



The Global Justice Center

Only when women create the  
constitution can the constitution create  
democracy

Presentation for

Gender Perspective on Constitution  
Drafting Process Seminar

January 9 – 11, 2006  
Chiang Mai, Thailand

There can be no democracy in Burma without a Constitution that supports women in all parts of government and aims to change the culture.

# The Constitution-Drafting Process

What is the purpose of the FCDCC effort to draft a new constitution?

What is the purpose of this seminar?

What do we want to accomplish here?

# What is Democracy?

- What is democracy? How do you define it?

# Democracy Then and Now

In 1947 a country was considered a democracy as long as all the people could vote - even if the government was all men.

# A New Definition of Democracy

The definition of democracy has changed. In 2006, influenced by the women's movement and international human rights, it is now premised on the equal political citizenship of women.

The issue of women's status and role in politics is critical because politics is central to everything in a democratic society. As such, the percentage of women's representation in politics is critical to lead to the permanent empowerment of women with equal political citizenship.

# Democracy in 2006 Includes

1. Right to self-development as an individual
2. Right and duty to be part of the systems that govern your life both public and private
3. Right to live in society as an equal

# Human Rights and Democracy

Women have a right to be part of the decision making affecting their lives.

All people have a right to live in a society based on equal political citizenship.



# How does a constitution advance democracy?

The Constitution is a tool to provide equal political citizenship.

A constitution must advance, protect and create a legal, political and social culture of women in the center of human rights.

# Critique of the FCDCC Constitution Drafting Process and Constitution



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# Arguments In Favor of Quotas

- Quotas for women do not discriminate, but compensate for actual barriers that prevent women from their fair share of the political seats.
- Women have the right as citizens to equal representation.
- Women's experiences are needed in political life.
- Women are just as qualified as men, but women's qualifications are downgraded and minimized in a male-dominated political system.
- Election is about representation, not educational qualifications.
- It is in fact the political parties that control the nominations, not primarily the voters who decide who gets elected, therefore quotas are not violations of voters' rights.
- Introducing quotas may cause conflicts, but may be only temporarily.

Excerpt from Drude Dahlerup: "Using Quotas to Increase Women's Political Representation", in International IDEA.  
1998: Women in Parliament. Beyond Numbers at [www.quotaproject.org](http://www.quotaproject.org)



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# Arguments Against Quotas

## Against Quotas

- Quotas are against the principle of equal opportunity for all, since women are given preference over men.
- Quotas are undemocratic, because voters should be able to decide who is elected.
- Quotas imply that politicians are elected because of their gender, not because of their qualifications and that more qualified candidates are pushed aside.
- Many women do not want to get elected just because they are women.
- Introducing quotas creates significant conflicts within the party organization.



Excerpt from Drude Dahlerup: "Using Quotas to Increase Women's Political Representation", in International IDEA.  
1998: Women in Parliament. Beyond Numbers at [www.quotaproject.org](http://www.quotaproject.org)

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# International Law Applies to The Process and the Product of Constitution Drafting

Does the FCDCC comply with international law?

Process:

Right to political participation can be found in:

- Universal Declaration of Human Rights (Article 21)
- Covenant on Civil and Political Rights (Article 25)

Women in Particular have a right to participate:

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- UN Security Council Resolution 1325
- (Section 8 (c) Measures that ensure the protection and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.)
- A specific right to participate in constitution drafting was found by the United Nations Commission on Human Rights.

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Incorporating true equality and democracy into the  
constitution

