

Nepal Bar Association

Ramshah Path, Kathmandu, Nepal

Ref.

Date: 20 March 2008

Central Executive Committee

(2007-2010)

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Bishwa Kanta Mainali

Vice- President

Hari Prasad Uprety
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Kabita Thapa (Karki)
Shanti Devi Khanal

PRESS RELEASE

For Immediate Release
Kathmandu

The NBA Releases Recommendations Related to the New Constitution of Nepal

In a publication released today, the NBA has made 99 recommendations for consideration by the Constituent Assembly (CA) for inclusion in the new Constitution of Nepal. This publication is being unveiled by the Right Honourable Chief Justice of the Supreme Court of Nepal, Kedar Prasad Giri, at the Himalaya Hotel today at 5 PM.

The NBA's recommendations were developed through a participatory and consultative process that included extensive research on nine issues and direct consultation with over 500 individuals including legal professionals, civil society organizations, political parties, community leaders and international experts from Canada, Kenya and the United Kingdom. The NBA's consultations included representatives from 72 of Nepal's 75 districts, women, Dalits, disabled, Terai People, Madhesees, Muslim women, indigenous nationalities, youth and all major political parties.

The nine subjects focus on various components of the justice system including the structure of the courts, independence of the judiciary and of the legal profession, access to justice and corruption, as well as on federalism, fundamental rights (including gender and minority rights), language and a CA process for drafting the new constitution.

As a leading civil rights lawyer and activist, NBA President, Bishwa Kant Mainali, is concerned with the Interim Constitutions extensive use of the term "as per provision in the law" in the chapter on fundamental rights. Such a phrase reduces a right to a mere legal right and not a constitutionally guaranteed right. "Fundamental human rights must be guaranteed," said Mainali. "Accordingly, this term should not be included in the new constitution." The President added that "It is imperative that the rights of marginalized minorities be included in the constitution as fundamental rights and that provision for affirmative action be made to ensure minorities receive the benefit of such rights."

The NBA makes a number of recommendations to protect the independence of the judiciary and to ensure the appointment of competent, impartial and accountable judges. The NBA also calls for the professional independence of government attorneys and the legal profession.

The NBA supports the adoption of a federal system of governance and provides thirteen (13) directive recommendations for members of the CA to consider in its deliberations on how to structure the new Nepal. These recommendations touch on matters related to the economy, the structure of the courts and the division of powers between the Central and Provincial governments.

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According to the NBA, "There should be a guaranteed right to justice provision in the constitution to ensure easy, equal and meaningful access to justice by the people." Practical recommendations to support this broad directive principle include the establishment of local bodies or other legal mechanisms to provide justice at a local level. Alternative dispute resolution systems, such as mediation, are also recommended.

The NBA admonishes that "[t]he new constitution...should be serious about the rights and inclusion of the marginalized, Dalits, indigenous nationalities and Madhesees and they include eight (8) recommendations for the purpose of ensuring that every Nepali has the right to a dignified life and identity. To this end the NBA has recommended the constitution include a provision stating that "...the Provincial governments [shall] be guaranteed rights over issues such as language, culture and the representation of indigenous nationalities, Terai People, Madhesees, Janajatis and other marginalized groups of the country."

On a language policy for the new Nepal, the NBA suggests the new constitution contain a provision stating that it is the duty of the state to provide primary and secondary level education in the mother tongues of the people, knowledge of the national language to all communities and to take steps towards providing higher education in all mother tongues of the people.

Finally, the NBA sets out thirteen (13) recommendations on the structure and various processes which could be employed by the CA to facilitate the drafting of the new constitution for Nepal. These recommendations, if implemented, would ensure a participatory, consultative and consensus based process, including the holding of "public hearings in the local language and mini-referendum processes to collect the suggestions from politically, economically, culturally, geographically and educationally disadvantaged people, caste, indigenous and minority groups."

The Nepal Bar Association (NBA) is a professional organization established in 1956 which currently represents more than 22,000 practicing lawyers across Nepal. The NBA is the national representative of the legal profession, serving the public and the profession by promoting justice, defending the rule of law, the independence of the judiciary and professional excellence. The NBA National Office is located in Kathmandu, with 82 Bar Units and 27 Women's Wings across the country.

The full text of the publication can be downloaded from the Nepal Bar Association (NBA) website at http://www.nepalbar.org/nba_cba_ddn.html.

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