



# **NHRC Suggestions on the Preliminary Draft Constitution of Nepal**



**July 23, 2015**  
**On the basis of Principles and Overall Suggestions**



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S.L.	Suggestions	Bases and Rationale
1.	<ul style="list-style-type: none"> <li>Preamble being the soul of the constitution, it should be brief, objective-based, clear and human rights friendly.</li> </ul>	<ul style="list-style-type: none"> <li>Since preamble explains the source and objective of the constitution, it is appropriate to make it brief with human rights friendly terminologies and language.</li> </ul>
2.	<ul style="list-style-type: none"> <li>National Human Rights Commission should be kept at the top in hierarchy of the constitutional bodies and the terms independence and autonomy of the Commission be mentioned under the related article.</li> </ul>	<ul style="list-style-type: none"> <li>The eligibility of the Chairperson and the Members of the National Human Rights Commission should be determined the same or equal to that of former Chief Justice or the Judges respectively as because the eligibility is different from those of other constitutional bodies.</li> <li>It is appropriate to place the NHRC at the top in hierarchy since there is the provision that 65 being the age limitation in other constitutional bodies while the NHRC has the provision of the appointment of chief justice or those officials of equal protocol of justices as the NHRC Officials who have been retired after attaining the age of 65.</li> <li>Give continuity to the decision of the Government of Nepal to place the NHRC at the top in hierarchy among other constitutional bodies</li> <li>Other constitutional bodies do not have the provision of status wise categorization on the basis of 'A', 'B', and 'C' while the NHRC has it on the basis of its autonomy and independence. Thus, it becomes inevitable to mention its autonomy and independence in the constitution.</li> </ul>
1.	<ul style="list-style-type: none"> <li>The provision with regard to the acquisition of the citizenship on the basis of descent and naturalized needs to be justifiable from the gender equality perspective.</li> </ul>	<ul style="list-style-type: none"> <li>With regard to the acquisition of the citizenship on the basis of descent, gender equality needs to be taken into account.</li> <li>Since the female and male have to be conditionally mentioned while acquiring citizenship, there could be discrimination while obtaining the naturalized citizenship.</li> </ul>
2.	<ul style="list-style-type: none"> <li>Since fundamental rights are being effective instantly, it is not appropriate to restrict them with limitation and since it is appropriate to adjust several provisions relating to</li> </ul>	<ul style="list-style-type: none"> <li>Fundamental rights are implemented instantly and nor are they legal rights. Thus, it is against the principles of human rights and fundamental rights to say that those will be made law and implemented later provisioning them as fundamental rights. The provisions mentioned under various Articles such as <b>'As per law...'</b> and <b>'The State shall make legal</b></li> </ul>

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	<p>fundamental rights under the directive principles and policies of the state; it is suggested to do so.</p>	<p><b>provisions, within three years as deemed necessary, for the implementation of the rights provided in this Part’ needs to be removed and implemented accordingly.</b></p> <ul style="list-style-type: none"> <li>• A few fundamental rights are found appropriate to be mentioned under PART – 4 rather than under fundamental rights.</li> <li>• Attention needs to be paid to the provision mentioned in the draft constitution with regard Economic, Social and Cultural rights which are provided gradually on the basis of the resources available.</li> </ul>
1.	<ul style="list-style-type: none"> <li>• There needs to be clear provision with regard to the jurisdiction and coordination between the National Human Rights Commission and other constitutional bodies (National Women Commission, National Dalit Commission and National Inclusive Commission )</li> </ul>	<ul style="list-style-type: none"> <li>• Since the jurisdiction of the constitutional bodies mentioned herein are prototype in nature, there could be duplication in the activities accomplished by them, there needs to be clarity in demarcation of jurisdiction and coordination in order to evade the replication in work and dispute emerged thereof.</li> </ul>
2.	<ul style="list-style-type: none"> <li>• Backward communities facing historical injustice and those falling behind in the list of human development index only need to be brought under positive discrimination.</li> </ul>	<ul style="list-style-type: none"> <li>• Since the communities placed under fundamental rights encompass all with its outreach, it is needed to do so to ensure justice to actual backward communities.</li> </ul>
3.	<ul style="list-style-type: none"> <li>• Revamp the terminologies in the constitution that have dual meaning.</li> </ul>	<ul style="list-style-type: none"> <li>• Since the draft constitution is lacking in clarity in language and also the terminologies of dual meaning are used at many places, simple and lucid language will only fulfill the objective of the constitution writing.</li> </ul>
4.	<ul style="list-style-type: none"> <li>• There needs to be provision that debar the human rights violators from getting public, constitutional and political appointment.</li> </ul>	<ul style="list-style-type: none"> <li>• In order to sustain the commitment and accountability of the state toward human rights and to end impunity</li> </ul>