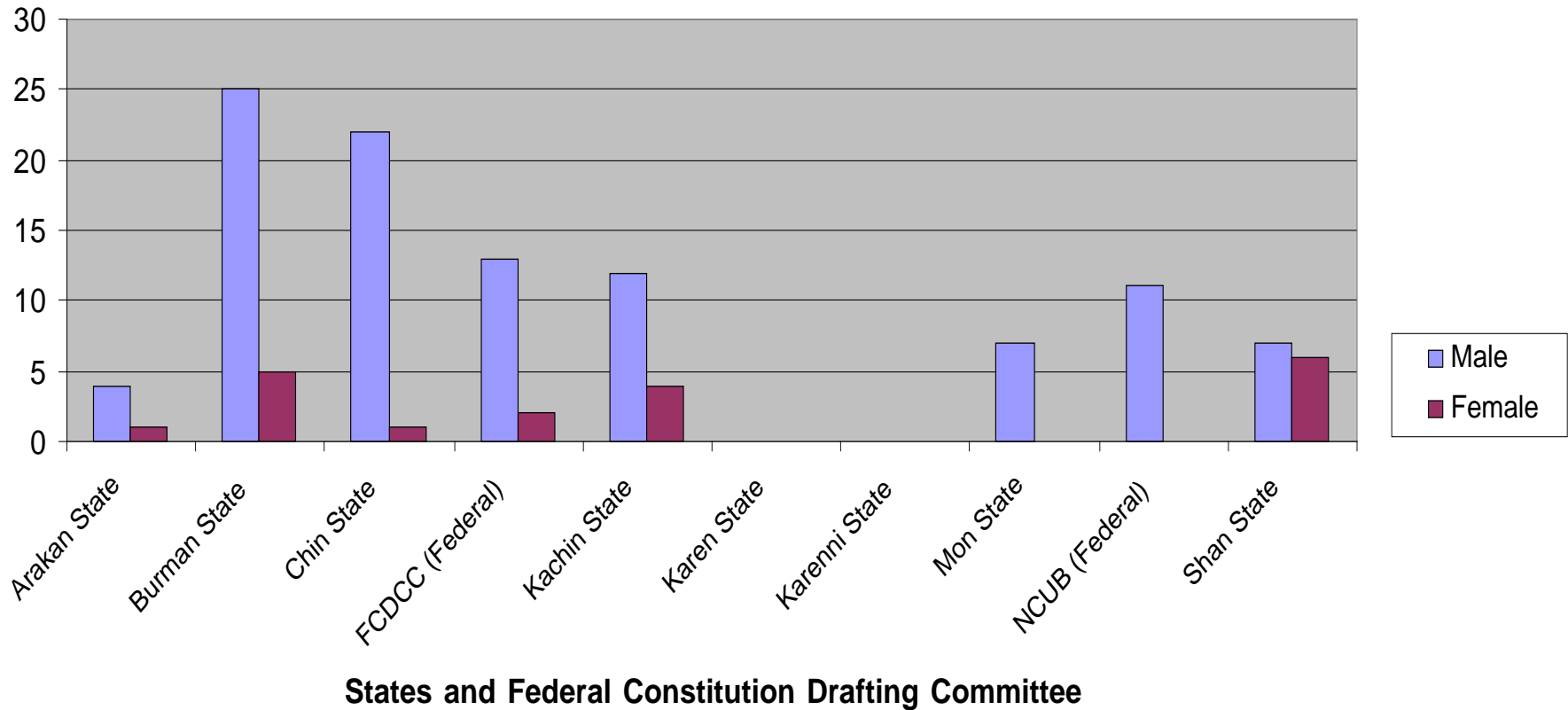
Does the FCDCC Draft Constitution reflect a  
product which has:

- Affirmative measures to enforce women's right to participate in the governance of their country – particularly within the judiciary.
- A recognition of the historical discrimination against women.
- Recognition of international law as above domestic law.



