

गैरआवासीय नेपाली संघ अन्तर्राष्ट्रिय समन्वय परिषद  
Non Resident Nepali Association International Coordination Council  
संविधान सुझाव समुह, संविधान सम्बन्धी सुझाव संकलन

Constitution Recommendation Committee, Suggestions for constitution making in Nepal



सुझाव दिने राष्ट्रिय समन्वय परिषद थाईलैंड

Name of the NCC providing the suggestion: **NRN Thailand**

मिति (Date): 16 March 2009-

(Please kindly send us your suggestion in English or Nepali. If you choose to use Nepali language, please use either *Preeti* font or *Unicode*. आफ्ना सुझावहरूलाई कृपया नेपाली वा अंग्रेजी भाषामा टाइप गरी पठाएर सहयोग गरिदिनु हुन हार्दिक अनुरोध गर्दछौं । नेपाली भाषा प्रयोग गर्दा *प्रीती* फ्रण्ट वा *युनिकोड* मात्र प्रयोग गर्न पनि आग्रह गर्दछौं । )

क्रम संख्या	Item विषय	Suggestions सुझाव
<b>(A) प्रस्तावना, अधिकार र कर्तव्य सम्बन्धी (Regarding Preamble, Rights and Duties)</b>		
1	What should be included in the Preamble of the constitution? संविधानको प्रस्तावनामा कस्ता कुराहरू समावेश हुनुपर्छ ?	Include the keywords: "federal state structure", 'aspirations of the new generation', 'global Nepali diaspora
2	What rights and duties of Nepali citizens should be included in the constitution? नेपाली नागरिकका कस्ता अधिकार र कर्तव्यलाई संविधानमा समावेश गरिनु पर्छ ?	Part 3 of Interim Constitution 2063 mentions 21 Articles on Fundamental Rights (मौलिक अधिकार). Concerning this section <b>7 modifications</b> are suggested. Among these are the addition of 4 Rights (Right nos.4,5,6,7, ). The following suggestions apply: 1) Need to mention on the Duties of Citizens (मौलिक कर्तव्य) by addition of <b>two critical phrases</b> .so that sub-article no.1 under Article 1 or Right to

		<p>Independence ( स्वतन्त्रताको हक) reads completely as:</p> <p>(i)“प्रतेक ब्यक्तिलाई सम्मान पूर्वक बाञ्च पाउने हक छ, तर अरु नागरिकको सो हक पनी कायम राखेको हुनु पर्छ, र राष्ट्रिय अखंडतामा हानि हुने बेवहार नगरेको हुनु पर्छ, र मृत्यु दंड को सजाय हुने गरी कुनै कानून बनाईने छैन”.</p> <p>2 ) Under sub-article no.3 of Article 1 on Right to Independence, item no घ states on the Right of Independence to establish a union or institution ( संघ र संस्ता खोलने स्वतंत्रता ), and item no. च states the Right of Independence to follow a profession, employment, industry or business ( कुनै पेशा, रोजगार, उद्योग रा ब्यापार गर्ने स्वतंत्रता)</p> <p>These given Rights are to be qualified in the New Constitution with the statement that <b>All Trade/Labour Unions</b> must have <b>no political affiliation whatsoever</b>.</p> <p>3) Women’s Rights ( Right no.20 ) to be reworded as <b>‘Women’s Equal Rights’</b> (महिलाको सामान अधिकार) सामान हक) or <b>‘हक ) or Equal Rights of Women and Men’</b> (महिला र पुरुषको समान हक )</p> <p>4) The <b>Right to Consumer Protection</b> (उपभोग्ताको हक) to be added. as a separate Right.</p> <p>5) <b>Right to compensation</b> (जरीमाना हक) for any damages or loss caused by any <b>tortious act</b> suffered to be established as an explicit Right..</p> <p>6) <b>Right to Equitable Development</b> (समन्यायिक विकासको अधिकार ) to be established as an explicit Right.</p> <p>7) Right for <b>NRNs</b> to exercise their <b>Voting Rights</b> (मतदान को अधिकार) from country of residence to be made into law .</p>
<b>(B) व्यवस्थापिका सम्बन्धी (Regarding Legislature)</b>		
3	Should it be a presidential (such as the one that exists in the USA) or parliamentary (similar to the one in the UK) or a mixed system (such as the one	It can be Presidential. It can also be Parliamentary or the Mixed system. But reliable checks and balances in the use of powers to be enforced.

