



Women Acting for Transformative Change

# **A Charter for Women's Rights**

Ensuring Equality through the Constitution in Nepal

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## **Ensuring Equality through the Constitution in Nepal**

### **1. Preamble**

On November 21, 2006, Nepal ended 12 years of armed conflict with the signing of a Comprehensive Peace Agreement (CPA) between the Government of Nepal and the Communist Party of Nepal (Maoist). The agreement facilitated the peace process and as a consequence, Nepal has expressed commitment to political and economic development, social transformation and political transition. The agreement highlighted issues of universally accepted fundamental human rights, a competitive multi-party democratic system, sovereignty of the people, rule of law, social justice, equality, independent judiciary, adult franchise, periodic elections, full freedom of the press, right to information, transparency and accountable political parties. Moreover, by adopting a policy on State restructuring, it has emphasized ending discrimination based on class, caste, ethnic origin, gender, religion, culture, regionalism, minority, and backwardness, for the protection of the rights and welfare of its citizens. In order to achieve this, commitment has been made to move towards a proportionately inclusive, federal republic system by ending the centralized and unitary structure of the State.

Nepal is also committed towards the Universal Declaration of Human Rights 1948, the International Covenant on International Economic, Social and Cultural Rights, 1966, International Covenant on Civil and Political Rights, 1966, the Convention on Elimination of all Form of Discrimination Against Women, 1979, International Humanitarian Law, and all fundamental principles and standards of human rights.

Therefore, recalling the commitments documented in the CPA for the formulation of a Constituent Assembly to draft a new constitution as a strategy to secure peace;

The root causes of conflict and poverty in Nepal are identified as exclusion and discrimination of Dalits, indigenous tribes, Madheshis, regionally backward communities, and discrimination against women. A large proportion of Nepal's population is still excluded from political, economic and social development processes. There are wide disparities in the access of these groups to all sectors including health, education, income and political and administrative participation. Women of every caste and community have lower levels of empowerment and social inclusion compared to men.

Nepal is now facing challenges to assess the losses caused by the conflict and the need to address reconstruction, obstacles in children's education, lack of access to health services, the need for national acquiescence and a reconciliation process. Women are vulnerable to insecurity and carry the additional burden of workload because of the displacement and death of male family members. Many households are now women headed and consequently, women have been shouldering the responsibility for family and social management with considerable effect on the country's social structure.

Women have suffered gravely from the inequitable social structure which limits their access to resources and decision-making processes, further undermining their ability to face the negative impact of conflict. Women are especially vulnerable to unsafe employment

overseas, rape, forced pregnancy, unsafe motherhood, sexual exploitation, malnutrition and the risk of HIV/AIDS. Consequently, women face huge social, financial and health problems throughout their lives. The UN Resolution 1325 has not been adequately implemented. Women have been drawing the attention of the government, political parties and civil society in seeking out their role in assisting the peace process at local level and in institutionalizing peace at the national level. However, neither their voices are heard nor their efforts have been taken into consideration.

Addressing gender disparity and empowering women is critical for the peace process and building a new Nepal. Since women comprise 51% of the population, they can achieve significantly if power sharing takes place on the basis of gender, caste, ethnicity, and region. Therefore, this Charter has been prepared by declaring women's unity, their recognition and their success.

## **2. Our Vision**

We envision that in two years, all Nepalese women will have gathered to celebrate the passage and ratification of a new constitution in Nepal that enshrines the principle of substantive gender equality and social justice, at all levels of women's lives.

In particular, the new Constitution will have:

- Promoted gender equality and prohibited discrimination on the grounds of sex, gender, age, marital status (widows and single women), disability, caste and ethnicity etc.
- Established a federal state that benefits women (where women are not subject to customary/religious law).
- Provided equal opportunity for men and women in policy and decision levels within every institutional structure of the State through multiple mechanisms to ensure participation of 50% women.
- Provided equal rights for citizenship for women and men.
- Ensured the rights for both men and women to live in accordance with the culture and religion of their choice and faith, without any discrimination.
- Ensured free education up to Bachelor degree.
- Ensured the rights to proportional participation as per the principle of the inclusion of democratic and accountable political parties and every citizen in the democratic process. Gender mainstreaming is emphasized in every policy and action plan of the State.
- Ended all kinds of violence against women, with their security promoted and ensured.
- Protected the sexual and reproductive health of women.
- Promoted women's right to employment as well as the right to generate income in Nepal and abroad. Women's security is guaranteed in the work place.
- Set up effective, independent and efficient resourceful mechanisms for guaranteeing all these rights of women.