## Suggestions made on Articles related to Human Rights Concerns

Article	Proposed Provisions	Provisions (Amendment and addendum) suggested	Bases and Rationale
12 (2) (b)	(b) Any person whose father or mother was a citizen of Nepal at the birth and both father and mother of such person are citizens of Nepal at the time of acquisition of his/her Citizenship,	(b) Any person whose father or mother was a citizen of Nepal at the birth and both <b>father or mother</b> of such person are citizens of Nepal at the time of acquisition of his/her Citizenship,	<ul style="list-style-type: none"> <li>To ensure the descent rights of women in citizenship on the basis of principle of equality</li> </ul>
21	(1) Every person shall have the right to live with dignity (सम्मानपूर्वक).	(1) Every person shall have the right to live with dignity (सर्यादापूर्वक)	<ul style="list-style-type: none"> <li>It is appropriate to use the term dignity other than the one mentioned under Article 21 (1) in order to make the provision consistent with the Article (1) of UDHR-1948.</li> </ul>
24 (2)	<p><b>Restrictive part of sentence</b></p> <p>There shall be no closure, seizure or cancellation of registration of radio, television, online or any other types of digital or electronic, print or other media or equipment of communications on account of publication and transmission or printing of any materials through the medium of audio, audiovisual or electronic equipment.</p>	24 (2) Remove the part of the restrictive provision	<ul style="list-style-type: none"> <li>The act of closure, seizure or cancellation of registration of radio, television, online or any other types of digital or electronic, print or other media or equipment of communications under any basis is against Article 19 of the Covenant on the Civil and Political Rights to which Nepal is a party. .</li> <li>Since the means of communication regulate through the law of land, they should be kept under fundamental rights.</li> </ul>
24	Add clause (4) after clause (3)	(4) In the event of obstruction and control caused on the rights to Freedom of Press provisioned by the constitution, appropriate compensations shall be	<ul style="list-style-type: none"> <li>Since it is deemed necessary to make it in accordance with the Article 19 of the Covenant on the Civil and Political Rights and</li> </ul>

Article	Proposed Provisions	Provisions (Amendment and addendum) suggested	Bases and Rationale
		provided to the victim party.	to ensure the prevalent right to Freedom of Press and to make up the loss endured by the victim through compensation in the event of their rights violation
25 (2)	<p><b>Restrictive part of sentence</b></p> <p>Provided that, this Clause shall not be applicable to the person under preventive detention or to the citizen of an enemy country.</p>	Remove the above part of sentence	<ul style="list-style-type: none"> <li>• Since it is to be in line with the Part B of Article 9, 14 (3) and Article 16 of the Covenant on the Civil and Political Rights to which Nepal is a party.</li> </ul>
26 (2)	(2) The victims of the crime shall have the right to social rehabilitation and compensation in accordance to law.	(2) The victims of the crime shall have the right to adequate reparation and compensation as per law.	<ul style="list-style-type: none"> <li>• It is the state obligation to provide reparation to victims in Economic, Social and Cultural way.</li> </ul>
27 (1)	(1) No person <b>who is detained</b> shall be subjected to physical or mental torture, or be treated in a cruel, inhuman or degrading manner.	(1) No person shall be subjected to physical or mental torture, or be treated in a cruel, inhuman or degrading manner.	<ul style="list-style-type: none"> <li>• Define as per the Article 1 of the Convention against Torture (CAT), 2084 to which Nepal is a party.</li> <li>• Incident of torture might be inflicted on a person even outside detention</li> </ul>
28 (2)	(2) The family members of individuals held under preventive detention according to Clause (1) shall be informed of their conditions immediately according to law.	(2) The family members of individuals held under preventive detention according to Clause (1) shall be informed of their conditions immediately <b>to family member or the kin of victims or the legal professionals</b> according to law.	<ul style="list-style-type: none"> <li>• It is to ensure the right to receive legal counseling service from a legal professional as per Part B of Article 9, 14 (3) and Article 16 of the Covenant on the Civil and Political Rights to which Nepal is a party.</li> </ul>

