



INTERNATIONAL
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OF JURISTS

**Nepal's Fundamental Rights Committee's Draft Provisions
Regarding Equality Rights and Economic, Social and Cultural
Rights: An Assessment and Some Recommended Changes**

April 2010

Introductory Note

In November 2009, the Nepalese constitutional committee charged with preparing a Concept Paper on Fundamental Rights and Directive Principles delivered its draft text to the country's Constituent Assembly.

The Committee's chapter on Fundamental Rights contains proposed rights provisions including a variety of articles that are equality/non-discrimination related or bear directly on economic, social and cultural rights (ESCRs).

In many ways, the Committee on Fundamental Rights and Directive Principles has produced a remarkable draft text in the area of ESCRs and Equality Rights. A broad range of ESCRs has been included—many have been explicitly included for the first time in South Asia—and the equality rights of many disadvantaged groups have been recognized. All in all, the draft text is an impressive foundation and demonstrates, on the part of Committee members, a considerable commitment, dedication and concern for the interests and rights of all Nepalis.

The purpose of this paper is to address the Equality and ESCR provisions contained in the Fundamental Rights Committee's draft text with a view to identifying possible shortcomings from the perspective of international human rights law. Where convenient, the paper also proposes wording which would comply with international human rights norms.

Finally, the paper takes up a list of issues which were not addressed by the Fundamental Rights Committee in its Concept Paper but which ought to be considered by the drafters of the constitution.

The paper is intended to be informal and for reference use by Constituent Assembly members, many of whom are non-lawyers. It is organized by subject area. Thus, the general equality rights guarantee as well as more specific provisions relating to women, children and Dalits are grouped together. While readers are encouraged to review the whole paper, many will find it to be useful when consulted on specific topics.

List of Issues and Commentary: **Economic, Social and Cultural Rights & Equality Rights in the** ***Fundamental Rights Committee Concept Paper***

Equality: Generally

- **Right to Equality: Articles 3(2) and 3(3):** The list of prohibited grounds of discrimination in **articles 3(2) and 3(3)** should be expanded to include “*age*” and “*national or social origin*”. With respect to age, this is a prohibited ground of discrimination under international human rights law. It is interesting that both youth and senior citizens are already recognized and listed as vulnerable groups in the provision relating to affirmative action programs. Therefore, for purpose of symmetry and consistency, ‘age’ should also be listed among the prohibited grounds of discrimination in **articles 3(2) and 3(3)**.

Any legitimate justification for treating people differently on the basis of their “national or social origin” can be addressed through a provision which permits reasonable limitations on rights. For example, it is permissible under international law not to extend certain political rights, such as the right to vote, to non-citizens. But in respect of most rights, all people must be able to do so on an equal basis. [“*national or social origin*”: **UDHR, ICESCR and ICCPR** article 2 and ‘age’ falls within ‘*other status*’ per the jurisprudence of the United Nations Human Rights Committee.¹]

- **Right to Equality:** As currently drafted, article 3(2) prohibits discrimination on the basis of “*economic status*”. However, “*economic status*” appears to have been mistakenly omitted from **article 3(3)**. Therefore, **article 3(3)** should be amended to include “*economic status*” as a prohibited ground of discrimination—in order to ensure that the same grounds that are already listed in art. 3(2) will also be in **art. 3(3)**. This would also be in keeping with the recent General Comment of the UN Committee on Economic, Social and Cultural Rights [**CESCR** General Comment. 20 (2009), U.N. Doc. E/C.12/GC/20 (2009) on “Non-discrimination in Economic, Social and Cultural Rights” at para. 35]
- **Right to Equality: “Disability”** as a prohibited ground of discrimination is found in **art. 3(2)** and **art. 3(3)**. However, because of the long history of marginalization which people with mental disabilities have faced and continue to face in Nepal, it would be important to have separate references to both mental and physical disability—as was done in the affirmative action provision following **art. 3(2)**.

