



# ***Nepal Bar Association***

## **POSITION PAPER ON HUMAN RIGHTS PROVISIONS IN THE NEW CONSTITUTION**

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### **INTRODUCTION**

This paper identifies the challenges and makes recommendations with respect to four areas:

1. Economic, Social and Cultural Rights;
2. Gender Equality
3. Rights of Indigenous People, Janajatis and Minorities; and
4. Language Rights

From a historical perspective it is important to note that Nepal's legal system under the Rana regime vested very limited rights to the people. The operation of the state and legal administration were largely based on the discretion of the Rana rulers which enriched and empowered them at the cost of the people. Given that the concepts of economic, social and cultural rights, gender equality, the rights of indigenous people, janajatis and minorities and linguistic rights were developed after the various human rights movements aided by the establishment of the United Nations, it is not surprising that these rights were not acknowledged by the Rana regime as fundamental rights. The Government of Nepal Act, 1948, Article 4 stated:

This position paper is available on-line at [www.nba-cba.org.np](http://www.nba-cba.org.np)

*"Without being contrary to the principles of public policy and etiquette and without opposing the prevalent and future laws in regards to fundamental rights, there shall be provision of individual liberty, freedom of the press, freedom of association or organization, religious freedom, full freedom under the law, freedom to acquire prompt and accessible justice, free and compulsory primary education, adult franchise, the assurance to protect personal property have been conferred herewith."*

These political and civil rights reflect the first attempt in Nepalese history to protect any fundamental rights. Subsequently, the Nepalese people have been struggling for the practical implementation of these rights and to expand fundamental rights to include economic, social and cultural rights.

The election of the Constitution Assembly in April 2008 was historic for Nepal. The role of the Constituent Assembly (CA) is to actively cater to the desires of the people as expressed in past movements and to fulfill this role the CA created fourteen committees, including a Constitutional Committee (CC), ten Thematic Committees and three Procedural Committees. All eleven committees submitted concept papers to the Constituent Assembly on or before January 27, 2010. A Preliminary Draft Reports Study (or *Gaps and Overlaps*) Committee was created to review the eleven concept papers and on September 30 2010 this committee submitted a report to the CA Chair listing 210 contentious issues. A high-level political task force led by Pushpa Kamal Dahal (UCPN-M) was established on October 11 2010 to resolve the contentious issues and on January 4 2011 the task force report resolving 127 issues was approved by and all party meeting of the CA. On January 26 2011 all reports (except State Restructuring<sup>1</sup>) were sent to the CC for resolution and on February 25 2011 the CC created a Dispute Resolution Subcommittee again led by Pushpa Kamal Dahal. This Subcommittee brought the number of contentious issues down to 21.

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<sup>1</sup> The State Restructuring Committee Report was submitted to this Subcommittee on June 3, 2011.

The discussion and recommendations in this NBA position paper respond directly to the concept papers submitted by the CA Committee on Fundamental Rights and Directive Principles, the Committee to Decide the Basis of Cultural and Social Solidarity, the Committee on Restructuring of the State and Distribution of State Powers, the Committee on the Protection of the Rights of Minorities and Marginalized Communities and the Committee on the Judicial System as well as to decisions of the CC Dispute Resolution Subcommittee.

The NBA's recommendations related to each of the four areas are based upon research conducted by constitutional experts, input received through seminars and consultation programs, thoughts expressed through questionnaires filled out by the public and legal professionals<sup>2</sup>, recommendations made by its Advisory Board and Executive Council, and resolutions adopted by the its National Conventions over a period of two years from June 2009 to June 2011.



## **SUBJECT AREAS**

### **I. ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

Economic, social and cultural rights (ESCR) are those rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education. ESCR have been part of international human rights since the adoption of the Universal Declaration of Human Rights; however, there has been considerably less attention placed on the need to incorporate these rights in the constitution. ESCR are indivisible from and interdependent with civil and political rights. Therefore, the ongoing constitution making process should recognize ESCR as fundamental rights in the new constitution.

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<sup>2</sup> The questionnaires were filled out between June 2009 and February 2010.