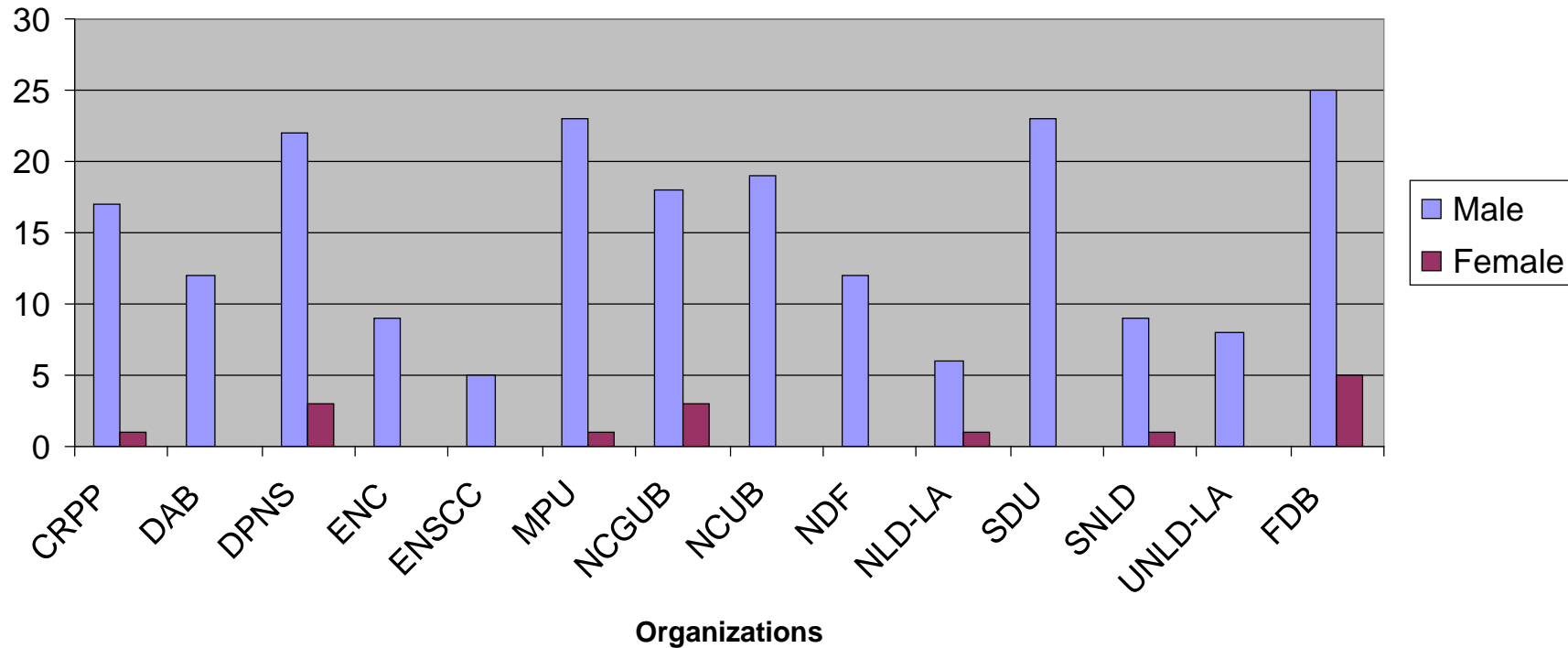
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## Women's Participation in State and Federal Constitution Drafting Processes of the Movement for Federalism and Democracy in Burma (Current)



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## Women in leading roles of Burma's pro-democracy organizations



- \*One of the women, Daw San Seng, is an Executive Board Member of both the MPU and NCGUB.

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What does Burma need in it's  
Constitution to change the  
culture for women and create  
democracy?



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# Critique of the FCDCC Constitution

It is not a modern constitution that guarantees real equality and democracy.

It does not address historic wrongs of sex discrimination and militarism.

# The FCDCC Constitution's Definition of Equality

It provides that each individual has the right not to be treated unequally, but no right for the government to ensure equality.

Article 11: "Every living person in the Federal Union of Burma: (A) shall equal before the law irrespective of native birth place, religion, class, gender, color, race or age."

# Example of Positive Obligations in South African Constitution

The South African constitution requires the government to promote equality.

Founding Provisions, Chapter 1: The Republic of South Africa is one, sovereign, democratic state founded on the following values:

a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.

Chapter 2, Section 9(2): "Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be take."

# Positive Obligations in East Timor Constitution

The Constitution enshrines the principle that equal participation is a necessary component of democracy.

## Section 17 - Equality between women and men

Women and men shall have the same rights and duties in all areas of family life and political, economic, social, cultural.

## Section 63 - Participation by citizens in political life

Direct and active participation by men and women in political life is a requirement of, and a fundamental instrument for consolidating, the democratic system.

The law shall promote equality in the exercise of civil and political rights and non-discrimination on the basis of gender for access to political positions.

# Other Clauses

- Quotas for all decision-making bodies

# Modern Definition of Equality

The definition of equality in CEDAW is the model example of requiring equality of results.

CEDAW Article 1:

For the purposes of the present Convention, the term "discrimination against women" shall mean any 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.

The FCDCC draft constitution does not guarantee equality of result.

# Exercise

- Write down 5 harms to women caused by law, policy or custom in Burma.
- Where in the FCDCC are these harms addressed?
- Where in a new and model constitution would you address these harms?



