

“A Review and Analysis of the 2009 Civil Society Public Submissions to the Constituent Assembly”.

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1. Introduction

Nepal is presently undergoing an historic political transition through a peace process and elections to the Constituent Assembly (CA) following the success of People's Movement in 2007 (2062/63). The first phase was marked by the signing of a peace accord between the Government of Nepal and the Communist Party of Nepal (Maoist)¹ in November 2006 (Mangsir 2063), writing of the Interim Constitution (IC), formation of an Interim Legislature, creating environment for the legitimate entry of Maoists into the political process and the ensuing interim period. It was followed by the elections to the CA in April 2008 (2064 Chaitra). Presently, Nepal is in the final phase of writing a new constitution. After the completion of constitution writing, it should ensure state restructuring, logical conclusion of the peace process and exercise of constitutional democracy, as expected by Nepali people. There is a general expectation that the Nepali people, through the new constitution, especially those who were subjected to exclusion and discrimination and the people and communities that were marginalized, shall have access and representation to state structures and their identity recognized with a sense of justice. Thus, this process of constitution building in Nepal does not only mean the preparation of a legal document of methods and processes regarding the structure of the government and governance of the state. The general expectation is that it will guarantee a federal democratic republic (FDR) and a just society which will be free from all forms of discrimination and injustice.

It is certainly a very challenging task for the CA. The more the CA is able to garner the people's participation and collaboration in the process, the easier and more credible its work will be. If the constitution is made in this way it will develop people's ownership in the constitution and the constitutional system will become strong and stable. At present, the Thematic Committees of the Constituent Assembly have already presented the draft of the future constitution, along with concept papers on the respective themes. The plenary of the CA has also held a discussion on the future Constitution. Still, the committees' proposals need revision and political consent, and the CA will have to send them to the Constitutional Committee along with necessary recommendations and guidelines. Only then, can the Constitutional Committee prepare an integrated draft. The task of preparing the first draft of the constitution will be completed only after the CA passes that draft. The Assembly shall make the first draft of the Constitution public through *Nepal Gazette* and people can submit their opinions on it through meetings, seminars, discussions, interactions and personally to CA members and staff. The CA schedule has made the following arrangements for public submissions:

- a. To hold extensive hearing, seminar and interaction on the first draft of the constitution.
- b. To accept the submissions through all means.
- c. The members shall visit their respective districts, regions and different parts of the country and collect public submissions.

¹ Following the elections to the CA, CPN (Maoist) and CPN (Ekata Kendra [Unity Centre]--Masal) were united and renamed as United CPN (UCPN Maoist) on 7 January 2008 (23 Paush 2065). Both names are used here as per context.

The final draft of the constitution shall be prepared by incorporating public submissions collected through these (different) mediums. Moreover, the entire new constitution, along with the Preamble will have to be passed by the CA. The CA shall complete the entire task of constitution building not later than 28 May 2010 (2067 Jestha 15) (according to current timelines) and organize a formal national program. According to the schedule of the CA, the Chairperson shall present the approved constitution before the President in the program, and the President will make it public in by promulgating it.²

Undoubtedly, constitution building has extensive political significance. It cannot be free from political upheavals of the country. The schedule of the Constituent Assembly has been affected by political happenings. Despite the commitment made by all the political parties to write the constitution according to the provision of the Interim Constitution to get the constitution built, they are nearing the decision to extend the timeline.

Nepali people are taking part in the constitution making process with great zeal and enthusiasm against this backdrop. Every day articles, features, opinions and responses come out on different aspects of the future constitution. Thematic experts and general citizens have participated in it. Last March/April, the Assembly members themselves tried to reach out to people with written questionnaires on different subjects of the constitution. They were involved in about two thousand programmes held in all the 75 districts of the country. During their visit, there have been about half a million submissions (IDEA-OHCHR-UNDP, 2009). Similarly, various organizations have made their networks and collected and presented the public submissions on different themes of the constitution to the concerned committees of the Constituent Assembly. Overall, a large portion of Nepali people has made direct participation in the process of constitution building.

This study is based mainly on information regarding the public submissions presented before the Thematic Committees and CA through "democratic dialogue" by 17 organizations assisted by United Nations Development Programme, Support to Participatory Constitution Building in Nepal (UNDP/SPCBN). In addition, this study has tried to incorporate, in a comparative manner, public submissions regarding the constitution prepared by a network of other organizations of the same nature which have collaborated with UNIFEM, UNICEF, CEDA and other donor agencies.

The major objective of this study is to analyze the public submissions collected by UNDP/SPCBN through democratic dialogue. Especially, it aims to analyze how far the voices of the historically marginalized communities and regions reached in the CA and how they are reflected in the preliminary draft of the constitution prepared by the Committees of the CA . The study also aims at providing reference material to the organizations that are receiving UNDP assistance so that they will be able to hold public dialogues on the first draft of the constitution in the second phase.

² The time limit of 28 May 2010 (2067 Jestha 15) has only been mentioned because the schedule of the Constituent Assembly has been frequently amended and not been followed.

2. Identification of Marginalized Communities

Nepal is highly diverse in terms of ethnicity, language, religion, culture and region. However, the Hindus constitute the majority. The Nepali state of the present time was established about 250 years ago by the Shah King of Gorkha, Prithvi Narayan Shah, by annexing the then smaller principalities. Nepalland had been dominated by different ethnicities, as well as language, religious and cultural groups. The king termed the diversity of the country as “a garden of 4 castes and 36 ethnic groups,” however, it could not acquire a political system with the same spirit. Be it the Shah kings or the Rana rulers, they all tried to integrate the country on the basis of the Hindu religion and culture, especially (lately) on the basis of the Parvate-Khas language, called Nepali. It witnessed the oligarchy of some noble family and class of Thakuri/Chhetri, Bahun and Newar castes. Women and other communities remained marginalized. Gender, ethnic, linguistic, religious and cultural discrimination were on the rise. Consequently, all the ethnic groups and communities apart from Thakuri/Chhetris, Bahuns and some high caste Newars of the Hindu caste system are considered historically marginalized and discriminated against. Women are subjected to marginalization and discrimination owing to a patriarchal social structure and values. Dalit women and women from some other communities are even doubly and trebly marginalized.

It has also affected the development structure of Nepal. According to the *Nepal Human Development Report* prepared by UNDP/Nepal in AD 2009, the average human development index (HDI) of Nepal is 0.509. However, the development level is different and imbalanced for different ethnic groups, genders and geographically remote regions. The hilly regions of mid-west and far west regions lag far behind in comparison to other parts of Nepal. Likewise, Terai/Madhes lags behind in comparison to the hilly region. But despite regional and linguistic discrimination or

Castes/Ethnicities	Human Development Index (HDI)
Entire Bahuns/Chhetris	0.552
Hill Bahuns	0.612
Hill Chhetris	0.514
Madhesi Bahuns/Chhetris	0.625
Other Madhesi castes	0.450
Newars	0.616
Other nationalities than Newars	0.494
Hill Nationalities	0.507
Terai Nationalities	0.470
Entire Dalits	0.424
Madhesi Dalits	0.383
Muslims	0.401
Nepal national average	0.509
Source: UNDP, 2009	

marginalization, the Madhesi Bahuns/Chhetris of Terai excel in the Human Development Index (HDI) of Nepal. Nepal occupies second position despite being scheduled as indigenous nationalities (*adivasi janjati*). Muslims and *Dalits* are at the lowest rung. Among them, the Madhesi *Dalits* are at the bottom. The table (above) projects the status of ethnic groups in terms of human development in Nepal.

The table helps to understand the aspects of positive provisions and social justice that need to be guaranteed in the future constitution for the protection of rights and interests of minority and marginalized communities and their all around development. Nepal Janjati

Mahasangh (Nepal Federation of Indigenous Nationalities, NEFIN) has also classified the status of 59 indigenous nationalities listed in Nepal. Accordingly, ten ethnic groups, including Kusunda, Bankariya and Raute belong to endangered groups. Twelve ethnic groups including Majhi, Chepang, Sattar and Jhangad are listed as highly marginalized groups, whereas twelve other ethnic groups including Sunuwar, Tharu, Gangai and Tamang are classified as marginalized. There are fifteen disadvantaged ethnic groups including Gurung, Magar, Rai, Limbu and so on whereas Thakali and Newar have been placed as developed groups.

Classification by Nepal Janjati Mahasangh

<u>Endangered Group</u>	<u>Highly Marginalized Group</u>	<u>Marginalized</u>		
1. Kusunda	11. Majhi	23. Sunuwar	37. Free	47. Marfali
2. Bankariya	12. Siyar	24. Tharu	38. Mugali	Thakali
3. Raute	13. Lhomi	25. Tamang	39. Larke	48. Gurung
4. Surel	14. Thudam	26. Bhujel	40. Lhopa	49. Magar
5. Hayu	15. Dhanuk	27. Kumal	41. Dura	50. Rai
6. Raji	16. Chepang	28. Rajbanshi	42. Walung	51. Limbu
7. Kisan	17. Sattar	29. Gangai	<u>Disadvantaged Group</u>	52. Sherpa
8. Lapcha	18. Jhangad	30. Dhimal	43. Chharatol	53. Yakkha
9. Meche	19. Thami	31. Bhote	44. Langway??	54. Chhantyal
10. Kushwadiya	20. Bote	32. Darai	45. Tin Gaunle	55. Jirel
	21. Danuwar	33. Tajpuriya	Thakali	56. Byansi
	22. Baramo	34. Pahari	46. Barha	57. Hyalmo
		35. Topkegola	Gaunle	<u>Developed Groups</u>
		36. Dolpo	Thakali	58. Thakali
				59. Newar

Source: Report of Constituent Assembly, Committee on Protection of Rights and Interests of Minority and Marginalized Communities, 2066

Particularly, the indigenous nationalities, Madhesis, *dalits*, women communities have not only voiced their feelings and submitted suggestions but they have also been closely watching each and every activity of the constitution making process. They want to end centuries of discrimination, and have concrete constitutional guarantee of community identity, right and freedom, and to have proportional and fair participation in the state structure of the future. They want to start it right from the constitution making process. Even the members of the Constituent Assembly are active now to incorporate their collective demands and desires in the constitution by forming different groups (caucuses) of indigenous nationalities, women, *Dalits* and Madhesis.

3. Concept of Participatory Constitution Building

Constitution is a written document that legally guarantees the state and administrative structure, people's rights and interests, sources of power and their distribution, acquiring and termination of power and other guarantees. In its provisions, the State makes clear the legal

ground for the process of making policy that is adopted to achieve its goals and that of state administration. It mentions the process of forming formal administrative structures like the Executive, Legislative and Judiciary, their jurisdiction and method of mutual checks and balances. The Constitution divides the rights and jurisdictions of different levels of the state such as the centre, province, local authorities. The Constitution is regarded as an organic entire law of a country wherefrom springs other state laws, Acts, regulations and decisions and verdicts regarding administration. Therefore, it is called “a law above the law”. Acts/laws, decisions or verdicts that do not conform to or are inconsistent with the constitution are considered as unconstitutional and removable.

The constitutional advocacies developed toward the end of the twentieth century have strongly challenged many established norms, concepts and principles of modern liberal state especially in regard to multi-ethnic and multi-cultural states. There have been strong arguments that homogenizing values based on legal equality rooted to modern constitutionalism that originated from late eighteenth century will not able to fulfill the desire of a multi-cultural society to self-rule. There have been many examples from such multi-cultural countries wherein the state system that allows the majority to grab all has failed. Therefore, the first political requirement of those countries is to create a constitutional framework wherein different cultural, ethnic, linguistic and social-cultural groups can make mutual transactions and share power so that they make a satisfactory place and status in state structure (Ghai, 2000; Tiruchelavam, 1999).

There has been a global wave of constitution building in the past three decades. Almost half of 200 constitutions prevailing now in the world were written in this period (Hart, 2003). Only within a decade of 1990 to 2000, new constitutions were built in 17 African countries, 14 Latin countries and all the former Marxist countries of Eastern Europe. In many countries including Sri Lanka, Thailand, the Maldives, Bhutan, Solomon Island, Kenya, Bolivia and Nepal, the process is either just finished or continuing. Nepal joined the trend in the 1990s but it could neither address the arising challenges and ventilate them nor continue the process. The Constitution of 1990 (BS 2047) ended as a failed experiment and Nepal is once again trying to build a new constitution.

Talking about the constitution building, many questions arise especially in the post-conflict situation. Can the democratic organizations created by the constitution work as expected while preventing themselves from the conflict between varying communities? Can the structure, process and measures of legal protection bridge the differences between castes/ethnicities, religions and regions? The constitutional provisions can provide a structure for mutual transactions and contracts but they cannot guarantee good behaviour. Yet the world practices show that there have been examples of many countries being successful in managing the ethnic diversity within the periphery of the constitution. It can be expected that the continuous experiment and exercise can develop good behaviour.

Of late, the issue of constitution building is not confined only to outer structure of democracy including people’s fundamental interests/rights, electoral system and technical representation, and participation of political leaders and constitutional experts. Such issues like identity, access and representation of different ethnic, linguistic and cultural communities in state

structure are given primacy in constitution building. These communities include those that lag behind in the mainstream, are marginalized and subjected to discrimination and injustice. It is strongly believed that diversity and identity existing in social and cultural life and style of people must get inclusive and proportional status in the state structure of the country.

During the period, the issue of holding elections to the Constituent Assembly and building a new constitution is particularly linked with resolving internal armed conflict, as well. The experiment of the Constituent Assembly has been successful in many countries like Namibia, El Salvador, Columbia, Peru, South Africa, Bosnia-Herzegovina in peaceful transformation of armed conflict. Even in the Nepalese context, a new constitution is recently required and justified as a means of peaceful and democratic political resolution of armed rebellion that was the “People’s War” launched by CPN (Maoist). Nevertheless, the issue of constitution building cannot be limited to this alone. It should guarantee democratic rule and satisfactorily address also the issues of proper identity, representation and access of people using different languages and belonging to different castes/ethnicities in state structure. Then alone shall building a new constitution hold significance along with the entire democratic restructuring of the state.

4. International Cooperation in Constitution Building

The process of constitution building has been an issue of extensive public concern for various reasons like the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), ILO Convention No. 169 regarding the rights and interests of indigenous nationalities, etc. It has also developed the international belief that all people should be allowed to directly participate in constitution building without discrimination. Therefore, the task of constitution building is now a sovereign issue of the citizens of the concerned country. Besides, it has aroused much international interest from the point of view of global peace, human rights, democracy and expertise. Globally, it is attempted to increase people’s participation by all possible means. There has been much international interest also about the process of constitution building in Nepal through the Constituent Assembly and its contents. United Nations and dozens of donor agencies have been assisting in the elections to the Constituent Assembly and building a new constitution in accordance with the request made by the Government of Nepal and CPN (Maoist). Despite all these attempts and experiments, the most important aspect in the process of constitution building is to have a sense of national ownership.

In this sense, constitution building is not an issue limited to the technical work of preparing only a legal document for operating the state and administration. It is, rather, a work of great political and civil importance. It perennially guarantees people’s ownership over the state, and provides a framework of administrative structure and civil and political rights. It also defines and manages people’s access and representation in administrative structure, and the basic principle and structure of the relations between the State and citizens. People must have a feeling of democracy right from the constitution building. In this sense, constitution building is also linked with the task of widening and consolidating the popular base of democracy. Therefore, the process of constitution building should also be democratic.

5. Basic Constitutional Norms

The representatives assembled in Philadelphia prior to building the constitution of the United States of America had accepted the Virginia Plan. In present-day terms, the plan was a form of constitutional principle. These days, issues like the Interim Constitution, acceptance of immutable basic constitutional principles, provision for judicially resolving them, come as a prerequisite of constitution building. These principles were adopted while building a constitution in Namibia, Cambodia, South Africa and Eritrea. The thirty-four constitutional principles that were adopted by South Africa are still discussed all over the world. These are called the Immutable Principles of Constitution Building (Brooke, 2005). These principles work as a guide to constitution building. Such principles are arranged to prevent the predominance of a single party, community or side and to see that the constitution guarantees ensuring issues like people's rights/interests, basic values and norms of democracy, national unity and so on.

Such constitutional principles are made prior to constitution building with consent from all the concerned parties. Moreover, authentic bodies are also fixed to scrutinize whether those principles were followed/not followed in the constitution draft after building the constitution. For this, a constitutional court was established in South Africa whereas the United Nations held a transitional administration in Cambodia. In general, these principles have emerged as the provisions of peace accord held between the conflicting parties or those of the Interim Constitution. Such principles are very useful for the conflicting parties, political parties, and in guaranteeing to safeguard and preserve the rights and interests of minority communities and general people.

6. Consent and Principle Developed in Nepali Context

In Nepali context, there has been no consent or agreement upon any constitutional principle specifically for the constitution building. Therefore, political parties have been expressing and changing views on the subject matter of the constitution both during and after the elections to the Constituent Assembly as per their will and favourable/unfavourable political conditions. In addition, the Thematic Committees of the Constituent Assembly have openly sought suggestions from everyone. It is also a process of democratic constitution building. However, it is very difficult to integrate and incorporate the public submissions in the constitution draft. It is clearly evidenced in the delay made by the committees of the Constituent Assembly and differing views of the political parties. Nonetheless, it is not true to say that there has been no agreement on the issues regarding the constitution in Nepal.

The issues mentioned in the twelve-point agreement held between seven parties and CPN (Maoist) from November-December 2005 to 8 November 2006 (i.e., 2062 Mangsir to 2063 Kartik 22) and different political agreements, understandings and decisions and the Comprehensive Peace Accord (CPA) signed by the Government of Nepal and CPN (Maoist) and some provisions made in the Interim Constitution have established and guided many principles and structures of future constitution and state management, political system, human rights, and civil political rights. Meanwhile, the State has made separate agreements with indigenous nationalities and Madhesi communities. It means their rights/interests are ensured in the

forthcoming constitution. Irrespective of the election results favouring/disfavouring any party, it is clear that every Nepali wants to be assured that the constitution incorporates issues like democratic system of rule, federal state structure, basic human and fundamental rights, proportional representation, inclusion, social justice and so on. These matters seek accepted principles and norms for constitution building.

Looking at the different agreements, and decisions, especially the *Comprehensive Peace Accord* and the *Interim Constitution of Nepal, 2007 (BS 2063)* and decisions and arrangements made by the first meeting of the Constituent Assembly, it can be said that there has been agreement on following matters.

