

**Draft suggestions for the incorporation of constitutional provisions
to ensure the rights of women in the new constitution being made
by the Constituent Assembly**

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PRO PUBLIC

Forum for Protection of Public Interest

"Women friendly Constitution Making: One voice of all Nepali"

Draft suggestions for the incorporation of constitutional provisions to ensure the rights of women in the new constitution being made by the Constituent Assembly

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Few Words

Gender equality is the basis of a civilized and developed society. However, the reality before us is that women have not only been denied of the opportunity to equality for ages but deprived of various opportunities to basic human rights owing to gender discrimination based different social, economic and cultural roles of men and women in the society. As a result, even if men and women are born equal the equality is limited on different ways.

The issues relating to gender equality are being raised universally since the past six decades and Nepal has been expressing commitment in international forums to ensure women rights and increase their access to all areas national life. The country has also formulated new laws, made necessary reforms in existing laws according to the needs of changing times and organizing various activities relating to gender equality. Gender Focal Point has been set up in each Ministry so as to create a gender-friendly atmosphere. Moreover, efforts are being made for the provisions of reservation for women in political, administrative and education sector along with women empowerment activities.

A new constitution is being written by the Constituent Assembly in the country. Nepali women have been struggling in social, economic, political and cultural front since a long time in the country to ensure human rights for women. Since that it is also the responsibility of the Ministry of Women, Children and Social Welfare to provide concrete suggestions to the Constituent Assembly regarding provisions rights of women by studying and analysing national and international constitutions, discussing the issue with institutions and activists working for women rights so as to make constitutional provision (in the new constitution) of basic human rights and justice for women in different sectors and different conditions. In this regard the Ministry has prepared a draft of proposed suggestions with the support of UNIFEM Nepal and in coordination with Forum for Protection of Public Interest PRO PUBLIC to ensure the rights of women in the new constitution. I hope the draft suggestions will be taken as reference material. I would like to thank all those who contributed to the preparation of the draft suggestions.

Binda Hada Bhattarai

Secretary

Ministry of Women, Children and Social Welfare

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Remarks

The protection and promotion of women's equal right as well as their proportional representation in every sector and level is very essential for the equitable development of the country. Women are deprived of natural rights, such as education, health, employment and safety, due to discriminatory provisions in existing laws and patriarchal social structure in Nepal. Most of women are being victimized of inequality, discrimination and violence in various social, economical, cultural and political fields. There is a need to take solid decision and commitment by the policy level to address the problem.

The nation is in interim period. The process of writing the new constitution has been proceeded after the historic election of April 10, 2008. This process has provided appropriate opportunity to address the existing discrimination and inequality against women and maintain equality.

Since the constitution is the source law of the country, it should provided guidelines regarding women's rights. That is why, topics on women rights should be evidently mentioned in the constitution. The new constitution going to be written by the Constitution Assembly should be based on futuristic, gender just and equality and pro-right perspective. With an objective to assist constitution builders in this issue, UNIFEM is collaborating with MWCSW and Pro Public since July, 2007. This 'Draft of suggestions on constitutional provisions to be included in the constitution to be written by the Constitution Assembly for ensuring women rights' is the result of incessant endeavour of more than one and half year.

Some of the main issues among the presented suggestions are as follows:

The women's right of fifty per cent participation in the decision making level of the state; the right against discrimination; the equal right on land, settlement and natural resources and heritage the rights of equal access and control over other productive resources and means; the right to information access; The right to receive special privilege from the state for occupation, employment, industry and business promotion; the right to secrecy; the right against violence and exploitation; the right to access to justice; the right of reproductive health and safe motherhood; the rights against discriminatory traditions, anti-women traditions and practices; and the rights against discrimination against women and presentation of women as a sexual and a commodity by the media.

In the process of development of this draft, six constitutions of Nepal, including the present Interim Constitution, was studied with a gender point of view. Apart from that, constitutions of 12 countries (India, Canada, South Africa, Sri Lanka, Afghanistan, Fiji Republican, Rwanda, East Timor, Kenya, Uganda, Sweden and Argentina) were also studied. This draft has incorporated the suggestions received as a response to the advertisements published in national dailies. It has also included the suggestions received from the discussions with

various groups, such as indigenous, ethnicities, Dalits, Muslims and Madhesi women. After the development of the preliminary draft based on those studies and suggestions, regional interaction programs were organized in all five development regions, where politicians, social workers, women activists and journalist participated.

This draft has taken account of the inputs received from various constitutional experts and actors in women sector. The preliminary draft was revised with the help of suggestions collected from the regional workshops and additional views and suggestions were collected organizing national interaction programs in Kathmandu. Following the workshops, two consultation programs with women parliamentarians were organized to discuss on the draft and their inputs are included as well. This draft, developed with a participatory process and extensive base, is also a shadow report of provisions to be included in the model gender sensitive constitution. I believe that this draft will be helpful to parliamentarians, experts and concerned persons in developing a gender responsible constitution.