¹ (*Schmitz-de-Jong v Netherlands* (855/99) & *Love v Australia* (983/01))

The UN Convention on the Rights of Persons with Disabilities, which Nepal has signed but not yet ratified, includes within its scope “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.” (Article 1).

Thus, the two references to “disability”, in **art. 3(2) and 3(3)**, should be replaced with: “**mental and physical disability**”.

- **Right to Equality: Substantive Equality, Right Against Untouchability, Rights of Women and Dalits (Articles 3, 9, 23 & 25)**. Despite the fact that the most prevalent grounds of discrimination such as *sex, religion* or *caste* have been prohibited bases of discrimination since at least 1951, discrimination remains prevalent in Nepali society. The current text is virtually the same as previous versions and is, therefore, unlikely to result in any significant progress because, as with earlier versions, it appears only to guarantee ‘identical treatment’ (or what is often called ‘formal equality’) rather than substantive equality. It is advisable, therefore, to revise the current equality/non-discrimination provisions (**Articles 3(2), 3(3), 9, 23, 25**) to ensure that every individual is entitled to substantive equality under the law and to substantive equality in the protection and benefit of the law without discrimination.

Such a provision would allow judicial review regarding the substance and effects of legislation and government actions. Courts should be permitted to look at the historical causes of discrimination against disadvantaged groups. In its current form, courts would instead be restricted to looking only at formal distinctions on the surface of challenged legislation.

Therefore, the current wording of **articles 3(2) and 3(3)** should be modified to state in positive terms that the right to equality protects against both direct and indirect forms of discrimination and also to include a guarantee of “substantive equality”. This could be accomplished by combining **articles 3(2) and (3)** to make a generic equality rights provision with the following wording:

There shall be no discrimination, *whether on purpose or in effect*, against any citizens in the application of general laws *or any other state action or inaction* on grounds of religion, race, caste, tribe, gender, sexual orientation, physical condition, disability, state of health, marital status, pregnancy, economic condition, origin, language or region, ideological conviction or any other similar grounds. *The right to equality requires positive measures to*

address both the needs of groups identified by prohibited grounds of discrimination and the removal of barriers confronting these groups. (Italicized text indicates suggested additional wording).

[CESCR General Comment 20 (2009) and CRPD art. 2]

- **Right to Equality Art. 3(3):** The intention, in art. 3(2) to authorize *laws* creating affirmative action measures should also be reflected in **art. 3(3)** which authorizes affirmative action *measures* (i.e., whether or not they are created by law). Thus, the paragraph after art. 3(2), “**Provided that nothing shall be deemed to prevent the making of special provisions....**” should be repeated immediately after **article 3(3)**. [CESCR General Comment 20 (2009)]

- **Right to Equality: Arts. 3(2) & (3):** In recognition of the growing awareness of intersecting grounds of discrimination, it would be useful to insert a few words at the end of articles **3(2) & (3)** which make clear that rights claimants can rely on multiple, intersecting grounds of discrimination. For example, a Dalit woman who experiences a combination of discrimination, on the basis of sex and caste, ought to be able to go to court and rely on both grounds in advancing her case.² It is recommended that the following wording be inserted at the end of **articles 3(2) and 3(3)**:

...In addition, there shall be no discrimination based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.

[CESCR General Comment No. 20]

- **Right to Equality: Art. 3(4) (Re: Pay Equity/Equal Pay) query,** does the prohibition of “discrimination....on the basis of gender for the same work” include work of equal value i.e., employment equity? The current provision provides for non-discrimination for men and women doing the same work. However, it does

² The UN Committee on Economic, Social and Cultural Rights has confirmed that: “Some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.” See: *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights* at para. 17:

<http://www2.ohchr.org/english/bodies/cescr/docs/gc/E.C.12.GC.20.doc>

Model wording can be found in the *Canadian Human Rights Act*, s. 3.1 which provides: “For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.