## **3. Achievements in the Interim Constitution 2063**

The Interim Constitution tends to address the human and civil rights of the Nepalese citizens and to bridge the gender disparity as well. The major achievements are outlined below:

## **Interim Constitution 2063. Part 2, Citizenship**

**Art. 8: Citizenship at the Commencement of the Constitution** (2) (b) any person whose father or mother is a citizen of Nepal at the birth of such person.

**Art. 8 (6)** A woman of foreign nationality who has a matrimonial relationship with a Nepalese citizen may acquire naturalized citizenship, if she desires to do so, pursuant to the laws in force.

**Art 8 (7)** Notwithstanding anything contained elsewhere in this Article in the case of such a person born to the women citizen of Nepal married to a foreigner, if such a person is born in Nepal and has been residing permanently in Nepal who has acquired citizenship of the foreign country by virtue of the citizenship of his/her father he/she may acquire the naturalized citizenship of Nepal pursuant to the laws in force.

## **Interim Constitution 2063. Part 3 Fundamental Rights**

### **Art. 12 Right to Freedom**

(1) Every person shall have the right to live with dignity, and no law shall be made which provides for capital punishment.

(2) No person shall be deprived of his/her personal liberty save in accordance with law.

(3) Every citizen shall have the following freedoms:

- (a) freedom of opinion and expression;
- (b) freedom to assemble peaceably and without arms;
- (c) freedom to form political party or organizations;
- (d) freedom to form unions and associations;
- (e) freedom to move and reside in any part of Nepal; and
- (f) freedom to practice any profession, or to carry on any occupation, industry, or trade.

Provided that,

(1) nothing in sub-clause (a) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religion or communities, or on any act of defamation, contempt of court or incitement to an offence; or on any act which may be contrary to decent public behavior or morality.

(2) nothing in sub-clause (b) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty, integrity or law and order situation of Nepal.

(3) nothing in sub-clauses (c) and (d) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of Nepal, which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes religion or communities, which may instigate violence, or which may be contrary to public morality.

(4) nothing in sub-clause (e) shall be deemed to prevent the making of laws which are in the interest of the general public, or which are made to impose reasonable restrictions on any act which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religion or communities.

**Art. 13 Right to Equality:** The following principles were adopted:

Equality before law:

- No discrimination against the citizen,
- Positive discrimination for the protection of interests of women,
- Dalit, indigenous ethnic tribes, Madhesis, or peasants, laborers, economically, socially, or culturally backward and children, the aged, disabled and those who are physically or mentally incapacitated.

**Art. 14. Right against Untouchability and Racial Discrimination:** (1) No person shall, on the ground of caste, descent, community of occupation, be subject to racial discrimination and untouchability in any form. Any such acts of discrimination shall be liable to punishment and the victim shall be entitled to compensation as provided by the law.

(2) No person shall, on the grounds of caste or tribe, be deprived of the use of public services, conveniences or utilities, or be denied access to any public religious place, or be denied their preferred religious activities.

(3) No person belonging to any particular caste or tribe shall, while producing or disturbing any goods, services or conveniences, be prevented from purchasing or acquiring such goods, services or conveniences; or no such goods, services or conveniences shall be sold or distributed only to a person belonging to a particular caste or tribe.

(4) No one shall be allowed to demonstrate superiority or inferiority with any person or a group of persons belonging to any caste, tribe or origin; to justify social discrimination on the basis of cast and tribe, or to disseminate ideas based on caste superiority or hatred; or to encourage caste discrimination in any form.

(5) Any act on the contrary to the provisions of sub-clauses (2), (3) and (4) shall be punishable in accordance with the law.

**Art. 15. Right Regarding Publication, Broadcasting and Press:** (1) No publication and broadcasting or printing of any news items, editorial, article, writings or other readings, audio-visual materials, by any means including electronic publication, broadcasting and press, shall be censored. Provided that nothing shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty or integrity of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities; or on any act of sedition, defamation, contempt of court or incitement to an offence; or on any act which may be contrary to decent public behavior or morality.

(2) No radio, television, online or any other types of digital or electronic means, press or any other communication media shall be closed, seized or be cancelled the registration because of

publishing and broadcasting or printing any material by such means of audio, audio-visual or electronic equipments.

(3) No newspaper, periodical or press shall be closed, seized or be cancelled the registration for printing and publishing any news items, articles, editorial, writings or other reading materials.

(4) No communication means including press, electronic broadcasting and telephone shall be obstructed except in accordance with law.

**Art. 16. Right Regarding Environment and Health:** (1) Every person shall have the right to live in clean environment.

(2) Every citizen shall have the right to get basic health service free of cost from the State as provided for in the law.