# Constitutions Providing Generally for Affirmative Measures for Women

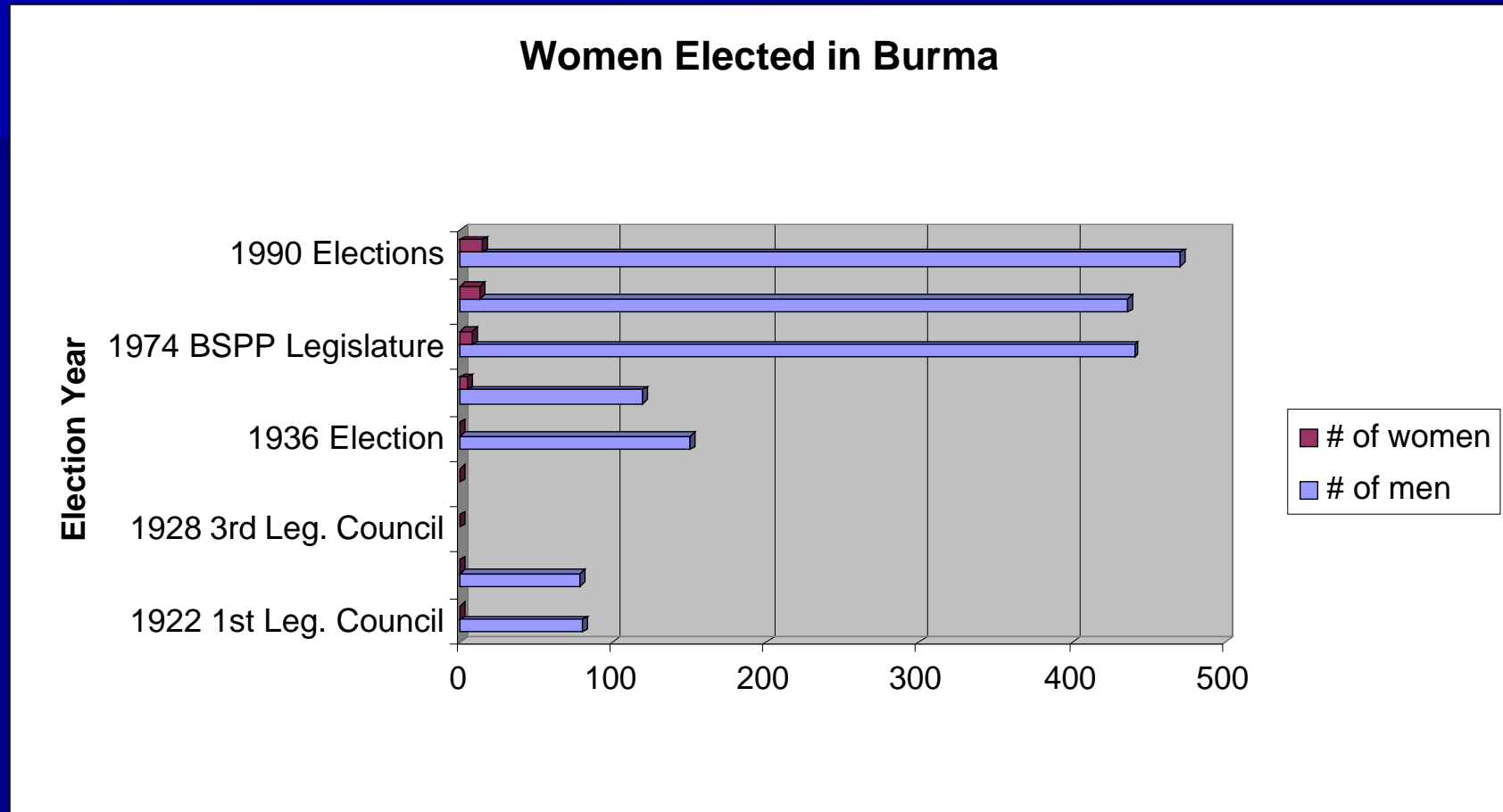
- The UGANDAN Constitution, Article 33, provides that “women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.”
- The INDIAN Constitution, Article 15, and the BANGLADESHI Constitution, Article 28, allow specifically for affirmative action for women.
- The SOUTH AFRICAN Constitution, Section 9, provides that “legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.”

(Source: International Alert and Women Waging Peace, “Inclusive Security, Sustainable Peace: A Toolkit for Advocacy and Action”)

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# Need for Affirmative Action in Burma



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# What are Quotas?

