

# A Treatise on the Constitution of Nepal 2015

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**Bipin Adhikari**  
Editor

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**Kathmandu University School of Law**

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### **Dedication**

Dedicated to all political leaders and activists who strove  
for due process, rule of law and constitutionalism in  
Nepal since the middle of the 20<sup>th</sup> Century.



# Foreword and Acknowledgements

Organising an international academic conference and preparing its proceedings (including commentaries and opinions from national and international participants) present a two-fold challenge. We decided to take up this challenge with the organisation of the Conference on the Constitution of Nepal, held in Kathmandu on August 11-13, 2018. And now, we present the report on the Conference in the form of this volume, *A Treatise on the Constitution of Nepal, 2015*. We believe this is the first complete review of the Constitution of Nepal, one of the newest constitutions in the world and representing the worldview, hopes, and desires of a country and people in the second decade of the 21st century.

The Conference was intended as an opportunity to discuss the content of the new Constitution as well as the challenges it had faced in its implementation in approximately three years since its promulgation. The Conference was indeed a timely initiative in view of its objective, intended output, and limited timeframe. The book builds upon papers submitted by national and international experts and practitioners and proceedings of live discussion sessions. Following the Conference, our team poured many hours into transforming the Conference materials into its present form.

As organisers, we had been enthusiastic about organising an academic conference on the new Constitution since it was promulgated in September 2015. Aside from bringing significant changes to national life, the Constitution was very distinct in its orientation. It was interpreted differently by various stakeholders; some supported it whole-heartedly, others decided to work with the enshrined compromises, and others still who remained critical of several provisions contained within the document. Many appreciated the historical events and large-scale efforts that led to the Constitution's promulgation and wanted it implemented. Additionally, there was significant international interest in Nepal's constitution-making process, and the Constitution clearly has had geopolitical implications as well. The promulgation of the Constitution even led to an economic blockade against the country. With its history embedded in the work of two Constituent Assemblies, the Constitution certainly required evaluation in an independent and impartial way.

Almost three years after the promulgation of the Constitution and its implementation, though it was slightly early for an exhaustive study, its evaluation could nevertheless be insightful for moving forward, especially in making recommendations for any "course correction" that may be required. As organisers, we believed that a thorough review of the Constitution in the Conference such as this could guide the future processes of constitution-building and informed decision-making by the Government of Nepal and other responsible actors. We believed that it could also assist the interpretation of the Constitution in the days ahead by the Government, the courts, academic circles, and civil society. Moreover, the Conference would also help spawn further studies and inform international parties of the efforts made by the Nepali polity to ensure the rule of law, inclusive democracy, human rights, due process, and social justice, among other goals.

We are indebted to many friends, colleagues, and national and international organisations for their invaluable efforts and commitment to the wide range of activities leading up to the Conference and the publication of this book. Following our decision to hold the Conference, as Convener and Co-convener, we formed an advisory group of five members comprised of Prof. Surya Dhungel, former member of National Human Rights Commission Mr. Sushil Pyakurel, Advocate Mr. Sunil Ranjan Singh, who was a member of the Commission for the Determination of the Number and Boundaries of

Village Bodies, Municipalities and Special, Protected or Autonomous Regions, Director of Social Science Baha Mr. Deepak Thapa, and Policy Analyst Dr. George Varughese. We drew a list of potential resource persons, national as well as international, and our preparatory activities commenced on mid-March 2018. We sincerely appreciate the cooperation and commitment of the members of the advisory group. We are also thankful that with their assistance and networks, we were able to assemble a group of distinguished experts from the country and from around the world; our experts' academic and professional contributions were immensely important for the proper review and interpretation of the 2015 Constitution. We are particularly grateful to the many framers of the Constitution and members of the Constituent Assemblies I and II, who wholeheartedly contributed their time and efforts to the Conference.

We express gratitude to the President of Nepal, Rt. Hon. Bidhya Devi Bhandari, for inaugurating the Conference and delivering her opening address to a sizeable gathering of approximately 250 people at the opening plenary. Her presence in the inaugural ceremony provided a much-needed gravitas to the event and helped to draw the attention of stakeholders towards the Conference's objectives. The keynote speech was delivered by an eminent Bangladeshi jurist and framer of Bangladesh's constitution, Dr. Kamal Hossain. At the inaugural session, we were privileged to hear from Mr. Subash Chandra Nemwang, Chair of the Constituent Assemblies I and II, as well as Dr. Ram Sharan Mahat, Nepali Congress leader and senior economist. The addresses at the inaugural session provided substantive information, opinions, and, consequently, a fillip for discussions scheduled over the next two days. We are grateful to each of them for their remarks.