1. To make constitutional arrangement for the state structure of federal democratic republic.
2. To end the centralized structure of the State and restructure it in a progressive way on the basis of secular and multi-linguistic norms along with an inclusive, democratic and federal administrative system.
3. To adopt a political system that follows the value and concept of universally accepted fundamental human rights; multi-party competitive democratic system; sovereignty vested in people; constitutional checks and balances; rule of law; social justice and equality; free judiciary; periodic elections; monitoring by civil society; complete press freedom; people's right to be well-informed; transparency and accountability of political parties; popular participation; impartial, capable and fair bureaucracy.
4. To respect human rights; right to live; right to personal dignity, freedom and movement; civil and political rights; economic-social rights; rights of women and children; including secular state and the person's religious faith.
5. To ensure the sovereignty of Nepali people, get forward-moving political resolution, administer democratic restructuring of the State and make economic-social-cultural transformation through the Constituent Assembly.

The Constituent Assembly should certainly prioritize these matters in the newly built constitution even if it does not mention any constitutional principle or agreement.

7. Democratic Dialogue in the Process of Constitution Building

People's participation in the process of constitution building is also symbolic whereby the citizens' sense of ownership over the constitution is established and consent is provided to the institutions, values and processes of self-rule. United Nations and different donor agencies based in Nepal have been assisting the organizations that represent different levels and sectors of Nepali civil life in seeking individual and collective public submissions about the future constitution and facilitating its access in the Constituent Assembly. It is not possible to describe and explain all these matters here. Yet, as said above, **it is the chief objective of this study to review the democratic dialogue held by 17 organizations assisted by United Nations Development Programme, Support to Participatory Constitution Building in Nepal**

(UNDP/SPCBN) and to reflect on the public submissions collected thereby in the constitution building. In addition, this study has tried to incorporate the public submissions regarding the constitution prepared by a network of some other organizations of the same nature which have collaborated with UNIFEM, UNICEF, CEDA and other donor agencies.

Last March 2009 (Falgun/Chaitra 2065), UNDP/SPCBN provided assistance to 18 nongovernmental organizations (NGOs) of Nepal through a programme called *democratic dialogue* in order to enable them to seek public submissions of different sectors, especially the voice of historically marginalized communities, and present them before the Constituent Assembly. Accordingly, those organizations collected public submissions and provided them to the committees of the Constituent Assembly. Of them, Nepal Patrakar Mahasangh (Nepal Federation of Journalists [NFJ]) is not incorporated in this study. 17 organizations, assisted by UNDP/SPCBN, had targeted the jurisdictions of the committees of the Constituent Assembly and presented the public submissions that were made through community participation to the Thematic Committees of the Constituent Assembly. This study considers those submissions as a major source of information. Yet, other useful references have also been used for analysis.

The organizations participating in this programme have different backgrounds. The Federation of Indigenous Nationalities Nongovernmental Organizations collected public submissions by collaborating with six other organizations and holding an interaction at VDC and district levels with 20 indigenous nationalities communities inhabiting the eastern hilly districts – Ilam, Sankhuwasabha, Solukhumbu, Khotang, Okhaldhunga and Udaypur.

Rastriya Adivasi Janjati Mahila Mahasangh has collected public submissions by collaborating with 29 Janjati Mahila Sanghs/Societies/Organizations. Nepal Tamang Ghedung (not mentioned) and Nepal Magar Sangh have, through their district branches, collected public submissions at VDC level of 6 districts (Rolpa, Syangja, Palpa, Gulmi, Baglung and Tanahun).

Kirant Yakthung Chumlung collaborated with four other organizations and collected public submissions focusing on the indigenous nationalities and *Dalit* communities at VDC level of nine districts including Sankhuwasabha, Terhathum, Dhankuta, Sunsari, Morang, Jhapa, Ilam, Panchthar and Taplejung. However, it invited participation of other ethnicities and communities, as well.

Jagrit Nepal has incorporated the public submissions made by the Tharu, Muslim and Madhesi *dalit* communities of five districts including Bara, Kapilvastu, Rupandehi, Saptari and Sarlahi. Madhesi Gairsarkari Samstha Mahasangh collected public submissions from the Madhesi communities of five districts including Mahottari, Sarlahi, Bara, Parsa and Rautahat. Madhesi Dalit Vikas Mahasangh (district not mentioned) has collected public submissions from Madhesi *dalit* communities.

BASE collaborated with 16 local organizations of five districts including Dang, Banke, Bardiya, Kailali and Kanchanpur and collected public submissions focusing on the Tharu communities. Similarly, Tharu Kalyankari Sabha collected public submissions focusing on the Tharu communities at VDC level of 14 districts, namely Jhapa, Sunsari, Morang, Saptari,

Udaypur, Siraha, Sarlahi, Rautahat, Bara, Parsa, Chitwan, Nawalparasi, Rupandehi and Kapilvastu.

Nepal Rastriya Dalit Samaj Kalyan Sangh (district not mentioned) collaborated with other six organizations and collected public submissions focusing on the *dalit* communities. Rastriya Dalit Network and Dalit Adhyayan tatha Vikas Kendra (district not mentioned) have jointly presented the public submissions focusing the *dalit* communities. Nepal Apang Manaw Adhikar Kendra performed street drama at different places of Banke, Dadeldhura, Surkhet and Kathmandu and collected public submissions of people with disabilities.

Nepal's National Muslim Women's Welfare Society (NMWWS) collected public submissions regarding Muslim communities from ten districts including Morang, Sunsari, Siraha, Saptari, Kapilvastu and Banke. It collected public submissions also from the Muslims residing in hill districts like Gorkha and Tanahun.

Manaw Adhikar Samrakshan Tatha Kanuni Sewa Kendra collaborated with three other organizations and collected public submissions in a mixed form from four districts including Rukum, Rolpa, Salyan and Dang. Shanti Abhiyan Sanjal Nepal has collected public submissions from the inhabitants of Karnali. Nepal Yuwa Samstha Sanjal (district not mentioned) has tried to articulate the youth voice in the future constitution.

Every programme had ensured the participation of people of the marginalized communities of local level. Particularly, special initiative was taken for the participation of *Dalits*, indigenous nationalities, women and other marginalized communities. There has been about 49 percent women participants.

The programme at VDC level was held in two stages. First stage explained the significance and opportunity of civil participation in the process of constitution building and highlighted issues of the marginalized communities. They were motivated to participate. In the second stage, issues raised in the first stage were integrated and a Community Charter was prepared through their participation and commitment. As far as possible, facilitators were selected from among the qualified people available at the local level. They were provided training. As required, the facilitators conducted the training in local languages. Training was conducted at different stages in order to facilitate civil participation in constitution building.

During the training, flipcharts were used and small informative pamphlets, including one on ILO Convention 169 and one on United Nations Declaration Regarding Indigenous Rights. These were distributed as reference materials. Moreover, a procedures manual was also made available. Flipcharts were prepared with necessary information and thoughts in order to assist in civil participation in the process of constitution building. The flipcharts helped immensely, especially in the marginalized communities, to help general people express their views. A training manual was also prepared for the facilitators. It explained the method of using flipcharts and the objective of every flipchart. The facilitators were asked to make a thorough study of the support materials available in the manual in order to use the flipcharts and render the discussion thematically.

After the completion of local level of programme, a one-day programme was held at district level. It was attended by the representatives of political parties, leaders of marginalized groups, women, rights activists of concerned districts and CA members representing those districts.

Those organizations made a collective participation of 880 VDCs of 68 districts and over 51,000 citizens, and collected public submissions on different aspects of the future constitution, especially those of marginalized communities and classes. It presented those submissions to the CA committees. **This study has analyzed those submissions and tried to make a comparative study of what place they have attained in the preliminary draft of the constitution presented by the committees.**

8. Submissions Made by Other NGOs Networks

Other organizations included in this study are eight organizations of the **Constituent Assembly Cooperation Network (COCAS)**. It has presented the points to be included in the constitution as a national charter. Those points should focus around the rights and concerns of the marginalized communities and classes. Janhit Samrakshan Manch (Pro-Public) collaborated with UNIFEM and the Ministry of Women, Children and Social Welfare. It focused on women issues and presented its submissions with a text referring to different Articles of the Interim Constitution and suggesting changes in different Articles while creating a “woman-friendly constitution”. Balbalika Shanti Kshetra-Rastriya Abhiyan (Children as a Zone of Peace (CIZOP) - National Campaign) and a network of 72 organizations working in child participation. These included UNICEF presented children-centered recommendations of the experts on how to enshrine the children’s rights and concerns in the future constitution. Similarly, a network of 19 organizations including NGO Federation working in cooperation with the Canadian cooperation agency (CIDA) has also presented its thematic submissions on different aspects of the constitution. Mirest Nepal held an open discussion on different aspects of the future constitution. This submission had direct participation of people in 26 districts and presented the collected public submissions as, “people’s letter of will”.

Likewise, SAP-Nepal HURDEC was one of the organizations collecting public submissions through a network. It formed a network of 22 organizations and collected public submissions focusing on the issues related with *Dalits*, Madhesis, indigenous nationalities, women, people with disability, youths, backward region Karnali and other matters under Development of Democracy in Nepal (DDN). In addition, Nepal Apang Samaj collected public submissions with its focus on people with disability.

These submissions can be divided into two groups. A) Submissions along with the proposed text of the constitution, and B) Submissions made in an ordinary format. Those who prepared submissions along with the proposed text of the constitution are Pro-Public and CIZOP. Other organizations fall in the category that presented submissions in an ordinary format. Some submissions of Mirest Nepal are in the form containing the text of the constitution while most of the submissions are in an ordinary format.

Pro-Public and CIZOP have used a group of experts. As a result, their submissions are clear and consistent. The submissions made by other organizations are not consistent. It owes to the fact that Pro-Public and CIZOP were able to set organizational priority whereas other organizations were limited to presenting the public submissions without any priority and processing. Pro-Public has prioritized ending gender discrimination.

Although submissions made by other NGO networks are considered in this paper, the primary source of information for this study is the public submissions collected by 17 organizations with the assistance UNDP/SPCBN.

9. Analysis of Public Submissions

The 17 organizations included in the study have collected over two thousand public submissions. Some of those submissions are repeated and others are inconsistent. The same applies to the public submissions collected by the other NGO networks. The public submissions collected by the 17 organizations under the aegis of UNDP/SPCBN are listed in the integrated table of unrepeatd submissions (See Appendix). According to the jurisdiction of CA Committees, there are more than 400 submissions and are classified into 11 major headings (titles) and 36 sub-headings (sub-titles). The submissions contain all the matters that range from those of constitutional importance to the ones related to people's daily life, (i.e., law and order, *bandhs*, strikes and load shedding.) On analysis, they can be divided into three groups: 1) Matters that should be included in the Constitution, for example, matters related with rights and interests of minority and marginalized communities, their identity, access, representation and participation in state structure, administrative system, electoral system, fundamental rights, 2) Matters that should be addressed after constitution building by the legislature immediately making Acts/rules, as deemed necessary, and 3) Matters related to good governance which the government can implement also by making policies and programmes. They are presented here in brief on the basis of CA Committees' themes and areas.

9.1 Preamble

The Preamble is also called an abridged form (synopsis) of or mirror to the constitution. It talks about the condition wherein the constitution is promulgated, basic values and methods and principles of building a constitution and authorities in promulgating the constitution, and so on. There has been a trend of writing Preambles from the time of the first written constitution of the modern world—the Constitution of the United States of America—to the recently written constitution of Bolivia.

Almost all the organizations and communities making public submissions and included in this study have wished that the Preamble of the Constitution should reflect the identity and characteristics of their respective communities. Indigenous nationalities, *Dalits*, Madhesis and other marginalized communities wish to keep the past phrase “*regret for discrimination*” in the Preamble. Probably their proposal is motivated by the constitution of South Africa. The Preamble of the Constitution of South Africa states thus: “*Recognize the injustices of the past*

and Honour those who suffered lack of freedom and justice of our land".³ Besides, almost all the constitutions of multi-ethnic, multi-lingual and multi-cultural states express the motto "*unity in diversity*". It is not unnatural to have such ambition since the Preamble is regarded as a mirror to the constitution. However, the Preamble will lose its significance if it contains everything. Its major structure contains the ideals and values that the constitution seeks to establish. Yet, people's that the constitution seeks to

establish. Yet, people's ownership to the Preamble gets consolidated if it can reflect the people's wish in a concrete way.

A representative proposal from among the public submissions regarding the Preamble has been presented in the box opposite. It focuses on the entire formation and characteristics of Nepali society and the nation.

It should state "Regretting ethnic, class, regional and gender problems and discrimination existing in the country; uprooting all forms of discrimination including ethnic discrimination; and establishing an equitable inclusive state."

9.1.1 Proposals of CA Committees

The Constituent Assembly Regulation placed the Preamble within the jurisdiction of the Constitutional Committee. Yet almost all the committees have proposed parts of the Preamble while focusing on their respective themes. In this regard, the Preamble proposed by the Committee regarding the Protection of Rights and Interests of Minority and Marginalized Communities comes closest to the public submissions analyzed hereby:

"While accepting that democracy, rule of law, sustainable peace, stability and development is possible only by creating a just and inclusive state that fully guarantees the rights and interests of minority, marginalized and backward or excluded communities; and ensures fully proportional representation of all classes, ethnicities, indigenous nationalities, *Dalits*, inhabitants of Terai, Madhesis, Muslims, disabled, people of other religions, languages, colours, genders, classes and regions at all levels and agencies of the State"

Similarly, the Committee on Natural Resources, Economic Rights and Revenue Distribution has proposed this without using constitutional language: The Preamble should mention such matters as preservation of biological diversity, sustainable management and use of natural resources and economic prosperity, equity and balanced development. The Committee on State Restructuring and Distribution (Delineation) of State Power has proposed the following Preamble:

³ *Constitution of South Africa – Preamble*

It is essential to make forward moving restructuring in order to resolve the class, ethnic, linguistic, regional, gender and community-oriented problems while ending the unitary and centralized form of Nepal and establishing a fully democratic, inclusive, proportional, federal, republican administrative system,

It is desirable to keep intact Nepali sovereignty, independence, freedom, unity and integrity and make political, economic, social, cultural, linguistic and physical development; create autonomous and self-ruled provinces, local level and special powerful structures based on identity and ability along with the constitutional right to self-determination; distribute the centralized administrative power to federation, province and local level ... make arrangements for all ethnicities, regions, genders and communities to have proportional representation and rights in the bodies that mobilize state power,

The Constitutional Committee has proposed a Preamble of eight chapters. It talks about keeping intact freedom, sovereignty and territorial integrity of Nepal, national unity, independence and self-respect; in addition, it shows commitment toward showing respect for past sacrifices and martyrdom of Nepali people in armed and peaceful movements for democracy, peace, human rights and forward progression; recalling pains caused by discrimination and oppressions created by feudal, autocratic, centralized, unitary and patriarchal state polity; internalizing multi-ethnic, multi-lingual, multi-religious, multi-cultural and regional diversity; it resolves to preserve and promote unity in diversity, social and cultural solidarity, tolerance and goodwill; adopt such democratic values and norms as the right to self-determination, autonomy and self-rule, civil freedom, fundamental rights, human rights, multi-party competition, adult franchise, proportionally inclusive administrative system, free judiciary and rule of law; and create the basis for socialism.

It is but natural that every party, community and group wishes to incorporate their feelings in the Preamble. However, the builders of the constitution should provide language to reflect those feelings instead of using the suggested letters and words. In this sense, the Preamble should explain the condition of issuing the constitution, its values, norms and principles and state polity. It is not at all necessary to include everything in the Preamble.

Similarly, it is not necessary to specify this or that rebellion in the Preamble. Even the following sentence conveys the expected meaning: *“While respecting the past struggle, movement and martyrdom of Nepali people against injustice, discrimination, inequality, exploitation and autocracy (despotism).”* It is not necessary to mention its variables in the Constitution. South Africa can be a good reference in this context. Its constitution states: **“Honour those who suffered for justice and freedom in our land.”** The struggle and sacrifices made by the people of South Africa are regarded as the best example in the world. However, the constitution builders did not essentially mention about the extreme ethnic division and apartheid policy during the Whites’ rule in the past.

The Preamble presented in flowery and hyperbolic language looks clumsy and provokes reactions from other communities. It can narrow down extensive the ownership of people toward

the constitution. Therefore, the Preamble should be brief, precise and clearly reflecting the people's principles and feelings.

9.2 Regarding Citizenship

Most of public submissions suggested that the Constitution should make clear arrangements for the issue of citizenship. Particularly, Madhesi community has taken special interest in presenting public submissions about citizenship. Their major submissions stress the following issues: guarantee of equality in citizenship; right to hereditary citizenship on the basis of mother or father's certificate of landownership; acquiring citizenship through easy and simple process; Madhesi community can use a photo with local dress (including *dhoti* and *gamachha* [loincloth and towel]); and so on. Though not stated directly, a main interest of the Madhesi community regarding citizenship is the citizenship of foreign woman nationals married to Nepali nationals. The reason is that the Madhesi community has a long tradition of marriage with Indian nationals of bordering cities.

The submissions of other communities include the following matters: mother or father's citizenship should also be made a ground for acquiring citizenship; women should have freedom to mention or not mention their spouse's (husband's) name and surname; names of both mother and father should be mentioned in the certificate of citizenship. Regarding federalism, some submissions also suggest providing double citizenship of Centre and province. Some submissions state that citizenship is distributed haphazardly and involves political bargaining. Thus foreign nationals acquire citizenship through illegal means. Therefore, they stress ending such conditions through the Constitution.

9.2.1 Proposal of Concerned Committee

Constituent Assembly Committee on Fundamental Rights and Directive Principles has proposed that the federal government should provide single federal citizenship to all Nepalese along with their provincial identity. It has proposed two types of citizenship, namely by descent and naturalized. A Nepali citizen should fulfill the following conditions in order to acquire Nepali citizenship by descent:

- 1) He/She must be born of Nepali mother or father who has permanent residence in Nepal,
- 2) He/She must be born in Nepal of a Nepali citizen married to a foreign national and must be a resident of Nepal; he/she must not have acquired citizenship of the foreign country by virtue of the citizenship of his/her mother or father,
- 3) Any child who is found within the territory of Nepal and whose parents are not known shall, until the father or mother of the child is traced.

The Committee has proposed following provisions for acquiring a naturalized citizenship:

- 1) A foreign national who is married to a Nepali citizen and who wants to acquire Nepali citizenship must have resided in Nepal for fifteen years and denounced his/her foreign citizenship.
- 2) A person who is born in Nepal of a Nepali national mother and who has been a resident of Nepal but whose father is not identified can acquire naturalized citizenship of Nepal in accordance with existing laws.

