

property **“Voices of Madhesi Community with regard to Inclusive
Constitution Making”**

**Suggestions made by the Federation of Madhesi NGOs to
various thematic committees of the Constituent Assembly
with regard to the making of the Constitution**

**Suggestions presented to Honorable Speaker and
Chairpersons of various thematic committees**

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Suggestions

1. Suggestions presented to Fundamental Rights and Directive Principles Committee

Recognition of Fundamental Rights

- ❖ Rights to live with absolute guarantee of economic, social, cultural, citizen and political freedom for every person should be provisioned,
- ❖ Rights to education, health and employment to people, youth, women, Dalit, Indigenous Ethnicities, farmers, workers, people with different abilities, backward people and communities of Madhes and Terai should be established,
- ❖ Special provision regarding education, health and employment should be made for the people with different abilities,
- ❖ A phrase that content the meaning that no law will be formulated by the centre, regions or any federal or centre unit in the local area against the interest press freedom should be incorporated in the chapter of fundamental rights of the Constitution,
- ❖ A phrase regarding the right with local people's absolute ownership on natural resources should be incorporated,
- ❖ Indigenous ethnicities, Dalits, including every citizen should have rights to pro-employment and gender friendly development,
- ❖ Leadership and participation of local people and communities in the development and construction work should be ensured,
- ❖ Rights of everybody to mother tongue, including absolute freedom to use own language in judicial and administrative entities of all level should be established and use of local languages in the judicial system of every region should be ensured,
- ❖ Rights of everybody and community to non-violent movement, to be organized and protest in peaceful way and to assemble should be ensured,
- ❖ Rights of every Nepali citizen regarding freedom to move and reside in any part of the country without disturbance should be established,
- ❖ Rights of youths from all group, level and region to development and construction should be established,

- ❖ Rights and responsibilities of youths residing in the country and out of the country, including migrant workers, should be explained clearly,
- ❖ Every Nepali citizen should be guaranteed the right to live in peaceful environment,
- ❖ The property right of women should be explicitly provisioned,
- ❖ There should be no discrimination according to the theory of same remuneration for the same work,

Restriction on Fundamental Rights

- ❖ Restriction on Fundamental Rights should only be based on ‘the declaration of state of emergency’,
- ❖ Daily livelihood activities should not be restricted by any type of declaration of state of emergency.

Directive Principles and Policies of the State

- ❖ Directive principles presented as policies and principles should be based on realities and objective to the optimum level,
- ❖ Activities of the state should be operated based on responsible, healthy and prompt and efficient administration,
- ❖ Directive Principles and Policies of the State should be stated based on positive discrimination, social security etc.

Provisions regarding special protection of the rights of minority communities:

- ❖ Absolute guaranteed rights to protection, empowerment or advancement for Madhesi, youth, women, Dalit, Indigenous Ethnicities, farmers, workers, people with different abilities, groups which are socially and culturally backward, children, aged, those who are physically or mentally incapacitated should be established,
- ❖ The state should establish various mechanisms at different levels from the centre to local level to ensure the rights of people from different levels and layers,
- ❖ There should be proportional representation of youth, women, Dalit, Indigenous Ethnicities, farmers, workers, people with different abilities, groups which are socially and culturally backward, children, aged, those who are physically or mentally incapacitated in every entity of the state,

- ❖ The provision regarding proportional representation should be based on the proportion of population of linguistic, ethnic, gender, religious, cultural, disable people, religious and gender minority, backward area and community.

Provisions regarding citizenship

- ❖ Provisions regarding citizenship of the state should be explicit,
- ❖ There should be mentioned that every Nepali shall have right to citizenship. The issue of women citizenship should be provisioned with a point of view to ensure women right.

2. Suggestions presented to Committee for the Protection of the Rights of Minorities and Marginalized Communities

Provisions for protection of Minorities and Marginalized Communities

- ❖ Guarantee of proportional representation in every entity of the state for the overall development of Minorities and Marginalized Communities,
- ❖ Guarantee of equality ending all types of discrimination,
- ❖ Protection and promotion of languages and cultures of Minorities and Marginalized Communities,
- ❖ Special provisions should be set for backward communities based of priority,
- ❖ Provision for free education up to higher secondary level,
- ❖ Provision for free basic health care,
- ❖ Guarantee of fulfillment of basic needs, such as food, shelter and clothes,
- ❖ The right to social security,
- ❖ Proportional representation for Minorities and Marginalized Communities in the organizational structure of every level of political parties.