Article	Proposed Provisions	Provisions (Amendment and addendum) suggested	Bases and Rationale
30 (2)	(2) The State shall impose taxes on individual property as deemed necessary in accordance with principles of progressive taxes.	Remove clause (2)	<ul style="list-style-type: none"> <li>The act of imposing tax is not fundamental rights but a policy based matter of the government.</li> </ul>
31 (1)	(1) Each person shall be free to profess, practice, and preserve his/her religion according to his/her faith, and distance himself/herself from any other religion.	(1) Each person shall be free to profess, practice, and preserve his/her religion.	<ul style="list-style-type: none"> <li>Since the provision of religious freedom and the prevalent condition under Article 18 of the UDHR – 1984 and Article 18 of the Covenant on the Civil and Political Rights contradict with the existing clause (3).</li> </ul>
32	Every citizen shall have the right to demand and obtain information on any matters of concern to himself or herself or to the public.	(32) Every citizen shall have the right to demand, obtain and circulate information on any matters of concern to himself or herself or to the public.	<ul style="list-style-type: none"> <li>Since right to demand, obtain and circulate information has been provisioned as per Article 16 of the Covenant on the Civil and Political Rights to which Nepal is a party.</li> </ul>
34 (4)	<p><b>Restrictive Part of Sentence</b></p> <p>(4) No person shall be subjected to involve in work against his or her will.</p> <p>(4) Provided that, nothing in this Clause shall prevent the enactment of a law requiring citizens to be engaged in compulsory service for public purposes.</p>	(4) Remove restrictive part of sentence	<ul style="list-style-type: none"> <li>Provision of compulsory service for public purposes is against the norms and values and principles of human rights</li> </ul>
34 (5)	(5) Any act against Clause (3) and (4) shall be punishable by law and victim of such act shall have right to receive compensation according to law.	(5) Any act against Clause (3) and (4) shall be punishable by law and victim of such act shall have right to receive <b>adequate reparation</b> and	<ul style="list-style-type: none"> <li>State should make the compensation and reparation available for each victim without any discrimination and the state should make the arrangement of such provision from the</li> </ul>



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		compensation to made available by the state from the perpetrators.	<p>perpetrators only.</p> <ul style="list-style-type: none"> <li>• Provision of reparation only provide justice to the victims. If the arrangement of compensation is made from the side of perpetrators only, the situation might arise that the victims will only receive the compensation only.</li> </ul>
36 (5)	(5) Every Nepali community living in Nepal shall have the right to acquire education in its mother tongue up to the secondary level, and the right to open and run schools and educational institutions as provided for by law.	remove ‘ <b>up to the secondary level</b> ’ mentioned in this clause	<ul style="list-style-type: none"> <li>• In order to make the provision consistent with the Article 27 of the Covenant on Civil and Political Rights – 1966 to which Nepal is a party</li> </ul>
41	Add clause 2 after clause 1	<p>Add clause (2) after clause (1) and shift existing clauses in clauses 3 and 4 respectively.</p> <p>(2) Every citizen shall have the right to protect himself or herself from hunger and malnutrition.</p>	In order to make it consistent with Article 11 (2) International Covenant on Economic, Social and Cultural Rights and its General Comments no. 12.
43 (2)	(2) Every woman shall have safe motherhood and reproduction and gender selective abortion shall be punishable according to law.	<p><b>Make the following provision in lieu of the clause (2)</b></p> <p>(2) Every woman shall have the right to safe motherhood and reproductive rights</p>	<ul style="list-style-type: none"> <li>• In order to ensure the reproductive right of women</li> <li>• In order to ensure the right to reproductive health of women</li> <li>• In order to make the provision consistent with the Article 4 (2) of the Convention on the Elimination of in all form of Discrimination against Women</li> </ul>