We are also grateful to Rt. Hon. Prime Minister K. P. Sharma Oli for kindly gracing the closing ceremony and his concluding address. Prime Minister Oli referred to the constitutional advance achieved by Nepal as represented by the new Constitution and the commitment of his Government to its implementation, including through the introduction of necessary laws. As organisers, we look forward to the Government of Nepal prioritising implementation of the Constitution in its best spirit, continuing the process of constitution-building, and strengthening the foundations of representative, inclusive democracy through the delivery of justice, the rule of law, due process, and, most importantly, constitutionalism.

While we also facilitated some sessions, all the panels or thematic sessions held at the Conference were chaired and moderated very efficiently by national-level political leaders, scholars, and civil society stalwarts, each of whom were well-known for their status and contributions. They included Senior Advocate and former Speaker of the House of Representatives Mr. Daman Nath Dhungana, former Assistant Secretary General of the United Nations Dr. Kul Chandra Gautam, Supreme Court Justice Hon'ble Sapana Pradhan Malla, Member of Parliament and women's rights activist Dr. Binda Pandey, researcher and analyst Mr. Deepak Thapa, former Chief Commissioner of the Election Commission Mr. Neel Kantha Uprety, former minister and Nepali Congress leader Dr. Minendra Rijal, former Chief Justice Mr. Kalyan Shrestha, and former Chief Justice Mr. Kedar Nath Upadhyay. We are grateful to these distinguished chairpersons and facilitators.

We were delighted to have top-notch experts as panelists and commentators. They included cultural historian Dr. Ramesh Dhungel, constitutional expert Dr. Surendra Bhandari, Hon. Member of Parliament Mr. Rajendra K. Shrestha, former Supreme Court Justice Mr. Girish Chandra Lal, former member of the National Human Rights Commission Mr. Sushil Pyakurel, former Lieutenant General of the Nepal Army Mr. Bala Nanda Sharma, member of the Truth and Reconciliation Commission Dr. Madhabi Bhatta, political analyst Prof. Ranabir Sammadar (India), constitutional expert Dr. Bhimarjun Acharya, comparative constitutional law expert Prof. Guobin Zhu (Hong Kong, China), constitutional expert Dr. Menaka Guruswamy (India), Prof. Purna Man Shakya, former Assistant Inspector General of Police Mr. Surendra Shah, legal consultant Prof. Robert Taylor (United States), constitutional expert Dr. Bipin Adhikari, Senior Advocate Prashant Bhushan (India), expert of human rights and constitutional reform Dr. Mario Gomez (Sri Lanka), barrister Dr. Sara Hossain (Bangladesh), historian Dr. Pratyoush Onta, disability rights expert Dr. Birendra Raj Pokharel, lesbian, gay, bisexual, and transgender (LGBT) rights professional Ms. Manisha Dhakal, former member of the National Human Rights Commission Dr. Gouri Shanker Lal Das, civil rights expert Dr. Yam Bahadur Kisan, electoral expert Mr. Kåre Vollen (New Zealand), Attorney Ms. Nicole Töpferwien (Switzerland), member of the Election Commission Ms. Ila Sharma, United Nations Development Programme (UNDP) governance official Mr. Tek Tamata, Advocate Mr. Sunil Ranjan Singh, constitutional



expert Dr. Ram Krishna Timalsena, Senior Advocate Dr. Chandra Kanta Gyawali, federalism expert Prof. Rekha Saxena (India), Senior Advocate Shambhu Thapa, Advocate Lalit Basnet, Prof. Surya Dhungel, Prof. Kumar Innam, Member of Parliament Hon. Parshuram Meghi Gurung, political analyst and Constituent Assembly II Member Mr. Lal Babu Yadav. We take this opportunity to thank each of them for their precious contributions to the Conference.