Naturalized citizens are prevented from holding certain positions. In particular, only a person acquiring Nepali citizenship by descent can be elected or appointed as the Head of Nation and Deputy Head of Nation of Nepal, chief of federal or provincial Legislature, Executive and Judiciary and chief of constitutional bodies and security agencies.

The Committee is not much divided about citizenship. Yet it has proposed different views like provincial government can issue single federal citizenship, there must be double citizenship of province and federation, and there must be a provision for nonresident citizenship, and so on. Similarly, women members of parliament have particularly suggested that there must be additional arrangements for providing hereditary Nepali citizenship to the children of mother or father who has acquired Nepali citizenship, and to those who are born in Nepal but whose father is not identified or whose father has denounced them. Besides, there have been complaints that the fifteen years' provision for providing naturalized citizenship to the people who are married to Nepali nationals and have been a resident of Nepal is more than required. It is doubted that the provision can raise questions against the citizenship of the children born of such couple.

9.3 Fundamental Rights and Directive Principles of State

All the organizations and communities included in this study have collected several public submissions regarding fundamental rights and directive principles of state. Some propose that matters like national unity, sovereignty, security of public and national property, abiding by the Constitution and respecting children, women, mature (senior) citizens and people with disability should be included as civil duties.

The submissions proposed under fundamental rights are of two types. First type of submissions have these proposals: all citizens should have personal freedom and rights of equality in accordance with universal norms; for example, every person should have the right to live with dignity; right of a citizen against being discriminated against on the basis of caste and ethnicity, dynasty, religion, language, colour, class, gender, disability, profession, occupation, freedom of thought and expression, to run organizations, assemble and form unions; right to information; freedom of publication, broadcasting, printing and press; freedom to acquire, own and sell property; freedom to engage in an occupation of his/her choice and right to employment; freedom to practice and follow religion and culture of his/her faith; Freedom of free movement from one province to another province and all over the country, to engage in an occupation and reside there; right to education, health, employment, accommodation and minimum livelihood along with food security; guarantee against encroachment upon personal freedom; right against being detained without being informed of the grounds for such an arrest and right to consult a legal practitioner of his/her choice; right against torture and to receive compensation by the

victim of such torture; right of all to compulsory and free education up to school level (12 grade); right to social security; and so on.

In the context that the nation is heading toward federalism, public submissions made by many organizations have significantly included the citizen's right to move freely from one province to another province while they are aware of the debates and demands raised in the country.

Similarly, submissions have been made giving special priority to the fact that the following matters should be mentioned as fundamental rights: investigation of homicide and inhuman cases that occurred during armed conflict; punishment to the culprits and the victims' right to compensation; and promotion of youth representation and participation at all levels of making state policies.

Most of the submissions suggest that phrases like "in accordance with the provision made under fundamental rights," "as provided for in law," or "by making laws" should not be used. Moreover, they suggest that prohibitory provisions should also be removed which are meant to reduce or limit constitutional rights. In general, the State limits or prohibits such rights in a state of emergency. In many cases, such provisions are deemed very essential for the development of minority, marginalized and backward communities and for the protection of their interests. They pave the way for the State to adopt a policy of positive discrimination.

9.3.1 Proposal of Concerned Committee

Constituent Assembly Committee on Fundamental Rights and Directive Principles has incorporated almost all the civil duties and rights/interests raised above in its proposal. The Committee has proposed ten fundamental rights including the following: be loyal to the nation and protect national unity, sovereignty and integrity; abide by the Constitution and law; respect and honour mother, father (parents), children, senior citizens, women, incapacitated, helpless, people with disability and human community.

The Fundamental Rights have a total of 31 titles of rights/interests. These include rights and interests of general people, and special rights of women, children, *Dalits*, indigenous nationalities, Madheses, people with disability, marginalized and minority communities, helpless, and senior citizens. The rights and interests that incorporate every citizen are as follows:

1. Right to live with dignity (no death penalty),
2. Freedom of thought and expression to every citizen; freedom to assemble peacefully and without arms; freedom to run political parties and organizations; freedom to move and reside anywhere in Nepal; freedom to engage in an occupation, employment, industry, trade of his/her choice; freedom to acquire, own, and sell property; right of freedom to follow or not follow religion his/her faith,

3. Right of every citizen to equality before law and equal protection and benefit of law; accordingly, there shall be no discrimination in using law on the basis of religion, colour, caste, ethnicity, gender, disability, language or region, ideology, or other similar grounds; there shall be no discrimination in wages for the same work on the basis of gender and in social security; every child shall have equal right in ancestral property without gender discrimination,
4. Under the rights regarding mass communication, there shall be no prohibition against publication and broadcasting of news, editorial, articles, features or audio and audiovisual materials through any means including electronic publication, broadcasting and press.
5. Judiciary rights: These include: right against being detained without being informed of the ground for such an arrest; right to present the arrested person before the judicial authority within twenty-four hours; right to consult a legal practitioner of his/her choice and case hearing; right to fair hearing by impartial, free and capable court or judiciary authority; and right of poor party to get free legal aid. Similarly, the victim of the offense shall have the right to get information about his/her case, legal compensation and rehabilitation, and right against torture and preventive detention.
6. Right to clean environment, free education up to secondary level, basic health services, employment, labour, accommodation, food, etc.

Some prohibitory provisions have also been proposed for the use of these proposed rights. For example, it is stated that in the context of freedom of thought and expression, peaceful assembly, forming organizations and so on, the State shall not be prevented from making laws to prevent such acts of discouragement as undermining nationality, sovereignty, independence and integrity of Nepal; or undermining the relationships between federal units; or undermining the relationships between different castes, ethnicities, religions and communities; or ethnic discrimination and untouchability.

Under right to equality, the Committee states that no citizen shall be deprived of equal protection and benefit of law. However, the following prohibitory sentence has paved way for the State to adopt a policy of positive discrimination: “It shall not be deemed as a legal prohibition against making any special laws for the preservation, empowerment or development of economically, socially or culturally backward women, *Dalits*, indigenous nationalities, Madhesis, farmers, labourers, oppressed regions, Muslims, backward classes, minorities, people with disability, incapacitated and helpless citizens.”

However, this sentence is so broad that excludes only “urban mature citizens”. In this case, either the fundamental rights of everyone are limited or the policy of positive discrimination cannot be taken for anyone. In this regard, it would be relevant to take a look at the Constitution of India.

The Constitution of India was amended immediately after its promulgation when educational reservation made for the *Dalits* was challenged in the courts. Right to equality under

fundamental rights was then limited to backward classes and ethnicity. Following this amendment, Article 15, Clause (4) of the Constitution of India added this sentence,

Nothing in this Article ... shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens and for the Schedule Castes and Schedule Tribes (Ethnicities) (Constitution of India, Article 15 (4)).⁴

Following this amendment, it was possible to provide reservation to Schedule Castes and Schedule Tribes of India in education and employment under the policy of positive discrimination.

Another important aspect of the public submissions made by the organizations included in this study is as follows: rights and interests of certain groups and communities, for example recognizing the identity of women, *dalits*, indigenous nationalities, Madhesis, minorities and marginalized communities; special rights for access and representation in state structure, and advancement and interests; right against discrimination on the basis of caste and ethnicity, dynasty, religion, language, class, gender, disability, occupation and trade; equal right of women and men in ancestral and family property; freedom to practice and follow religion and culture of his/her faith; etc. Other suggested rights are: freedom to freely move, engage in an occupation and reside anywhere in the country; minimum livelihood along with education, health, employment, accommodation and food security. Some submissions are made in addition to the rights provisioned in the Interim Constitution. These submissions are specially made in relation with minority and marginalized communities. Below is a comparative analysis of the submissions made for the rights/interests of such groups and communities and the rights proposed by the Constituent Assembly Committee on Fundamental Rights and Directives Principles of the State.

9.3.2 Rights and Interests Related to Women

The submissions have given priority also to rights and interests regarding women. They have especially emphasized that the following rights should be provisioned in the Constitution as special fundamental rights of women: right to reproduction and reproductive health; guarantee to end domestic violence on women; equal right of women and men in case of divorce; end of gender discrimination and exploitation; guarantee for single women to live a dignified life; social security for education, health and nourishment of women and children; and so on.

Rights and interests regarding women as proposed by other NGOs, especially Pro-Public, are more specific. In constitutional language, it has been suggested that every right and interest of groups mentioned in the Interim Constitution should be women-friendly. These submissions are directly reflected in the following proposal of the Committee on Fundamental Rights and Directives Principles of the State:

⁴ XXXXX

- Every woman shall have equal right of inheritance without gender discrimination;
- There shall be no discrimination against women;
- Every woman shall have the right to reproduction;
- There shall be no physical, mental and sexual violence or exploitation against women on the basis of religious, social and cultural tradition, practices or any other grounds. Such acts shall be legally punishable and the victim shall have the right to compensation.
- Women shall have the right to proportional participation in all the state agencies on the basis of the principle of inclusion.
- Every woman shall have to get special opportunity in education, health, employment and social security on the basis of positive discrimination.

9.3.3 Child Rights

The collected submissions have also given priority to child rights. The major child rights are: Every child shall have the right to nourishment, basic health, education and social security; end of exploitation of child labour; right to peaceful environment and education; special arrangements for disabled and conflict-ridden children; government protection to street children, beggar children and orphan children; end of administering and forcing to administer intoxicants to newly born children in the name of ethnic tradition; and so on.

Similarly, Children as a Zone of Peace (CIZOP), among other NGOs, has proposed 15 child rights under 5 points. They are listed in the table below.

CIZOP Proposal Regarding Child Rights	
Fundamental Rights	<ol style="list-style-type: none"> 1. Every child shall have the following rights:- <ol style="list-style-type: none"> a. Right to live a full life and right to development b. Right to birth registration to identity along with name and nationality c. Right to free basic health service, nourishment and accommodation d. Right to get safe, free and compulsory education up to secondary level. It also includes child development education and service. There shall be guarantee against physical and psychological punishment. e. Right against domestic and non-domestic abuse, violence, humiliation, neglect and exploitation of children as well as right to security against disadvantage through sale, child marriage, and in religious and cultural way. f. Right to security against discriminatory labour that has a negative effect on physical, mental and social development of children or against fatal incidents at factories, mines and so on. g. Right against forceful use of children for direct or indirect

	<p>conflict or political purpose, and against recruitment in police, army and armed groups, and right to their security during the period of conflict.</p> <p>h. Right to remain safe from arrests, detention, etc until a certain age. If it is necessary to make such an arrest, it shall be for a very short period. In that case, they shall have the right to remain in family contact and away from other adult prisoners serving in jail.</p> <p>i. Right against discrimination on the basis of child's birth, gender, ethnicity, language, religion, culture, disability, economic condition and political ideology.</p> <p>j. Right to participate and expression opinions in all the matters that may affect them.</p> <p>k. Right to freely engage in sports, entertainment and cultural activities as suits their age.</p>
	2. Right of orphans, mentally and physically disabled, conflict-ridden, displaced, street, minority, <i>Dalit</i> and backward children to receive special security and assistance from the State for their development and advancement.
	3. Children's interests shall get priority in all the matters related with them.
	4. All under the age of 18 shall be regarded as a child for the purpose of child rights.
	5. It shall be the prime responsibility of children's family or caretakers to obtain these rights. The State shall take necessary steps to fulfill these rights.

These submissions are made in a clear and precise way. The Committee's proposal has given place to almost all the submissions except using the children and regarding people below 18 years of age as children. The Fundamental Rights Committee has proposed the following draft of child rights as fundamental rights:

- Every child shall have the right to name and birth registration along with their identity.
- They shall have the right to get education, health, nourishment, care, sports, entertainment and personality development from family and State.
- They shall have the right to get mother tongue education.
- They shall not be employed in factories, mines and other similar vulnerable acts.
- They shall not be forced into child marriage, illegal trafficking, and abduction or hostage.
- They shall not be recruited or used in army, police or armed conflict or groups.
- They shall not be abused, neglected, or physically, mentally or otherwise exploited or used in the name of cultural or religious practices.

- They shall not be physically, mentally or otherwise tortured at home, school or any other places.
- Any act against children as stated above shall be punishable in accordance with law and victim children shall have the right to get proper compensation from the victimizer.
- They shall have the right to child-friendly justice.
- Helpless, orphans, mentally retarded, disabled, conflict-ridden, displaced and vulnerable children shall have the right to get special security and facilities.

9.3.4 Dalit Rights

Similarly, the new Constitution should guarantee *Dalit* rights as regards other important issues. Dalit community has been subjected to untouchability and extremely inhuman discrimination and exploitation due to caste system which has been prevalent in Hindu society for thousands of years. Like indigenous nationalities, it is also looking forward to the new constitution with great awareness and expectations. All expect that through the new constitution, they shall live respectfully and have a feeling of justice. Their major rights and interests include: While defining minorities and marginalized, do not make an overall definition of all the communities; define the *Dalits* clearly as “*Dalits are a community that is forcibly made untouchable on the basis of caste, dynasty and occupation*”; end untouchability and ethnic discrimination; make scientific reservation along with a provision of compensation; grant freedom to enter temples and perform worships without any intervention; and so on. The major *Dalits* rights that should be included in the Constitution are listed in the table opposite.

End untouchability and punish the person committing untouchability as an offence against humanity.
While defining minorities and marginalized, do not make an overall definition of all the communities. Rather define the <i>dalits</i> clearly as a community that is forcibly made untouchable on the basis of caste, dynasty and occupation.
They should have the right against untouchability and ethnic discrimination.
They should have the right to compensation and scientific reservation.
They should have freedom to enter temples and perform worships without any intervention.
End exploitation of <i>dalit</i> , kamaiya, haliya, kamlari and wadi communities.
Arrange land for landless <i>dalits</i> .
<i>Dalits</i> should have the right to free education, health and employment.
Ensure <i>dalit</i> participation in the organizational structure of political parties.

The major *Dalit* rights as proposed by Fundamental Rights Committee are as follows:

- There shall be no discrimination, humiliation, intolerant behaviour or discrimination against *Dalit* community anywhere on the basis of caste and

ethnicity and untouchability. Such an act shall be regarded as a social crime and legally punishable. The victims shall have the right to compensation.

- Dalit community shall have the right to participation in all the organs, agencies and sectors of State mechanism along with compensation on the basis of proportional inclusion.
- Dalit community shall have the right to special opportunities in education, health, employment and social security on the basis of positive discrimination. The destitute *Dalits* shall be given priority while making such arrangements.
- The Committee on State Restructuring has recommended that the *Dalits* shall have proportional representation at all levels of State on the basis of population and 3 and 5 percent additional (compensatory) representation in federal and provincial structures, respectively.

9.3.5 Special for Indigenous Nationalities

Naturally, a major issue that the new Constitution should provision is related with indigenous nationalities. Most of the submissions are related with it. The inset table provides a summary of the

fundamental rights. Women of every community shall wish to reserve the right when there is a national policy of reserving 33 percent of seats for women in state structure lest it is not again limited to Chhetri, Bahun, Thakuri women. Therefore, indigenous women also want to ensure ethnically proportional quota. Fundamental Rights Committee has not arranged a separate list of fundamental rights for the indigenous nationalities as of women, *Dalits* or children. However, it has made some arrangement for the indigenous nationalities under social justice. It is as follows:

"indigenous nationalities shall have the right to preserve, promote and develop language and culture along with their identity and to get special opportunities and benefits with priority for their empowerment and advancement."

a. Ensure the rights as provided for in ILO Resolution 169, United Nations Declaration regarding Indigenous Nationalities and international instruments in the Constitution.
b. Recognize the right to self-determination as a fundamental right.
c. Retain the preferential right over natural resources like water, land and forests, etc as owned by the indigenous nationalities.
d. Provide the indigenous nationalities a right to mother tongue education up to secondary level.
e. Provide the indigenous nationalities a right to information in mother tongue.
f. Provide the indigenous nationalities and other excluded communities a right to reservation.

The Committee on State Restructuring has proposed 9 of 14 provinces on the basis of the identity of major nationalities. Besides, it has proposed an "autonomous region" for 23 nationalities on the basis of ethnic identity. It has also proposed a "*political preferential right*" of the local major ethnicity of the provinces and autonomous regions as proposed on the basis of identity. Accordingly, political parties should make them a candidate for the post of Chief

Executive for two terms. The Committee has proposed the following rights regarding nationalities:

The predominant ethnicity/community of the concerned province and autonomous region shall have political preferential right. Accordingly, political parties shall make them a candidate for the post of Chief Executive for two terms during elections and formation of provincial governments in the provinces that shall be carved on the basis of ethnic community and autonomous region that shall be carved under special structure.

Indigenous, indigenous nationalities and Madhesis shall have the right to self-determination as a right regarding internal and local politics; culture, religion, language, education, information and communication; health, accommodation, employment, social security, economic activities, commerce, land; mobilization of resources and means, and environment.

Similarly, women, *Dalits* and Madhesi community shall have the right to representation and participation at different levels of State, and administration in proportion to population.

The Committee has proposed separate rights under security and social justice. Accordingly, destitute classes, incapacitated, helpless, single women living in helpless conditions, senior citizens; and socially backward women, *Dalits*, Madhesis, indigenous nationalities, minorities and marginalized, Muslims, gender and sexual minority communities; people with disability, youths, backward classes, farmers, labour classes and oppressed regions shall have the right to participation in state structure and public services on the basis of the principle proportional inclusion. Besides, people of these communities shall get special opportunity and benefit of education, health, accommodation, employment, food grains and social security for their advancement, preservation and development. Likewise, farmers shall have the right over land and shall get opportunity and benefit for agricultural development. On the other hand, the Committee has proposed that youths shall have the right to get special opportunity in sectors like education, health and employment for their empowerment and advancement.

9.4 People with Disability

The public submissions also include suggestions regarding the rights/interests of people with disability. They are as follows: a) There should be an end to all forms of discrimination on the basis of disability and such discrimination should be made illegal and punishable, b) The State should preserve and provide facilities for support materials, Braille and sign language that are used by the people with disability as a basic right, and c) The State should ensure the right of children with disability to education, health, entertainment; and so on.

In this regard, the Fundamental Rights Committee has proposed as follows: “The people with disability shall have the right to live with dignity and self-respect along with identity of diversity and to equal access in public services and facilities.” Moreover, people with disability

have been mentioned along with minority and marginalized communities, especially in regard to social justice and positive discrimination.

9.5 Regarding Youth Communities

Public submissions made by almost all the organizations suggest that youth community should get priority in the constitutional provision. The Association of Youth Organizations Nepal (AYON) has collected youth-centered public submissions regarding the Constitution. Those submissions suggest that the rights and interests of the youth community should get priority on the basic issues of the Constitution including fundamental rights. They also suggest that there should be an end to impunity and youths should be provided a guarantee for security; youths should have an access in state structure; youth should be empowered; and so on. Most of the submissions related with youth are oriented toward government policies and programmes. They can be included in the directive principles of the State.