**Art. 17. Education and Cultural Right:** (1) Each community shall have the right to basic education in their mother tongue as provided for in the law.

(2) Every citizen shall have the right to free education from the State up to secondary level as provided for in the law.

(3) Each Community residing in Nepal shall have the right to preserve and promote its language, script, culture, cultural civility and heritage.

**Art.18. Right Regarding Employment and Social Security**

(1) Every citizen shall have the right to employment as provided for in the law.

(2) Women, laborers, and aged, disabled as well as incapacitated and helpless citizens shall have the rights to food sovereignty as provided for in the law.

(3) Every citizen shall have the right to food sovereignty as provided for in the law.

**Art. 19. Right to Property:** (1) Every citizen shall be subject to the laws enforcement, and have the right to acquire, own, sell and otherwise dispose of their property.

(2) The State shall not, except in the public interest, requisition, acquire, or create any encumbrance on the property of any person.

This clause shall not be applicable on property acquired through illegal means.

(3) Compensation shall be provided for any property requisitioned, acquired or encumbered by the state in implementing scientific land reform or in public interest in accordance with law. The compensation and basis thereof and operation procedure shall be as prescribed by law.

**Art. 20 Right to Women:** (1) No one shall be discriminated in any form merely for being a woman.

(2) Every woman shall have the right to reproductive health and other reproductive matters.

(3) No physical, mental or any other form of violence shall be inflicted to any woman, and such an act shall be punishable by law.

(4) Sons and daughters have equal rights to their ancestral property.

**Art. 21. Right to Social Justice:** (1) Women, Dalits, indigenous tribes, Madheshi community, and oppressed groups, the poor peasants and laborers, who are economically, socially or educationally backward, shall have the right to participate in the state mechanism on the basis of proportional inclusive principles.

**Art. 23. Right to Religion:** (1) Every Person shall have the right to profess, practice and preserve his / her own religion as handed down to him/ her from ancient times having due regards to the social and cultural traditional practices. Provided that no person shall be entitled to convert another person from one religion to another, and shall not act or behave in a manner which may jeopardize the religion of others.

(2) Every religious denomination shall have the right to maintain its independent existence, and for this purpose to manage and protect its religious places and religious trusts, in accordance with law.

**Art. 24. Rights Regarding to Justice:** (1) No person who is arrested shall be detained in custody without being informed of the ground for such arrest.

(2) The person who is arrested shall have the right to consult a legal practitioner of his / her choice at the time of the arrest. The consultation made by such a person with the legal practitioner and the advice given thereon shall remain confidential, and such a person shall not be denied the rights to be defended through his her legal practitioner.

(3) Every person who is arrested shall be brought before a judicial authority within a period of twenty-four hours after arrest excluding the time necessary for the journey from the place of arrest to such authority, and no such person shall be detained in custody beyond the said period except on the order of such an authority.

**Art. 25. Rights against Preventive Detention:** (1) No person shall be held under preventive detention unless there is a sufficient ground of existence of an immediate threat to the sovereignty and integrity or law and order situation of Nepal.

(2) Any person held under preventative detention shall, if his/her detention was contrary to the law or was in bad faith, have the right to be compensated in a manner as prescribed by law.

**Art. 26. Right against Torture:** (1) No person who is detained during investigation, for trial or for any other reason shall be subjected to physical or mental torture, nor shall they be given any cruel, inhuman or degrading treatment.

(2) Any such an action pursuant to clause (1) shall be punishable by law, and any person so treated shall be compensated in a manner as determined by law.

**Art. 27. Right to Information:** (1) Every citizen shall have the right to demand or obtain information on any matters of his/her own or of public importance.

Provided that nothing shall compel any person to provide information on any matter about which secrecy is to be maintained by law.

**Art. 28. Right to Privacy:** (1) Except on the circumstance as provided by law, the privacy of the person, residence, property, document, statistics, correspondence and character of anyone is inviolable.

**(29) Right against Exploitation:** (1) Every person shall have the right against exploitation.

(2) Exploitation on the basis of custom, tradition and convention or in any manner is prohibited.

(3) Traffic in human beings, slavery or serfdom is prohibited.

(4) Forced labor in any form is prohibited.

Provided that nothing in this clause shall prevent for enacting a law allowing the citizen to be engaged in compulsory service for public purposes.

**Art. 30. Right Regarding Labor:** Every employee and worker shall have the right to proper work practice.

(2) Every employee and worker shall have the right to form trade unions, to organize themselves and to perform collective bargaining for the protection of their interest in accordance with law.