## **A. CHALLENGES**

### **Lack of constitutional recognition of economic, social and cultural rights as absolute fundamental rights**

Over the last sixty years, the peoples' movements of Nepal have focused not only on civil and political rights but also on economic, social and cultural rights. However, Nepal's six constitutions have given more importance to civil and political rights and have yet to recognize economic, social and cultural rights as fundamental. The Interim Constitution, 2007 has recognized rights such as health and education under the fundamental rights but as these rights require further implementation through legislation yet to be enacted they are mere legal rights, neither absolute nor effective. .

### **Lack of Proper Implementation of Fundamental Rights**

In spite of the fact that the judiciary of Nepal has handed down some crucial decisions in favor of economic, social and cultural rights through the interpretation of the provision of equality and positive discrimination (Article 11) and the Directive Principles and Policies of the State (Chapter 4), of the Constitution of Nepal, 1990, poor implementation has resulted in limited benefits to the people in terms of economic, social and cultural rights. Therefore, the indifference exhibited by state mechanisms to implement the decisions of the court has also been a principal challenge in the area of economics, social and cultural rights.

### **Non-fulfillment of Nepal's obligations under International Human Rights Instruments**

Since the revolution in 1990, almost all of the international covenants and treaties pertaining to economic social and cultural rights have been ratified by Nepal. The Treaty Act, 1990 provides that the treaties and covenants ratified by Nepal be equivalent to the laws of Nepal. The Supreme Court of Nepal has, from time to time, interpreted the provisions of the Treaty Act, 1990 in various cases. In spite of this, Nepal has not been able to effectively fulfill its international obligations relating to the

human rights which have increased the challenges with respect to implementing economic, social and cultural rights.

**Lack of consideration of the importance of economic, social and cultural rights to the overall development of the nation.**

The previous movements and conflicts in the history of Nepal have included the issues of economic, social and cultural rights. Those responsible for the operation of state mechanisms have not given consideration to this fact and to the importance of these rights in the development of the constitution. This has resulted in added challenges to the strengthening of economic, social and cultural rights.

**B. RECOMMENDATIONS**

**Lack of a Separate Constitutional Recognition of Economic Social and Cultural Rights as Absolute Fundamental Rights**

The Nepal Bar Association circulated questionnaires to legal professionals and the public to determine whether or not economic, social and cultural rights should be incorporated as fundamental rights in the upcoming constitution. Almost all of the survey respondents were in favour of such incorporation. The Nepal Bar Association has always advocated for human rights. Universal human rights principles emphasize that all human rights are interconnected. Nepal's constitutions promulgated to date have prioritized civil and political rights over economic, social and culture rights. Therefore the forthcoming constitution should ensure all kinds of human rights in a way that they can practically be exercised. The Nepal Bar Association recommends that human rights must include economic, social and cultural rights along with civil and political rights. The NBA believes that the following economic, social and cultural rights should be established as fundamental rights: Rights regarding employment & social security, right to residence, right to have appropriate environment for work, right to equality, right to freedom, right to maintain livelihood within the prescribed standards, rights of women, right to reproductive health, rights of children, right to health, education and cultural

rights, right to authorship over the creation of literature, art or scientific creation, and right to marriage and family. The Nepal Bar Association is aware of the economic situation and capacity of the state. It is also informed on the provision of Article 2 of the 1966 Covenant of the Economic, Social and Cultural Rights which states that state governments are required to confer such rights to citizens "by all appropriate means" which enables the particularities of the legal and administrative systems of each State, as well as other relevant considerations, to be taken into account.<sup>3</sup>

### **Implementation Mechanisms for Economic Social and Cultural Rights**

Pursuant to a survey conducted by the Nepal Bar Association on how the state can deliver justice when economic, social and cultural rights are infringed, a majority of the respondents said that the state must immediately enact legislation that delivers justice and specify the legal processes and bodies involved. However, some respondents stated they were in favor of the enforcement of these rights over time. The question of whether the state can afford to fulfill its obligations was answered by most of the participants positively. Similarly, most participants said that the government should immediately specify the types of remedies available and a process whereby individuals can receive a remedy whereas some have said that the state should provide the remedies over time through effective implementation.