- The idea behind quota systems is to recruit women into political positions and to ensure adequate representation of women.
- Quotas ensure equality of results.
- Almost all political systems have some form of quota – in some countries quotas apply to minorities based on regional, ethnic, linguistic or religious groups.
- Currently, approximately 72 countries have constitutional, electoral or political party quotas.

(Source: [www.projectquota.org](http://www.projectquota.org))



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Quotas can be put into place  
through:

- Constitutions
- Legislatures
- Political Parties

# Three Types of Quota Systems

- Constitutional Quota:
  - Quotas mandated in the constitution of the country.
  - Cannot be changed without amending the constitution
  - Burkina Faso, Nepal, the Philippines and Uganda.
  
- Law or Regulation:
  - In the laws or regulations of the country.
  - Can be changed by the government at any time with a majority vote
  - Widely used in Latin America as well as in Belgium, Serbia, Bosnia & Herzegovina and Sudan.
  
- Political Party Quota for Electoral Candidates:
  - Rules or targets set by political parties to include a certain percentage of women as election candidates. There might also be quotas for internal party structures (who is the leadership of the party)
  - Can be voluntary or can be required by law
  - Many political parties that have adopted some type of quota provisions in Argentina, Bolivia, Ecuador, Germany, Norway, Italy and Sweden. But in many other countries, only one or two parties have adopted quotas.
  - If the majority party in a country uses quotas, like African National Congress in South Africa, this may have a substantial effect on the overall representation of women. (Most political parties in the world do not apply any quota system at all.)

(Source: [www.quotaproject.org](http://www.quotaproject.org))



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# Examples of Countries with Quotas

Country	Type of Quota	# of Women Elected	% of Women in Parliament
<u>RWANDA</u> - List PR	Constitutional Quota for National Parliaments; Election Law Quota Regulation, National Parliament; Constitutional or Legislative Quota, Sub National Level	39 of 80	48.8%
<u>SWEDEN</u> <i>europa</i> - List PR	Political Party Quota for Electoral Candidates	157 of 349	45.0%
<u>SPAIN</u> <i>europa</i> - List PR	Political Party Quota for Electoral Candidates	126 of 350	36.0%
<u>COSTA RICA</u> <i>southamerica</i> - List PR	Election Law Quota Regulation, National Parliament; Political Party Quota for Electoral Candidates	20 of 57	35.1%



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<p><b>ARGENTINA</b>  <i>southamerica</i> - List PR</p>	<p>Constitutional Quota for National Parliaments ;  Election Law Quota Regulation, National Parliament ;  Constitutional or Legislative Quota, Sub-National Level ;  Political Party Quota for Electoral Candidates</p>	<p>87 of 255</p>	<p>34.1%</p>
<p><b>SOUTH AFRICA</b>  <i>africa</i> - List PR</p>	<p>Constitutional or Legislative Quota, Sub-National Level ;  Political Party Quota for Electoral Candidates</p>	<p>131 of 400</p>	<p>32.8%</p>
<p><b>IRAQ</b>  - List PR</p>	<p>Constitutional Quota for National Parliaments ;  Election Law Quota Regulation, National Parliament</p>	<p>87 of 275</p>	<p>31.6%</p>
<p><b>EAST TIMOR</b>  <i>asia</i> - Parallel</p>	<p><i>Quotas existed previously or quota legislation has been proposed</i></p>	<p>23 of 88</p>	<p>26.1%</p>



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# Quotas in Constitutions

## Argentina – Weak Quota

### Section 37

- (1) This Constitution guarantees the full exercise of political rights, in accordance with the principle of popular sovereignty and with the laws derived there from. Suffrage shall be universal, equal, secret and compulsory.
- (2) Actual equality of opportunities for men and women to elective and political party positions shall be guaranteed by means of positive actions in the regulation of political parties and in the electoral system.

Congress is empowered:

23. To legislate and promote positive measures guaranteeing true equal opportunities and treatment, the full benefit and exercise of the rights recognized by this Constitution and by the international treaties on human rights in force, particularly referring to children, women, the aged, and disabled persons.



# Quotas in Rwanda

- Constitutionally mandated 30% women for all government and decision-making positions.
- Parallel system of women's councils and women-only elections
- Sector and district levels there are 3 ballots – general, women's and youth.