9.6 Rights and Interests of Minority and Marginalized Communities

Most of the submissions are centered on the rights and interests of the minority and marginalized communities and that is natural. The major submissions in this regard are as follows:

- The marginalized communities should be defined on the basis of the communities that are excluded or discriminated against or subjected to inequality on religious, linguistic, class and regional grounds.
- The rights of minority ethnicity, language, religion, gender, etc should be ensured in accordance with the minority rights provided for by the United Nations.
- Indigenous nationalities should be recognized in the Constitution as the children of the first inhabitants before the creation of the State.
- The State should seek prior consent of the indigenous nationalities while making policies and programmes that might affect them.

Similarly, the submissions state that the identity of Muslims, Madhesi and other communities at par with indigenous nationalities, and positive policy and programme for them should be clearly specified. They also suggest classifying the people with disability as marginalized.

Dalit community has sought a different definition of *Dalits*. They suggest that “*There should not be one definition for all the communities while defining the minorities and marginalized. Regarding Dalits, they should be defined as a community that is forcibly made untouchable on the basis of caste, dynasty and occupation.*”

9.7 Regarding Social Justice, Social Security, Reservation and Positive Discrimination

Matters regarding fundamental rights, social justice, security and special arrangements for minority and marginalized communities/classes have been frequently repeated. It is not unnatural. It becomes easier to make special arrangements for them after initial arrangement is made in the fundamental rights and it is established in the directive principles of the State as a guiding principle. Major submissions regarding social justice, security, reservation and positive discrimination are as follows:

- There should be special arrangements about political, economic, social, linguistic, cultural, educational, employment and health and other rights of indigenous nationalities women.
- There should be a separate arrangement for positive discrimination along with reservation for women, nationalities, *Dalits*, Madhesis, backward regions, disabled, youths, HIV affected, highly marginalized communities, single women and third gender people.
- The State should make special arrangements for economic, political, social, educational, health and cultural development of highly marginalized, marginalized and endangered indigenous nationalities women.
- There should an arrangement for special quota and reservation for minority, excluded and marginalized communities.
- The State should adopt a policy of positive discrimination in order to guarantee the preservation rights of people with disability.

9.7.1 Proposal of CA Committee

The report of the Committee Regarding the Rights and Interests of Minority Communities has made a detailed analysis of minority and marginalized classes and communities. Accordingly, it has also proposed the subject matters to be included in the Constitution. The proposed definition of minority, marginalized and excluded communities is as follows:

- The term “minority communities” refers to the communities which are subjected to all forms of discrimination and oppression by the State. The term shall also refer to less populated ethnic, religious or linguistic communities which have been subjected to such discrimination and oppression.
- The term “marginalized communities” refers to the communities which are economically, socially, educationally, health-wise, politically, ethnically, religiously, linguistically or gender-wise or sexually backward. The term also refers to highly marginalized and endangered communities.
- The term “excluded communities” refers to the communities which have not been included in the state power owing to their subjection to ethnic discrimination and untouchability; linguistic, economic, social, religious, gender or sexual or regional discrimination and oppression; or physical or mental incapacity or disability.

The Committee has incorporated different subjects related to its jurisdiction. For example, it consists of the definition of nation, languages, rights/interests of minority and marginalized communities and the directive principles and policies of the State. It has proposed the nation's definition as follows: "*Nepal is a ... federal, democratic, republican, secular, fully proportional and inclusive State ... free from ethnic discrimination and untouchability and linguistic and religious discrimination ... based on multi-ethnic, multi-lingual, multi-religious, multi-cultural equality, freedom and justice*" Regarding languages, it has proposed that Nepali should be "*the language of official business at the Centre and contact language between the provinces*"; and that "*all the languages spoken in different parts of Nepal should be regarded as national languages and the State shall treat all the languages in an equal manner.*" It has also proposed that one or more than one language spoken by the majority of population in a province can be made a language of official business. It has proposed the right of the deaf (hearing impaired) citizens to use sign language and that of the sightless citizens to use Braille script.

Similarly, the State shall make no discrimination against a citizen for acquiring, using and terminating his/her citizenship on any ground like being or belonging to an ethnicity, indigenous nationalities, *Dalit*, Terai inhabitant, Madhesi, Muslim, religion, colour, language, gender, sexual and gender identity, political or other ideology, property, birth or region or physical or mental incapacity or disability condition. It has also proposed providing third gender people with citizenship along with their gender identity.

The State shall make no discrimination against any citizen regarding the use of law on the basis of ethnicity/nationalities, colour, gender, language, birth, region or physical or mental incapacity or disability condition. However, it is proposed that "*the State shall identify the economically, socially, politically, educationally and health-wise backward communities or classes and make special legal provision for their preservation, development and empowerment along with compensation for past oppression and on the basis of positive discrimination*". The proposal of the Committee also states that the State shall make special legal provisions for fully proportional representation at every level of the State for right against ethnic discrimination and untouchability, right to get free education up to higher level, and for development and empowerment. It has also proposed that "*the State shall make special provisions for ensuring additional rights of proportionality as a compensation for the communities which have been subjected to ethnic discrimination and misbehavior of untouchability and religious and cultural oppression*".

Yet the parties could not make a consensus towards the draft proposal of the Committee. Nepal Federation of Indigenous Nationalities (NEFIN) also expressed dissatisfaction over the proposal and presented a memorandum for its rewriting.

To an extent, the Committee on Fundamental Rights and Directive Principles of State integrated these scattered proposals regarding minority and marginalized communities and incorporated them under Fundamental Rights and Directive Principles of State, as stated above.

9.8 Regarding State Restructuring and Distribution of State Power

Every person has given great significance to the issue of state restructuring. The public submissions have given priority to such issues as federal state structure, electoral system, autonomy, right to self-determination, right over natural resources, and so on. There is no disagreement on federal structure. However, there is much disagreement on carving provinces,

naming them and languages. The community, party and regional grounds for such differences can be seen clearly. Some of the issues raised in the public submissions are presented in brief in the table opposite.

The major submissions of the indigenous nationalities lay special emphasis that while federalizing nation, the provinces should be demarcated and named on the basis of ethnic, linguistic and historical backgrounds of indigenous nationalities. On this ground, they demand such provinces as Limbuwan, Khambuwan, Tamsaling, Newa, Magarat, Tamuwan, Tharuhat, etc. The demand for “One Madhes One State” from Jhapa to Kanchanpur has affected different ethnicities and communities of Terai-Madhes. Especially, the slogan of “One Madhes One State” is highly prioritized by Madhes-oriented parties like Forum TMDP, Sadhbhawana, etc, districts of eastern Terai and the Madhesi caste groups following Hindu caste system. Yet, there have been differences even among Madhesi communities, and this demand has not gained enough consensus even in the Terai.

Establish Limbuwan autonomous region, along with right to self-determination, comprising of nine districts east of Arun.
Declare ten districts as Tamsaling province; they are namely Dudhkoshi in east and Budhi Gandaki and Narayani in west, east-west highway in south, entire Chitwan area and up to border of self-ruled Tibet (China) in north.
Create Tharuhat region by incorporating Banke, Bardiya, Kailali, Kanchanpur and Dang districts.
Form Sales region comprising of area up to Kapivastu with Siraha-Saptari as a centre; Sarvajit region comprising of neighbouring areas of Baglung and Baglung itself as a centre; and Bhul province comprising of area from Salyan to Far Western Region.

The public submissions made mostly by communities other than nationalities chiefly demand that provinces should not be made on ethnic grounds, nor should they be named to represent a single ethnicity. Similarly, *Dalits* have suggested that some *Dalit* provinces should be made with non-territorial unit or densely populated *Dalit* settlement as its centre. Indeed, the alternative of a non-territorial unit for *Dalits* is worth considering. Some major suggestions regarding this are listed in the table above.

9.9 Distribution of State Power

Public submissions are made also regarding distribution (delineation) of state power between the Centre and provinces. Accordingly, defence, currency and foreign affairs, telecommunications, international trade, development projects involving more than one province

and other similar issues should fall under the Centre; residual power should rest with the provinces; all provinces should have equal rights; provincial governments should have rights regarding education, health, transport and electricity; provinces should have the right to make arrangements for police and security forces for their security; commissions and coordinating units should be arranged for conflict management between Centre and provinces, and among provinces.

9.9.1 Proposal of the Committee

The Committee on State Restructuring and Distribution (Delineation) of State Power is the last of all the Thematic Committees of Constituent Assembly to present its report. Naturally, the Committee's report is of greatest interest; moreover, it had comparatively more challenging responsibility. The Committee has mainly proposed three levels of state structure—Federal, Provincial and Local. It is mentioned in most of the public submissions. The Committee has proposed fourteen provinces along with their names and capitals on the basis of identity and capacity of federal units. Nine out of fourteen provinces are based on ethnic identity, and the remaining five provinces are based on non-ethnic identity. The provinces are demarcated on the basis of ethnic predominance in Village Development Committees (VDCs) and territorial continuity.

According to the Committee report, local units and autonomous regions shall also have legislative rights as provided within the list of the Constitution. There shall be an elected Legislative Assembly at local level and autonomous regions. The Assembly can make laws within its jurisdiction.

The Committee has also proposed autonomous regions for 23 ethnic groups. However, Danuwar autonomous region has been mentioned twice, and it is not clear whether there are 22 autonomous regions only or it is another autonomous region. The proposed autonomous are listed in the table below.

Indigenous Nationalities Specified as Autonomous Regions				
1. Kochila	2. Jhangad/Urau	3. Dhimal	4. Meche	5. Santhal
6. Lepcha	7. Yakkha	8. Chepang	9. Dura	10. Kumal
11. Danuwar	12. Pahari	13. Thami	14. Majhi	15. Baram
16. Thakali	17. Chhantyal	18. Sunuwar	19. Danuwar (?)	20. Surel
21. Jirel	22. Hemu (Hyolmu???)	23.	Vyasi	

Similarly, it has proposed special and preserved (conserved) areas. However, their relation, especially that of special and preserved (conserved) areas, with local government is not clear.

The Committee has proposed that political parties should nominate a candidate from major local ethnicity for the post of Chief Executive of the provinces made on the basis of identity for the first two terms. The question may arise how it shall be in harmony with universal norm of democracy if it forms a provision of the Constitution. Therefore, such matters should be

arranged through organizational structure of political parties rather than through a constitutional provision. In this way, it can retain democratic norm, on the other hand, and address ethnic aspiration, on the other.

The federal structure as proposed by the Committee is as follows:

Structure of 14 Provinces Proposed by the Committee



There is great disagreement in the Committee regarding the state restructuring, especially the structure of the provinces. Although this report was endorsed by a majority votes like that of other Committees, different parties have expressed different opinions about it. The members of parliament representing CPN (UML) voted in favour of the proposal. However, their dissatisfaction over the measurement, map and naming of 14 provinces is being publicized.

10. Distribution of Rights

The Committee has proposed five separate lists of rights – federal, provincial, local, autonomous regional, common. According to it, thirty jurisdictions including defence, army, foreign affairs, central police, central bank and financial policy fall under federal list. Twenty-eight subjects including police, administration and law and order, education, health, agriculture, language, culture, religion and script fall under provincial list. Common list has twenty-seven

30 percent of economic dividends from natural resources should be distributed to the Centre and 70 percent of dividends should be distributed to the provinces.

The primary right and responsibility of ownership, operation and management of water, land, forests, herbs, biological diversity, mines and other natural resources

subjects. Twenty issues including city /community police, cooperative, local tax and local market management fall under local list. Similarly, twenty subjects fall under autonomous region. Those issues which are not mentioned in the list, that is residual power, are reserved for federal level.

should rest with the provinces and local village, town and district governments.

National river should be delegated to the Centre.

It is relevant to mention about the jurisdiction of the Committee on Natural Resources, Economic Rights and Revenue Distribution since it is also highly related with the distribution of rights among different state levels. The Committee has prepared a detailed draft on the issues related with the economic rights of the citizens, state responsibilities, civil duties and financial procedure. In nature, most of the issues are technical. Yet, public concern regarding the ownership, mobilization and use of natural resources is equally important.

The public submissions made by the organizations that are included in this study have shown great interest about natural resources. Especially, indigenous nationalities have referred to ILO 169 and emphasized that they should have ownership over water, land and forests. Besides, the State should seek free and prior informed consent for using natural resources and provide due share of the benefits reaped thereof.

The Committee on Natural Resources, Economic Rights and Revenue Distribution has not duly addressed the issue of collective demands of indigenous nationalities in its draft proposal. Yet it has proposed the following provision besides other issues under the Directive Principles of State.

1. Prioritize the needs of local communities while preserving, promoting and making a sustainable use of natural resources and make equitable distribution of the benefits reaped thereof.

The Committee has also proposed three lists – federal, provincial and local – for the distribution of natural resources and resources and benefits of revenues. It has proposed that all the three levels –federal, provincial and local – can do works related with natural resources like forests, land, mines and minerals, irrigation and hydroelectricity on the basis of their volume and quantity. National policies, standard determination and big projects are referred to federal level. Middle and small projects fall under provincial and local levels. It has also proposed for Financial Commission for revenue distribution and Commission for Natural Resources for resolving contentions that may arise in regard with natural resources.

11. Regarding Determining Legislative Model

The public submissions regarding legislature show obvious effect of the policies adopted by political parties. United CPN (Maoist) had not proposed for unicameral legislature till the time of public submissions. Therefore, most of the submissions favour a bicameral Centre and

unicameral provinces. The submissions from Karnali even suggest for increasing the number of MPs for the disadvantaged districts. Most of the submissions suggest for mixed electoral system for legislature. Moreover, it is demanded that the representation of women, minority and marginalized communities should be prioritized in First-Past-the-Post system. The submissions from many organizations suggest specifying minimum qualifications for MPs. Similarly, there should be an arrangement for recalling the MPs who are involved in corruption, deviation from parliamentary system, etc. Most of the submissions suggest that the voters' age should be fixed as 16 years.

There should be a bi-cameral legislature at the Centre.
There should be a unicameral legislature in the provinces.
The number of MPs of the districts deprived of transport and communication facilities should be increased.
Proportional representation of women and men of indigenous nationalities, <i>dalits</i> and Madhesi communities should be ensured.
There should be reservation for women, indigenous nationalities and <i>dalits</i> even in direct electoral constituencies.
Voters' age should be fixed as 16 years.
Elected representatives can be recalled.

11.1 Proposal of the Committee

Constituent Assembly Committee on Determining the Model of Legislative Organs has proposed for Westminster Model of legislative structure. Accordingly, there shall be two Houses at federal level of legislature that is parliament, along with the Head of State. The Lower House that is House of Representatives shall consist of 151 members and the Upper House – National Assembly – shall consist of 51 members. 76 members of the House of Representatives shall be elected through First-Past-the-Post system. 75 members shall be elected through proportional system. The Committee has proposed that there should be an arrangement also for the representation of women, Madhesis, oppressed ethnicities, *dalits*, indigenous nationalities, backward classes, regions and other communities on the basis of close list as was practised during the elections to Constituent Assembly. The National Assembly shall consist of 38 members with equal representation from each province. 13 members shall be elected by the House of Representatives. They shall be elected from among the communities which are not represented therein as well as reputed personalities of national life and specialists on the basis of single transferrable vote under proportional system. It is proposed that the candidates for the House of Representatives must have attained 25 years of age and that for the National Assembly must have attained 35 years of age.

It is proposed that National Assembly shall be a permanent House. The tenure of its members shall be 6 years whereas the tenure of the members of the House of Representatives shall be 5 years. However, the House of Representatives can be dissolved before its term expires. Moreover, its term can be extended to a maximum of one year during the state of emergency. It is proposed that one of the posts of Speaker or Deputy Speaker of the House of Representatives and Chairperson or Deputy Chairperson of the National Assembly should be occupied by women.

It is proposed that there shall be a unicameral legislature – Provincial Assembly – in the province. The Provincial Assembly shall have a maximum number of 35 members. Of them 18 members shall be elected through First-Past-the-Post system and 17 members shall be elected through proportional system. Electoral systems are proposed in the same manner as Federal House of Representatives. As for the House of Representatives, the term of the Provincial Assembly shall also be for 5 years; it can be extended for maximum one year; and it can be dissolved before its term expires. The National Assembly shall also have a woman Speaker of Deputy Speaker. The Committee proposes that there should be at least 33 percent of women in the legislature of both federal and provincial levels. Moreover, members are prohibited from defection.

The Committee mentions about forming local autonomous units. However, it has not made any structural proposal in the Constitution. It also states that there shall be common form and formation process of local autonomous units under the Provincial Assembly and legal provision shall be made for uniformity in their activities.

The United CPN (Maoist) has basically written a note of dissent in the proposal of the Committee. According to the party proposal, federal legislature should be unicameral and it should be called House of People's Representatives. It shall comprise of 245 members. They shall be elected through direct (FPTP) system with proportionally inclusive representation of the women, *dalit*, indigenous nationalities, Madhesi, Muslim and other communities made through multi-member constituency system on the basis of population and territory. It is proposed that the candidates must have attained 23 years and voters must have attained 16 years of age. It is also proposed that the federal legislature shall nominate certain number of members from among the ethnicities, indigenous nationalities and minority communities which do not have minimum required number for representation in proportion to population. Moreover, it has proposed for making an arrangement to recall the members. The same applies to the provinces.

It is proposed that legislature shall be all powerful. It can create, direct, control and monitor other state organs by itself or through a subordinate mechanism. For that purpose, a powerful standing committee should be formed which can carry on all the business of the legislature when the House is not in session. The Committee shall consist of a maximum number of 21 members with one representative from each province.

Similarly, United CPN (Maoist) has written a note of dissent regarding the formation and election of the legislature. It is of the same nature as that regarding federal legislature. It has proposed 25 to 45 members for the Provincial Assembly. They shall also be elected as the members of federal legislature through multi-member constituency on the basis of ethnic proportion.

Some other members, especially some women CA members, have written a note of dissent stating that women representation should not be less than 50 percent in proportion to population. Similarly, a CA member of Karnali region has written a note of dissent stating that territorial size should also made a ground for making arrangement for its representation.

12.0 Regarding System of Rule

Naturally, public submissions regarding the administrative system are also influenced by political grounds. All forms of administrative system as proposed by political parties are reflected in these submissions in one form or another. Besides, some submissions are close to the views of the parties which are formed for ethnic issues. Those parties have proposed that President or Prime Minister should be Executive Head in rotation in accordance with syndicate system. Such submissions are also presented here.