The Nepal Bar Association maintains the position that the mere citation of economic, social and cultural rights in the constitution is not sufficient unless it is supported by implementation mechanisms. For example 'the right to residence' requires the federal government to count and record the number of squatters in order to formulate the budget and plan for the construction and distribution of apartments. Similarly, 'the right to employment' requires the government to identify the number of persons to be employed, the type of employment to be received, as well as the period of time within which they should be employed and thereby formulate the employment objectives and

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<sup>3</sup> General Comment No. 3 (1990) on the nature of States parties' obligations (art. 2, para. 1, of the Covenant)

policy. The guarantee of 'the right to education and health' requires the government to identify the number of schools and hospitals that need to be constructed and their locations. While these details do not have to be included in the constitution the constitution must state clearly how the government will ensure the guarantee of these rights through laws and policies.

Since the above mentioned matters are directly connected with the economic capacity of the state and are not achieved by sentiments, the Nepal Bar Association holds the position that the rights shall be conferred by the state to the citizens "by all appropriate means" as described in General Comment No. by the committee under the Article 2 of the 1966 Covenant of the Economic, Social and Cultural Rights.

### **Non-fulfillment of Nepal's Obligations under International Human Rights Instruments**

Nepal's commitments to international treaties and covenants made without preparation has rendered the state unable to provide the facilities or treatment to citizens and posed a risk to the state being unable to meet its international obligations. Accordingly, the Nepal Bar Association believes that treaties and covenants should not be ratified without adequate preparation.

## **II. GENDER EQUALITY**

The question of the constitutional provisions required to guarantee gender equality is crucial. Because of Nepal's traditional, patriarchic values, the elimination of gender inequality has been difficult. In legal and constitutional terms the Constitution of 1990 was the first to include an equality provision. Immediately after, Nepal ratified the Convention on Elimination of All Forms of Discrimination against Women (CEDAW). The Interim Constitution (2007) has a separate Article on women's rights under fundamental rights and gender biased laws have been contested in the courts and subsequently repealed by parliament.

## **A. CHALLENGES**

### **Social Structure**

Nepali society is largely influenced by religion, customs and traditions with a century long practice of discrimination between males and females. Because the society has always favoured sons over daughters all state mechanisms are male centered. The main challenge to establish gender equality is the social structure influenced by cultural male domination.

### **Household and Child Obligations**

Girls marry earlier than boys and after marriage, females are obligated to concentrate on the husband, father-in-law, and mother-in-law as well as on the functions of the home and family. These household obligations take up most of their time and interfere with, or prohibit, the development of other skills. This is the main challenge for the gender equality movement in Nepal.

### **Weak Implementation**

In spite of the existence of equality provisions the lack of their implementation has rendered them ineffective. For example the provision in the Interim Constitution, 2007 to ensure 33% participation female participation in all state bodies has not been acted upon.

## **B. RECOMMENDATIONS**

### **Adoption of the Principle of Equality and Special Provisions to Address Existing Inequality**

The Nepal Bar Association believes that the constitution should contain provisions to ensure political, economic and social equality between male and females. The Nepal

Bar Association emphasizes that such equality requires the introduction of a policy for positive discrimination for women in special circumstances, keeping the reality of Nepal in consideration. Specifically, the Nepal Bar Association recommends the compulsory representation of at least 33% of women in all sectors of the state with the view to eliminate unequal treatment of women and to ensure women's representation and employment. Similarly, there should be free education up to a bachelor's degree, with the aim of increasing the competitive capacity of women. Women should also be provided with special training so that they can enter the public service. The Nepal Bar Association has also adopted a position for the introduction of positive discrimination provisions in favor of reproductive health and other related matters. It recommends the introduction of fast track programs for the period of time required to achieve equal representation of women in the various sectors of Nepal.

Women's rights have always been linked with those of indigenous peoples, Dalits, Madhesis and other marginalized communities. It is essential to deal with women rights separately. However, the implementation of provisions relating to women and gender equality requires the assurance of proportional representation of women in all communities on a compulsory basis.