Means of Inclusion

- ❖ Reservation system should be applied for the Minorities and Marginalized Communities in every entity of the state based on positive discrimination,
- ❖ Proportional reservation for marginalized communities should be guaranteed in the organizational structure of every level of political parties.

3. Suggestions presented to Committee for Restructuring the State and Sharing of State Power

Federal Structure of the State

There should be five types of government in the country. The types of the government should be Central, State and Sub-state and District Development committee and Village Development Committee in local level. Since the main motivation behind selecting federal structure is providing every citizen with the opportunity to participate in policymaking level, citizens should have opportunities to participate in decision-making process from the community level in forthcoming structure. Every level of the government should be provided with the rights, which will enable them to solve problems. It will be appropriate to form Village Development Committee at the village level and District Development Committee at the district level. Gender, regional, community level, ethnic and Dalit equality should be addressed while forming the level of government.

Territory Demarcation of Federal Units

Territory demarcation should be based on the geographical structure, regionalism, density of population, ethnicity, language, religion-culture, natural resources and historicity etc. of the whole country. In this context, attention to be paid to various scholars' views expressed through articles as to how the ethnic, regional and linguistic discrimination by the centralized state from the historic period could end.

The theory and policy regarding territory demarcation should be as follows:

- ❖ The theory to end discrimination based on region, language and ethnicity from the past.

- ❖ The theory to maintain balanced allocation of population, historicity, natural resources and human resources.

According to above-mentioned theory, criterion for territory demarcation of constituent units should be primarily area/population, and after that ethnicity, language, religion, culture, and then balanced distribution of natural resources and historicity should be considered as other criterion.

Basics for naming Federal States

Constituent Units are named after names of regions, natural heritages, languages, religions, ethnicities etc. Since Nepali is a nation with diversity, constituent Units must be named on the basis of regions, languages, ethnicities and natural heritages. According to various opinions received, constituent units should not named on a unilateral basis, but should be based on languages, regions and ethnicities. That is why, constituent units should not named on a unilateral basis. The basis for naming

constituent Units must be ethnicities, languages and regions, and historicity should also be considered.

Legislative Power among governments of Constituent Units

- ❖ The federal government and the parliament should be provided with the power to legislate laws related to the main law and particularly policies and rules under the scope of the federal government.
- ❖ In addition to the power of legislating necessary policies and rules in its state, the state government should be provided with the power to legislate the main law that governs its state.
- ❖ The local government should also be provided with the power to legislate laws needed in its territory.

Executive Power among the Governments of Constituent Units:

- ❖ Providing powers related to foreign affairs, defense, currency, big industries, air transportation and custom to the federal government, all other powers should be provided to state governments and local governments.
- ❖ In the Nepalese federal structure with the main goal to provide every citizen access to policy making, local and village governments should be provided with the power to exercise the executive power of local and village level like all the executive power of central Council of Ministers.

Judicial Power Distribution

- ❖ The existing community level mechanism providing justice in the VDC level should be established as public courts.
- ❖ District Courts should be established in the district level.
- ❖ High Courts should be established in the state level and provided them with the right to issue various types of summons.
- ❖ There should be the Supreme Court in the centre level.

Security Power Distribution

- ❖ The power to operate security force and internal security should be provided to local and village level governments.

- ❖ The power to make necessary security arrangement keeping in mind both internal and external security of the state should be provided to the state level
- ❖ The power to make complete arrangement of internal and especially external security system of the state should be provided to the central government.

Inter-state Relation between Constituent Units

Cooperative Federalism Policy might be appropriate to apply for restructuring the state in Nepal. Therefore, inter-state relation between constituent units should be bilateral cooperative and competitive.

Conflict Resolution Mechanism

- ❖ Being spread in more than one state is a natural phenomenon of natural heritages of a country, so it should not be taken as a surprise if disputes arise between states regarding resources.
- ❖ There should be Inter-State Commission to resolve such disputes.
- ❖ There should be a provision to apply the methodology of referendum to resolve the disputes between constituent units.
- ❖ Disputes regarding the borders and resources between constituent units should be resolved through the central court.

Other Issues related to the Committee's Scope of Work

The Right to Self-Determination

- ❖ To provide the right to ethnic, regional self-Determination

Provisions regarding Human Rights and Democratic Values

- ❖ Governments should establish mechanisms to monitor and supervise the application and effective implementation of citizens' human rights and democratic values,
- ❖ Mechanisms should be established in both federal and state level to monitor the activities of governments to protect human rights.