	<p>to be found in France) of governance?</p> <p>तपाईंको विचारमा हाम्रो संविधान कस्तो प्रणालिमा आधारित हुनु पर्छ - राष्ट्रपतीय (संयुक्त राज्य अमेरिकामा जस्तो) वा संसदीय (बेलायतमा जस्तो) वा मिश्रित (फ्रान्समा जस्तो)?</p>	
4	<p>How should the electoral system be? Should it be-</p> <p>a) fully proportional</p> <p>b) fully first-past-the-post system (directly elected)</p> <p>c) or a mixed system such as the one adopted in the election for the present CA?</p> <p>( If mixed, what should be the proportion between the directly elected and proportional representation? )</p> <p>हाम्रो मुलुकले कस्तो निर्वाचन प्रणाली अपनाउनु वेश हुन्छ</p> <p>क) पूर्णसमानुपातिक</p> <p>ख) पहिलो हुने निर्वाचित हुने (प्रत्यक्ष निर्वाचित)</p> <p>ग) वा संविधान सभाको निर्वाचनमा प्रयोग भएको जस्तो मिश्रित व्यवस्था ?</p> <p>(मिश्रित भए प्रत्यक्ष निर्वाचित र पूर्णसमानुपातिक बिचको अनुपात कति हुनुपर्छ ?)</p>	<p>It should be Mixed Electoral system with <b>70%</b> of members elected by direct election (प्रत्यक्ष निर्वाचित) and <b>30%</b> elected by proportional system (समानुपातिक प्रणाली ) with the candidates under the latter scheme declared in advance by each Party before the Election ( according to Article 27on Right to Information or सुचनाको हक).</p> <p>The <b>criteria</b> for candidacy for high political office to be specified. Very clear profiles required so that no person convicted of a serious crime would be eligible for such offices.</p>

5	<p>If proportional system is to be used, should we have some minimum threshold level of secured votes to qualify for the proportional part of the parliamentary quota? If so, what should be that percentage of the secured votes?</p> <p>समानुपातिक प्रणालि लागु हुने हो भने कुल मतको कुनै न्यूनतम प्रतिशत मत पाएका दललाई मात्र व्यवस्थापिकामा समानुपातिक प्रतिनिधित्वका लागि योग्य मान्ने प्रावधान राख्छ उचित होला ? यदि त्यस्तो प्रावधान राख्ने भए कम्तिमा कति प्रतिशत मत तोकनु बाध्यनीय ठान्नु हुन्छ ?</p>	<p>The political Party that secures a minimum percentage of threshold votes is to be declared eligible to be a representative national political Party.</p> <p>The minimum percentage of such secured votes must be in the range of <b>5% to 7%</b> of the total.</p>
6	<p>Any other suggestion not included in the above list</p> <p>माथिका बाहेक अन्य कुनै महत्वपूर्ण सुझाव</p>	
<p><b>(C) कार्यपालिका सम्बन्धी (Regarding Executive Authority)</b></p>		
7	<p>How should the chief executive be elected by the people- directly (as in the US, France, or Russia) or by majority votes of parliament (as in Germany, India, or Italy)?</p> <p>देशको कार्यकारी प्रमुखको निर्वाचन कसरी हुनु पर्ला- अमेरिका, फ्रान्स, रुस आदि देशमा झैं प्रत्यक्ष निर्वाचनद्वारा अथवा भारत, जर्मनी, इटाली आदि देशमा जस्तो संसदको बहुमतद्वारा ?</p>	<p>The Chief Executive (President) must be <b>directly elected</b> by the people ( प्रत्यक्ष निर्वाचित ) to serve a term not exceeding 4 years.</p>
8	<p>Should the cabinet members be allowed to come from outside of parliament? Or should members of parliament be prohibited from becoming ministers?</p> <p>के व्यवस्थापिका बाहिरका व्यक्तिहरू पनि मन्त्री हुन सक्ने</p>	<p>Cabinet members may be <b>from outside</b> the Parliament ( .व्यावस्थापिका बहिर )</p> <p>But checks and balances must be in place in the appointment of ministers so that if a Parliament member wants to be a minister, he/she has to resign from the Parliamentary post. In this way the Parliament will be completely free to check on the</p>