Article	Proposed Provisions	Provisions (Amendment and addendum) suggested	Bases and Rationale
			<p>(CEDAW)</p> <ul style="list-style-type: none"> <li>• Law can be promulgated for regulating the crime against feticide on the basis of gender identification</li> </ul>
44 (7)	(7) No child shall be tortured at home, school or any other place and in any condition, either physically, mentally or in any other forms.	(7) No child shall be tortured at home, school or any other place and in any condition, physically, mentally or in any other forms of <b>corporal punishment</b> .	In order to make the provision consistent with the Article (37) of the Convention on the Rights of Child (CRC)
44 (10)	(10) The acts pursuant to Clauses (4) (5), (6) and (7) shall be punishable in accordance with law and children who are victims of such acts shall have the right to receive proper compensation from the perpetrator in accordance with law.	Remove the term ' <b>Perpetrator</b> '	<ul style="list-style-type: none"> <li>• Each victim child should be provided with the compensation and reparation without any discrimination by the state and should make the provision as such to be provided from the side of the perpetrators.</li> </ul>
46	Senior citizens shall have right to get special protection and social security from the state.	Senior citizens shall have right to live with dignity including the right to get special protection and social security from the state.	<ul style="list-style-type: none"> <li>• In order to ensure the senior citizens' right to live with dignity</li> </ul>
51 (2)	(2) The State shall make legal provisions, within three years as deemed necessary, for the implementation of the rights provided in this Part.	Remove the term 'state shall make legal provision out of fundamental rights and implement and also remove the entire clause by making provision of fundamental rights	<ul style="list-style-type: none"> <li>• Fundamental rights are not the matters to make laws and implement but there is provision that they are implemented by</li> </ul>

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		that would into practice automatically.	origin.
52	(c)To enroll for mandatory service when required by the nation.	(c)To enroll for service when required by the nation.	<ul style="list-style-type: none"> <li>• Mandatory service is against the principle of human rights</li> </ul>

## Provisions with regard to National Human Rights Commission

Article	Proposed Provisions	Provisions ( amendment and addendum ) suggested	Bases and Rationale
247 (1)	(1) There shall be one National Human Rights Commission in Nepal consisting of the following Chairperson and members:	There shall be an independent, autonomous and competent National Human Rights Commission in Nepal consisting of 1 Chairperson and 4 Members. The appointment of Chairperson and members shall be done on the basis of diversities including women.	<ul style="list-style-type: none"> <li>• In order to ensure the establishment o the independent and autonomous National Human Rights Commission consistent with the Paris Principles and international norms and values</li> <li>• Other constitutional bodies do not have the provision of status wise categorization on the basis of ‘A’, ‘B’, and ‘C’ while the NHRC has it on the basis of its autonomy and independence. Thus, it becomes inevitable to mention its autonomy and independence in the constitution.</li> <li>• It needs to be made so to address proportional representation, inclusiveness and diversities</li> <li>• In order to make it as per the decision of Supreme Court</li> <li>• In order to give continuity to the provisions made as per the NHRC Act, 2053 (1996) brought into force in the beginning.</li> </ul>
247 (1)	(b) Four persons from among those who have made outstanding contribution, by being actively involved in the field of protection and promotion of human rights, child	(b) Four persons from among those <b>prominent persons</b> who have made outstanding contribution, by being	<ul style="list-style-type: none"> <li>• To make the field of provision wider for those persons who have made outstanding contribution in the field</li> </ul>

