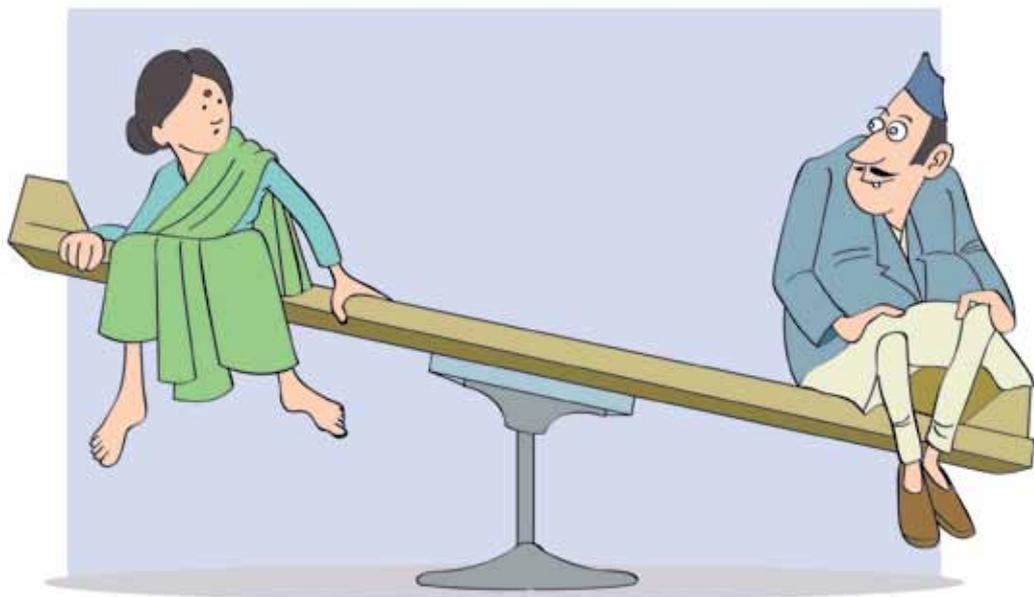
³⁷ Issues of citizenship, inheritance rights and violence against women are complex and cannot be dealt with in great detail here.

“NEW NEPAL”: STATE STRUCTURE & SECULARISM

25 How will a federal state structure affect women and their position in society?

- Federal systems add tiers to the Government structure in a country and therefore allow for greater opportunities for political participation for all groups in a society, including women. By allowing smaller and more intimate portions of the population to elect representatives, federal systems increase the chances for people who might not be competitive at the national level to enter government. Furthermore, along the same lines, federalization allows peoples who have lower levels of political and academic experience to gain this experience and to appeal to constituencies on the basis of other characteristics, such as a better understanding of the needs and demographics of local communities.





26 How will secularism promote women's rights?

- Contrary to widespread belief, secularism is not an anti-religious commitment; rather it is a commitment to treat all religions equally and neutrally and to ensure conditions for people of various religions to coexist peacefully and respectfully in a nation. According to international standards on the freedom of religion and belief, it is essential that no one religion is promoted by the State at the cost of equal opportunities for adherents of other religions to practice their rituals and traditions. In some countries, like the United States, a secular state is interpreted to mean a complete separation of “church and State”, but in South Asia a secular state is more often viewed as a commitment to provide equal opportunities and respect for all religions and their adherents.
- Many religions have precepts that are harmful to women or have a negative effect on women’s capacity to participate fully in political, social and economic life in a country. Constitutional recognition of a secular state makes it more difficult for a State to pass religious-based laws that might perpetuate these practices. As such, a secular state improves the ability of women to participate on equal terms in a society.

ANNEX I

Key International Human Rights Treaties

Name of the Treaty	Acronym	Year
International Covenant on Civil and Political Rights	ICCPR	1966
International Covenant on Economic, Social and Cultural Rights	ICESCR	1966
International Convention on the Elimination of All Forms of Racial Discrimination	ICERD	1966
Convention on the Elimination of All Forms of Discrimination Against Women	CEDAW	1979
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	CAT	1984
Convention on the Rights of the Child	CRC	1989
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	ICRMW	1990
Convention on the Rights of Persons with Disabilities	CRPD	2006
International Convention for the Protection of All Persons from Enforced Disappearance	CPED	2010



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