	<p>प्रावधान राख्नु उचित होला ? अथवा व्यवस्थापिका सदस्यले मन्त्री नै बन्न नपाउने व्यवस्था गर्नु आवश्यक ठान्नु हुन्छ ?</p>	<p>Executive branch ( कार्यपालिका )</p> <p>There should be <b>Parliamentary hearing</b> for the ministers.</p>
9	<p>Should we have term limits for President and (or) Prime Minister?</p> <p>राष्ट्रपति एवं (अथवा) प्रधानमन्त्रीको पदावधि तोक्नु आवश्यक छ ? छ भने कतिपटक सम्म आफ्नो पदमा बहाल रहन पाउने व्यवस्था गरिनु वान्छनीय ठान्नु हुन्छ ?</p>	<p>For the position of Chief Executive (President or Prime minister), a person is elected for a term of <b>4 years</b> at a time.</p> <p>A person cannot hold the position of the Chief Executive (President or Prime Minister) for more than <b>2 terms</b>.</p>
10	<p>What should be the provision to remove the chief executive and the ministers? To change the government, should we require the opponent to present the complete set of the new government (PM and the key cabinet names) with some minimum support of the parliament members?</p> <p>कार्यकारी प्रमुख र मन्त्रीहरूलाई हटाउन कस्तो प्रावधान राख्नु पर्ला ? सरकार परिवर्तन गराउन प्रस्ताव राख्ने विपक्षी दलले नयाँ प्रधानमन्त्री लगायत पूर्ण मन्त्रिमण्डलको स्वरूप र त्यसलाई संसद सदस्यहरूको आवश्यक न्यूनतम समर्थन रहेको प्रमाण समेत पेश गर्नुपर्ने प्रावधान राख्न वान्छनीय होला ?</p>	<p>The Chief Executive and the ministers can be subjected to removal from office with <b>impeachment</b> proceedings (महा अभियोग).</p> <p>In addition, there should be the Constitutional provision to remove the Prime Minister and ministers through a <b>Vote of No Confidence</b> (अविश्वास को मत).</p> <p>To change the Government it should be required that the opposing Party (विपक्षी दल) present its candidates with the required minimum support of the Parliament members.</p>
11	<p>What constitutional provisions would you suggest to guarantee internal democracy in major political parties?</p> <p>मुख्य दलहरूभित्र आन्तरिक लोकतन्त्रलाई सुनिश्चित गर्न संविधानमा कस्तो व्यवस्था गर्न आवश्यक ठान्नु हुन्छ ?</p>	<p>All Parties must be required to show <b>accountability</b> and <b>transparency</b> in the following areas:</p> <ol style="list-style-type: none"> <li>1) Display of source of funding</li> <li>2) Annual Auditing</li> <li>3) Code of Conduct</li> <li>4) Taxes</li> <li>5) Timely conduct of elections for Party executives and other office bearers.</li> </ol>
12	<p>Any other suggestion not included in the above list</p>	<p>1. Only a Nepali citizen by birth can become the Chief Executive (the President or Prime</p>