Article	Proposed Provisions	Provisions ( amendment and addendum ) suggested	Bases and Rationale
	rights or various field of nation. – Members	actively involved in the field of protection and promotion of human rights or various fields of nation.	of protection and promotion of human rights to be eligible to be appointed as Members
247 (6)	6. The remuneration and other conditions of service of the Chairperson and the Members of the Federal Human Rights Commission shall be as determined by law. The remuneration and other conditions of service of the Chairperson and the Members of the Federal Human Rights Commission shall not, as long as they hold office, be altered to their disadvantage.	6. The remuneration and other conditions of service of the Chairperson and the Members of the <b>National Human Rights Commission</b> shall be <b>equal to that of Chief Justice of and Judges of Supreme Court</b> . The remuneration and other conditions of service of the Chairperson and the Members of the <b>National Human Rights Commission</b> shall not, as long as they hold office, be altered to their disadvantage.	<ul style="list-style-type: none"> <li>As there is a provision that prominent persons such as Chief Justice and Judges retired from Supreme Court or the persons who have made outstanding contribution, by being actively involved in the field of protection and promotion of human rights, or in the field of social service are appointed as the Chairperson and Members of the NHRC, the amendment therein is needed so as to uphold their dignity and status.</li> </ul>
247 (7)	(7) A person once appointed to the office of the Chairperson and the Members of the Federal Human Rights Commission shall not be eligible to be appointed to any position(s) of Government services.	(7) A person once appointed to the office of the Chairperson and the Members of the <b>National Human Rights Commission</b> shall not be eligible to be appointed to any position(s) of Government services except to the position in constitutional bodies.	<ul style="list-style-type: none"> <li>At the time of need of persons with active and outstanding caliber for the nation, the alternative needs to be kept open for their appointment by the Constitutional Council.</li> </ul>
248	(1)to be added in 248 (2)	(i) If someone obstructs the work of the National Human Rights Commission, ignores directives /orders or fails to implement the NHRC recommendations , Legal action shall be taken against the such doers.	<ul style="list-style-type: none"> <li>To build the environment conducive in order to make duties and functions of the National Human Rights Commission effective by removing the possible obstruction in the NHRC activities as per the</li> </ul>

Article	Proposed Provisions	Provisions ( amendment and addendum ) suggested	Bases and Rationale
			Article 248
248	248 (1)	To add the part of sentence mentioning the mandates the National Human Rights Commission for the protection, promotion and effective implementation of human rights provided through constitution in the federal states as well.	<ul style="list-style-type: none"> <li>The jurisdiction of the Commission needs to encompass federal states as well.</li> </ul>
248 (2)	Add (j) after (1) in 248 ( 2)	(j) Necessary initiative to be made for the protection of human rights condition of the Nepali citizens stationed overseas for foreign employment and for other purposes.	<ul style="list-style-type: none"> <li>4 million Nepalese are in various countries as migrant workers and their human rights is in vulnerable condition</li> </ul>
	Add Article 249 after Article 248	(249) <b>Provision with regard to the NHRC Staff</b> : There needs to be a provision that allows the Commission to recruit staff and manage on its own as per necessity.	<ul style="list-style-type: none"> <li>Ensure the functional autonomy of the Commission as per the Paris Principles and the order issued by the Superior bench of Supreme Court</li> </ul>
	Add Article 250 after Article 249	(250) (1) The government shall provide necessary budget to the Commission in lump-sum.  (2) The internal auditing of the budget shall be done through the Financial Comptroller General Office (FCGO) as per the clause (1)	<ul style="list-style-type: none"> <li>The provision to be made as pursuant to Article (2) Composition and guarantees of Independency and Pluralism of Paris Principles 1993 and the superior bench of Supreme Court (Ramaya Lamichhane b including National Human Rights Commission).</li> </ul>
258	(2) The Attorney General or officers subordinate to	<b>Add restrictive provision</b>	<ul style="list-style-type: none"> <li>To ensure to bring the human rights</li> </ul>