4. Suggestions presented to Committee for Determining the Structure of the Legislative Body

The Form of Legislative Body

Legislature:

Both in the Central Level and Provincial Level, the legislature of the country should be bicameral. The lower house of the central level should be called House of Representative or Parliament and the upper house should be named *Rajya Sabha*. The House of Representative should be formed with the directly elected members and there will be elected members on the recommendation of political parties based on proportional representation in the upper house or Rajya Sabha. The total number of members in the House of Representative and the Rajya Sabha should be 151 and 51 respectively. The tenure of the House of Representative should be five years and the Rajya Sabha's tenure should be six years. Every Nepali citizen who has completed the age of 16 years will be eligible to vote for the House of Representative and the Rajya Sabha. Elections should be conducted in direct and secret voting system. One should be 25 years old to be eligible to be a candidate for House of Representative and 35 years old to be eligible to be a candidate for Rajya Sabha. Rajya Sabha should be a permanent house, where one third of total members's tenure will be completed in every two years. Both of the houses should elect a Speaker and a Deputy Speaker by consensus or election system to execute their transactions of business.

The President should, on the recommendation of the Prime Minister, summon session of the House of Representatives and the Rajya Sabha. The House of Representatives should be provided with the right to legislate all of the legislation of the country and all bills should be enforced after ratified by the President following the approval of the House of Representative and Rajya Sabha. Such bills should be approved by the majority of present members' number.

Vote of Confidence:

If one-fourth of the total number of the members of the House of Representative propose a no-confidence motion against the Prime Minister, the Prime Minister should receive the Vote of Confidence floating the proposal for discussion and it should be made compulsory for the Prime Minister to receive the support of the majority of the present members.

Both of the House of Representative and Rajya Sabha should frame rules for conducting transactions of business, maintaining order during their meetings and regulating functions and procedures of committees and such rules should be enforced after the approval from the President.

Provincial Parliament

There will be bicameral Provincial Parliaments in every province of the country. The lower house should be called Legislative Assembly and the upper house should be named Legislative Council. In the province, the Legislative Assembly should consist of directly elected members and the Legislative Council should be formed with elected members based on proportional representation. The total number of members in the Legislative Assembly and the Legislative Council should be 51 and 31 respectively. The Governor should, on the recommendation of the Chief Minister, summon and conclude sessions of the Provincial Parliament. The Chief Minister should have the Vote of Confidence in the Legislative Assembly. The Legislative Assembly should be provided with the right to legislate legislations in all sectors but defence, currency, foreign affairs. There should be a secretariat to carry out the business of the Legislative Assembly and the Legislative Council. There should be a Speaker and a Deputy Speaker in the Legislative Assembly and the Legislative Council. The members of the Legislative Assembly and the Legislative Council should receive remuneration as provided for in law.

Executive:

There should be two-layered executive in Nepal. In the central level, there should be The President and the central Council of Ministers, chaired by the Prime Minister, and provincial Council of Ministers should be in each province. The President should hold office for a term of five years and nobody should be eligible for the post for more than two terms. The President should be elected by single transitional system from the members of Legislative Assembly, Legislative Council, House of Representative and Rajya Sabha.

Functions, Duties and Powers of the President

- ❖ The President should summon and conclude sessions of the House of Representative and the National Assembly, and appoint as determined by law according to the recommendation of the Council of Ministers.
- ❖ The President should hold the post of the Supreme Commander of Nepali Army and confer titles, honors, decorations and national awards.
- ❖ The President should use his powers in consultation and consensus of the Council of Ministers.
- ❖ The President should have the power to grant pardons, suspension and commutation the sentence decided by a court.
- ❖ The President should appoint the leader with the majority in the House of Representatives in the post of the Prime Minister and should appoint the Governor in recommendation of the central Council of Ministers.

Constitution of the Council of Ministers:

- ❖ The central executive power of Nepal should be vested in the Prime Minister and the Centre Council of Ministers pursuant to law.
- ❖ There should be the Central Council of Ministers with up to 21 members, chaired by the Prime Minister and the Provincial Council of Ministers should consist of 15 members and chaired by the Chief Minister of the province. The Prime Minister should be responsible to the Central Parliament and the Chief Minister should be responsible to the Provincial Parliament.
- ❖ The President should appoint the leader with the majority in the House of Representatives in the post of the Prime Minister and in a province, the Governor should appoint the leader with the majority in the Legislative Assembly in the post of the Chief Minister.

