

Civic Education

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Note: this is a wide range of topics and no one organisation is likely to cover all. But anyone who is seriously doing civic education on making a new constitution ought to have some sense of the entire scope of the topic. This is not a complete set of questions, and only for some topics are some suggested elementary answers given. Anyone who would like more details and suggestions is welcome to contact CASU – please e-mail jill.cottrell@undp.org.

A Democracy and People’s Sovereignty

1. What is democracy, and what is meant by the sovereignty of the people? How do these relate to the making of a new Constitution?
 - a) Democracy as rule of the people
 - b) People’s sovereignty as empowerment of the people to make their own decisions
2. Democracy, sovereignty and the making of a new constitution
3. Democracy, sovereignty and the content of a new constitution

B Constitution

I What is a Constitution?

1. A Constitution is a law (or collection of laws)
2. A Constitution is a document
3. A Constitution creates the legal framework in which government works – in other words it says how a government comes into being and what its powers and duties are
4. It creates (or supports) the rights of citizens and others
5. It probably sets the basic framework for the military, police, civil service etc.
6. It does not contain all the details about the working of government
7. No other law can conflict with the constitution

II Does Nepal already have a Constitution?

1. Nepal now has a Constitution – the Interim (temporary) Constitution of January 2007.
2. Nepal had a Constitution which became law in 1990, but this was replaced after the Jana andolan II.

III What did the 1990 Constitution say?

1. It tried to limit the powers of the King so that he had to carry out almost all his functions on the instructions of the government;
2. It says who is a citizen of Nepal and who is entitled to apply to become a citizen;
3. It set out the composition of the Parliament: both the House of Representatives and the National Assembly
4. It required that members of the House of Representatives were elected from 205 constituencies (which meant that there was not much choice about the electoral system).
5. It said what the powers of the House of Representatives and the National Assembly were.
6. It said how new laws were to be made
7. It said how government requests to spend public money and to raise taxes were to be approved (because these must be approved by the Parliament)
8. It said how the Prime Minister was to be appointed from among the members of the House of Representatives.
9. It said how the Ministers were appointed.
10. It said how the House of Representatives could remove the Government.
11. It said something about how political parties could be formed and registered.
12. It said that there must be a system of government
13. It stated the basic rights of the people – which even government must respect. These include the right to equality, to fair trial, to reasonable privacy, to join together with other people to form associations, hold meetings etc., and to express opinions.
14. It stated some of the principles that government should follow in making policies and laws; but these were only guidelines, in the sense that the courts would not be able to force government to do these things.
15. It created the system of courts and said how judges were to be appointed and how they could be dismissed. It tried to set up a system where the judges were independent and could not be interfered with by government.
16. It created various bodies to make sure that the principles and rules in the constitution were applied; these included the courts, and the Election Commission to run fair

elections, the Auditor General to check that public money is spent only according to the law, the Commission for the Investigation of the Abuse of Authority to try keep corruption out of the public life of Nepal and to ensure that people who were corrupt were punished.

17. The Constitution tried to set up a system of government that included all Nepali citizens and that made it possible for development to take place.
18. The Interim Constitution has a number of differences from the 1990 Constitution:
 - a) There is no role for the King – and it is to be left to the Constituent Assembly to decide whether Nepal shall continue to have a system of kingship;
 - b) The Interim Government has the duty to work towards the Constituent Assembly where the people can make a new Constitution;
 - c) There are provisions about how the Constituent Assembly will be set up and how it will work;
 - d) Some new rights are given
 - e) Some new responsibilities are given to government;
 - f) By a change to the Interim Constitution a decision was made that Nepal will become a federal country

IV Where do Constitutions come from?

1. Sometimes Constitutions are just collections of rules that have developed over a long period in a particular society.
2. Most Constitutions are made in a formal way, but some have been made by king for their people, some have been made by parliaments, and some have been made by special bodies set up to devise a new constitution for the country.
3. The 1990 Constitution of Nepal was prepared by a small group, and then to the interim government and signed by the King. There was some opportunity for people to give their views on what the new Constitution should be, but there was no good system to consider those views and take account of them in preparing the Constitution.

V Is there need for a new Constitution?

1. Changed role – or non-existence – of King
2. People felt excluded by old constitution
 - a) Hindu State
 - b) Nepali language
3. Other reasons

C The process for a new Constitution

I What needs to be done?