In the 2003 elections, in the lower house, 39 of the 80 people elected were women - 48.8% - greater than the constitutional minimum of 30%. In the upper house women constituted 6 of 20 or 30%.

Rwanda's percentage of female representation is now the highest in the world.



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# Rwanda – Gender Equality is Fundamental

## Article 9

- The State of Rwanda commits itself to conform to the following fundamental principles and to promote and enforce the respect thereof:
- equitable sharing of power;
- building a state governed by the rule of law, a pluralistic democratic government, equality of all Rwandans and between women and men reflected by ensuring that women are granted at least thirty per cent of posts in decision making organs;

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# Quotas in Constitution Rwanda – Strong Quota

## Preamble

Considering that after the Transition period, Rwanda shall be governed by a Constitution comprising ideas expressed by Rwandans themselves;

## Sub-section 3 : The Senate

### Article 82

- The Senate shall be composed of twenty six (26) members serving for a term of eight years (8) and at least thirty per cent (30 %) of whom are women. In addition, former Heads of State become members of the Senate upon their request as provided for in paragraph 4 of this article.

The organs responsible for the nomination of Senators shall take into account national unity and equal representation of both sexes.

### Article 77

- Without prejudice to the provisions of Article 76 of this Constitution, the members of the Chamber of Deputies shall be elected for a five-year (5) term by direct universal suffrage through a secret ballot using a system of proportional representation.
- The seats which remain after allocation of seats by dividing votes received by the electoral quotient shall be distributed to political organizations according to the system of the highest surplus.
- The list shall be compiled in full respect of the principle of national unity as stipulated in Articles 9 and 54 of this Constitution and the principle of gender equality in matters relating to elective offices as stipulated in article 54 of the Constitution.
- Candidates may be presented by a political organization or may stand independently.

Note: The whole constitution is transitional according to the preamble.

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# Rwanda Continued – Political Parties

- Article 54
- Political organizations are prohibited from basing themselves on race, ethnic group, tribe, clan, region, sex, religion or any other division which may give rise to discrimination.
- Political organizations must constantly reflect the unity of the people of Rwanda and gender equality and complementarity, whether in the recruitment of members, putting in place organs of leadership and in their operations and activities.

# Temporary Quotas in Constitution – Uganda – Transitional Quota

## Composition of Parliament

78. (1) Parliament shall consist of-

- (a) members directly elected to represent constituencies;
  - (b) one woman representative for every district
  - (c) such numbers of representatives of the army, youth, workers, persons with disabilities and other groups as Parliament may determine; and
  - (d) the Vice-President and Ministers, who, if not already elected members of Parliament, shall be ex-official members of Parliament without the right to vote on any issue requiring a vote in Parliament.
- (2) Upon the expiration of a period of ten years after the commencement of this Constitution and thereafter, every five years, Parliament shall review the representation under paragraphs (b) and (c) of clause (1) of this article for the purposes of retaining, increasing, or abolishing any such representation and any other matter incidental to it.

# How might a quota work in Burma?

Burma will likely have a proportional representation system. This means that each party gets the percentage of seats equal to the percentage of votes they received.

- In a closed list system you vote for the party.
- In an open list system you vote for the person.

Quotas are most effective within the closed party list system.

# Quotas in India

- Constitutional amendment reserving 33% of seats in all local government bodies for women
- Voluntary quota systems for the two major political parties:
  - Indian National Congress, 15% quota for women
  - Assa People's Council – 35% quota for women



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# Quotas can be gender-neutral

A quota could require that there are not less than 40% of either men or women.



# Recognition of Historical Discrimination Against Women

In COLOMBIA THE Constitutional Court recognizes historical discrimination toward women and enforces equality through quotas of women in public high level positions.



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# International Law and Constitutions

A constitution should address how international law will relate to the country's legal system.



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# What is international law?

- 1) Treaties are binding international law on the countries that sign and ratify them (e.g. CEDAW, ICCPR)
- 2) Customary Law is created by general and consistent practice of states, followed by a sense of legal obligation (it can be argued that equality for women is customary international law)



# How does international Law become part of domestic law?

- 1) When the government signs a treaty, the legislature must pass a law incorporating the treaty into the law;

OR

- 2) The treaty automatically becomes part of the country's laws, a process referred to as "self-executing."