The submissions show no disagreement that the country should be republic. However, there are a lot of differences regarding the model of Executive. Most of the submissions object to the use of the term “President”. The major submissions are: One of President and Vice President should be woman; the Council of Ministers should be small but inclusive; the same person should not hold the post of President and Prime Minister for more than two terms; the Chief Minister of the province should be selected from among the major local ethnicities/nationalities; MPs should not be minister; if they, however, become a minister, their post should fall automatically vacant; and so on. Some suggest that President should be selected from among persons of civil society rather than from political parties. The following table shall further explain it.

Submissions regarding Executive also alternative in nature. Some submissions regarding administrative structure are based on whether the State adopts parliamentary or Presidential system. For example, President in parliamentary system shall be elected by the members of central and provincial legislatures. He/She should be selected in rotation from among different ethnic, linguistic, cultural and regional communities. Moreover, most of the submissions suggest that Prime Minister should be elected directly by people through adult franchise if parliamentary system continues. Ministers should be nominated from outside the parliament on the basis of their ability and capacity. On the other hand, President in presidential system should be elected through adult franchise. He/She must get full

Rastrapati Mandal or Parliamentary Mandal should be arranged. Accordingly, one member from among indigenous nationalities, Chhetris/Bahun, <i>dalits</i> , endangered nationalities and women should be President or Prime Minister, in rotation, for one year each.
Ministers should be nominated from outside the parliament. If an MP becomes a minister, his/her post shall automatically fall vacant.
At least one member from each province and one from non-territorial communities and minority ethnicities should be nominated in Central Cabinet.
President should be selected from among persons of civil society.
The allowances for Ministers, Prime Minister, President and MPs should be limited.

majority to be elected for the post.

Similar submissions are made for provinces. However, almost all the submissions of indigenous nationalities communities emphasize on the constitutional provision that the provincial government should be led by major ethnic community. Indigenous nationalities communities take it as political preferential right.

Committee on Delineating Administrative Model could not garner majority for any of proposals. However, it is surprising that there is no difference regarding the Executive structures

of provincial and local administration. The model proposed by Congress/UML has got prominence in provinces whereas the model proposed by the Maoists has got prominence at local level.

The Committee has submitted its report by making a parallel study of all the three proposals regarding federal Executive that were put for voting. 18 CA members of the Committee have voted in favour of Executive Presidential system based on adult franchise and as proposed by United CPN (Maoist). According to the system, President shall be elected by adult voters throughout the nation, and the candidate must secure full majority (50+ percent) of the valid votes. If a candidate cannot secure the required votes in the first phase, then there shall be a competition between the two candidates securing highest votes of all. The system resembles with American system. However, there is a provision that the President, while forming the government, shall include parties securing at least five percent seats in the legislature. In this system, there is no Opposition in the parliament.

Congress/UML have made a joint proposal in favor of “*improved*” parliamentary system. It secured 16 votes in the Committee. It is mainly Westminster Model of parliamentary system. It has ceremonial President while the Prime Minister is the Executive Head. The President shall appoint the Prime Minister on the basis of majority in the parliament. However, some new provisions are made keeping in view the dissolution of parliament. Accordingly, a “no-confidence vote” cannot be proposed in the first year of the Prime Minister’s election; similarly, it cannot be proposed before a year after it fails. Though the UML members in the Committee voted in its favour, the party is divided about it. Most of CA members are still in favour of the parliamentary system as they were during the CA elections and wherein Prime Minister is elected directly.

The concept that secured three votes is mainly in favour of Executive Presidency. However, it proposes that President should be elected by a two-thirds majority of the existing members of of the Lower House of Federal Legislature.

One CA member of Nepali Congress has written a note of dissent in favour of parliamentary system of rule wherein Prime Minister is elected through direct election.

13.0 Regarding Judiciary

Public submissions are also related the structure of Judiciary and judicial system. Almost all the submissions suggest the following: Three levels of Judiciary should be structured. It must have perennial freedom. Besides, there must be separate court for women in local agencies. There should be a joint judicial system that recognizes original and traditional judicial system of indigenous nationalities. However, there are different opinions regarding the appointment of the judges. The

Judiciary should be free.
Provinces should have their own judicial system.
There should be village level courts.
There should be separate court for women in local bodies.
Original and traditional judicial system of indigenous nationalities should be recognized.
The disabled should have easy and effective

submissions suggest all the procedures including election, parliamentary endorsement, public hearing and recommendation of constitutional/judicial council.

access to justice.
There should be a special court for hearing the cases related with untouchability.

13.1 Proposal of the Committee

The Committee formed to make arrangements of judicial system has basically proposed for three tiers of court structure – federal, provincial and district/local. Moreover, ilaka, town or village level courts can be formed for easy access of all citizens in justice. The proposal also suggests that a separate bench should be established in district/local courts in accordance with provincial law. It shall resolve family contention, contention related with domestic violence on women, contention related with child rights and contention related with *dalits*' untouchability. It shall also resolve problems that might arise through cultural, religious and traditional law and custom of minority communities including indigenous nationalities, Madhesis and Muslims.

The proposal also suggests that a special military court should be formed in the Chairmanship of Federal Supreme Court that shall hear the appeals over the verdicts of military court. There shall be appeal against the verdicts of this court in Federal Supreme Court.

Legislature shall form a special judicial committee for the appointment of Chief Justice and other Judges of the Supreme Court. On its recommendation, the person endorsed by the majority of members of legislature shall be appointed as Chief Justice or Judge of Federal Supreme Court. Any law graduate who has worked as the Chief Justice or Judge of the High Court of a province for at least seven years, or has practised law for at least fifteen years, or has worked for at least fifteen years in the judicial or legal field, or has worked as a gazetted officer first class or above of the judicial service for at least twelve years is eligible for appointment as a Judge of the Supreme Court. Moreover, the Federal Legislature may present a resolution of impeachment against him/her if a Judge does not fulfill his/her duty or fails to do so due to inefficiency and bad conduct. He/she may be removed from his/her office if such a resolution is passed by a two-thirds majority of the existing members of the Legislature.

There is a similar proposal for the appointment of Chief Justice and Judges in the High Court of provinces on the recommendation of special judicial committee of Provincial Legislature and its endorsement by the majority of the Legislature. There are similar arrangements for their removal. Similar proposal is made for the appointment of Judges at district and local levels on the recommendation of special judicial committee of House of People's Representatives.

The work of the special judicial committee of the Federal Legislature is not limited to making recommendations for the appointment and removal of the Judges. It is proposed that the Committee shall consist of a maximum of nine members that shall be elected by the Federal Legislature. It shall be chaired by the Vice Chairperson. The members shall consist of Federal Minister for Law and Justice and other members having proportionally inclusive representation.

The Committee is also vested with the right to follow the Constitution and analyze the issues that are directly concerned with the rights of the post of national importance (Head of State or Other Authorities elected by the Legislature) and with political issues; and analyze the Constitution and federal law in the matter that is inconsistent with the Constitution. Its decision shall be final. There shall be no complaint, appeal and writ against it in any court.

Similarly, it has proposed about the formation, and work, duties and rights of Judicial Committee at provincial and local level.

There is great disagreement also on the Committee's proposal. The proposal is basically in the line of United Maoist. Nepali Congress, CPN (UML) and other parties have opposed the proposal stating that direct control of the Legislature on the freedom of Judiciary shall have a negative effect of the democratic values.

14.0 Regarding Constitutional Bodies

There have also been submissions on free constitutional bodies and commissions. The major submissions are: continue the present constitutions and form separate commissions for indigenous nationalities, endangered communities, child labourers and kamlaharis, peace and reconciliation, animals and wildlife, and disabled, elders, unemployed, and so on. Commissions should be formed on the basis of ethnic, linguistic and gender inclusion. There should be compulsory representation of marginalized classes.

Continue the existing ones and form new Commissions.
Commission for Indigenous Nationalities
Commission for Indigenous Nationalities Women
Commission for the Preservation and Promotion of Endangered Ethnicities, Languages and Communities
Commission for Rehabilitation of Child Labourers and Kamlaharis
Peace and Reconciliation Commission
Commission for Animals and Wildlife
Separate commissions for such matters as disabled, elders, unemployed, women, <i>dalits</i> , nationalities, agriculture and land reform

The Committee has made its proposal beginning with a Preamble. The major proposal of the Committee has proposed to continue the constitutional bodies that have been provisioned in the Interim Constitution, that is Commission for the Investigation of Abuse of Authority, Commission for Auditing, Public Service Commission, Election Commission and Human Rights Commission. Besides, it has proposed for 11 commissions including Women Commission, Dalit Commission, Indigenous Nationalities Commission, Commission for the Preservation of Rights and Interests of People with Disability, Minority and Marginalized Communities and Backward Classes and Regions, Madhesi Commission, Muslim Commission.

The Commissions shall consist of one Chairperson and two members on the basis of proportional representation and inclusion. The same applies to the Commissions to be formed in the provinces.

15.0 Regarding Social and Cultural Solidarity

Almost all the organizations included in the study have also incorporated public submissions regarding social and cultural solidarity. Submissions vary according to ethnicities and communities. The submissions made by indigenous nationalities include: change the national flag, national anthem and national symbols in a way that reflects cultural diversity of all the ethnic communities; provide right to every community for the preservation and promotion of their language, religion, script, culture and tradition for the identity of minority and marginalized communities; declare all religious and cultural festivals as public holidays; recognize Nepali, English and Hindi as languages of official business; give national recognition to Braille script and sign language; and so on. Other submissions suggest that legal arrangements should be made for polygamy in order to prevent minority communities from disappearing.

15.1 Proposal of the Committee

The jurisdiction of the Committee and the matters related with the Committee for the Protection of Rights and Interests of Minority and Marginalized Communities are mostly same. Therefore, most of the issues are repeated here. Here is a brief discussion about the proposals which are not included in the issues of other Committees. This Committee has also introduced its proposal with a Preamble. It states, "... Ensure political, economic, social, cultural and linguistic rights of different units under federal structure and make a strong resolution to promote social solidarity through mutual goodwill, trust and respect."

It has following major proposals.

- Every community shall have the right to preserve, promote and adopt their language, script and culture in order to preserve, promote and develop their culture, language and script.
- All the languages spoken as mother tongues in Nepal shall be the national languages.
- Sightless and people with impaired hearing shall have the right to use Braille script and sign language.
- The Nepali language in the Devanagari (vernacular) script shall be the language of official business of the Central Government.
- Any language that fulfills certain standards shall be recognized as a language of official business of the Central Government on the recommendation of Language Commission after it is endorsed by Central Legislature.
- One or more than one language that is spoken within the province shall be the language of official business of the Provincial Government along with official language of the Central Government as specified by the law of Provincial Legislature.
- Other languages shall be the language of official business of local bodies as specified by the law of Provincial Legislature.

16.0 Regarding the Protection of National Interest

The public submissions regarding the protection of national interest include: enhance national dignity while defining national interest; preserve national security, social goodwill, political stability and global peace; alleviate poverty; and create a society free from discrimination. Moreover, arrangements should be made to integrate Maoist combatants; there should be inclusive recruitment in Nepal Army, Armed Police and Nepal Police, army should be democratized. All having attained 18-20 years of age should be given military training. Treaties and agreements should be endorsed by the Legislature; and so on.

16.1 Proposal of the Committee

The Committee proposes such issues as Preamble, use of sovereignty, fundamental rights and duties, right to self-determination, political parties and referendum. Yet it has tried to link them with national interest. It is for the first time that the issue of national interest has been proposed in a broader sense in the Constitution. The Committee has the following proposal about national interest:-

The basic issues of national interest include protection of sovereignty and national integrity; national independence and identity; national unity on the basis of consensus and collaboration; social and cultural coordination; proportional and inclusive, multi-party democratic, federal republican political system; economic progress and prosperity; development of transport, communication and technology; maintain social goodwill among different castes and ethnicities, classes and groups and create a nondiscriminatory equitable society.

The Committee made the following proposal under civil duties: “The Government can call all the citizens who have attained 18 years of age for military training for national security. Accordingly, it shall be the duty of every citizen to participate in the training and serve the nation.” Similarly, it has included the foreign policy and relations of Nepal under the Directive Principles of State. It states, “The international relations of Nepal shall be operated with full commitment to the principles and norms specified in international law and United Nations Charter that an independent nation shall respect the independence and sovereign equality of all the nations and shall not intervene in the internal affairs of another independent nation, and make peaceful resolution of internal contention among the nations.”

The proposal prohibits treaties and agreements that narrow the boundaries of Nepal, makes unfavourable effect on provincial integrity, undermines national unity and is against the interest of Nepal. The proposal also states that treaties regarding peace and friendship, defence and military relations, boundary of the State of Nepal, and natural resources and their distribution should be endorsed by a two-thirds majority of the Central Legislature while other treaties and agreements should be endorsed by a simple majority.

It is proposed that there shall be a National Security Council consisting of seven members including the Executive Head as Chairperson and Defence Minister. It shall draft policies regarding national interest, defence and counter-defence, and make recommendations to the Council of Ministers or Executive Head to mobilize and manage the National Army of Nepal. All the organs of security, including the army shall be accountable to the Government. There shall be a Commission for Military Service, Commission for Police Service and Commission for Paramilitary Force. The Head of Nation shall be the Supreme Commander of the national army of Nepal. He/She shall appoint the Commander-in-Chief (Chief of Army Staff, COAS) on the recommendation of the Council of Ministers.

Political parties cannot run its activities in ways that undermine national sovereignty, integrity and unity. Such activities shall be punishable in accordance with law. Agreements regarding water resources and granting permission to other persons and organizations than national persons or organizations can be made after the Central Legislature endorses them with a majority.

17.0 Miscellaneous

The Constitutional Committee has made a draft proposal by incorporating all the issues that were not included in other committees. Those issues are: Nepal Nation, flag, amendment of the constitution, political parties, emergency powers, transitional provisions, etc.

The Committee makes the following proposal regarding Nepal Nation:

Having multi-ethnic, multi-lingual, multi-religious and multi-cultural characteristics with common aspirations, and being committed to national independence, integrity, national interest and prosperity of Nepal, all the Nepali people collectively constitute the nation.

Similarly, the State of Nepal is called “*an independent, indivisible, sovereign, secular, inclusive, oriented towards socialism, republican, multi-national State*”. The proposal has retained the existing national flag, national anthem and coat-of-arms.

An inevitable aspect of the Constitution is the method and process of its amendment. In this regard, the Committee has regarded such democratic values as “*sovereignty vested in people, republic, rule of law, fundamental rights, free judiciary, pluralism, multi-party competition, adult franchise and periodical election*” as unalterable (i.e., non-amendable). Other Articles of the Constitution can be amended or abrogated without contradicting these issues. The Committee has proposed different procedures and methods for the amendment of any Article of the Constitution. Accordingly, a) a referendum can be held on the proposal for amendment after the majority of members of the Federal Legislature approve it, b) if the proposal for amendment is endorsed by a majority of valid votes in the referendum, the Article shall be deemed amended in itself, c) the proposal for amendment can be presented in any of the House of Federal Legislature or the Legislature of any Federal units as a Bill, d) such a proposal requires the endorsement of the majority of members of the Provincial Legislature if it is related with

changing the provincial boundary or jurisdiction, e) if the proposal for amendment is related with a certain province, it requires only the endorsement of the majority of members of the Legislature of the concerned province, f) the amendment Bill presented along with the endorsement of the Provincial Legislature shall be forwarded to the President for approval if it is endorsed by a two-thirds majority of the Federal Legislature, g) the President shall approve the Bill within 15 days.

The provision is made to amend or abrogate any Part of an Article of the Constitution in order to facilitate the fulfillment of its goals or to be consistent with time. It is a relatively political matter how a constitution is or is not developed. The unalterable aspect of the Constitution is not permanent and universal only because it is written so.

The proposal to hold a referendum for the amendment is important. It is not necessary to disagree with it. However, the required number of members for making such proposal should be specified. The universal norm is 25 percent of members. Moreover, it is necessary to state that the Government can also hold a referendum.

The proposal is worth considering in terms of federalism. According to the principle of federalism, Centre or province cannot unilaterally change the relations between the federation and units. It needs bilateral consent and participation. Therefore, it has clearly accepted the principle of federalism on amendment of the constitution.

The Constitutional Committee has also made proposals regarding political parties. It states that *“persons committed to common political ideology, philosophy and programme can form and operate parties and gain people’s support and cooperation while remaining under law”*. Besides, parties should be inclusive and democratic. There shall be no prohibition against parties. However, parties cannot be run on the basis of the same ideologies, philosophies and programmes.

Parties can be registered at the Election Commission only for the purpose of elections. However, it does not explain about the status of the parties which shall not contest in the elections but shall organize and mobilize people. It is the parties’ choice to contest or not contest in the elections. However, they need legal status to approach people. It helps make them more responsible and sensitive toward people. Therefore, it is expected that they are legally registered and the activities of unregistered parties shall be regarded as illegal. The report is, however, silent about the economic transparency of parties. Here, party expenditures depend on members’ levy and civil assistance. However, the process is not very transparent. It is believed that if the Constitution specifies about the economic transparency and internal democracy of parties, their accountability to people shall help develop the party system.

The proposal and provisions regarding emergency powers are the same as the existing ones. If a grave emergency arises in regard to the sovereignty or integrity of Nepal or the security of any part thereof, whether by war, external aggression, armed rebellion, extreme economic disarray, natural disaster, the President on the recommendation of the Council of Ministers of the Government of Nepal may, by Proclamation or Order, declare a State of Emergency to be enforced in Nepal or any specified part thereof. The Proclamation shall be approved by a two-

thirds majority of the Parliament. The period of the State of Emergency shall be three months and another period of three months can be added thereto through the endorsement of the Parliament.

18.0 Conclusions and Recommendations

At the moment, Nepal is undergoing the gravest political transition of history. The major responsibilities during the transition are to reach the peace process to a logical conclusion and build a new constitution through a Constituent Assembly. All the past structures and norms of state administration are not only being questioned but also destroyed fast. Therefore, the new Constitution needs to make an open scrutiny of past experiments and experiences and establish new structures and norms.

People's participation in the process of constitution building is also symbolical. It establishes citizens' ownership towards the new constitution and the institutions, values and procedures of self-rule get public consent. United Nations and different donor agencies based in Nepal have been assisting in facilitating citizens' access to the process of constitution building. Different levels and sectors of civil life of Nepal have made personal and collective submissions regarding the new constitution.

18.1 Summary

The study makes a comparative analysis of the public submissions of different sectors of Nepali society regarding constitution made by 17 organizations which have been assisted by UNDP/SPCBN in constitution building through democratic dialogue and of the preliminary drafts along with concept papers prepared by the Thematic Committees of the Constituent Assembly.