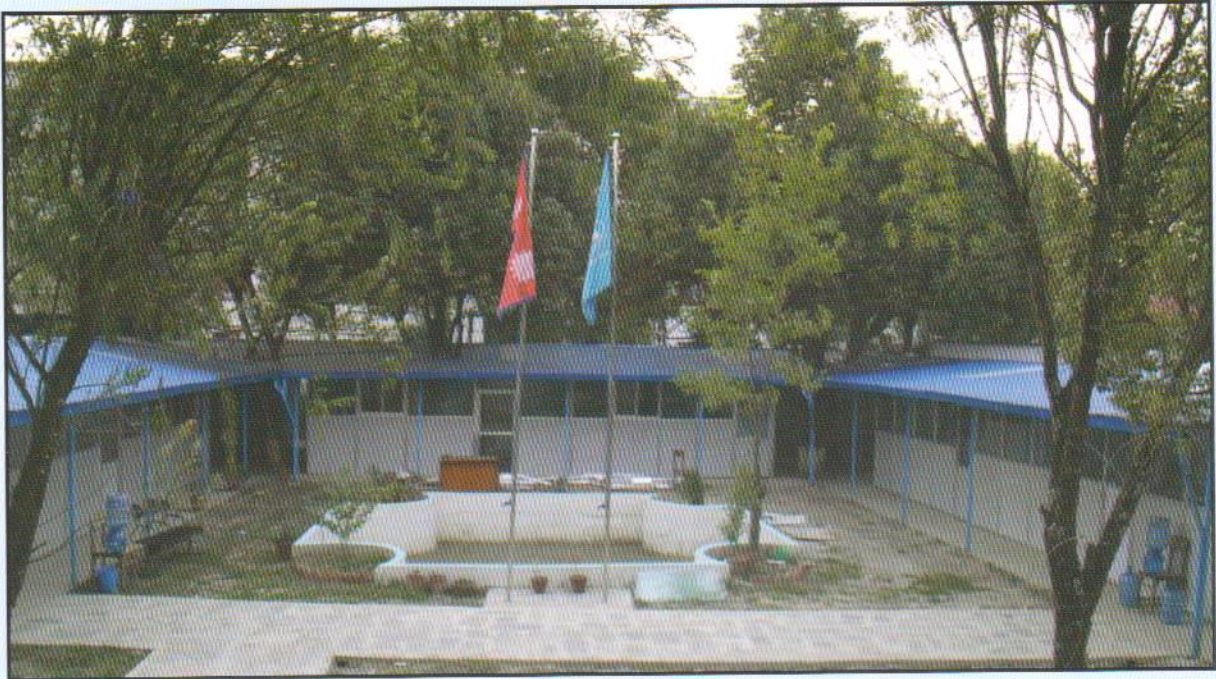
Article	Proposed Provisions	Provisions ( amendment and addendum ) suggested	Bases and Rationale
	<p>him/her shall represent the Government of Nepal in suits in which the rights, interests or concerns of the Government of Nepal are involved. Unless this Constitution otherwise requires, the Attorney General shall have the right to make the final decision to initiate proceedings in any case on behalf of the Government of Nepal in any court or judicial authority. The Attorney General shall appoint prosecutor as per necessity for prosecution.</p>	<p>'but the Office of the Attorney General have to compulsorily file the case in concerned court on the basis of the NHRC recommendations</p>	<p>violators to justice</p> <ul style="list-style-type: none"> <li>• To ensure the implementation of the decision of Supreme Court and the NHRC recommendation</li> </ul>
284	<p><b>Monitoring and Evaluation of Function of the Constitutional Bodies:</b> The Chief and Officials of the Constitutional Bodies shall be accountable and liable to the Federal Parliament. Monitoring and evaluation of function of the Constitutional Bodies shall be performed by concerned Committee of the House of Representatives.</p>	<p>Add restrictive part of sentence as follows</p> <p><b>...but this shall bind the National Human Rights Commission to implement this provision</b></p>	<ul style="list-style-type: none"> <li>• The serious concern might rise since the Commission is independent and autonomous as per the Paris Principles and decision of Supreme Court.</li> <li>• Since the Article 285 has addressed this provision, it has become necessary to make the arrangement of this provision</li> </ul>

The end



**Central Office:**

Hariharbhawan, Lalitpur  
P.O.Box No. 8192, Kathmandu  
Email: nhrc@nhrcnepal.org  
Phone: 01-5010015, 16, 17, 18  
Website: www.nhrcnepal.org  
Fax: 01-5547973, 5547974  
Hotline: 50 10 000



**Regional Office:**

**Biratnagar, Bargachhi Chowk**

Phone: 021-461931, 461093  
Fax: 021-461100

**Janakpur, Devi Chowk**

Phone: 041-527811, 527812  
Fax: 041-527250

**Pokhara, Janapriya Marg**

Phone: 061-462811, 463822  
Fax: 061-465012

**Nepaljung, Shantinagar**

Phone: 081-526707, 526708  
Fax: 081-526706

**Dhangadi, Uttar Behedi**

Phone: 091-525621, 525622  
Fax: 091-525623

**Sub-Regional Office**

**Khotang, Diktel**

Phone: 036-420284

**Rupendehi, Butwal**

Phone: 071-546911

**Jumla, Khalanga**

Phone: 087-520222