	<p>माथिका बाहेक अन्य कुनै महत्वपूर्ण सुझाव</p>	<p>Minister) of the country.</p> <ol style="list-style-type: none"> <li>2 All Political Parties that do not abide by the fundamental features of the Constitution to be outlawed and banned.</li> <li>3. The candidates for political Party leadership cannot have criminal records</li> <li>4. Parties that ferment social disorder, communal disharmony, or act against national sovereignty and for national disintegration are to be banned.</li> <li>5. Individual level corruption/fraud and Party level corruption/fraud need to be distinguished if they do take place.</li> </ol>
<p><b>(D) संघीयता सम्बन्धी (Regarding Federalism)</b></p>		
<p>13</p>	<p>What should be the future federal structure of the country?</p> <ol style="list-style-type: none"> <li>a) purely along ethnic lines</li> <li>b) based on three ecological belts: Mountains, Hill and Terai</li> <li>c) based on the existing five development region model</li> <li>d) based on a mix of ecology, geography, economy, mixed resource endowment (mountains and plains) and ethnicity</li> <li>e) or any other basis ?</li> </ol> <p>हाम्रो मुलुकले कस्तो संघीय स्वरूपलाई अपनाउनु हितकर हुन्छ :</p> <ol style="list-style-type: none"> <li>क) पूर्णतः जातीय आधारमा</li> <li>ख) हिमाल, पहाड, र तराई तीन भौगोलिक क्षेत्रका आधारमा</li> <li>ग) हालको पाँच विकास क्षेत्रको मोडेलमा</li> <li>घ) पर्यावरण, भूगोल, आर्थिक तथा प्राकृतिक स्रोत सम्पन्नता एवं जातीयताको मिश्रित आधारमा</li> <li>ङ) अथवा अरु कुनै आधारमा ?</li> </ol>	<p>A combination of 'c' and 'd' to be done with the inclusion of <b>equitable sharing of resources</b> administered by the Governing Councils of the separate States to be demarcated in New Nepal .</p>

14	<p>How should the powers be divided or allocated between the centre and federal entities?</p> <p>संघीय एकाई एवं केन्द्रकाबिच शक्तिको बाँडफाँड कसरी हुनु पर्छ ? केन्द्रले कस्ता अधिकार राख्ने र प्रदेशले के पाउने हुनुपर्दछ?</p>	<p>The <b>responsibility/jurisdiction/authority</b> in managing State Affairs can be broadly divided into <b>three categories</b> :</p> <p>(i) those falling under the <b>Sole responsibility/jurisdiction/authority</b> of the Federal Government. These could include the exclusive portfolios such as National Defense, Finance and Fiscal (monetary) Policy, Taxation, Water Resources Management, Civil Services, Foreign Policies and Affairs, Trade, Citizenship, Roads and Infrastructure Development, Telecommunications, etc.</p> <p>(ii) those falling under <b>Joint responsibility/jurisdiction/authority</b> of the Federal and State Government. These could include the <b>portfolios</b> in such areas as Policy on Education and Health, Natural Resources, Environment and Climate Change, Internal Security (Police Forces), etc.</p> <p>(iii) those falling under the <b>Sole responsibility/jurisdiction/authority</b> of the State Government. These could be the portfolios such as Cultural affairs, Local development, Local taxation, etc.</p>
15	<p>Any other suggestion not included in the above list</p> <p>माथिका बाहेक अन्य कुनै महत्वपूर्ण सुझाव</p>	<p>There should be a vision and goal for <b>sustainable</b> and <b>inclusive</b> development. For e.g. the goal must be to narrow the gap between the levels of poverty that exist and to promote inclusive opportunities especially in Education, Civil Service and for Constitutional appointments.</p>
<p><b>(E) समावेशिकरण सम्बन्धी (Regarding Inclusiveness)</b></p>		
16	<p>What provisions should be included to empower women and others belonging to various marginalized, indigenous and other ethnic groups?</p> <p>महिला, आदिवासी र अन्य जाति-जनजाति समुहका सीमान्तकृत जनतालाई अधिकारसम्पन्न बनाउन संविधानमा के कस्ता प्रावधानहरू राख्न आवश्यक ठान्नु हुन्छ ?</p>	<p>Provide <b>targeted capacity empowerment</b> programs based on a <b>Needs-based Approach</b> of long-term plans extending from 15 to 25 years, with the provision to review and extend these programs if necessary .</p> <p>These programs are to be based on the principles of equity and necessity understood from peoples' own participation and ownership of such development projects.</p>
17	<p>What provisions should be included to make the system of governance as inclusive as possible?</p>	<p>The words' various marginalized groups' to be used instead of using specific words like 'madhesi' .</p>