**There is a growing trend to recognize that international law should trump domestic law where they conflict.**



# International Law and Constitutions

- Many constitutions in the **former SOVIET REPUBLICS** incorporate international law into domestic law and provide for the primacy of international law where it conflicts with domestic law.
- The **SOUTH AFRICAN Constitution** requires the use of international law.

Section 39. (1) When interpreting the Bill of Rights, a court, tribunal or forum -

- must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
- must consider international law; and
- may consider foreign law.

When international laws and standards such as the ICCPR, CEDAW or Resolution 1325 are integrated into national law, the state is obligated to enforce them.



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# How international law is used to help women - the case of Colombia

Problem for women: Abortion is illegal in all circumstances and women are getting hurt and dying from illegal abortions

Constitutional Provision: International law is supreme in the Colombian Constitution

RESULT: International law is being used to challenge the abortion laws as violating women's right to health and life



# STRATEGIES

## Exercise 3

How can you, representing the millions of women in Burma, ensure that the constitution creates a true democracy by addressing the culture of discrimination and promoting women's equality?



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# Model Draft Constitution of the Women's League of Burma and other Supportive Groups

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# Purpose of Creating a Model Constitution

TO PLACE BEFORE THE GLOBAL COMMUNITY A  
CONSTITUTION FOR A NEW FEDERAL UNION OF BURMA  
WHICH:

1. IS BASED ON A PROCESS OF FULL, OPEN AND EQUAL PARTICIPATION FROM ALL ETHNIC, GENDER, RELIGIOUS AND OTHER GROUPS IN ALL TRANSITIONAL AND DRAFTING PROCESSES
2. IS BASED ON COMPLIANCE WITH ALL INTERNATIONAL HUMAN RIGHTS INSTRUMENTS BINDING ON THE UNION OF BURMA AND AFFRMATIVELY SEEKS TO PROMOTE THESE RIGHTS IN THE DOCUMENT

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# FOUNDING PROVISION

THE CONSTITUTION IS WRITTEN IN SPIRIT OF ACKNOWLEDGING PAST WRONGS AND SYSTEMIC OPPRESSION OF BURMA'S ETHNIC MINORITIES AND WOMEN UNDER THE MILITARY DICTATORSHIP. THE CONSTITUTION SHALL PROHIBIT RACIAL, GENDER, AND ALL OTHER FORMS OF DISCRIMINATION. WE AFFIRM THAT THE CONSTITUTION WILL BE USED TO PROTECT THE RIGHTS OF THE MARGINALIZED AND BE A MECHANISM OF JUSTICE. IT IS OUT OF THE PAST WRONGS THAT WE STRIVE TO ERADICATE THE CULTURE OF INEQUALITY AND DISCRIMINATION AND MILITARISM.

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# ARTICLE ONE

The Constitution of the Federal Union of Burma shall provide for the establishment of one sovereign state, a common Union of Burma citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

The Federal Union of Burma is founded on the following values:

- Human dignity, the achievement of equality and the advancement of Human rights and freedoms.
- Non-racialism and non-sexism.
- Supremacy of the constitution and the rule of law.
- Universal adult suffrage, a national common voters roll, regular elections and a
- multi-party system of democratic government, to ensure accountability,
- responsiveness and openness.

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## Why, What For?

1. Future Constitution to Protect Women
2. How to make a better constitution a reality
3. Improve FCDCC's Constitution
4. Empower women leaders on a constitutional platform
5. Provide a WLB model constitution/rights wanted by all exile groups.
6. Educate

"MODEL" is the IDEAL

### BIG PICTURE

- Create a model for gender equality and all rights and to get alliances from global women's groups to join so SPDC embarrassed
- Use United Nations to show SPDC violations of law.
- Get new allies in countries through women's groups (e.g. Tanzania, Brazil)
- Get action from new allies and have them denounce SPDC's national convention  
to legitimize a lawful constitution of the people
- Use to take advantage of new 1325 rights and ask for enforcement (easier than

proving "threat to the peace" ) National convention violates 1325 by not  
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# Strategy

1. Use as a model for training youth and others inside and outside Burma
2. Have forum meeting to get comments and feedback on revisions
3. Release to global community to contrast with other constitutions and international law
4. Do press release with Vision of New Burma
5. Seek allies in global women's community to endorse this constitution and use in Security Council as part of threat to peace
6. Get Aung San Suu Kyi to endorse
7. Lobby ASEAN Caucus on Democracy in Burma