UNIFEM is continuously working for gender equality, women empowerment and women right protection. I would wish to express my pleasure on behalf of UNIFEM to have an opportunity to work with Nepal Government, particularly MWCSW in various programs related to gender equality and women empowerment, including this report. I would like to thank Pro Public, involved in programs related with public awareness and various social development programs, for the collaboration in development of this draft. I am also thankful to Prakash Mani Sharma, Executive Director of Pro Public, Advocate Sharmila Shrestha, Advocate Kavita Pandey and Advocate Rama Panta Kharel and other members of her team. My colleagues in UNIFEM Salina Joshi, Program Officer and Yamuna Yadav, Program Support Manager, who handled the responsibility by providing advises and feedbacks being involved continuously in the process of development and publication of this document, deserve special thanks. I also express my heart appreciation to all of them, who provided their valuable comments and suggestion in various discussion, studies and interactions.

Present political transition period of Nepal is an important opportunity for stepping forward being united to ensure women rights for all of Nepalese women and all Nepalese. I appeal on behalf of UNIFEM and myself to all to use this draft as basic document with collaboration and coordination between all pro-women right entities, organizations, persons and all actors who are committed to establish gender justice using this opportunity in a positive way. I expect that all actors will receive this document as helping common mechanism in building gender responsible new constitution which will protect and promote women's rights. Thank you.

Sangita Thapa, Program Coordinator

UNIFEM Program Office, Nepal

Foreword

Gender equality is the necessity of democratic and equitable society and the foundation of human civilization. Modern gender jurisprudence has accepted the principle that the provisions relating to special rights and protection should be included in the constitution along with guaranteeing the right of equality by the state for the protection, promotion and enforcement of the women's rights the state. Almost democratic countries of the world have incorporated this principle. In the context of Nepal, although from the previous constitution, there has been the provision of special arrangement for women's development by the state yet since the state has not been sensitive regarding that provision as the result, women's literacy rate limited at 42 percent, ownership limited at 5 and 10 percent respectively in house and land, reproductive health related complications remained at the rate of 281 per 100,000 women, 90 percent women being victimized from various types of domestic and other violence and negligible representation of women in the decision making level of the state, and all these explicitly show the situation of gender discrimination in Nepal.

The Universal Declaration of Human Rights has incorporated the principle of non-discrimination. Nepal has expressed its commitments to several treaties and conventions relating to human rights, Declarations passed by the World Women Conferences, the Beijing Conference by incorporating the related issues. The Comprehensive Peace Accord (CPA) 2005 and the Interim Constitution of Nepal (IC), 2007 have also made strong commitments to end all forms of discrimination against the women. The Interim Legislature Parliament has passed out the resolution of ensuring minimum 33 percent representation of women in all state mechanisms. All these commitments could bring the desired changes in the status of women only after they are provided with the constitutional protection and only then human right of women could be ensured.

On the occasion of constitution making by the Constituent Assembly in Nepal for the first time, since the new constitution be the crucial in establishing an equitable state with ensuring the rights of women who have been kept backward for several of years, in cooperation with and support of Ministry of Women, Children and Social Welfare and UNIFEM Nepal, Pro-public has organized various programmes with the objectives to assist the Constituent Assembly by preparing the suggestions/submission on the rights of women. In this regard, in order to ensure the preparation programme effective and process to collect opinions and suggestions of maximum number of people, one day interaction programme was conducted and 5 members advisory committee was formed. As per suggestion of the committee, the team studied and analyzed the provisions relating to the rights of women in the constitutions of 12 different countries (India, Canada, South Africa, Shri Lanka, Afghanistan, Fiji Republic, Rwanda, East Timor, Kenya, Uganda, Sweden and Argentina) and 6 constitutions of Nepal. On the basis of the study, three separate concept

paper was prepared on the subjects: **Provisions relating to Citizenship and Fundamental Rights of Women; Preamble and Duties, Policies and Directive Principles of the State;** and **Women Participation in the Constitutional and Other Bodies of the State** and collected the local people's opinions and suggestions from the regional consultations in all five regions and the final national level consultation as well as collected the opinions and suggestions from concerned experts as well as general public by making public notice in the national daily newspapers. And with all these inputs, a draft was prepared. Again the draft was refined with the suggestions come out from the discussions with hon'ble women CA members. Thus the final draft has been prepared with the objective to incorporate the provisions in the new constitution.

The IC, 2007 has made more positive provisions relating to protection of the rights of women than that of the previous constitutions however, there are still discriminatory provisions against women particularly regarding the right to citizenship which is the basis to claim and enjoy all rights. And, it is not acceptable in the Federal Democratic Republic of Nepal.

There has been discriminatory treatment against women since a long time. As a result, women are not being able to enjoy their fundamental rights freely as men do. In this regard, it is the duty of the state to create conducive environment. Similarly, this submission has suggested the state for the implementation of the provisions of special arrangements for women in the constitutional way. One of the main reasons for discrimination and violence against women is the economic dependence and till this dependence has not been addressed the violence against women cannot be ended. Therefore, along with constitutional guarantee on inherited right to property, rights relating to ownership and access to natural resources, the stress has been also made in making all forms of violence against women as a punishable crime as well as provision of compensation to the victim.

We have bitter experiences that national and women development is not possible through the policies and programmes made without presence of women in the decision making level. Therefore, equal women participation is required in the politics and all decision making level of the state, and the submission also suggests to mention the right to proportional participation under the fundamental rights.

(Note: the acknowledgement is almost same as in earlier text, but long list of names in this section.)

Thank you!

Dr. Shri Krishna Shrestha, President,

Pro-public