	राज्य संयन्त्रलाई बढि भन्दा बढि समावेशी बनाउन संविधानमा के कस्ता प्रावधानहरु राख्न उचित ठान्नु हुन्छ?	
18	Any other suggestion not included in the above list माथिका बाहेक अन्य कुनै महत्वपूर्ण सुझाव	One nationality concept of <b>being a Nepali</b> must be emphasized with respect for cultural diversity and national unity (सांस्कृतिक सदभावना र राष्ट्रिय एकता)
<b>(F) संशोधन र नियन्त्रण सम्बन्धी (Regarding Amendment and Control)</b>		
19	What should be the requirement to amend the constitution? संविधानको संशोधन गर्न कस्ता प्रावधानहरुको पालना गर्न जरुरी ठान्नु हुन्छ ?	<ol style="list-style-type: none"> <li>1. Constitution amendment should require at least a <b>two-thirds</b> majority by members of the Parliament.</li> <li>2. It should also be made <b>explicit</b> that the following fundamental features of the Constitution <b>cannot be amended at all</b>: <ul style="list-style-type: none"> <li>(i) Territorial integrity of the country (अखंडता),</li> <li>(ii) National sovereignty (सार्वभौमसत्ता),</li> <li>(iii) Multi party Democratic system (लोकतांत्रिक पद्धति),</li> <li>(iv) Republican state (गणतांत्रिक राष्ट्र ),</li> <li>(v) Independent Judiciary (स्वतंत्र न्यायपालिका)</li> <li>(vi) Freedom of the Press (संचार माध्यमको स्वतंत्रता)</li> </ul> </li> <li>3. Other provisions related to amendment and control should be left to <b>legal experts</b> as per prevailing standard provisions and situations..</li> </ol>
20	What powers should parliament or president or cabinet have in ratifying Nepal's treaties with other nations? अन्य देशसँग गरिने सन्धीलाई अनुमोदन गर्ने प्रक्रिया कस्तो हुनुपर्छ र सरकार वा राष्ट्रपति वा संसदसँग यस सम्बन्धमा कस्तो अधिकार हुनु पर्छ ?	

21	<p>Under which conditions can a state of emergency be declared?</p> <p>कस्तो अवस्थामा राज्यलाई आपत्कालीन स्थितिको घोषणा गर्ने अधिकार हुनुपर्छ ?</p>	
22	<p>Who should have residual powers and how should this be defined and used?</p> <p>अवशिष्ट अधिकार (बाधाअड्चन फुकाउने अधिकार) लाई कसरी परिभाषित गर्ने र त्यस्तो अधिकार कसले प्रयोग गर्ने व्यवस्था हुनुपर्छ?</p>	
23	<p>What other provisions should be included in the constitution to strengthen democracy, human rights, rule of law and promote economic development?</p> <p>मुलुकको लोकतन्त्र, मानव अधिकार, विधिको शासन तथा आर्थिक विकासको प्रवर्धन एवं सुदृढिकरणकालागि संविधानमा अन्य कस्ता प्रावधान राख्न जरुरी ठान्नु हुन्छ ?</p>	
24	<p>What provision should be included in the constitution to control corruption by politicians and public officials?</p> <p>सार्वजनिक पद धारण गर्ने व्यक्ति एवं राजनितिक नेतृत्वावात हुने भ्रष्टाचारलाई नियंत्रण गर्न सम्बिधानमा कस्तो बेवस्था गर्न आवश्यक ठान्नु हुन्छ?</p>	<p>1. There should be provisions disqualifying a person to continue in elected political and constitutional positions if the person is convicted of serious crime(s) which include corruption and fraud.</p>
25	<p>Any other suggestion not included in the above list</p> <p>माथिका बाहेक अन्य कुनै महत्वपूर्ण सुझाव</p>	<p>1. A strong moral base to be established through the Education System through which values for responsible citizenship and participatory democracy are imbibed by children which can play out in adulthood. in terms of the conscious practice of</p>