1. People need to learn about constitutions and constitution making
2. People should be consulted
3. Preparation for Constituent Assembly
 - a) Government must prepare laws and rules
 - b) Parties must understand about constitutions
 - c) Civil society must learn about constitutions

- d) In some countries a body prepares a draft constitution before the Constituent Assembly meets
- e) Selection/election of members
- 4. Constituent Assembly meets and prepares new Constitution
- 5. New Constitution becomes law
- 6. New Constitution must be implemented and used

II What is Constituent Assembly?

- 1. Body that makes a new constitution
- 2. Elected or appointed or a mixture
- 3. Not like a parliament:
 - a) Does not make ordinary law
 - b) Does not supervise government
 - c) Should represent whole nation
 - d) Elections for a CA are not elections for a government
 - e) Issues may cut across party lines
 - f) People should be able to contribute to debate – CA more open than parliament

III What will the CA have to do?

- 1. Learn about constitution making
- 2. Adopt rules of procedure
- 3. Consult people
- 4. Consult experts
- 5. Prepare a draft (assuming that there is no draft prepared for discussion before the CA)
- 6. Submit draft to public for views
- 7. Debate Draft
- 8. Adopt Constitution

IV How will CA Work?

- 1. Depends on rules to be adopted
- 2. Much of discussion will probably be in committees
- 3. Should be open to public expressing views before it and before committees
- 4. Should give adequate time for public input
- 5. Final decision is supposed to be by consensus:
 - a) On a vote on a proposed article of the Constitution, if even one person votes against the matter is referred to a committee of party leaders
 - b) If they agree it goes back to the Assembly
 - c) If in the end it is impossible to reach consensus, an article cannot be accepted without at least two-thirds of the members of the CA who are present voting in favour (and not vote can take place if there are not two-thirds of all the members present).

V How can the public have an input?

- 1. By exercising their right to vote carefully
- 2. By pressurizing parties
- 3. By preparing with organizations they belong to submissions

- a) to the CA
 - b) to the High Level Committee on State Restructuring when it is set up
 - c) to any other body that is set up to receive such submissions
4. By joining with other organizations to show the CA that they are being watched

D The Issues the Constituent Assembly will have to decide

These are the various things that will go into a new Constitution. For many groups it may not be appropriate to go into details about the systems of government, but some groups may be interested in particular aspects of the constitution. Many groups will be interested in human rights, the rights of women, the monarchy, for example. Below are sections on the main decisions that will have to be reached.

I Whether Nepal will be a monarchy or not

1. What is a monarch?
2. What do kings or queens do in the modern world?
3. Can a Constitution have a monarch but avoid that person exceeding their powers?
4. What happens in countries that do not have monarchs?
 - a) They are republics
 - b) They have a President
 - c) They may also have a Prime Minister

II Systems of Government

1. Parliamentary system – the system Nepal has had
2. Presidential system
3. Mixed systems
4. Examples of these – various countries
5. Main arguments in favour of one or the other
6. There is no system that is necessarily better or worse

III Legislatures/Parliaments

1. What does a legislature do?
 - a) Makes laws
 - b) Controls budget – all public expenditure must have legislative approval
 - c) In a parliamentary system members of the government are usually drawn from the legislature, and it can usually dismiss the government by “vote of no confidence”
 - d) Supervises the work of the government
 - e) Carries out investigations on matters of public interest
 - f) Represents the people
 - g) Sometimes approves appointments of ambassadors, judges
2. How does it work? (detailed discussion not important, but it might sometimes be interesting to mention):
 - a) Sometimes receives petitions
 - b) Makes its own rules
 - c) Members are protected against legal action for what they say in legislature – in order that they may be free to express their own views

IV Human Rights

1. What are human rights?
2. Different types of rights:
 - a) Civil and political
 - b) Economic social and cultural rights
 - c) Group rights
3. What sorts of rights were protected under the 1990 Constitution?
4. Should the rights be the same for all or can a constitution have rights spelled out for certain disadvantaged and special groups?
5. How about the Interim Constitution?
6. How can human rights be enforced?