5. Suggestions presented to Committee for Determining the Structure of Governance of State

Nature and Forms of Governance

- ❖ The executive power should be vested on the Prime Minister,
- ❖ The Prime Minister should be elected by the majority of the central House of Representatives,
- ❖ There should be a provision limiting the election of the Prime Minister's tenure only for two periods,
- ❖ The formation and division of work of the central government should be the responsibility of the Prime Minister,
- ❖ The ministers and the Prime Minister should be responsible to people and the central parliament,
- ❖ There should be a provision for proposing the proposal of impeachment against the Prime Minister and passing the same with simple majority of the parliament,
- ❖ The President should be the Head of the State,
- ❖ The President should be elected by the central and provincial parliament,
- ❖ The President should be the symbol of national unity and the patron of the national security bodies and he should execute other works as recommended by the Prime Minister,
- ❖ There should be a provision to make the President constitutional.

Electoral System

- ❖ Mixed electoral system with direct and proportional election should be organized,
- ❖ There should be provision to nominate 15 per cent seat from left group and community for thematic expertise,

Model of Executive Organ

- ❖ Central Level – Formation of the central government should be done by the Prime Minister. The President will appoint the leader of the parliamentary party holding majority in the parliament as the Prime Minister,

- ❖ Provincial Level – The provincial government should be formed by the Chief Minister. The Chief Minister should be elected by simple majority in the provincial legislative assembly and he or she should form the government and allocate the portfolios. The Chief Minister should be appointed the Governor,
- ❖ Local Level – The forms of local government should be district, municipality area and village development committee. The chief of these bodies should be elected and other members should be appointed,

Electorate

- ❖ The minimum age of electorates should be 16 years.

Constituency

Criterion for Constituency Demarcation

- Geography
- Population
- History

Structure of the Government, Number and Power Distribution

- Maximum number of members in the central executive Council of Ministers should be 21.
- The central Council of Ministers should be formed on inclusionary basis.
- There should be mandatory representation of every provision in the Council of Ministers.
- The maximum members in the provincial government should be from 15 to 21 according to the size of the province and the government should be formed on inclusionary basis.
- The maximum members in the local government should be from 9 to 11 and the representation of marginalized groups, areas and communities should be guaranteed in the constitution.

Power Distribution

Central

- Fiscal Sector/Currency

- International Aid and Relation
- National Security
- National Planning
- Settlement of Disputes between various provinces
- Protection of Human Rights/Minority Rights
- Plans recommended by provincial government

Provincial

- Issues not included in the central level mandate
- Peace and order of the province
- Tax
- Development Planning
- Provincial legislation development and implementation
- Setting provincial service and facilities and distribution

Local

- Local resources and means identification and mobilization
- Planning
- Service and facilities distribution
- Other works according to local need
- Local ethnic autonomous government
- Development strategy based on demand and supply, and equitable social justice should be set.

Inter-Relationship

Criterion for inter-relationships between Central, Provincial and Local Governments

- Economic Sector
- Social Sector
- Religious
- Development
- Natural Resources Mobilization and Distribution
- Security Sector

Governmental Service and Facilities

- ❖ There should not be duplication regarding the integrated services and facilities delivered from certain ministries, departments and offices,
- ❖ Public should have easy access to services and facilities.

Criterion for Good Governance

- ❖ Government elected by people and Rule of Law,
- ❖ Participatory Decision Making Process and Transparent Activities,
- ❖ Provision for publicity and public information about governmental decisions, services and facilities,
- ❖ Practice and provisions for hearing and addressing problems of people.

6. Suggestions presented to Committee on Judiciary

Judiciary

There should be provisions regarding judiciary as follows for the management of the justice system in Nepal:

1. Supreme Court
2. Provincial High Court
3. District Court

Supreme Court:

- ❖ This should be the highest court in the judicial hierarchy. The Supreme Court can solve all the disputes related to all provincial high courts and judicial bodies and the central and state laws.
- ❖ It should have the final right to interpret the constitution and laws.
- ❖ There should be maximum 13 judges in addition to the Chief Justice in the Supreme Court.

Appointment and Qualifications of Judges of the Supreme Court:

- ❖ The President should appoint the Chief Justice of the Supreme Court on the recommendation of the Constitutional Council and other judges on the recommendation of the Judicial Council.
- ❖ The tenure of the Chief Justice should be for five years. But the person should have worked at least for five years in the Supreme Court.

Conditions for Removal of the Chief Justice or Judges of the Supreme Court:

The Chief Justice or other Judges of the Supreme Court should be removed from the post in the following situations:

1. If the Chief Justice submits his/her written resignation "to the Head of State" or a Judge submits his/her written resignation to the Chief Justice,
2. If he/she attains the age of sixty-five years,
3. If the Central House of Representative passes a resolution of impeachment,
4. If he/she dies.