In the process, it has also tried to take as reference the public submissions regarding the constitution as made by a network of some other organizations – COCAS, NGO Federation, CIZOP, Pro-Public and Mirest Nepal, that are of the same nature as UNIFEM, UNICEF and CIDA they collaborated with.

The organizations included in the study have different backgrounds. They represent the diversity of Nepali society. They have created a network with other organizations and prepared a long list of issues of their concern and which should be addressed and provisioned by the new Constitution. They have also presented them to the Thematic Committees of Constituent Assembly.

Overall, these submissions have incorporated the issues from the Preamble of the future constitution to the transitional provisions. Yet most of the submissions give special emphasis on the rights of the historically marginalized communities, their access and representation in state structure, end of discrimination, recognition of ethnic/linguistic and cultural diversity. The major points incorporated in the submissions are as follows:

- 1) Institutional consolidation of peace and democracy,
- 2) Minimum guarantee of education, health and livelihood, and clear guarantee of fundamental rights in accordance with universal human rights,

- 3) Proper representation of ethnic, linguistic, cultural and regional diversity in state structure,
- 4) End of discrimination; especially, special constitutional provision along with state policy of social justice and positive discrimination for the advancement of marginalized communities including women, *Dalits*, Madhesis and nationalities,
- 5) Proportional inclusion of all ethnicities and communities in state structure,
- 6) Structure of federal democratic state incorporating all ethnicities and communities,
- 7) Fully democratic, people-elected, inclusive, just and accountable administrative system.

Almost all the Committees have incorporated these issues in their proposals and there is not much disagreement about them. The Committee proposals have mentioned about the access and representation of all in state structure. Almost all the Committee reports have stated about special arrangements for all that are considered as marginalized, including nationalities, Madhesis, *Dalits*, women and people with disability. The issues of many Committees are common and repeated. Almost all the Committees are very sensitive and ambitious about these issues. Therefore, these issues are all-pervasive. It is expected that these issues shall be consistent in the integrated draft.

Most of the issues are linked with the special aspirations and priorities of Madhesi community and nationalities. They are as follows:

- 1) Right to self-determination
- 2) Creation of federal province on the basis of historical sites of indigenous nationalities
- 3) Preferential right to the major local ethnicity in the post of Chief Executive post of the province
- 4) One Madhes One Region consisting of Terai districts from Jhapa in east to Mahakali in west.

The preliminary drafts along with the concept paper of all the 11 committees of Constituent Assembly have incorporated almost all these demands excluding “One Madhes One Province”. The public submissions collected under the democratic dialogue of UNDP/SPCBN are clearly reflected in the concept and draft of the Committee. Moreover, the Committee report has recorded about the submissions made by 17 organizations to the CA Committees. However, the Committee reports and drafts are not prepared only on the basis of the submissions of these 17 organizations. Overall they have tried to incorporate the suggestions and aspirations of political parties, concerned groups, thematic experts and common people.

However, the Committee reports are themselves incomplete, contradictory, full of party differences, and often inconsistent with democratic values and norms. Therefore, political parties, civil society and different communities have shown differences regarding the method and priority of moulding them in constitutional structure and procedure.

It is necessary to have much consensus among the political parties for preparing these preliminary drafts of the Committees as the first draft of the Constitution. At present, an informal Committee of the Constituent Assembly is trying to study these reports and build consensus. Moreover, the proposal of the Committee on Natural Resources, Economic Rights and Revenue Distribution (Delineation) has been revised after a consensus. Similar consensus can be built at this level for a couple of Committee reports. However, it is inevitable to have consensus among top leaders on other many issues of extreme political importance like determining federal units, administrative system (Executive, Legislative and Judiciary) and electoral system.

18.2 Discontent and Contentious Issues

The country witnessed great change in political equation when the Thematic Committees of Constituent Assembly reached the stage of preparing reports. United CPN (Maoist) quit the government then. Most of its activities were oriented towards street protests. It was but natural to affect the Committees' business. Consequently, the Committees could not build consensus on their proposals. There was disagreement on several words. Most of the contentious issues were resolved through a majority decision. Initially, no "*note of dissent*" was written after two of the Committees – Committee on Protection of National Interests and Committee on Rights and Interests of Minority Communities – made decisions through majority. But thereafter it became a trend of writing "*note of dissent*" in the reports of all the Committees. Most of the differences are limited to status of word that parties attached to them, for example, "People's War", "Madhes Movement", "People's Republic", and so on. Others are genuine in nature, for example, administrative system, electoral system, provincial structure, and so on.

The genuine differences among the major political parties are as follows:

- **Structure of Executive:** United CPN (Maoist) is in favour of administrative system with the Executive President elected through adult franchise. On the other hand, Congress and UML are in favour of parliamentary system with President elected from the Parliament as the Executive Head. Some Madhes-oriented parties are also in favour of a President elected from the Parliament as the Executive Head.
- **Form of Legislature:** Many parties including Nepali Congress and CPN UML are in favour of a bicameral legislature. On the other hand, the Maoists are in favour of the supremacy of a unicameral legislature. Maoist and other parties also basically disagree upon the election to the legislature. The Maoists are in favour of a First-Past-the-Post system of electing candidates from multi-member electoral constituencies along with ethnic quotas. Other parties are mostly in favour of a mixed system with proportional representation.
- **Judiciary:** Similarly, other parties are in favour of a free Judiciary that can make the final analysis of the Constitution. However, the Maoists MPs are in favour of a controlled Judiciary. There are differences on many issues like the process of the appointment of Judges.

- **Formation of Provinces:** The Committee has decided about creating structure of 14 provinces as federal units through a majority of Maoist and UML but UML wants to rethink on it. The proposed names, demarcation and number of provinces have aroused responses throughout the nation on ethnic and cultural grounds. Especially, the proposal of preferential right has narrowed the universal norms of democracy and election.
- **Language Policy:** There is no disagreement that Nepal is a multi-lingual State. Proposed drafts have already accepted this fact. As regards the provinces, the Committees have proposed that they can make the contact language of national level and local languages as the language of their official business. However, Madhesi parties have especially shown differences by demanding that both Nepali and Hindi should be made contact languages and languages of official business at the Centre.
- **Pluralism:** Though the Maoists have followed multi-party competition, they have theoretically rejected “pluralism”. Other parties are more suspicious about them. They view that once they have accepted democracy, they should not question "pluralism" as part of the process.
- **Land Reform:** As for land reform, it is not a big issue to have contention about certain terms. Once it is mentioned that compensation shall be provided in accordance with law while acquisitioning landholdings exceeding the limited landholdings most contention is minimized.
- **Mandatory Army Training:** The Committee on Protection of National Interest has passed a proposal through a majority along with United CPN that it shall be a fundamental duty of all the citizens of Nepal having attained 18 years of age to take military training.

These varying opinions are not unalterable. All the three alternatives of administrative system are found in democratic exercise. There is no logic behind whether it is more democratic or more people-oriented (janwadi). It is easy for a big party to acquire power in the Presidential system while small parties can bargain with major competitors during elections. Any system can yield expected results through sufficient public support and efficient leadership.

The country is heading toward federalism. In this regard, a bicameral legislature is better than a unicameral legislature. It is also experienced by most federal countries. Similarly, the supremacy of all-party standing committee of the legislature is not consistent with democratic values. The better structure is to provide checks-and-balances.

The process of selecting Judges is different in different countries. The legislature can also hold elections. However, after their appointment they should be given freedom in imparting justice. It needs a mechanism to watch their conduct and work efficiency. However, it should be free from frequently changing political equations.

The provincial structure is not made on the basis of identity. In general, any name should be relative to ethnicity/culture. However, it does not mean that a name considers another as alien and prohibits him/her from it. It is good to have a commonly acceptable name. However, it is necessary to rise above the mentality that everything is lost with a different name. Nonetheless, the issue of political preferential right is not democratic. The political ambition of an ethnicity cannot and should be a constitutional provision. It is a matter of parties' choice to establish the leadership of certain ethnicity during the elections. At the most, it can be placed under the Directive Principles of State.

Language is a sensitive issue. It is linked with both right and opportunity. However, the official business of the State cannot be done easily and simultaneously in many languages. At the Centre, there can be one language of official business while the Provinces can have two or three languages of official business. It is hard to resolve the problem if a party makes a certain language as an issue of its prestige and identity.

Military training is not a big issue at all. However, it should be voluntary for the citizens. Similarly, it would be more meaningful to adopt an effective policy of land use rather than limit the issue of land reform to limited landholdings. It is an unnecessary stance whether the term "pluralism" is used in the Constitution or not. The proposals made so far by the Committees do not prohibit pluralism in the constitution. The word does not lose its meaning and importance just because it is not written.

18.3 Suggestions

The Committees of Constituent Assembly have greatly incorporated the different issues of the new constitution in their reports. They have mentioned about their theoretical matters as well as international practice and experiments made in Nepal on them. Besides, the Committees have referenced to the public submissions made through the questionnaires of the CA members, submissions made by different organizations and concerned groups/communities and the suggestions and thoughts presented to the Committee by guest experts as well as personally. Attempts have also been made to use them while preparing the preliminary draft of the Constitution. However, the Committees' proposals were divided along party lines as political parties adopted varying perspectives, norms and priorities. Every contentious proposal is passed with simple majority. Proposals need an agreement or at least a two-thirds majority to endorse the Constitution. It does not seem possible in the status quo. Moreover, there are grave theoretical and priority-wise differences among the parties on many provisions of the proposed preliminary draft. The Constitution cannot be built without correcting them. Third, drafts are unexpectedly long and in many cases inconsistent. They should be revised by directly addressing the public submissions so far as possible or closely addressing their feelings.

In the above context, political parties, civil society, concerned groups/communities, intellectual/professional experts and international community should collaborate and make a consensus about revising different aspects of the proposed drafts. On the basis of this study, here are some brief suggestions.

Political Parties: Political parties play a decisive role. In the Nepalese context, no single party can play a decisive role today. The biggest party in the Constituent Assembly – United CPN (Maoist) – has only 40 percent of the seats. It can prevent other parties from endorsing the Constitution. However, they cannot endorse it all alone. Keeping this in view, the Maoists should play an important role in creating a consensus on the basic issues of the Constitution rather than forcing others to follow their own political priorities. Thus they can have a positive political effect on people.

Nepali Congress and UML are established parties in open politics. Their role in building consensus can be highly important. They are expected to preserve democratic values and norms and show flexibility in political and administrative structures.

Maoist, Congress and UML have acquired more than 70 percent of seats of the Constituent Assembly. However, it is not proper that they impose their decisions on others as they have been doing of late. Numerically, Madhesi parties have hardly 14 percent of seats in the Constituent Assembly. However, they have direct influence in the politics of Madhes-Terai. There are also other small parties. Therefore, parties must build up a great consensus among themselves. It can and should be initiated by Maoist, Congress and UML by taking other parties in their confidence.

Consultations with Concerned Groups: The Committees of Constituent Assembly have collected open suggestions from concerned groups but have not made any consultations with them. It is necessary. Today communities are mobilized in collective issues and launching movement has been an easy strategy for all. It is not that political parties have expected control and influence over them. It is necessary to hold formal/informal consultations with them. It can be initiated by the Constitutional Committee. Especially, it is necessary to take them into confidence in regards to federalism. It shall not only enhance mutual relations and trust but also help build consensus on the Constitution.

Consultations with Subject Experts: Equally important is to hold consultations with the experts of the concerned subjects for revising the draft of the Constitution and for thematic clarity. Such consultations should be made to widen alternatives rather than limiting them in favour of or against a certain proposal. If needed, consultations can be made also with international experts.

Civil Society: Undoubtedly, civil society has played a very important role in democratic movements and the peace process of Nepal. However, their role after the movements has been limited. Parties and concerned groups have their own stances. They may not be flexible. Civil society can help build flexibility and understanding. Constitutional Committee and political parties can invite civil society to play its role. At the moment, they also play a pro-active role for building consensus.

International Community: International community also has a great stake in Nepali democracy, peace process and prosperity. It is their test to reach the peace process to a logical conclusion and get success in constitution building. UNMIN, UNDP and bilateral and multi-lateral agencies working in Nepal are somehow related with the peace process and present

political transition of Nepal. They can assist in making peace process and constitution building successful in at least, three ways:

- a) By pursuing and pressurizing the political parties to reach a consensus,
- b) By facilitating and collaborating with the concerned groups, civil society and thematic experts on issues and themes, and
- c) By collectively publicizing their stake.

In the end, this attempt for peace and democracy in Nepal has national and international importance. It is a prime matter that Nepali people shall benefit from its success. Yet, it carries a lot of possibilities to be exemplary in peaceful political transformation of armed conflict and institutional consolidation of democracy. It can be a model of success if it can arouse expected consciousness and a sense of responsibility in all.

Appendix – 1

Integrated Table of Public Submissions

S.No.	Subject	Public Submissions
1	Related with Fundamental Rights and Directive Principles	
	Public submissions regarding basic fundamental political and civil rights	<ul style="list-style-type: none"> • Right of every person to live • Right against discrimination meted to any citizen on the basis of caste and ethnicity, heredity, religion, language, class, gender, disability, profession and occupation • Freedom of thought and expression, to establish organizations, assemble, form unions • Right to information, freedom of publication, broadcasting and press • Freedom to acquire, own, and sell property • Freedom to engage in an occupation of his/her choice and right to employment • Equal right of women and men over parental and family property • Right of all citizens to be equal before the law • Freedom to practice and follow religion and culture of his/her faith • Equal treatment of the State toward all religions • Prohibition against forced or tempted conversion • Freedom of free movement from one province to another province and all over the country, to engage in an occupation and reside there • Right to education, health, employment, accommodation and minimum livelihood along with food security • Guarantee against encroachment upon personal freedom • Right against being detained without being informed of the ground for such an arrest and right to consult a legal practitioner of his/her choice • Right against torture and to receive compensation by the victim of such torture • Right of all to compulsory and free education up to school level1 grade 12 • Right to social security • Right to entertainment • Right of labourers and to form trade unions

		<ul style="list-style-type: none"> • Right to equal wages for equal work • Right to live in a clean environment
	Special for women	<ul style="list-style-type: none"> • Right regarding reproduction and health • Guarantee to end domestic and sexual violence against women • Equal right of women and men in cases relating to divorce • End of all forms of discrimination and exploitation against women
	Rights of children	<ul style="list-style-type: none"> • Right of every child to nourishment, basic health, education and social security • No child should be subjected to physical, mental or any other form of exploitation and provision of penalizing the exploiter.
	Special for indigenous nationalities	<ul style="list-style-type: none"> • Constitutional and legal rights provisioned in ILO Convention 169, UN Declaration Regarding Indigenous Nationalities and other international instruments should be ensured in the Constitution as fundamental rights. • The right of the indigenous nationalities to self-determination should be recognized as a fundamental right. • Preferential right of the indigenous nationalities over natural resources like water, land, forests and so on owned and occupied by them. • Right of the indigenous nationalities to highest level of education in mother tongue • Right of the indigenous nationalities to information in mother tongue • Right to legal advocacy in mother tongue • Right of the indigenous nationalities and other excluded communities to reservation
	Special for women of indigenous nationalities	<ul style="list-style-type: none"> • Recognition of identity of the indigenous nationalities of women • Guarantee of personal and collective rights of the indigenous nationalities women • Rights of the indigenous nationalities women should be ensured in accordance with international treaties, covenants and laws Nepal is a party thereto. • Right of the indigenous nationalities women to determine their priorities • Right of the indigenous nationalities women to information and communication and to information in mother tongue

	Dalit Rights	<ul style="list-style-type: none"> • Right against untouchability and ethnic discrimination • Prevention of untouchability and penalizing the person committing untouchability as an offence against humanity • Freedom of <i>Dalits</i> to enter a temple and worship without intervention • Right to receive compensation and scientific reservation
	Special for people with disability	<ul style="list-style-type: none"> • There should be an end to all forms of discrimination made on ground of disability and such discrimination should be made illegal and punishable. • Right of children with disability regarding education, health and entertainment should be ensured. • The State should protect support material, Braille and sign language, used by people with disability as fundamental rights and provide such facility. • The State should provide an assistant to people who are highly incapacitated and people with disability as a basic fundamental right.
	Other rights	<ul style="list-style-type: none"> • Investigation of homicide and inhuman incidents that took place during armed conflict, punishment to the guilty offenders and right of victims to be compensated • Consumers' rights • Rights of prisoners in jail should be mentioned. • Right to environmental justice • Right to clean drinking water • Right to land • Right to energy
	Related with directive principles	<ul style="list-style-type: none"> • To promote youth representation and participation at all levels of policy making of the State • To ensure equal participation of people with disability in national development along with special arrangements by the State for their education, health and employment • State guarantee to make all types of physical structures disabled-friendly • The State shall arrange for safe accommodation for orphans, helpless or disabled without any guardian. • The State shall provide disability allowances to all people with disability in order to provide

		guarantee for social security.
	Regarding citizenship	<ul style="list-style-type: none"> • Guarantee of equality among the citizens • The names of both parents (mother and father) should be mentioned on the certificate of citizenship. • Grounds for acquiring/providing citizenship • Hereditary (By descent) • Inborn (By birth) • Certificate of landholding of mother or father • Citizenship of mother or father • Title (surname) of daughter in accordance with place of birth • The Madhesi communities should be allowed to post photos on the certificate of citizenship in accordance with their dress (dhoti, gamchha [loincloth, towel]). • Woman married to a foreign national should be allowed to use her spouse's name and title. • Double citizenship of Centre and province • Acquiring citizenship through an easy process • A foreign national residing for 20 years should be provided with citizenship.
2	Public submissions regarding the rights/interests of minority and marginalized communities	<ul style="list-style-type: none"> • The minorities should be defined on the basis of the lack of access or limited access to economic, social, political and education resources. • The marginalized communities should be defined on the basis of being a community that is excluded or discriminated against and subjected to inequality on religious, linguistic, gender, class and regional grounds. • People under the line of poverty should be defined as a highly marginalized community. • The rights of minority ethnicities, languages, religions, genders, etc should be ensured in accordance with the minority rights provided by the United Nations. • A separate schedule should be made for <i>Dalits</i>, indigenous nationalities, Madhesi and marginalized people. • There should be at least one representative in the state structure from minority and marginalized communities.
	Related with indigenous nationalities	<ul style="list-style-type: none"> • The indigenous nationalities should be identified and recognized in the constitution as the children of first inhabitants before the creation of the State.