### **Citizenship Provisions**

The Nepal Bar Association has been advocating for provisions that allow citizenship to be issued through either the mother or the father. Survey respondents agreed with this position. Accordingly, the Nepal Bar Association recommends that the new constitution should contain a provision allowing every person to accrue a citizenship in the name of mother or father and with their choice of gender identity.

Children born to Nepali citizens married to foreign citizens and who permanently reside in Nepal should be able to obtain citizenship from either their mother or their father. Foreigners married to Nepali citizens who wish to obtain a Naturalized Nepali citizenship should be able to do so if they have been legally residing in Nepal and they waive the citizenship of their native country. The Nepal Bar Association recommends

the introduction of a provision where individuals born in Nepal, and whose mothers reside in Nepal and are Nepali citizens, may claim citizenship without having to identify the father.

### **Institutional Structure for Equality**

The Nepal Bar Association has been advocating for the empowerment Nepali women. To implement, evaluate and monitor the provisions related to women's equality as set out in the constitution and in the laws of Nepal, the NBA recommends that an independent and highly empowered Women's Commission be established. Since the existing administrative structure is not effective and is subject to political influences the Nepal Bar Association recommends that the forthcoming constitution include the requirement to create a Women's Commission free from political interference and establish it as an independent and competent constitutional body. The CA Committee on Restructuring of the State and Distribution of Powers has recommended the establishment of a Constitutional Women's Commission under the new constitution. The Nepal Bar Association strongly supports this recommendation. .

### **III. RIGHTS OF INDIGENOUS PEOPLE, JANAJATIS AND MINORITIES**

There have been no special programs by previous governments relating to the rights of the poor, indigenous people, *janajatis* and minorities. The words '*indigenous people*', '*janajatis*' and '*minorities*' can be found in various previous government plans of Nepal. The Interim Constitution of Nepal, 2007 includes these words in Part 4 *Responsibilities, Directive Principles and Policies of the State*, specifically in Articles 33(D), 33(D.1), 35(10) and 35(14). The inclusion of these words in the Interim Constitution evidences that the rights of indigenous people and *janajatis* have been given importance after the latest people's movement in 2006. However, to date, indigenous people or minorities have not had access to state resources and it is important that this issue be addressed by the forthcoming constitution.

## **A. CHALLENGES**

### **Identification of Indigenous People and Minorities**

Identification appears to be the biggest problem in terms of formulation and implementation of the rights of indigenous people and minorities in Nepal. There is no proper data on who the indigenous people are and how many of them there are. Almost all people belonging to different castes and ethnic groups claim to be indigenous people however such claims are not backed by any objective data. Even people who have resided in Nepal for a short period of time claim to be indigenous people and the state has accepted these claims. Any minority group seems to be regarded as indigenous. If indigenous is intended to apply to people who have inhabited Nepal for a long period of time, then it is clear that several ethnic groups having Nepali as their mother tongue should be recognized as indigenous people. However, the fact that we don't have objective criteria for the identification of indigenous people remains a challenge for Nepal.

### **Lack of Access to State Power and Resources**

In the past, indigenous people and minorities did not have access to state power and resources. As a result, they have been vigorously advocating establishing their rights since the collapse of the monarchy and establishment of democracy. Indigenous people and minorities have prepared a list of rights and have demanded that the government provide an opportunity for free higher education in their mother tongue. Even though the state's ability to impart free higher education to the indigenous and minority groups in their mother tongue is questionable, the state should at least provide concrete programs for primary education in order to establish their linguistic identity rights.

## **Access to and Equal Participation and Representation in State Bodies**

The minorities in Nepal, the indigenous, Dalit, Madheshi people in particular, have very limited access to, and participation and representation in, the public sector. Limited access and denial of proper representation of minorities was one of the reasons for the decade long armed conflict in Nepal. Furthermore, the protection of minorities and ensuring them equal access is not only the problem that the peace process is supposed to address, but also Nepal's obligation international law. Therefore, the new constitution should contain provisions protecting the rights of minorities and ensure that they are properly represented and have equal access to state bodies.