Jurisdiction of the Supreme Court:

- ❖ The Supreme Court should be entitled to the right to declare a law void either *ab initio* or from the date of its decision if it appears that the law in question is inconsistent with the Constitution.
- ❖ For the enforcement of any legal rights or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, the Supreme Court should have the right to issue necessary and appropriate orders to enforce such rights or settle such disputes.
- ❖ An Appeal should lie to the Supreme Court in case of dissatisfaction over the verdict of a concerned provincial High Court regarding declaring a provincial law void or enforcement of fundamental rights or legal rights against a provincial government.
- ❖ The Supreme Court can settle justice in following cases if they include constitutional and legal context:
 - Inter-province disputes,
 - Disputes between the Central Government and Provincial Governments,
 - Disputes related to international treaties, agreements
- ❖ If the dispensation of justice in a particular court may be adversely affected, the Supreme Court can order another court to hear the case.
- ❖ For making the judicial administration effective, the Supreme Court can issue necessary instructions to the apex court and other subordinate courts subject to the legal jurisdiction.

Central Judicial Council:

There shall be a Central Judicial council to make recommendations and give advice in accordance with the Constitution concerning the appointment of, disciplinary action against, and other matters relating to judicial administration, which should be formed as:

1. The Chief Justice - Chairperson
2. The Central Minister of Law and Justice - Member
3. A senior advocate on the recommendation of the Nepal Bar Association - Member
4. A legal expert nominated by the Head of State - Member
5. A senior judge of the Supreme Court - Member

Functions, Duties and Powers of Central Judicial Council:

The functions, duties and powers of the Central Judicial Council should be as determined by law.

Judicial Service Commission:

The formation, functions, duties and powers of the Judicial Service Commission should be as determined by law.

Provincial Apex Court:

The Provincial Apex Court should be the highest court in the provincial judicial hierarchy and all other judicial institutions of the province should be under the Apex Court.

- ❖ The Apex Court should be authorized the final right to the interpretation of provincial laws.
- ❖ The Provincial Apex Court should be formed with one Chief Justice and six other judges.

Appointment and Qualifications of Judges of the Provincial Apex Court:

- ❖ The Governor should appoint the Chief Justice and other judges of the Apex Court on the recommendation of the Provincial Judicial Council.
- ❖ A Judge, who has served the Provincial Apex Court for at least three years, could be eligible to be appointed as the Chief Justice of the Provincial Apex Court.

Conditions for Removal of the Chief Justice and Judges of the Apex Court:

The Chief Justice and other Judges of the Apex Court should be removed from the post in the following situations:

1. If the Chief Justice submits his/her written resignation to the Governor or a Judge submits his/her written resignation to the Chief Justice,
2. If he/she attains the age of sixty-five years,
3. If the House of Representative passes a resolution of impeachment,
4. If he/she dies.

Jurisdiction of the Provincial Apex Court:

- ❖ The Apex Court should be entitled to the right to declare a law or a part/parts of a law void either *ab initio* or from the date of its decision in its province if it appears that the law in question is inconsistent with the Constitution.
- ❖ The Apex Court should have jurisdiction to hear original and appellate cases, to examine decisions referred for confirmation, review cases or hear petitions or review final orders as defined by law.
- ❖ Other powers should be as prescribed by law.

District Court:

District Courts should be established and managed by provincial law.

Appointment of Judges of District Courts:

- ❖ The Head of the Province should appoint the judges of district Courts on the recommendation of the Provincial Judicial Council.
- ❖ A person with a Bachelor Degree in Law with a working experience of at least five years or a person who has worked as an advocate for at least five years, could be eligible for the post of District Courts.

Transfer of Cases:

If the Apex Court is satisfied that the dispensation of justice in a case registered in a particular court may be adversely affected if it is heard by that court, the Apex Court should be able to order another court of the same level to hear the case.

Responsibility of the Chief Justice:

The Chief Justice should have the ultimate responsibility to make the administration of provincial justice administration effective.

Provincial Judicial Council:

There shall be a Provincial Judicial council to make recommendations and give advice concerning the appointment of, transfer of, disciplinary action against, dismissal of Judges, and other matters relating to judicial administration. There should be the chairperson and other members as follows:

- | | |
|-------------------------------------|---------------|
| 1. The Chief Justice | - Chairperson |
| 2. A senior judge of the Apex Court | - Member |

3. A senior advocate to be appointed by the Chief Justice on the recommendation of the Provincial Bar Association - Member
4. A legal expert nominated by the Chief Minister - Member
5. The Provincial Minister of Law and Justice - Member

Provincial Judicial Service:

The formation, functions, duties and powers of the Provincial Judicial Council should be as determined by law.

