

Nepal

**SETTING HUMAN RIGHTS BENCHMARKS
IN THE NEW CONSTITUTION**

April-May 2009

A Global Initiative of Seeking Public Opinion



INHURED INTERNATIONAL

(International Institute for Human Rights, Environment and Development)
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Background

The new constitution-making process in Nepal is going to a daunting challenge in terms of incorporating various demands being raised from different sections and communities of the society. The conventional way of understanding of human rights may not serve the purpose of attaining the aspiration of traditionally marginalized and excluded section of the society. The question of **self-determination** in the context of **federalism** is going to be the most contentious issue from rights perspective in the new constitution drafting process. A wider public discourse is eminent to narrow down the debate and reach to commonly accepted principles without compromising the internally accepted human rights norms and values.

A progressive, all-inclusive, human rights-friendly constitution is the demand of the day without compromising the past achievements and new aspiration of the people whose rights have been systematically violated. There is a need to recognize and galvanize specifically the internationally recognized human rights norms and principles in the day to day life. **The new constitution not only should embrace the spirit of the April Movement (Jana Andolan) and the historical parliamentary proclamations to move towards state restructuring and democratic development through inclusive and meaningful public participation but also reflect the aspiration of the traditionally marginalized section of the society through their direct participation in the discourse.** Along with the recognition of diversities of country such as culture, tradition, language and ethnicity, the principles of state mechanisms such as multiparty system, independence of judiciary, fundamental human rights, people's sovereignty, inclusive democracy and secularism must merit as non-negotiable benchmarks of the new constitution.

Total abolishment of capital punishment along with guarantee of right to life, freedom of expression, assembly and organization and other provisions as guaranteed in the international instruments to which Nepal is a state party are the universal standards of fundamental rights. The provisions must not be tampered in the name of consensus building among the power-centers. In the economic, social and cultural domains, it is vital to embody primary health care, right of the disabled, right to land and natural resources as well as rights relating to free and compulsory education, right to employment with social security, fair

wages and labor rights as fundamental rights with justiciability provision associated with them

Similarly, **ensuring equal social, economic, and political rights including non-discrimination based on gender, religion, ethnicity, class, and sexual orientation together with inheritance rights is instrumental to pave the way for the desired inclusive democratic order.** As a balancing act and the obligation of the state as enshrined in the International Covenant on Economic, Social and Cultural Rights and the Vienna Declaration and Plan of Action, the justiciability of these rights with clearly defined time-bound attainment indicators must be ensured.

In this context, INHURED International believes that there are internationally accepted rock-bottom principles of human rights which must not be compromised under any pretense or any form of political system to be instituted: These are:

- 1) Equality and non-discrimination
- 2) Universality, indivisibility and interdependence
- 3) Zero tolerance to violence and impunity
- 4) Uniformity of definition and interpretation
- 5) Supremacy of human rights

In order to support our initiative, INHURED International is seeking precious expert recommendations on human rights related components from the global human rights community to be furnished to the Constituent Assembly in Nepal in the process of drafting of the new constitution. The exercise of seeking time-honored inputs and suggestions would contribute to galvanize the ongoing debate on the human rights benchmarks setting in the constitution. For this, we have taken liberty to frame some broader questions in relation to the non-negotiable human rights principles. We are confident that the concerned institutions and individuals would invest their time and energy to furnish the response on these questions for the noble cause of helping shape our future and the future of our generations.

QUESTIONS OF CRITICAL CONCERN

[Please respond them on or before May 15, 2009]

A. Human Rights Principles

What should be the fundamental principles of human rights in the new constitution?

1. The essence of the Preamble that embodies non-negotiable human rights doctrine and civilian supremacy

Ans :

2. The doctrine of non-discrimination, accountability and procedural mechanism to be embodied

Ans :

3. The renewed non-negotiable components of civil and political rights, including non-derogable rights

Ans :

4. The progressive realisation of economic, social and cultural rights in terms of ensuring their justiciability

Ans :

5. The rights of traditionally marginalised sections of the society in terms of equality and self-determination

Ans :

B. **Emerging and Overarching Issues**

How should the following emerging and overarching issues be incorporated in the new constitution?

1. Equal, fair and unhindered access to resources and right to development

Ans :

2. Equal, fair, cost-free and unhindered access to justice

Ans :

3. Right to peace and criminalisation of war-propaganda

Ans :

4. Protection and enjoyment of intellectual property right

Ans :

5. Responsibilities of transnational corporations and other business enterprises with regard to workers rights

Ans :

6. Right to enjoy a healthy and protected environment

Ans :

C. Human Rights Mechanisms

How should the national institutions be framed for better protection and promotion of human rights?

1. The mandate, scope and jurisdiction of the National Human Rights Commission in the changing situation

Ans :

2. The need for an independent tribunal to address human rights-related issues

Ans :

3. The status and authority of Dalit Commission, Women's Commission, Disability Commission and others

Ans :

4. The rationale for other sectoral commissions or ombudsmen

Ans :

5. The creation of local ombudsmen and their linkage with national institutions in the new federal structure

Ans :

The End