## **B. RECOMMENDATIONS**

### **Mechanisms to Fulfill Obligations to Indigenous People and Minorities under International Covenants**

It is essential to effectively implement international treaties and covenants relating to indigenous people and minorities ratified by Nepal. The Nepal Bar Association recommends that the mechanisms to fulfill obligations set out in these treaties and covenants, including ILO 169, need to be clarified.

### **Rights over Natural Resources**

The Nepal Bar Association has been advocating for the rights of indigenous people, *janajatis* and minorities over natural resources. Indeed, economic, social and cultural rights of minorities, local and indigenous people are dependent upon the utilization of local means and resources. Therefore, without affecting the national development policy and programs, the Nepal Bar Association recommends that the constitution contain a provision under fundamental rights that minorities, local and indigenous people have the primary right over natural resources.

### **Constitutional Recognition of Customary Laws**

Many customary laws exist in Nepal to govern indigenous people and minorities. It has been stated that there is a need to provide constitutional recognition of these customary practices. The matter was highlighted by three CA Thematic Committees: The Committee on the Protection of the Rights of Minorities and Marginalized Communities; the Committee on Restructuring of the State and Distribution of State Powers; and, the Committee on the Judicial System. The country wide survey of the Nepal Bar Association evidenced that a majority of respondents preferred granting constitutional recognition to the local system. The Nepal Bar Association believes that local traditions should be protected so long as they do not infringe on international laws and universally accepted human and fundamental rights principles. The Nepal Bar Association trusts that there shall be no attempt to oppose democratic principles or laws made by the state in the name of the protection of the traditional and local laws.

### **Representation in the Mainstream of the State Including the Right to Self Determination of Minorities and Indigenous People**

Indigenous people, *janajatis*, Madhesis, Dalit and marginalized persons are less economically, socially, culturally and politically developed. Though the state has expressed commitment via the different international treaties and covenants these groups continue to be discriminated against in their daily lives. On the dawn of Nepal's access to federalism, the forthcoming constitution should guarantee these groups a dignified life equivalent to others.

The CA Constitutional Committee and the Committee on Restructuring of the State and Distribution of State Powers accepted the principles of the right to self-determination, inclusiveness and proportional representation. The Nepal Bar Association recommends that if the right to self-determination is recognized under fundamental rights then it should empower individuals and communities to make decisions on economic, social

and cultural issues. The Nepal Bar Association has a strong belief that there should be a clear provision to the effect that no one shall, at any time, understand the right to self-determination as a right to establish a separate state or split up the state.

#### **IV. LANGUAGE**

Despite the fact that Nepal is a multilingual and multicultural nation, to date only the Nepali language has received recognition and promotion resulting in discrimination against other languages spoken in Nepal. Now that we are writing a new constitution the promotion and development of other languages must be addressed.

##### **A. CHALLENGES**

###### **Identification of a Constitutional Question Relating to Language**

Issues relating to language pose a challenge in the context of writing the upcoming constitution. Although the CA Thematic Committee to Decide the Basis of Cultural and Social Solidarity Concept Paper reflected consensus on the issue of language with only minor disagreements on the selection of words, the Constituent Assembly, as a whole, is divided on the issue. The ongoing debate and discussion in the Constituent Assembly is focused the *language of official business* rather than on the protection and promotion of the rights of minority linguistic groups.

###### **Linguistic Movement**

Because the attempt to strike a balance between the rights of linguistic minority groups and the efficient operation of the state has been politicized, there is a threat that the issue will not be properly incorporated into the constitution. With the need to settle other political issues such as the form of government, electoral system and model of federalism, the constitution writers may be tempted to postpone the issue of language. To give in to such temptation, however, may pose problems in the future if not

properly addressed prior to promulgation of the constitution. The linguistic issue has been more of a political interest to the parties rather than being a matter of protection and promotion of the rights of the linguistic issue. This is relevant only for the determination of the policy to select language for the work of the government.