Other Suggestions:

- ❖ Verdicts on cases should be provided to stakeholders without delay.
- ❖ Separate Bench should be arranged for cases related to the fundamental rights.
- ❖ A timeframe should be set for taking decision on cases involving public interest.
- ❖ The right to accept writs should be provided to provincial courts.
- ❖ Mechanisms to enforce verdicts of courts should be provisioned in the Constitution.
- ❖ The rights of prisoners should be mentioned in the Constitution.
- ❖ There should be provisions of investigation and recommendations by the Justice Council regarding withdrawal of cases filed on behalf of the government.
- ❖ The operations of courts should be simple, easy and transparent enough to be understood by people.
- ❖ The Constitutional Court should be provisioned to settle inter-province disputes and disputes related to federalism.

7. Suggestions presented to Committee for Determining the Structure of constitutional Bodies

Forms of Constitutional Bodies

- ❖ Constitutional bodies should be in both the centre and provinces. Constitutional bodies at the central level should be called central constitutional bodies and Constitutional bodies at the provincial level should be called provincial constitutional bodies.
- ❖ There should be one representative of provincial constitutional bodies in the central constitutional bodies.
- ❖ The provincial legislative assembly of every province will form the management units of the provincial constitutional bodies.
- ❖ Constitutional bodies should be autonomous.

Accountability

- ❖ All constitutional bodies should be accountable to the parliament.
- ❖ All Chief Commissioners or Commission Chairmen and other Commissioners or members should always be responsible for their works. Even after their tenure, they should be honored for their good works and punished for their wrong doings.
- ❖ The suggestions provided by the constitutional bodies should consist of mandatory nature.
- ❖ They should be directly accountable to people.

Appointment Procedure

- ❖ The President should appoint the Chief Commissioner or Chairperson and other Commissioners/Members in related commission for six years based on the recommendation of the Constitutional Council.
- ❖ The theory of inclusion should be applied in the appointment process of the Chief Commissioner or the chairman or other Commissioners/Members of Commissions.
- ❖ The age of the Chief Commissioner or the chairman or other Commissioners/Members of Commissions at the time of the appointment should be at least 36 years and maximum 60 years.
- ❖ The Auditor General should be appointed according to the inclusive theory and the appointee should have passed the Degree Level in Management, Commerce

or Accountancy from a university recognized by the Government of Nepal or should have worked as a special class office of the Government of Nepal after successfully completing the Chartered Accountants examination or have at least 10 years experience in the field of auditing.

- ❖ The Attorney General should be appointed according to the inclusive theory and the appointee should have passed the Bachelor Level in Law from a university recognized by the Government of Nepal or should be a legal practitioner, who have worked or gained experience in the legal study and research.
- ❖ The Vice President and Members of the National Planning Commission should be appointed according to the inclusive theory and the appointees should have passed the Bachelor Level from a university recognized by the Government of Nepal or should have been working in planning and development sector, have experience of not less than a decade in the field of revenue, law, development or research.
- ❖ The Chairperson and Members of the Information Council should be appointed according to the inclusive theory and the appointees should have passed the Bachelor Level in Journalism from a university recognized by the Government of Nepal or should have experience of a decade in the research work of Journalism sector.
- ❖ The Chief Commissioners/Chairpersons and Commissioners/Members of the Commission for the Investigation of Abuse of Authority, Public Service Commission, Election Commission, Human Rights Council, Dalits Commission, Women Commission, Land Reform Commission, Disable Commission, Indigenous Ethnicity Commission, Madhesi Commission, Youth Commission should be appointed according to the inclusive theory and the appointees should have passed the Bachelor Level from a university recognized by the Government of Nepal or should have work experience of a decade in the related sector.
- ❖ The Chief Commissioner/Chairperson and Commissioners/Members of the Minority Commission should be appointed according to the inclusive theory and the appointees should have passed the Bachelor Level from a university recognized by the Government of Nepal or should have worked as a researcher, lecturer or any other capacity in religious, gender, culture, linguistic sector. (The term Minority should be interpreted in relation to Mushlim, religious, gender and third gender, language and culture.)