V Directive Principles

1. What sorts of things have been included under these in various constitutions of Nepal? (See especially Interim Constitution)
2. How are these different from rights?
3. If they are not rights how are they useful?
 - a) Are a way to judge performance of government – so can be used politically
 - b) Government may use them as a social agenda
 - c) Sometimes courts have used them to help interpret the human rights provisions of the constitution
4. If these things are not included in directive principles how can they appear in a constitution?
 - a) Many can be economic social and cultural rights

VI Language and religion

1. How should the Constitution deal with the matter of languages?
 - a) What should be the official language or languages?
 - b) What should be the position of the official language(s) – in what bodies would they be used?
 - c) Should there be other official languages for the lower levels in the federation? How would this be decided?
 - d) Should there be other national languages and what would be the implications of “national languages”?
 - e) How can the various languages of the country be protected?
2. What are the implications of having a “secular state”?
 - a) Should religion be taught in public schools?
 - b) Should public occasions be able to have any religious content?
3. How can respect for all religions be ensured?

VII Elections

1. What is the function of elections?
 - a) Select representatives
 - b) Choose government (in case of a general election in a parliamentary system)
 - c) Shape policy
 - d) Accountability of government and individual members

2. What different electoral systems are there?
 - a) Plurality/Majoritarian systems (include first past the post)
 - b) Proportional systems
 - i. List systems
 - ii. Other systems (perhaps not detail needed except for a specialist workshop)
3. What are the advantages and disadvantages of different system?
 - a) Some produce fewer parties and more stable government
 - b) Some are a more accurate reflection of the votes of the electorate
 - c) Some are easier to understand than others
 - d) Some are more likely to produce a varied range of candidates – women, minorities etc.
4. The Nepal sense of “proportional” – reflecting the ethnic and other make-up of the country: how can this be achieved?

VIII Courts and justice

1. What is their role?
2. What is independence of the judiciary?
3. Why is it important?
4. How can it be achieved – especially through a constitution?
5. How are judges appointed and how and when can they be removed?
6. How can the accountability of the judiciary be achieved?
7. What is a fair trial and how can a constitution try to guarantee it?
8. What is access to justice and how can a constitution try to guarantee it?
9. What is the role of an attorney-general (rather specialised)
10. How can decisions about when to bring criminal prosecutions be made independent of the government and other influences?

IX Federalism and Decentralisation

1. What is federalism and which countries are federations?
2. How do countries become federations?
3. How is the national government constructed in federations to make sure the interests of all part of the country are represented?
 - a) executive
 - b) parliament – two houses, but how is the second house made up and what is its role?
 - c) courts
 - d) other bodies?
4. How are powers to make law and carry out policies divided between the different levels of government?
5. How are natural and financial resources distributed, and how are decisions about finances made?
6. At the lower levels: could there be:
 - a) A constitution?
 - b) Courts?
 - c) Civil service?
 - d) Election commission etc.
7. How are disputes resolved?

8. Are there other methods of decentralising power away from Kathmandu, other than complete federalism?
9. How could the country be divided – what principles should be used?

X Security and the Constitution

1. How can a constitution protect the physical security of citizens?
2. How can a constitution regulate the military police etc and ensure civilian control?
3. How and when is a state of emergency declared and how is abuse prevented?

XI A Constitution and Fair and Good Government

1. What are the usual mechanisms for ensuring accountability?
 - a) Auditor General
 - b) Elections
 - c) Legislature
 - d) Courts
 - e) Ombudsmen
2. How are important functions insulated from political influence?
 - a) Independent commissions and offices
3. What other methods are found:
 - a) Anti-corruption bodies
 - b) Codes of conduct

Requirements to declare assets

XIII Special topics for special groups

How can each of these groups (i) participate in the making of the new Constitution and (ii) benefit from the provisions of a new constitution?

- c) Women
- d) Children
- e) Elderly
- f) Persons with disability
- g) Dalits
- h) Minorities

E Protecting and enforcing the Constitution

1. How can a constitution be protected against being changed?
 - a) Can be made hard to change – e.g. by requiring two thirds majority, or a referendum, and perhaps requiring a certain time to elapse between the time the amendment is first proposed and the time it can be passed
 - b) It is possible to make some provisions impossible to change?
 - c) What are the advantages and disadvantages of each protective mechanism?
2. How is it possible to try to ensure that the Constitution does not remain just a piece of paper?
 - a) Timetable in the Constitution for implementation
 - b) Importance of people using the constitution
 - c) Role of the courts
 - d) Special Commission to ensure implementation