### **Lack of Language Policy**

Due to a lack of detailed research on Nepal's languages, there has been a problem in formulating a language policy. Although Nepal is a multi lingual society, there is no single language majority in any territory of Nepal. The formation of federalism based on language is a seriously challenging issue. Although there is a policy to provide education in mother tongues, its effective implementation requires the development of a systematic script, a culture of writing, preparation of reading materials in all mother tongues and preparation of educational manpower. The challenge is to prepare a clear policy to ensure these developments.

## **A. RECOMMENDATIONS**

### **Language as a Fundamental Right**

The Nepal Bar Association highlights the need to include language as a fundamental right. Each community should be guaranteed the right to acquire at least primary education in their mother tongue, the deaf and mute people should be guaranteed the right to use brail script and symbolic language, minority groups, the marginalized and the less developed communities should be guaranteed the right to practice, protect and promote their religion, culture, language or script freely, without any discrimination, and each Nepali community should be guaranteed the right to protect their language, script, culture, cultural civilization and heritage.

In addition, the Nepal Bar Association believes that the constitution should include the following provisions under fundamental rights to ensure that:

- Language is a basic right of the individual and the concerned community and that they can exercise this right without any limitations.
- Each person has the right to be recognized as a member of their own linguistic community and the state is bound to create opportunities accordingly.
- Each person may use their language in their public or personal life.
- Each person shall have the right to contact their linguistic community or their community of origin.
- Each person shall have the right to gain education in line with their own language and culture.
- Each person shall have the right to make equitable representation in the government media.
- Each person's language will have adequate protection and attention by the government.

### **Language of Official Business**

The question of how the language of official business should be decided was one that generated great debate in the Constituent Assembly. The Concept Paper of the Committee to Decide the Basis of Cultural and Social Solidarity incorporated many issues related to language. However, these issues are yet to be resolved to the mutual satisfaction of all stakeholders.

Most NBA survey respondents stated that the Nepali language in the *Devnagari* script currently in use should be the only language used as the language of official business. A few respondents suggested that one other language spoken by a majority of the people in all of Provinces, along with the Nepali language in *Devnagari* script, be considered as the two languages for official business. A few other respondents stated that English should also be included as a language for official business and that there should be three national languages of official business in total. Similarly, with respect to the question of how to determine the official provincial language, all respondents stated that the language spoken by a majority of people in the province should be the language of official business. A notable number of respondents also stated that the

Nepali language should be required as a language of official business in each province, in addition to the language spoken by most of the people. The participants also recommended that the language of official business for the province be selected by the province itself. Most respondents said that the Nepali language in *Devnagari* script should be the language of official business for the center and for inter-province as well as center- province communications.

The Nepal Bar Association recommends that the Nepali language in *Devnagari* script be the language of official business for the center government, the language of inter-province communication and the communication with or by the center government. In addition, all languages spoken in Nepal should be considered as languages of the nation and the state ensure they all receive equal consideration as national languages for development and expansion. As a consequence of this kind of treatment, the province may pursue one or more of the most spoken language(s) of the province to be the second official language on the basis of agreement.

### **Institutional Structure**

An institutional structure is important to determine the required language-related policy and also for the protection and promotion of language. The Nepal Bar Association recommends the formation of a High Level Language Commission empowered to manage the development, protection, promotion, study, research and monitoring of all the languages spoken in Nepal and to determine the necessary language policies and programs. The CA Committee to Decide the Basis of Cultural and Social Solidarity supports this view. This issue should be addressed in the constitution. Additionally, the Nepal Bar Association believes that high level language commissions should be established in the provinces and that the protection, development and use of mother tongues should be monitored.

**Priority**

The Nepal Bar Association urges the constitution makers to address the settlement of linguistic issues at the same time as or together with other political issues such as the form of government, electoral systems and model of federalism.