Proposed New Commissions:

1. Minority Commission (Religious Minority, gender and third gender, language and culture)
2. Disable Commission

3. Indigenous Ethnicity Commission
4. Madhesi Commission
5. Youth Commission
6. Information Commission
7. Natural Resource Commission

Existing Constitutional Bodies/Commissions

1. Legislative
2. Executive
3. Judiciary
4. Auditor General
5. Commission for the Investigation of Abuse of Authority
6. Public Service Commission
7. Election Commission
8. Human Rights Commission

8. Suggestions presented to Committee on Natural Resources, Economic Rights and Sharing of Revenues

Provision to be included in the Preamble of the Constitution

“Being firmly determined upon the goal of overall economic prosperity of the nation, people and communities, socio-cultural transformation and progressive development of the nation through sustainable management of the nation’s natural resources with people’s participation”,

Special Provision regarding Natural Resources

- ❖ Natural resources of the country should be managed in a sustainable way in collaboration between indigenous people and local community, public and the state according to the justice theories, which are acceptable to Nepali people, indigenous people and local community,
- ❖ The state should adopt a policy with a special priority to community based natural resource management for the sustainable management of natural resources.

Communities’ Fundamental Rights over natural resources

- ❖ Nobody of any community will be deprived of means of livelihood related to natural resources,
- ❖ Every citizen should have the right to sustainable management of natural resources,
- ❖ Every Nepali citizen should have the right to have equitable access to natural resources, control them and to use them wisely,
- ❖ Every person and community, affected by the destruction of natural resources, bio-diversity and local natural environment, should have the right to demand and receive reasonable compensation against the loss.

Provisions related to Fundamental Rights with special types of community and personal nature regarding natural resources

- ❖ The right to environmental justice,
- ❖ The right to clean water,
- ❖ The right to food sovereignty,
- ❖ The right to land,

- ❖ The right to distribution of benefits received from genetic resources,
- ❖ The right of indigenous communities to natural resources,
- ❖ The right of women to natural resources,
- ❖ The right of Dalits and suppressed communities to natural resources,
- ❖ The right to energy,
- ❖ The right to development,

Other Rights related to Natural Resources

- ❖ The right of self-determination of people and communities regarding natural resources,
- ❖ The right to receive payment against the environmental services provided,
- ❖ The right to watershed area,
- ❖ The right to higher and lower coastal area,
- ❖ The right to irrigation system and wetland area,
- ❖ The right to environmental education,
- ❖ The right to be protected from the climate change or natural disaster and environmental degradation.

Responsibilities, Directive Principles and policies of the State regarding Natural Resources

- ❖ Establishment of the right of people and communities over natural resources and protection of the right,
- ❖ Establishment of community based natural resource management system as a priority system,
- ❖ Adoption of a policy which does not allow to keep agriculture land without cultivation and allows to use the land, being used by landless people, as a family or community land,
- ❖ Proper utilization of land, distributed to landless people and land, brought within limitation by law, and providing agriculture subsidy, agriculture technologies,

agriculture tools and all services and facilities required for agriculture markets for agriculture revolution,

- ❖ Avoiding multinational companies and foreign companies from gaining ownership on any land and natural resources,
- ❖ Achieving local and national economic development through maximum sustainable use of natural resources, including water, land and forest for the upliftment of landless and impoverished people,
- ❖ Capacity building of local communities and local governments for natural resource management,
- ❖ Raising public awareness and keeping people well informed regarding natural resources, environment, health and sanitation,
- ❖ Protection and promotion of local communities' traditional knowledge, skills, practices and technologies related to natural resources, land, agriculture, irrigation and food,
- ❖ Expansion of forest and natural areas to minimize the cause and impact of the climate change,
- ❖ Formation of permanent Natural Resource Committee in the legislative of the nation and establishment of such committees in all levels of legislatures formed according to federal structure.
- ❖ Natural Resource Commission: a Natural Resource Commission, consisting of a chairperson and required number of members, should be established.

Ratification, Assimilation and Approval of Bilateral, Multi-lateral and International Treaties, Agreements and Conventions

- ❖ Ratification, assimilation and approval of all types of bilateral, multi-lateral and international treaties, agreements and conventions related to natural resources and environment should be done by the two-third majority of the parliament,
- ❖ Independent, pre-informed approval set by legislations of indigenous and local communities should be ascertained before mobilization of any natural resources in Nepal.

Dispute Settlement Structure related to Natural Resources

- ❖ The Natural Resource Commission will play the role of mediator to settle natural resource related disputes between states and only after such disputes could not be settled in the commission's mediation, such disputes will be taken to the court,
- ❖ Disputes related to natural resources, scheduled by a local government and community will be settled through community mediation or community court according to the provisions in the law,
- ❖ An Environmental Bench or Special Court related to natural resources, formed under the Supreme Court according to the law should resolve legal disputes of national importance related to natural resources.