**Art. 31. Right against Exile:** (1) No citizen shall be exiled.

**Art. 32. Right to Constitutional Remedy:** The right to proceed in the manner set forth in Article 107, for the enforcement of the rights conferred in this part is guaranteed.

## **Part 7 Constitution Assembly**

**Article 63 Formation of Constituent Assembly:** Clause (3) has provided the Mixed Electoral System in the constitution for CA election.

(4) The principle of inclusiveness shall be taken into consideration while selecting the candidates by the political parties pursuant to sub-clause (a) of clause (3) above, and while making the list of the candidates pursuant to sub-clause (b) above, the political parties shall have to ensure proportional representatives of women, Dalit, oppressed tribes, indigenous tribes, backwards, madhesi and other groups, in accordance as provided for in the law.

Notwithstanding anything contained in this Clause, in case of women there should be at least one third of total representation obtained by adding the number of candidature pursuant to sub-Clause (a) of Clause (3) to the proportional representation pursuant to sub-Clause (b) of Clause (3)



## **Part 18: Political Parties**

**Art. 142 (3) (c):** In the executive committees at all levels, there should be the provision for the inclusiveness of members from neglected and suppressed regions including the Women and Dalit.

### **4. Women's Status and Amendments to the Interim Constitution**

All the aforementioned rights achieved by women following their long struggle and the women's movement should be incorporated in the new constitution. Besides these, the following amendments shall be required in the interim constitution.

The language used in right to religion in Article 23 has gender disparity and discrimination in the name of cultural identity, social practice and tradition. Therefore, Article 23 on right to religion should be redefined.

Similarly, the discriminatory provision under the citizenship right that allows citizenship to children conditionally, on the basis of their mothers' matrimonial relationship, should be ended. This provision still restricts a foreign national, who is the husband of a Nepali woman, from acquiring Nepali citizenship based on their matrimonial relationship. Therefore, the provision regarding citizenship in the interim constitution should be amended.

### **5. Provisions to be made for Women in the New Constitution of Nepal**

In the 21<sup>st</sup> century, every nation based on equality has the responsibility for ensuring commitment to the human rights principles; ending discrimination, respecting human rights norms and values and women's dignity, including the right to life and right to development. Therefore, the new Constitution to be drafted by the Constituent Assembly should ensure the following articles along with the provisions made in the interim constitution in favor of women.

#### **5.1 Socio-Economic Foundation**

##### **5.1.1 Ending Discrimination**

There is diversity among women in terms of ethnicity, language, region, class, political ideology, religious identity and so on. Because of these identities and because they are women, they are facing discrimination and are living with inferiority. Therefore, the new constitution must ensure rights that support the end of all types of gender-based discrimination, non-inclusion and restrictions in order to uphold the respect and dignity of women.

Restrictions should be imposed on the attitudes that consider women as commodities. Provisions should be enacted to fully recognize equality between men and women and their civic rights based on the recognition of a mutually dependent social structure.

##### **5.1.2 Cultural Rights**

The Constitution must guarantee cultural rights. However, these rights must end all social practices and beliefs that include patriarchal norms and values, customary laws and regulations that restrict and prohibit women's advancement and development, and reinforce violence.

### **5.1.3 Economic Rights**

Women's economic rights should be guaranteed including the right to property inheritance, through which women can independently operate economic activities and enjoy their property and income without interference by anyone. The significant contribution made by women for their family's livelihood should be recognized in the national GDP.

### **5.1.4 Rights of Rural Women**

The State should take responsibility through special provision in the constitution on the pandemic poverty among rural women, their meager access to development, its benefits and their access to health care services, including reproductive health care. This should ensure women's participation in economic, educational and community activities, which will promote women's equal rights to participation for their benefit.

## **5. 2. Political Framework for Restructuring of State**

### **5.2.1 Institutional Structures in Political System**

While restructuring Nepal to a federal system, the State should ensure that women will not be confined to traditional customary laws in the name of group identity based on ethnicity, culture and tradition. Similarly, the Federal States should guarantee to take measures to modify social and cultural patterns for eliminating prejudices and practices based on the idea of inferiority or the superiority of either sex or stereotype roles for men and women including untouchability, and show full commitment and accountability towards the rule of law.

### **5.2.2 Ensuring Women's Inclusive Participation at All Levels of the State**

Fifty per cent women's participation should be ensured from local to national levels of policy as well as decision-making. The participation of women should take place proportionately with representation of their caste, ethnicity, group identity and disability. To ensure their participation, provision should be made for reservation of 50% seats in the judiciary, executive, legislative, constitutional organs, commissions and other structures of the State. The periodic elections from federal to central governments for implementing such provisions should follow a Mixed Electoral System (proportional and first past the post). Under the Mixed Electoral System, there should be constitutional provisions such as a proportional system that places men and women in alternative order in the list of candidature. While adopting a proportional system, women's position should be ensured in the important and highest ranks of the State, for instance, if the Vice-President is a man, the President should be a woman.