## SUMMARY OF RECOMMENDATIONS

### I. ECONOMIC SOCIAL AND CULTURAL RIGHTS (ESCR)

1. Human rights must include economic, social and cultural rights along with civil and political rights.
2. The following economic, social and cultural rights should be established as fundamental rights: Rights regarding employment & social security, right to residence, right to have appropriate environment for work, right to equality, right to freedom, right to maintain livelihood within the prescribed standards, rights of women, right to reproductive health, rights of children, right to health, education and cultural rights, right to authorship over the creation of literature, art or scientific creation and right to marriage and family.
3. Recognizing the current economic capacity of Nepal, economic social and cultural rights shall be conferred to the citizens "*by all appropriate means*" in line with General Comment No. 3 (1990) on the nature of States parties' obligations (art. 2, para. 1, of the Covenant);
4. The constitution must state clearly how the government will ensure the guarantee of these rights through laws and policies;
5. Future treaties and covenants should not be ratified by the Government of Nepal without adequate preparation for implementation of their provisions.

### II. GENDER EQUALITY

1. Introduction of a policy for positive discrimination for women in special circumstances, including:
  - a. The compulsory representation of at least 33% of women in all sectors of the state with the view to eliminate unequal treatment of women and to ensure women's representation and employment.
  - b. Provision of free education up to a bachelor's degree, with the aim of increasing the competitive capacity of women.
  - c. Provision of special training so that they can enter the public service.

- d. Introduction of positive discrimination provisions in favor of reproductive health and other related matters.
    - e. Fast track programs for the period of time required to achieve equal representation of women in the various sectors of Nepal.
  2. Women's rights should be separate and not linked with the rights of minority groups or communities.
  3. The implementation of provisions relating to women and gender equality requires the assurance of proportional representation of women in all communities on a compulsory basis.
  4. Constitutional Provisions related to Citizenship should include:
    - a. The passing of citizenship to children through either the mother or the father.
    - b. Children born to Nepali citizens married to foreign citizens and who permanently reside in Nepal should be able to obtain citizenship from either their mother or their father.
    - c. Foreigners married to Nepali citizens who wish to obtain a Naturalized Nepali citizenship should be able to do so if they have been legally residing in Nepal and they waive the citizenship of their native country.
    - d. Individuals born in Nepal, and whose mothers reside in Nepal and are Nepali citizens, may claim citizenship without having to identify the father.
    - e. The forthcoming constitution includes the requirement to create a Women's Commission as an independent and competent constitutional body.

### **III. RIGHTS OF INDIGENOUS PEOPLE, JANAJATIS AND MINORITIES**

1. The mechanisms to fulfill obligations set out in these treaties and covenants, including ILO 169, are clarified.
2. The constitution contain a provision under fundamental rights that minorities, local and indigenous people have the primary right over natural resources.
3. Local traditions should be protected so long as they do not infringe on international laws and universally accepted human and fundamental rights principles.

4. Any right to self-determination recognized under fundamental rights in the constitution should empower individuals and communities to make decisions on economic, social and cultural issues.
5. There should be a clear provision to the effect that no one shall, at any time, understand the right to self-determination as a right to establish a separate state or a right to split up a state.

#### **IV. LANGUAGE**

1. The constitution should include the following provisions under fundamental rights to ensure that:
  - a. Language is a basic right of the individual and the concerned community and that they can practice, profess and exercise this right without any limitations.
  - b. Each person has the right to be recognized as a member of their own linguistic community and the state is bound to create opportunities, including, but not limited to:
    - i. The right to acquire at least primary education in their mother tongue; and,
    - ii. The right for deaf and mute persons to use brail script and symbolic language.
2. With respect to the *language of official business*:
  - a. The Nepali language in *Devnagari* script should be used for the center government, the language of inter-province communication and the communication with or by the center government.
  - b. The language(s) of official business for the province should be selected by each province from one or more of the most spoken language(s) of the province.
  - c. The Nepali language should be required as a language of official business in each province in addition to the language spoken by most of the people.

3. All languages spoken in Nepal should be considered as languages of the nation and the state ensure they all receive equal consideration as national languages for development and expansion.
4. The formation of a High Level Language Commission empowered to manage the development, protection, promotion, study, research and monitoring of all the languages spoken in Nepal and to determine the necessary language policies and programs.
5. High level language commissions should be established in the provinces and that the protection, development and use of mother tongues should be monitored.
6. Linguistic issues should be settled at the same time as, or together with, other political issues such as the form of government, electoral systems and model of federalism.