		<ul style="list-style-type: none"> • The original place of residence of the indigenous nationalities and area of that region should be specified in the Constitution. • There should be a provision for the indigenous nationalities to make their economic, social and cultural development in a free manner under the right to self-determination. • The right of the indigenous nationalities to self-rule should be implemented. • Free inclusion, inclusive representation and leading role of the indigenous nationalities women at every level of state structure should be ensured. • Restructuring judicial system on the basis of traditional values and norms of the indigenous nationalities women • There should be fully proportional and inclusive representation of the indigenous nationalities women and men on the basis of population in legislative-parliament, Executive, Judiciary and at every level of making and implementing state policies. • Special rights of women, elders, children and physically disabled or differently able people of the indigenous nationalities should be ensured. • There should be special arrangements for issues like political, economic, social, linguistic, cultural, educational, employment, health, etc. related with the indigenous nationalities women. • The State should seek free and informed consent from the indigenous nationalities women while making policies and programmes that might affect them. • There should be special arrangements for the livelihood of women who are the victims of conflict and belong to displaced indigenous nationalities. • There should be clearly specified arrangements for the access, participation and control of the indigenous nationalities women in State services, facilities and programmes. • The State should make special arrangements for the women of highly marginalized, endangered indigenous nationalities for their economic, political, social, educational, health and cultural development.
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		<ul style="list-style-type: none"> • Right of the indigenous nationalities to perform work in government offices in mother tongue or through an interpreter in courts • There should be a provision of proportional quota system in order to ensure the access and representation of the indigenous nationalities in administration, security, education, health, employment and private sectors. • Preservation and development of the languages, scripts, religions and cultures of minorities and indigenous nationalities • Freedom to form ethnic political organizations
	Regarding Madhesi communities	<ul style="list-style-type: none"> • Equal rights in proportion to population • Inclusion in all sectors • Mother tongue education • 50 percent reservation for all the Madhesis • One Madhes/One Province
	Regarding Muslim communities	<ul style="list-style-type: none"> • Muslims are also a separate community like other nationalities, Madhesis and <i>Dalits</i>. Therefore, they should be constitutionally recognized. • There should be a constitutional guarantee of Muslim Personal Law in order to practice marriage, divorce, property inheritance in accordance with Muslim tradition. • There should be constitutional arrangements for National Muslim Commission. • Arrangements should be made for Standing Haj Committee. • Besides, there should be a constitutional provision of forming Waqf Board, Halali Committee for the right and interest of Muslim community. • The Muslim community should not be avoided while making a special package for other marginalized and backward communities. • The Muslim women should get proportional share in the quota reserved for women. • Muslim girl students or Muslim women personnel should not be forced to wear school dress (uniform) or other formal dress that is inconsistent with Islam. • Recognition of Urdu language • Arrangement for modern education in Madarsas and formation of Madarsa Board • Arrangement of teachers and free education in Madarsas

		<ul style="list-style-type: none"> • Separate schools for girl children • Opportunity for and protection of employment • Representation at all levels of the State
	Women and gender issues	<ul style="list-style-type: none"> • Economic assistance financial aid to single women • Arrangement for single women to live with dignity • Arrangement of delivery allowances for delivering women • Arrangement of allowances to the widows without age discrimination • End of malpractices like dowry, using girl children's property, elopement (<i>jari</i>) and child marriage • End of malpractices and superstitions like polygamy/polyandry, witchcraft and shamanism • End of gender and social discrimination • Social security for women and children's education, health and nutrition
	Related with the <i>Dalits</i>	<ul style="list-style-type: none"> • While defining minorities and marginalized communities, it should be clearly defined that the <i>dalits</i> have been a community that is forced to be untouchable on the basis of their caste, heredity and occupation. • Separate quota for Madhesi <i>dalit</i> women • Arrangement of land for landless <i>dalits</i> • Right to education, health and employment – right of <i>dalits</i> to get free education • End of exploitation of <i>dalit</i>, kamaiya, haliya, kamlari and wadi communities
	Regarding children	<ul style="list-style-type: none"> • Arrangement of free education to victim children • Government protection to street children, begging children and orphaned children • Special arrangement for disabled and conflict-ridden children • End of child labour exploitation • Peaceful environment and education for children
	Related with people with disability	<ul style="list-style-type: none"> • The State should adopt a policy of positive discrimination in order to guarantee employment to people with disability. • Arrangement of livelihood allowances for those disabled people who cannot do any enterprise and are unemployed • People with disability should be classified as marginalized.

		<ul style="list-style-type: none"> • Data should be regularly collected and updated for identification of people with disability. • The State shall adopt a policy of positive discrimination to preservation the rights of the people with disability. • In every state agency, there should be compulsory arrangement of a branch related with the issues of the people with disability. • There should be an arrangement for compulsory participation of the people with disability in local authorities. • There should be facilities for the disabled in studies. • There should be an arrangement for all types of medical treatment of the disabled. • There should be an arrangement for allowances to the disabled and physically weak people. • The State should make a policy to preserve the economic rights of the people with disability, build capacity and provide opportunities in accordance with ability, capacity and disability. • The State should promote for fully acquiring social, economic and cultural rights. • The State should make a special arrangement for preservation and promotion of traditional skill and knowledge. • Braille script, touch language, lip study and sign language that are used by the people with disability shall be accepted as a part of life. • There should be an arrangement for free education, health, accommodation, food and allowances to all disabled people including those who were disabled in people's war. • Employment opportunities in accordance with the disabled people's capacity and condition • Guarantee of complete life for the disabled
	<p>Regarding social justice, social security, reservation and positive discrimination</p>	<ul style="list-style-type: none"> • Arrangement for elderly allowances • Arrangement for employment for all or unemployment allowances • Economic arrangement as a ground for living for orphan, disabled, sightless and senior citizens • Arrangement for special quota and reservation for minority, excluded and marginalized communities • Reservation for ten years • There should a separate arrangement for

		<p>reservation and positive discrimination for women, indigenous nationalities, <i>Dalits</i>, Madhesis, backward regions, disabled, youth, HIV affected, highly marginalized communities, single women and third gender people.</p> <ul style="list-style-type: none"> • There should be free education up to class 12 for marginalized class. • Special arrangements for health and education for marginalized communities • Classification of single women, men, incapacitated and disable people in accordance with their condition and arrangement for due protection • Elderly allowances for all attaining 60 years of age • Arrangement of ration cards for marginalized and poor class.
3	State restructuring	<ul style="list-style-type: none"> • The State structure should be federal democratic republican (FDR). • The State should be secular. • There should be three tiers of administrative structure (federal, provincial and local). • There should be multi-party competitive system. • Even the provinces can build constitution. • Currencies should have provincial logo. • The units should be named on the basis of ancient civilization and cultural identity. • The existing national flag should be redesigned in a way that reflects the provinces. • Ethnic autonomous states along with self-determination should be established on the basis of historical relation of the indigenous nationalities with lands (territory) and historical states established thereupon. • Federal units should be created and named on the basis of language, ethnicity, territory and cultural identity. • Provinces should be carved on the basis of ethnic, geographical, cultural and development possibilities. • Non-geographical units should be formed for the <i>Dalits</i>. • Provinces should be named on the basis of religious area, cultural and regional identity, historical importance, mountains, hills and rivers.

		<ul style="list-style-type: none"> • Provinces should be vested with a right to self-determination. • Special autonomous and self-governed regions and units should be established at village, town or district level of the provinces where certain caste and ethnicity, language or religion has predominance and dense population. • Ethnic, self-governed state areas should be determined and demarcated on the basis of history, traditional habitation and cultural speciality of the concerned ethnicities. • Provincial structure should be prepared on the basis of geography and population. • There should be One Madhes/One Province.
	Proposal of <i>Dalit</i> community about state restructuring	<ul style="list-style-type: none"> • State Province should be determined up to Kapilvastu while considering Siraha-Saptari as centre. Similarly, Sarvajit Province should be created by merging the areas close to Baglung while considering it as centre. Moreover, Bhul Province should be formed from Salyan to Far Western Region. • There should be an arrangement for mixed electoral system along with proportional reservation. • At least twenty percent of constituencies should be reserved for <i>Dalits</i> if direct electoral system is retained. • There should be an arrangement that prevents reducing but enhances the rights of <i>Dalits</i> in federal provinces.
	Distribution (Delineation) of state power	<ul style="list-style-type: none"> • Only such issues as defence, currency and foreign affairs, telecommunications, international trade and development projects involving more than one province should fall under the Central Government. • The interrelations among the provinces should be good and there should no prohibition against importing and exporting goods. • Residual power and other rights should be vested with the provinces. • Provincial government should ensure education, health, transport, electricity, fundamental rights and rights of provincial government should be ensured). • All provinces should have equal rights.

		<ul style="list-style-type: none"> • Provinces should have a right to establish security for its territory. • There should be an arrangement for commission and coordinating unit for conflict management between centre and provinces, and among provinces. • The incomes incurred in a province should be used therein. • Central revenues should be distributed on the basis of population, geographical difficulty, backwardness and other economic indexes. • A constitutional mechanism should be developed for distributing revenues. • Centre should look after hydroelectricity and irrigation. • Local authorities should look after forests and rivers.
	Public submissions focusing on the Tharu communities	<ul style="list-style-type: none"> • Tharuhat province should be created by including Banke, Bardiya, Kailali, Kanchanpur and Dang districts. • The capital of a federal state should be based in Nepalgunj, Banke. • Badhghar system that prevails in the Tharus should be legally recognized. • Tharus' preferential right over water, land and forests should be ensured. • There should be an arrangement of one family one employment for free labourers (kamaiyas). • There should be free health service for free labourers. • Tharu language should be recognized as an official language. • There should be an arrangement for declaring holidays during the festivals of Tharu community. • There should be an arrangement for providing elderly allowances to all the Tharus attaining 60 years of age. • Tharus should be declared in the Constitution as <i>bhumi putra</i> (sons/children of soil).
4	Committee on Determining the Model of Legislative Organs	<ul style="list-style-type: none"> • There should be a bicameral legislature at the Centre. • There should be a unicameral legislature in the provinces. • The Upper House should be elected through mixed electoral system.

		<ul style="list-style-type: none"> • The Lower House should be elected on the basis of proportional representation. • Every political party should have representation of indigenous nationalities, women and men in a way ensuring their proportional representation. • The Upper House at the Centre should be established as a House of Representatives of Ethnic Groups (Jatiya Sabha). This House must have compulsory representation of indigenous nationalities and all other ethnicities, regions, genders, languages, religions and so on of Nepal. • There should be a unicameral legislative-parliament.
	Regarding state legislature	<ul style="list-style-type: none"> • Every federal unit must be bicameral. In autonomous provinces, an arrangement should be made to have their own elected parliament, government elected by the parliament and Upper House. • There should be an arrangement for proportional representation in legislative-parliament, Executive, Judiciary and other sectors of every federal state. • Provinces should have their own local rules and laws that recognize the custom-oriented laws of indigenous nationalities.
	Public submissions regarding election system	<ul style="list-style-type: none"> • Proportional representation of indigenous nationalities women and men should be ensured in the elections of central and provincial legislatures. An arrangement should be made for proportional electoral system with binding legal provision which is based on provincial list at federal and provincial level. It is made in order to bring all indigenous nationalities to political mainstream. • There should be an arrangement of quota for highly marginalized and endangered ethnicities. • There should be a mixed electoral system (50 percent direct election and 50 percent proportional election). • Voters' must have attained 16 years of age. • Every system must have tenure of four years. • Voters must have certificate of citizenship for casting votes. • Arrangements should be made for proportional representation at all places. • There should be a mixed electoral system wherein

		<p>70 percent should be proportional and 30 percent should be a system of First-Past-the-Post.</p> <ul style="list-style-type: none"> • There should be ethnic, full proportional electoral system. • Educational qualifications of the members of parliaments should be specified.
5	Public submissions regarding determining the administrative model of the State and distribution (delineation) of state power	<ul style="list-style-type: none"> • There should be a federal democratic republican (FDR) system. • There should be an arrangement in the administrative system for Rastrapati Mandal (Presidium or Samsadiya Mandal (Parliamentary Consortium). It should provide for a Head of State / Executive Head for one year each for indigenous nationalities, Chhetris-Bahun, <i>Dalits</i>, endangered ethnicities and women. • Women and men should be appointed as President in turn on the basis of provincial rotation. • Ministers should be appointed from outside the parliament. If a member of parliament becomes a minister, his/her post shall automatically fall vacant. • There should be an arrangement for having one person from each province, and at least one person from non-geographical community and minority ethnicity. • The cabinet should be small. • The Chief Minister of the province should be from the local nationalities. • There should be an arrangement of power isolation and check and balance in government agencies. • One should be addressed as Rastra Pramukh (Head of State) instead of Rastrapati (President). • The Head of State should be elected through direct elections. • President should be ceremonial. • President should be selected from civil society. • An arrangement should be made to remain as President for a maximum of two terms. • There should be an arrangement for Executive Prime Minister. • There should be an arrangement for Opposition in the Parliament. • Allowances of ministers, Prime Minister,

		<p>President and members of parliament should be limited.</p> <ul style="list-style-type: none"> • The executive power of country should be delegated to central, provincial and local level. • The electoral system of provincial legislature parliament should also be fully proportional along with quota and based on open list system. • There should be special constitutional arrangements to ensure proportional participation of indigenous nationalities in federal Executive, Legislative and Judiciary, and Provincial Executive, Legislative and Judiciary, and local bodies. • There should be an arrangement of mandatory reservation of indigenous nationalities in federal and provincial civil servant administration, security and other agencies. • There should be an arrangement for separate civil servants of federal and provincial levels. • There should be representation of youth members of parliament on the basis of their percentage. • There should be 50 percent youth participation in making administrative, economic, judicial, and educational and health policies. • VDCs should have a right to local government. • There should be universally accepted human rights and multi-party competitive democratic system of rule. • People should be sovereign and supreme. • There must be constitutional checks and balances. • There must be a rule of law. • Proportional opportunity in all the state agencies should be ensured on the basis of female, male and ethnic population. • There should be people elected government and rule. • Government activities should be transparent. • There should be an arrangement to recall (withdraw) the elected representatives. • Equal access of citizens of all ethnicities, classes and communities in administering the government should be guaranteed. • Political parties should include marginalized communities on the basis of population.
	On retaining parliamentary	<ul style="list-style-type: none"> • There should be an arrangement to delegate all

	system	<p>the executive rights to the Prime Minister and select President as a constitutional Head of State.</p> <ul style="list-style-type: none"> • President should be elected by federal and provincial legislatures. • Prime Minister should be elected through adult franchise. • Prime Minister should be elected by provincial legislative assembly and joint session of the Centre. • He/She shall serve for only one term.
	On retaining presidential system	<ul style="list-style-type: none"> • President should be elected from direct election on the basis of adult franchise. • His/Her tenure must be for four years. • A person shall not hold the post for more than two terms.
	Electoral system	<ul style="list-style-type: none"> • It should be fully proportional electoral system along with quota and based on open list system. • There should reserved constituencies for youths • Voter ID should be made compulsory. • Arrangements should be made for voter IDs.
6	Committee regarding Judiciary System	<ul style="list-style-type: none"> • Judicial freedom should remain perennial. Provinces should have their own judicial system. No one shall intervene with it. • Arrangements should be made for village level courts. • Local bodies should have separate judiciary for women. • There should be four tiers of judiciary—federal, provincial, special autonomous regional and of self-governed ilakas. • Every province should have a High Court. • Judges should be appointed after endorsement from the Upper House at the Centre, and after endorsement from concerned legislature in the provinces. • Judges can be terminated through a simple majority of concerned legislature. • Judges should be appointed on the basis of public hearing. • Judges should be elected. • A person should have a right to judicial advocacy in his/her mother tongue. • Indigenous nationalities should have a right to perform their work in mother tongue in government offices or through an interpreter in

		<p>courts.</p> <ul style="list-style-type: none"> • A joint judicial system should be arranged that recognized the original and traditional judicial system of the indigenous nationalities. • Traditional organizations of the indigenous nationalities should be given formal legal recognition. • Inclusive representation should be ensured at all levels of judiciary. • Judiciary, legal and curative arrangements should be made for people with disability, and government should be prosecutor in all cases. • Arrangements should be made for easy and effective access of the disabled in justice. • A separate bench should be arranged for cases linked with fundamental rights and interests. • Time limit should be fixed for deciding cases of public concern. • A <i>Melmilap Kendra</i> (Reconciliation Centre) should be established at local level. • Arrangements should be made to impart quick justice from labour court in cases related with autocratic (feudal) land production. • Arrangements should be made to try cases of human rights violations by army through a civil court. • Special court should be arranged to try cases related with untouchability.
7	Committee on Determining the Structure of Constitutional Bodies	<ul style="list-style-type: none"> • New commissions to be formed while continuing the existing ones: <ul style="list-style-type: none"> • Commission for Indigenous Nationalities • Commission for Indigenous Nationalities Women • Commission for Peace and Reconciliation • Commission for Rehabilitation of Child Labourers and Kamlaharis • Commission for Animals and Wildlife • Commission for Preservation and Promotion of Endangered Ethnicities, Languages and Communities • Separate commissions for such matters as disabled, seniors, unemployed, women, <i>Dalits</i>, indigenous nationalities, agriculture and land reform.