Economic Rights and Benefit Sharing related to Natural Resources

- ❖ The mobilization of economic sources received by community based natural resource management system should be based on the theory of sustainable source management – Collection from the bottom line and invest in the bottom line,
- ❖ Indigenous and local communities should have community self-determination right regarding natural resources managed by communities and mobilization of economic sources received from them.

9. Suggestions presented to Committee for Determining the Basis of Cultural and Social solidarity

Language of Official Business

- ❖ Nepali, English and Hindi should be languages of official businesses in all Constituent Units,
- ❖ Interpreters should be provided for the official businesses of citizens,
- ❖ Examinations to fill posts in the central government entities should be conducted in Nepali and English; and at constituent units, such examinations should be conducted in the language of official business in the related unit and at local entities, local language should be used.

Conservation of National Language and Culture

- ❖ All the languages spoken in the country should be scheduled as the national languages,
- ❖ Apart from Nepali language, other main languages practiced in Nepal should be scheduled as the language of the nation of Nepal,
- ❖ Primary education in the local level should be provided in a mother tongue, dominant in the area. In post-primary level education, local mother tongues should be included as an optional subject,
- ❖ There should be provision to provide Higher education in all national languages,
- ❖ The central and constituent units should share equal responsibility to preserve and promote all kinds of culture,
- ❖ A Language Academy should be established to promote all languages,
- ❖ Brail script for sightless people should be made compulsory in all schools.

Establishment of Criterion for Solidarity

- ❖ Nepali language and Hindi language should be established as link languages,
- ❖ The responsibility to promote ethnic, cultural, religious tolerance and solidarity should be shared by all constituent units,
- ❖ All kinds of cultures should be treated equally regarding holidays and other facilities in every constituent unit,

- ❖ All citizens should be free to profess any religion, but anything that may have direct negative impact upon the religion or culture of others while practicing own religion should be prohibited,
- ❖ There should be inter-federal solidarity/responsibility to promote, maintain and preserve prehistoric, ancient, religious and touristic heritages,
- ❖ Promotion of any practice or tradition that supports social discrimination by any constituent unit should be prohibited,
- ❖ Languages and behaviors addressed to people with different abilities should be respectful.

10. Suggestions presented to Committee for Preserving National Interests

Identification of National Interests of Nepal and Definition

- ❖ The national interest of Nepal lies in maintaining its indivisibility, ethnic-social-cultural-religious harmony and co-existence. The definition of the national interest in the new constitution should be based on this.

Means for constitutional safeguarding of sovereignty, integrity and national unity

- ❖ Defining Nepal as a sovereign, indivisible, secular, inclusive federal Democratic Republican State, the responsibility to maintain national unity should be given to the central state on the same basis,
- ❖ Recognition to identities of all communities in the state; proportional inclusive representation and participation in all bodies of the state; and equitable access to opportunities and resources in the state should be guaranteed.

Management of Nepal's International Border

- ❖ Management of Nepal's International Border should be provisioned mainly as the responsibility of the central government. There should be a provision regarding a role of state governments also in its protection.

Conservation of National Natural Resources

- ❖ Conservation and proper utilization of huge natural resources with national importance should be done by the central government in coordination with local indigenous community and provincial governments,
- ❖ Conservation and proper utilization of resources within the state or area should be kept under concerned entities' scope of work.

International Relation

- ❖ International relation of Nepal should be based on the UN Charter, Five Principles of Peaceful Coexistence (Panchasheel) and equal distance, and it should be kept under the scope of central government.

International Treaty and Agreements

- ❖ There should be a provision that signing international treaties and agreements of national importance should be approved by the majority of two thirds of the total members in the central parliament.

National Security

- ❖ A provision should be made in the context of applying proper security policy by the central government regarding the national army and border security force for the national security system,
- ❖ A national security policy and National Security Council should be provisioned,
- ❖ The National Security Council should be chaired by the Prime Minister (the Chief Executive) and the Minister of Defense and the Minister of Home should be members of the council. The mandate of the Security Council should be set to recommend the Head of the State to mobilize the army,
- ❖ The army should be inclusive,
- ❖ Civil Police (Janapad Prahari) should be kept under the State Government for maintaining internal peace and order.

Duties of Nepali Army and its operation

- ❖ Main duties of Nepali Army should be safeguarding national integrity, defend the country and people of the country from external attack,
- ❖ Contributing at the time of national catastrophe, natural disaster and contributing in the task of nation building should be mentioned as duties of Nepali Army,
- ❖ Nepali Army should be mobilized by the Head of the State/Supreme Commander as recommended by the National Council.