The panelists and commentators also included Member of Parliament and former Minister Hon. Sher Bahadur Tamang, constitutional expert and Member of Parliament Hon. Radheshyam Adhikari, Chief Attorney of Province No 2 Mr. Dipendra Jha, constitutional expert Mr. Budhi Karki, Prof. and educationist Dr. Yubaraj Sangroula, Chief Minister of Gandaki Province Mr. Prithvi Subba Gurung, former secretary of the Government of Nepal Mr. Balananda Poudel, policy analyst Dr. George Varughese, political analyst Prof. Mahendra Lawoti, Mayor of Dhulikhel Municipality Mr. Ashok Byanju Shrestha, peace advisor Mr. Robert Bartel (Germany), journalist Mr. Mahabir Paudyal, constitutional expert Prof. Mara Malagodi (United Kingdom), gender activist Ms. Bharati Silwal, constitutional expert Prof. Mahendra Pal Singh (India), historian Mr. Thomas Robertson (United States), constitutional expert Prof. David Law (Hong Kong, China), constitutional expert Prof. Qianfan Zhang (China), economist and former head of the National Planning Commission Dr. Shanker Sharma, economist Prof. Sagar Raj Sharma, economist and former head of the National Planning Commissions. Dr. Swarnim Wagle, Member of Parliament Hon. Bimala Rai Paudyal, Economist Mr. Niraj Paudyal, economist and banker Mr. Radhes Pant, Advocate Dr. Dina Mani Pokharel, human rights expert Hari Phuyal, Prof. Linda Yanti Sulistiawwati (Indonesia), Prof. Ajeet N. Mathur (India), human rights activist Mr. Subodh Raj Pyakurel, senior lawyer and former Chief Commissioner for Investigation of Abuse of Authority Commission Mr. Surya Nath Upadhyay, political analyst Mr. Hari Sharma, Member of Constituent Assembly I Mr. Nilamber Acharya, sociologist Prof. Ganesh Man Gurung, and Senior Advocate and constitutional analyst Mr. Dinesh Tripathi. We take this opportunity to thank each of them for their precious contributions.

On the management side, the rapporteurs' responsibility was coordinated by Advocate Semanta Dahal and his team: Ms. Needika Adhikari, Mr. Satish Adhikari, Ms. Bijita Dhakal, Ms. Susma Giri,

Mr. Sushrey Nepal, Ms. Prakriti Kandel, Ms. Subekshya Pokhrel, and Ms. Richa Shrestha. They deserve special thanks. The volunteers from Kathmandu University School of Law Mr. Abhishek Jha, Mr. Aayush Koirala, Ms. Avishee Dahal, Ms. Aanya Mishra, Ms. Deepika Acharya, Ms. Kirit Mani Adhikari, Ms. Luna Niraula, Ms. Padma Rijal, Ms. Rashila Banjara, Ms. Sandhya Wagle, Ms. Shinja Niraula, and Ms. Shreya Nepal also provided valuable support. We thank Mr. Kiran Maharjan for the design scheme for the Conference as well as its literature and paperwork. The English-Nepali simultaneous interpretations during the Conference were provided by Mr. Manoj Karki and Mr. Alok Tumbahangphey for which we are thankful to them. We acknowledge the invaluable contribution of Ms. Shubhecha Tewari for her voluntary spirit before and after the Conference as well as for her central role as coordinator of the Conference Secretariat. We thank the team in the Secretariat, which included Mr. Yagya Thapa, Ms. Bidushi Adhikari, Mr. Prabin Paudel, and Ms. Sarada Gurung. Finally, we also thank Ms. Bidushi Adhikari for her editorial assistance.

This Conference was made possible through the moral and financial support of different agencies in Nepal and abroad. We want to note here the support and encouragement of the Government of Nepal from the very beginning. It would not have been possible to organise the Conference without the financial support of the Swiss Agency for Development and Cooperation (SDC), the Australian Aid (AusAid), the International Foundation for Electoral System (IFES), the Asia Foundation (TAF), the National Democratic Institute (NDI), and the Niti Foundation. On behalf of the Kathmandu University School of Law and the Southasia Trust, we thank these missions and organisations for the financial support and understanding of the value of an international conference to review, discuss, and debate the new Constitution of Nepal.

We would like to also thank all participants of the Conference, including its framers, legal and technical experts, representatives of the civil society organisations, bureaucrats, representatives from political parties, and members of Nepal's indigenous communities and other minority groups, whose contributions were invaluable in ensuring a productive conclave.

For an undertaking of this size and depth, inevitably there will have been lapses and omissions, for which we apologise to anyone so aggrieved. We worked diligently to ensure the quality of the deliberations as well as of this present book. We hope that the deliberations of the Conference, as carried in this volume will provide a useful compendium with which to study the Constitution of Nepal, 2015 and set the future course.

Bipin Adhikari, Convener / Kanak Mani Dixit, Co-convener  
Conference on the Constitution of Nepal, 2015 (August 11-13, 2018)

September 2020, Kathmandu

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