		civility in society. 2. The enforcement of the Equal Rights of women and men (and other genders), starting with dignity of the girl-child, must become a normalized part of the Nepali consciousness.
<b>(G) गैरआवासीय नेपाली सम्बन्धी (Regarding Non-Resident Nepali)</b>		
26	<p>What provisions should be included in the constitution to enable NRNs' contribution in nation-building? In addition to the provision on dual nationality, what else should be included to ensure the NRNs' participation in the governance of the country?</p> <p>राष्ट्रनिर्माणमा गैरआवासीय नेपालीहरूको संलग्नतालाई प्रोत्साहित गर्न दोहोरो नागरिकता लगायत संविधानमा अन्य के कस्ता प्रावधान राख्न आवश्यक ठान्नु हुन्छ ?</p>	<p>It is imperative to <b>define</b> the Non-Resident Nepal (NRN) on the basis of Nepali origin. In addition to the provision of <b>dual nationality</b> , provisions should be made for the eligible NRNs to exercise their <b>voting rights</b> (मतदानको अधिकार) at the Embassies of Nepal or appropriate locations in their countries of residence.</p>
<b>(H) माथिका बाहेक अन्य (Others)</b>		
<b>Any other suggestion not included in the above list</b>		
<b>माथिका बाहेक अन्य कुनै महत्वपूर्ण सुझाव</b>		
<p>The following <b>9 issues</b> to be incorporated with emphasis in the New Constitution</p> <p><b>: <u>Presidential System:</u></b></p> <p><b><u>(i) Eligibility for Chief Executive (देशको कार्यकारी प्रमुख)</u></b></p> <p>Only a Nepali citizen by birth can be eligible for President (or/or PrimeMinister)ofthecountry.</p> <p>If the Presidential system is adopted, and a particular Party wins by a two-thirds majority and the President is from this same Party, then he/she can also become a <b>dictator</b>. In order to avoid such a situation of power monopoly by a Party a Constitutional provision must ensure that checks and balances uphold the separation of powers between the Legislature and the Executive bodies.</p>		

**(ii) The Oath of Office (शपथ ग्रहण):**

The Oath of Office for high political office to be taken in the national language ( in Nepali) and this to be so declared as the first sub-article under Part 1, Introduction, Article 5 on National Language,.

**(iii) Independence of the Judiciary (न्यायपालिकाको स्वतंत्रता):**

The Judicial Council must be made accountable and effective in ensuring an effective Independent Judiciary. The recent system of the requiring the Parliamentary hearing of nominees for the Supreme Court justices could adversely affect the Independence of the Judiciary as the performance of potential Supreme Court justices could be affected by the political interests and considerations of the politicians, who are potential members of the Parliament.

Need to institutionalize the complete separation of powers between the Legislature and the Judiciary. Therefore it should not be required to have the system of Parliamentary hearing of the nominees for Supreme Court justices. The justices could, however, be subject to an impeachment by the Parliament if they are found to be engaged in corruption (भ्रष्टाचार).and other unethical conduct

**(iv) Protection of Civil Service Professionals:**

There is need to provide Constitutional protection to the civil servants ( निजामती कर्मचारी ) as it is an accepted practice that they are subject to arbitrary and sometimes even unjust decisions of the ministers regarding their appointments, transfers, promotions and dismissals. This has degraded the morale of the civil servants and weakened the Civil Service .

In the New Constitution the directive must be that the decisions concerning the appointment,transfer, promotion and dismissal of civil servants should be made only through the **established procedure** of the Public Service Commission (लोकसेवा आयोग) and through the concurrence of the Public Service Commission.

**(v) National Development Plans:**

National Development Plans must be prepared and approved in a transparent and scientific manner with the participation of various stakeholders, e.g., NGOs, Media, Civil Society (नागरिक समाज).

**(vi) Environment Friendly Sustainable Development:**

Substantive Development parameters for Nepal must be clearly engraved. These parameters are to be worded as follows:

**“Development should be resource-efficient, environment and climate friendly, ecologically sound and sustainable, and socio-economically equitable”.**

**(vii) Language of the Draft Constitution:**

The language used in the New Constitution must be simple and easily understandable Nepali language and that the first draft of the Constitution must already be made available in other **local and ethnic languages**.

**(viii) Non-politicization of National Institutions that guarantee**

**Civil order :**

There should be a Constitutional provision against politicization of national bodies such as Security and Law Enforcement, Civil Service and the Educational sector.

**(ix) Relocation of the capital:**

The capital city should be relocated from Kathmandu.