



Australia Nepal Friendship Society

Canberra, Australia

Recommendation on the concepts and contents to be incorporated in the future constitution of Nepal

The Australia Nepal Friendship Society Inc., Canberra, organised a one day workshop on Sunday 22 February 2009 at the Australian National University in Canberra to come at a community view on what should be included in the new constitution of Nepal.

The discussion was lively and the understandings were mostly unanimous. The key resolutions of the workshop are given below and the differences in opinion where existed are also noted.

1. On preamble

It is agreed that the preamble of the constitution should contain the following three points:

- That the constitution is promulgated by the sovereign people of Nepal;
- That the constitution must develop and promote the following institutions:
 - i. multiparty democracy,
 - ii. periodic election,
 - iii. fundamental rights of the people,
 - iv. rule of law,
 - v. independence of judiciary,
 - vi. inclusive nature of the state, and
 - vii. territorial integrity.
- That the constitution shall lay the foundation for a peaceful, just, harmonious, and prosperous federal democratic republic of Nepal that unleashes the full potential of its citizens.



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2. On rights and duties of Nepali citizens

As mentioned in the interim constitution.



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3. On restructuring of the state

To promote decentralization, cooperation and eliminate all kinds of disparities, including regional disparity, the country shall adopt a federal structure in which:

- (a) The country shall have three levels of parliaments and governments – central, provincial and local.
- (b) 4 or 5 provinces will be identified on the basis of major river basins (for example, as described in the attached paper by Baburam Bhattarai)
- (c) Local units, which will also serve as electorates for all level of governments, based on current linguistic and ethnic compositions (for example, as described in the attached paper by Ram C. Acharya). Their names shall not, however, identify them as ethnic or linguistic units. The relevance of the names must remain current even after the population composition changes over time because of the increased mobility of people.

4. On division of power between the levels of governments

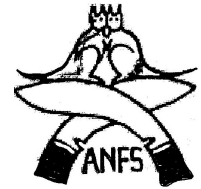
The key principle is to make local governments/bodies as powerful as possible without compromising the cooperative pact of the provinces and the nation as a whole (for example, see the concept forwarded by Prof. Shiva Gautam in the attached paper). An optimal division of power and responsibilities between different levels of governments is therefore a precondition for the cooperative environment (for example, see the idea floated by Prof Alok Bohara in the attached paper). This issue needs a thorough debate. An example of the power division could be as follows:

Federal: foreign relations and treaties, defense, fiscal and monetary policies, projects of national importance, income and trade tax;

Provinces: Provincial level planning, development and resource use based on the principle of subsidiarity;

Local: local level planning, development and resource use;

Concurrent: shared under cooperation between local bodies, states and the centre.



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There may be situations in which needs/laws of different levels of government will be in conflict. In case of such conflict, federal laws shall prevail.

A Council of Nepal Governments shall be formed to determine the cooperative allocation of resources, development priorities and resolution of possible conflicts.

5. On inclusiveness

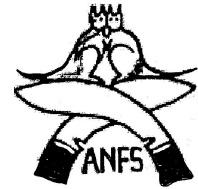
Inclusiveness is a must for a just society. It can be achieved gradually through positive discrimination in favour of the marginalized and disadvantaged individuals (rather than a group based, defined on any basis) based on, say, a means test. The need for such discriminations will fade away with balanced development as they cross and move above the pre-specified criterion. Positive discrimination practices with means test will discourage the development of an entrenched creamy layer who will have an incentive to perpetuate the marginalization and disadvantages of their own community.

Reservation based on positive discrimination with well targeted empowerment initiatives to disadvantaged and marginalized individuals could be the instrument for promoting inclusiveness. The constitution shall have such provisions.

6. On election of executives

The constitution shall adopt an electoral system in which

- the Prime Minister would be directly elected by a first-past-the -post system (with a majority vote of 51% or more), and
- the President would be indirectly elected under a proportional voting system by all parliamentarians of the country; and the President shall be the ceremonial head of the state;
- the national and provincial parliamentarians shall be elected by a mixed system (50-50 FPTP and proportional system);
- Some of the participants are also of the opinion that there must be a minimum educational qualification requirement for all directly elected members of all parliaments;



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- a requirement of at least 2.5-5% of the vote shall be placed on all parties to be eligible for the allocation of proportional seats at all level of governments.

7. Council of Ministers

To remove the perverse incentive to parliamentarians to trade their support to the government with the ministerial berths and then to get involved in corruption, and to open the possibility of including non-political experts in the cabinet, the constitution shall explicitly and clearly state that:

- a. Members of parliament shall be strictly and universally prohibited from becoming ministers and taking up any position of profit;
- b. The PM shall nominate all ministers subject to the scrutiny of the nominated ministers by the Parliament Committee on minister nomination. The total number of ministers shall not exceed the numbers as specified in law. However, if a parliamentarian is nominated as a minister then his/her position in the parliament shall become vacant and a by-election will be held to fill the position;
- c. The Prime Minister and the council of ministers shall be accountable to the parliaments.

8. Term limits for the President and the Prime Minister

To encourage smooth transfer of leadership to younger generation, who come up with new ideas and higher spirit, and discourage the possibility of the capture of the state power by vested interest groups and perpetuation of their dominance, the constitution shall assert that:

- The PM shall have a maximum of two terms, each term not exceeding 5 years.
- The president shall have a maximum of one term not exceeding 6 years.
- The vacancy of the PM and the President posts must not come at the same point of time.

9. Power to remove the President, the Prime Minister and the ministers



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There shall be an impeachment process for the president, prime minister and ministers before the legislature. If the president, prime minister or a minister is voted to be removed by 2/3 of the parliament then he should be removed.

10. To guarantee internal democracy in major political parties

All political parties are required to

- Have a full financial disclosure
- Be transparent in their financial dealings
- Hold national conventions in regular intervals
- Elect all national leaders, and
- Reject all applications by persons found corrupt by the court of law.

11. Amendment and control

The constitution shall have unalterable and alterable provisions:

Unalterables:

There should be core areas of the constitution which cannot be modified like the fundamental rights and the principles enshrined in the preamble.

Alterables:

1. Articles related to number, size and dissolution of constituent units of the federation may only be amended by a double majority of 2/3 votes of people and in at least 2/3 of the provinces.
2. For all others articles a simple majority of the parliament may amend the constitution.

12. Ratification of international treaties

As mentioned in the interim constitution

13. Emergency: declaration and power



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As mentioned in the interim constitution

14. Residual powers and its use

The residual power will rest on the president. If a situation arises to exercise this power, the president shall work on the advice of the council of ministers. Any order issued under this authority shall have to be endorsed by the parliament within 60 days.

15. Treatment of non-resident Nepali population

Citizenship of Nepalis who obtain citizenship of other countries shall not be deemed automatically rescinded unless he or she notifies the appropriate authority otherwise in writing. Citizens who maintain dual citizenships shall not be able to hold some public positions as specified in law.