Provisions should also be made so the State has responsibility to provide opportunities for developing women's capacity.

### **5.2.3 National Women's Commission should be a Constitutional Body**

The National Women's Commission should be made a constitutional body. The functions and duties of the Commissioners, and their qualification, appointment and capacity should be defined by the constitution.

#### **5.2.4 Women's Citizenship Rights**

The right of citizenship for women should be fully guaranteed. The State should ensure equal right to women with men for obtaining nationality, changing it or adopting it. The provision that prevents the right to citizenship of children on the basis of the matrimonial relationship and nationality of their mother should end.

If the husband of a Nepali woman is a foreign national and if he desires to obtain Nepali citizenship on the basis of their matrimonial relationship, provision should be made in the constitution to provide him citizenship.

### **5.3 Political, Social and Cultural Rights**

#### **5.3.1 Rights to Special Service and Care in Maternity**

The Constitution should ensure the rights of women to receive the necessary services during pregnancy and after delivery and to have a qualified birth attendant during delivery.

The constitution should accept that motherhood is a social responsibility and have a provision that the State takes responsibility for family education. Similarly, arrangements should be made in the constitution that men and women have equal responsibility in reproductive and childcare roles. Children's best interests should be taken into account while doing so.

The right to sexual health for women should be guaranteed.

#### **5.3.2 Ensuring Equality**

Constitutional provisions should ensure to void automatically any customary law, act, practice and tradition that is discriminatory to women.

#### **5.3.3 Marriage and Family Relations**

Equal right to marry and to freely choose a spouse and enter into marriage with the free and full consent of both woman and man should be incorporated into the constitution. Similarly, provisions should be ensured so that men and women are not treated differently in the process of marriage and divorce. The constitution should nullify child marriage and polygamy.

#### **5.3.4 Property Rights in the Family**

Equal rights should be applied for husband and wife, daughter and son to acquire, own, sell and otherwise dispose of their property.

### **5.4 Security**

Security here does not mean improvement of national security management but it is to guarantee security of women at home and in public spheres.

#### **5.4.1 Security at Home**

All types of violence such as cultural, physical, mental and structural violence committed by any member of the family at home should be defined as domestic violence. Women's right to protection against all types of violence at home should be guaranteed by the constitution as the fundamental right of all women.

#### **5.4.2 Security in the Public Sphere**

Any type of harassment against women, be it sexual violence, including rape and abduction, and any kind of abusive behavior practiced as tool of warfare by conflicting parties is unacceptable. Rights against such violence should be ensured by the constitution.

### **5.4.3 Right to Security for Women in Foreign Employment**

Right to employment for women should be ensured. Security and rights of women involved in foreign employment should be guaranteed in the country of origin and the country of destination.

### **5.4.4 Right to Justice for Victims**

The interim constitution of Nepal has explicit provision in the criminal judicial system. However, it does not have any provision for a victim judicial system. Women are often victims of violence. They are particularly victims of crimes such as sexual violence, physical and psychological abuse and trafficking. Therefore, for protection of victims, the constitution should have a provision for adequate compensation, the right to rehabilitation and the responsibility of the judicial agencies.

## **5.5 Peace, Justice and Reconciliation**

5.5.1 In order to address the effect of violence against women and children during the armed conflict, special attention should be paid to their rights and well-being. Moreover, truth related to all these issues should be well documented in the process of peace, justice and reconciliation.

5.5.2 It is necessary to pay special attention to gender justice during the processes of peace, justice and reconciliation. The State should make special arrangement to guarantee social healing and to regain loss of respect and dignity for women who have suffered during the conflict, including the provision for compensation. To achieve this, women's equal participation should be ensured in every sector and level of peace building.

5.5.3 Women's equal participation must be guaranteed in all structures of the State that are due to be constituted with reference to the peace process, such as the Truth and Reconciliation Commission, the High Level State Restructuring Commission, the Peace Commission, the High Level Commission on Internally Displaced People as well as in the local structures.

5.5.4 Peace, justice, and reconciliation processes should be designed for the well-being and best interests of victims. Such processes should fulfill victims' needs for social respect, economic and psychological support, and cultural and equal participation.

5.5.5 A safe place should be ensured to rehabilitate victims during the reconciliation process. For this action, special attention should be paid towards security measures using psychological, procedural and holistic approaches.

5.5.6 Any force and undue influence against any victim of armed conflict should be declared unlawful.