		<ul style="list-style-type: none"> • Commissions should be formed inclusively on the basis of ethnicity, language and gender. • There should be compulsory representation of marginalized classes in the commissions.
8	Regarding natural resources, economic rights and revenue distribution	<ul style="list-style-type: none"> • Local authorities should be allowed to levy revenues on natural resources and use the revenues locally. • All the natural resources should fall under provinces. • The Centre shall get 30 percent of economic dividends incurred from distributing natural resources and means. Provincial government shall use the remaining 70 percent. • The State should follow the norm of preservation of natural resources and means and their proportional distribution. • Federal states should have an access and control over water, land, forests and other natural properties. • Province and local village, town and district governments thereof should have primary right and responsibility of ownership, operation and management of water, land, forests, herbs, biological diversity, mines and other natural resources. • National rivers should belong to the Centre. • Revenues raised from natural resources should be equally distributed at all levels. • There should be equal right over natural resources and means. • Natural heritage should be used without affecting the right of future generations over the resources. • Local people must be vested with full authority to supervise, preserve and promote local natural heritage. • They should have a right over water base area. • They should have a right over irrigation and wetland area. • There should be protection against the effects of climatic change or disaster, and environmental destruction. • The principle of earning and spending at the grassroots level should be adopted.
9	Cultural and social solidarity	<ul style="list-style-type: none"> • Religious trusts should be kept out of state

		<p>responsibility.</p> <ul style="list-style-type: none"> • Other festivals than certain national festivals should fall under the jurisdiction of provinces. • Local festivals should be celebrated as the festivals of self-ruled and autonomous regions. • The State should adopt a policy of giving equal status to all cultural festivals. • National flag, national anthem and national symbols should be changed in a way to reflect the cultural diversity of all ethnic communities. • There should be an arrangement for every community to participate in their culture and scientific, cultural and artistic progress. • There should be a legal arrangement of polygamy for minorities. • Every community identifying minority and marginalized communities at local level should have a right to preserve and promote its language, religion, script, culture and tradition in an equal and autonomous way. • The State should invite equal participation of all ethnic communities in all its organs and create a basis for social and cultural solidarity. • All religions should be recognized as a national religion. • Discrimination, hatred and humiliation imparted on the basis of religion, culture and language should be punished. • Public holidays should be declared during all religious and cultural festivals. • The ground of social and cultural solidarity along with identity should be determined while accepting mutual existence. • All marginalized classes shall have the right to adopt, practice and preserve their prehistoric religion while retaining current social and traditional dignity. • The State should adopt a special policy of keeping alive the original dress, instrument, song and dance, etc of indigenous nationalities. • Arrangements should be made for special reservation for endangered and highly marginalized nationalities in army and civil services.
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		<ul style="list-style-type: none"> • Nepali, English and Hindi languages should be regarded as official languages. • Braille script should be arranged in every school. • Language used to address and treat the people with disability should be respectful.
	Public submissions regarding languages	<ul style="list-style-type: none"> • A language spoken by over a percent should be listed as a federal and provincial official language. • Provinces should make a list of languages used therein and grant all listed languages the right of first language in autonomous and self-governed regions. • A single language should not be recognized as contact language (<i>lingua franca</i>), link language or official language. • The State should prepare a list of those languages which have no script or literature and are endangered, and make a special policy of preserving and developing them. • Language academy, language training school and Language University should be established for the promotion of minority languages. • English, Hindi and Tibetan/Chinese languages should be listed as international languages. • Language spoken by the majority of population should be made an official language of the Centre and concerned province(s). • Local languages should be used in local authorities. • All the languages spoken in autonomous states should be recognized by provincial or regional and local governments as an official language at their levels. • The right to decide a language or languages as an authentic official language, contact language and language of instruction in schools should rest with autonomous states and the parliaments and governments thereof. • The predominant language of a federal unit should be made an official language while determining the official languages of different levels of federal units. Moreover, a multi-lingual policy should be adopted in such federal units. • All mother tongues should be made national languages.

		<ul style="list-style-type: none"> • Nepali should be the second language in all the provinces. • All the mother tongues originated in this country should be national languages. All types of cultures originated in this country should be national cultures. • All the cultures and customs of Nepal should be listed. • A preservation and manage agency should be formed for endangered languages. It should comprise of language experts, intellectuals and linguistic communities. A trilingual interpreter should be arranged for the Head of Central Government. • The mother tongue of the predominant ethnicity of a province should be made its official language while Nepali should be national language. • English and the language of major ethnicity should be made an official language of the province.
	<p>Related with reservation and positive discrimination</p>	<ul style="list-style-type: none"> • There should be an arrangement of reservation and positive discrimination for the special class within the marginalized class. • The marginalized class should get free education up to grade 12. • There should be proportional quota in technical education. • There should be an arrangement for easy access of the marginalized classes in education, health and human grounds. • Drinking water, communication, health, electricity, etc should be proportionally distributed. • There should be an end to corruption. • There should be an end to sexual abuse and torture. • There should be an arrangement of quota reservation for minority ethnicities until they reach the competitive level. Besides, there should be guarantee of skill-oriented training and employment for illiterate, marginalized and indigenous nationalities. • Schools should be established wherein no discrimination is made between the children of the rich and the poor.

		<ul style="list-style-type: none"> • There should be an arrangement for annual stipend to backward, <i>Dalit</i>-indigenous nationalities, disabled and marginalized groups. • Indigenous nationalities, women, <i>Dalits</i> and disabled people should be provided with special education and employment opportunities.
	Related with education	<ul style="list-style-type: none"> • There should be an arrangement for getting education up to higher level through mother tongue. • There should be an arrangement for free primary education in mother tongue. • There should be an end to double education system. • There should be an arrangement for mother tongue education up to lower secondary level. • There should be an arrangement for scientific and technical and vocational education. • There should be constitutional arrangement for research into, and preservation and promotion of traditional subjects and practices.
10	Committee on Protecting National Interest	<ul style="list-style-type: none"> • National interest should be defined on the basis of enhancing national respect, national security, social goodwill, political stability, world (global) peace, poverty alleviation and discrimination-free society. • It should be the responsibility of all levels of government to promote national interest. • Integration of Maoist combatants should be systematized and Nepal Army, Armed Police and Nepal Police should be democratized on the basis of the principle of inclusion. • The number of army should be reduced. • There should be an arrangement for military training to all within 18-20 age groups. • Treaties and agreements should be endorsed (ratified) by the legislature. • Army and police recruitment should be made on the basis of proportional inclusion. • The number of army should be reduced and Zone of Peace (ZOP) should be declared. • The Central Government should sign international peace treaties with the consent of provincial governments. • Unequal and discriminatory treaties and agreements should be reviewed and border

		<p>security should be regulated.</p> <ul style="list-style-type: none"> • All foreign nationals should be required a visa for entry in Nepal. • All the border-related treaties made so far should be reviewed and Nepal should be demarcated in accordance with rules relating to international borders. • The unequal treaties with India should be nullified. • There should be special arrangement for border security and check posts along Tibetan border. • Provinces should be allowed to maintain paramilitary security force and police. • Everyone should have proportional inclusion in army. • Alternative youth security force should be formed for national security.
	Preamble	<ul style="list-style-type: none"> • It should reflect the concept of unity in diversity and guarantee to make Nepali people sovereign, and build a society which imparts justice, fraternity, equality, equal opportunity and unity. • It should state “While multi-ethnic, multi-lingual citizens of Nepal who are equipped with geographical diversity and sovereignty shall get equal social, economic, educational and political opportunity through Constituent Assembly as desired by people; while heading towards peace, prosperity and forward moving economic and social development; and while creating a unified, fraternal and just society for all castes and ethnicities in order to establish civil rights.” • It should state “Regretting for ethnic, class, regional and gender problem and discrimination existing in the country; uprooting all forms of discrimination including ethnic discrimination; and establishing an equitable inclusive state.” • It should state “Nepal is a free, indivisible, sovereign, secular and free from untouchability, inclusive federal democratic republican state.” • It should address indigenous nationalities, backward classes, women and <i>Dalits</i> through inclusion. • National logo, flag, etc should reflect citizens’ ownership while accepting the national sovereignty and integrity, principle of pluralism, and all the castes and ethnicities, religions,

		<p>cultures, languages, dresses, geographical conditions and characteristics of nation.</p> <ul style="list-style-type: none"> • It should declare the nation as free from <i>Dalits</i> and untouchability. • It should state “secular, democratic republic with ethnic self-rule.” • The present Nepal should be declared as free from all forms of discrimination, violence and inequality. • It should declare to end gender discrimination. • The ethnicity that is socially discriminated and whose language and culture is not preserved and promoted by the State should be considered as a backward ethnicity. • The Constitution should be named as “People’s Law”. • The Preamble of the Constitution should mention state as free from ethnic discrimination. • The State should maintain law and order in the country and preserve and promote rights. • The Preamble should mention about sacrifices of the Limbus along with other Nepalis in Nepali revolution. • Nepal should be a federal republic.
Related with Laws Framed by the Legislature		
		<ul style="list-style-type: none"> • Both women and men committing polygamy should be punished (for at least ten years). • The person testing and administering video X-ray or amniocentesis test to know the gender of the child should be severely punished. • A jury system comprised of religious gurus and linguistic and cultural experts should be established in local courts. • There should be a separate bench for indigenous nationalities in every tier of courts.
	Regarding constitution amendments	<ul style="list-style-type: none"> • There should be a provision of constitution amendment by two-third of the total members.
Public Submissions Regarding Government Policies, Programmes and Good Governance		
	Regarding education	<ul style="list-style-type: none"> • There should be an end to licensing in educational system. • Textbooks should reflect the importance of identity and existence of all kinds of cultures. • There should be strong and effective public security.

		<ul style="list-style-type: none"> • Marginalized communities should get free technical and vocational education along with a quota. • The State should implement scientific and practical education which is useful for life. • There should be one university in each province. • A higher secondary school should be established in every VDC. • There should be uniform textbooks in private and government (public) schools. • Moral education should be included at national level of school education, from primary to higher secondary level.
	Regarding the farmers' rights and interests	<ul style="list-style-type: none"> • Agriculture should be modernized. • Seeds, fertilizers, and the like should be stored in rural area for agricultural crops. • All taxes on agriculture should be waived. • Agricultural loan should be provided at cheap and reasonable interest. • Depots should be established in accordance with the geographical condition of fertilizers and seeds. • The government should provide agricultural market and fix the rate for agricultural products. • There should be proper arrangement for agricultural roads. • There should be arrangements for plotted farming. • There should be irrigation facilities. • There should be agricultural technical training. • Agricultural loan flow to landless, <i>adhiya</i> farmers without any collateral. • There should be scientific land reform. • Landowner's certificate should be issued on the basis of residence and landholding.
	Judicial	<ul style="list-style-type: none"> • Impunity in murder cases should end. • Dowry system should be fully eradicated.
	Others	<ul style="list-style-type: none"> • Health, education, transport, electricity, communication facilities should be made easily available. • Community forests should be fully transferred to the communities. • There should be compensation for any destruction caused by wildlife in the areas close to national parks.

	Regarding women	<ul style="list-style-type: none"> • There should be at least 33 percent women participation in all the state agencies. • Women should get 50 percent reservation at all levels on ethnic ground. • Women violence should end. • Women should be provided delivery allowances from prenatal to postnatal stage. • Women should get free delivery service. • Delivery service should be made available in every village. • Women University should be established. • Girl children should get special opportunity in education. • Women should be provided skill-oriented training to make them self-reliant. • There should be a provision of court for victim women at an accessible place and judicial process should be swift for them. • Women should be involved in income-generating work. • Women should have right to reproductive health.
	Regarding youths	<ul style="list-style-type: none"> • People between 16-35 age groups should be identified as youths. • Youth Ministry, Youths Commission and Youth Information Centre should be established. • Youths involved in political goals should have proper representation in state structure after gaining the said goals. • Acts and rules oriented towards foreign employment should be amended and youths should be provided employment within the country. • Special security policy should be adopted in the security of foreign employment and employment in insecure countries should be terminated. • An office should be established in each of concerned countries to guarantee security to youths seeking foreign employment. • The State should arrange for youth insurance. • It should involve 30 percent of semi-skilled, skilled, unemployed youths of the society in industries. • There should be an arrangement at Central level for the representation of youth artists of Far Western Region to preserve and promote their arts and culture.

		<ul style="list-style-type: none"> • Youths should not be used for party and personal interest. • A mechanism like Youth Information Centre should be established at village level. • Arrangements should be made for international recognition of the youths through sports. • Allowances should be given to unemployed youths. • There should be 50 percent representation of youths in state structure, political parties and nongovernmental organizations (NGOs). • Employment for youths should be created within the country. • There should be loan flow to youths by keeping their educational certificates as collateral. • Opportunities to foreign employment should be proportionally distributed. • Proper agreement of labour for the human power going abroad.
	Regarding children	<ul style="list-style-type: none"> • The minors should not be used in factories, hazardous activities, army, police and conflict. • The State should arrange for special facilities for the future of helpless, retarded, conflict-ridden, displaced and vulnerable children. • The tradition to administer and force to administer intoxicants to newly born children on the basis of ethnicity should end. • The State should arrange for special facilities for helpless, orphan, mentally retarded, conflict-ridden, displaced and vulnerable children. • The State should provide breakfast (snacks) to children below eight years of age.
	Regarding good governance	<ul style="list-style-type: none"> • The State should end social abuse and domestic violence, gambling and use of drugs. • It should develop modern agricultural system and irrigation. It should provide loans to farmers without collateral. • It should provide job opportunities in accordance with skill. • It should provide employment to local people in industries. • There should be right to electricity for all. • There should be animal life insurance for farmers. • There should be vocational and skill-oriented training and employment.

		<ul style="list-style-type: none"> • Employment should be created within the country and brain drain should be discouraged. • Foreign employment opportunities should be proportionally distributed. • There should be proper agreement for human power going abroad. • Dowry and polygamy should be made punishable. • An office should be established to look after the <i>Dalit</i> problems and complaints. • Local inhabitants should have special right to employment in their own region and in accordance with their qualifications.
	Dalits	<ul style="list-style-type: none"> • It should be clearly specified that discrimination and untouchability made on the basis of caste shall be severely punished; it should be considered a criminal offence; and there should be compulsory arrangement for providing compensation to the victims of such offence. • <i>Dalits</i> should have access to natural resources including water, land and forests. • There should be guarantee to uproot all traditions of bonded labour including the forms of labour exploitation like haliya, kamaiya, haruwa, charuwa, balighare, doli, bhund, eating and disposing carcasses, bethbegari, kamlari, and gateman's custom existing in Madhes. • <i>Dalit</i> women graduating SLC should be provided with educational loans. • There should be an arrangement for ration cards. • There should be an arrangement for special employment to single <i>Dalit</i> women. • <i>Dalit</i> candidates should have a right to serve five years more than other communities in army, police, civil and education services and corporations. • The Constitution should mention about 20 percent meaningful participation of <i>Dalit</i> community in political parties. • There should be one employment for one <i>Dalit</i> family. • There should be a system of reservation for <i>Dalits</i> in every sector. • <i>Dalits</i> should get free education up to higher level. • <i>Dalit</i> women should be given special recognition among women.

		<ul style="list-style-type: none"> • <i>Dalit</i> women should have equal participation in state organs. • Tripartite discrimination against <i>Dalit</i> women should end. • A Dalit Ministry should be established. • <i>Dalit</i> disabled should be provided with allowances s. • <i>Dalits</i> should get 20 percent reservation in government services including civil service, army and police. • There should be full guarantee of education, health and employment. • <i>Dalits</i> should have compulsory participation in the Cabinet. • The State should declare a nation free from untouchability. • Scattered settlements should be integrated and provided with necessary services and facilities (utilities). • <i>Dalits</i> should get elderly allowances right after 50 years of their age. • Certificate of citizenship must bear their title than the term <i>Dalit</i>. • Landless <i>Dalits</i> should be provided with land and ownership certificate. • Untouchability should be practically ended from every village. • Inter-caste marriage should be encouraged and protected.
	Meche	<ul style="list-style-type: none"> • Meches should be scheduled in the Constitution as a highly marginalized ethnicity. • Their language, culture and traditions should be preserved.
	Rajwanshi	<ul style="list-style-type: none"> • Kochila or Birat province should be established by comprising of Jhapa, Morang and Sunsari. • Terai Rajwanshi and indigenous nationalities should get free education up to grade 12. • Land as well as property should be limited. • Open border should be sealed.
	Tajpuriya	<ul style="list-style-type: none"> • Kochila state should be established. • Tajpuriya community should be included in all the state agencies like legislature and Council of Ministers. • Marginalized communities including Tajpuriya should get reservation.

	Muslim	<ul style="list-style-type: none"> • Muslim Commission should be formed. • Id, Bakra-Id and Moharram should be declared as public holidays. • Divorce system should be recognized in accordance with Islamic religion and practices. • Muslim community should be allowed to follow laws in accordance with their own religion. • Urdu should be included in national languages. • Muslims should be addressed as Terai people rather than Madhises. • There should be reservation for their representation in all the state organs. • There should be reservation in education, health and employment sectors.
	Related with Karnali region	<ul style="list-style-type: none"> • Karnali should be given compensation and declared as an autonomous province. • Commission for Development of Remote and Marginalized Regions should be made a constitutional commission. • There should be at least one member from Karnali in each of the constitutional commissions. • The state should increase the number of members of parliament representing those districts which are deprived of transport and communication facilities. • The people of Karnali should have the right to education, employment and health. • There should be an additional 25 percent budget for Karnali. • Karnali Provincial Development Commission should be formed. • Karnali University should be established. • Jumla district should be introduced as the spring of Nepali language. • Sinja valley should be preserved and promoted. • Khas ethnicity should be declared as indigenous nationality. • There should be an end to social superstitions (malpractices) like untouchability, chhaupadi and witchcraft. • Historical Sinja valley, Mansarovar, Kailashmarg, Rara lake, Phoksundo lake and Karnali region should be developed for promoting tourism. • There should be a representative from Karnali in Nepal Tourism Board (NTB).

		<ul style="list-style-type: none"> • A high level authority should be established in Karnali region for preservation and development of herbal natural heritage. • Karnali region should be declared as a region of biological diversity. • Political parties should provide special quotas to people of Karnali.
	Miscellaneous	<ul style="list-style-type: none"> • A person involved in girl trafficking (selling girls/women) should be sentenced with capital punishment. • Personnel committing corruption and abusing their position should be given life imprisonment. • A person involved in favoritism and nepotism should be severely punished. • Rural sector should be given higher priority than urban sector. • Human traffickers (traders) and slave traders or hostage-takers should be severely punished. • The nation should be declared as free from corruption. • There should be an end to violence, murder and terrorism. • There should be a constitutional provision to provide electricity and road to all VDC wards of Nepal within five years. • Nepal should be made free from illiteracy.
	Others	<ul style="list-style-type: none"> • Literacy campaign should be launched. • There should be an end to load shedding (power cut). • All SLC graduates should get an employment. • There should be an end to such activities as anarchy, <i>bandh</i>, strike, impunity and dearness. • Rural area should be electrified. • There should be one employment for one family. • No <i>bandh</i> and strike should be launched as a protest. • The martyrs' family should get free education. • There should be 50 percent women representation in all the state organs. • Sister organizations of big parties should be dissolved. • The new constitution should be built by 19 May 2010 (2067 Jestha 15). • Foreign nationals should not be provided with Nepali citizenship.

		<ul style="list-style-type: none"> • Child rights should be ensured and Child Ministry should be established. • There should be an end to labour exploitation. Their family should be provided with basic needs like education and health. • Labour wages should be uniform through the country. • Children should be given compulsory allowances. • Single women or men having attained 40 years of age should be provided with allowances s. • Both widows and widowers should get allowances. • There should be free treatment of fatal diseases like heart attack (cardiac arrest) and cancer. • There should be a prohibition against the birth of more than three children. • Lands should be limited and redistributed. • People should get free electricity. • The Constitution should mention about adopting a clear policy of uplifting the lifestyle of poor people. • Women traders and drug traffickers should be hanged to death. • The rapists should be sentenced to death. • Murderers should get death penalty.
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