See: http://laws.justice.gc.ca/fra/h-6/20090812/page-2.html#codese:3_1

not address different work that is of equal value. Under the concept of *employment equity*, it is important to properly value work traditionally performed by women. This is important in Nepal, where women often perform low-valued work that is not performed by men, but that is equal in value to other kinds of work. It is advisable that the provision be reviewed with the goal of ensuring that different work that is of equal value, whether performed by men or women, is paid equally.

Equality: Untouchability

- **Right against Untouchability: Art. 9** (see above re Article 3 and *substantive equality*)

Equality: Women

- **Rights of Women: Art. 23(2)**—rather than framing it merely as an anti-discrimination provision, it should be framed, in positive terms, as a right to substantive equality in which both direct and indirect discrimination would be prohibited. (see above re Article 3 and *substantive equality*)
- **Rights of Women: Art. 23(6)**: This provision guarantees that women shall have ‘special opportunities’ with respect to *education, health, employment and social security*. However, these benefits are jeopardized by the uncertainty in the wording of art. 31(1) which may make them subject to being ‘prescribed by subsequent law’. This shortcoming can be resolved by simply deleting article 31(1). (See separate comments on article 31 below).

Equality: Children

- **Rights of Children: Art. 24**: There should be a provision that in any proceedings concerning children, the paramount consideration should be the ‘best interests of the child’? Article 3(1) of *Convention on the Rights of the Child* (which Nepal has ratified) provides that: “**In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.**” This principle, according to the Committee on the Rights of the Child, cuts across all rights and provisions of the Convention and should inform the interpretation of the scope and content of those rights. Nepal should have a similar provision in **article 24**.

- **Rights of Children Art. 24(2):** This provision guarantees that children shall have ‘special opportunities’ with respect to *education and health care*. However, these benefits are jeopardized by the uncertainty in the wording of art. 31(1) which may make them subject to being ‘prescribed by subsequent law’. This shortcoming can be resolved by simply deleting article 31(1). (See separate comments on article 31 below).

Equality: Dalits

- **Rights of Dalits: Art. 25(1)** Rather than framing it merely as an anti-discrimination provision, it should be framed, in positive terms, as a right to substantive equality in which both direct and indirect discrimination would be prohibited (see above re Article 3 and *substantive equality*)
- **Rights of Dalits: Art. 25(3)** The rights of Dalits in this provision to ‘positive discrimination’ with respect to “*education, health facilities employment and social security*” are jeopardized by the uncertainty in the wording of art. 31(1) which may make them subject to being ‘prescribed by subsequent law’. This shortcoming can be resolved by simply deleting article 31(1). (See separate comments on article 31 below).

Legal Aid

- **Right to Justice: Legal Aid (article 5(10)).** The current provision creates a right to legal aid for poor people, but, located where it is in the text, the right to legal aid would likely only be guaranteed for people subject to criminal proceedings.

In order to make certain that legal aid will also be available whenever a poor person’s constitutionally protected interests are jeopardized or violated (**not** merely in the area of criminal justice), it is advisable to also create a separate provision—outside **article 5**—under the following heading:

Legal Aid:

Any indigent person has the right to free legal aid when their fundamental rights are subject to imminent threat or have been violated.

Education

- **Right to Education: Art. 16(3)** The article purports to offer free higher education to “Citizens belonging to a disadvantaged class” but it then limits it by saying that this is subject to it being “provided for in the law.” The ‘as provided for in the law’ wording effectively means that the right to higher education is NOT constitutionally protected. Rather, it is only protected if, and to the extent that,

Parliament subsequently decides to do something by way of legislative enactment. No constitutional entitlement to higher education is created by the current wording of the provision to give effect to the obligation under ICESCR article 13 to make higher education equally accessible to all.

As with most constitutional provisions, certain elements will require full clarification, such as, in this case, the definition of ‘disadvantaged class’ and ‘higher education’. However, the need for implementing legislation does not displace the need to affirm the essence of the right irrespective of the eventual content of that legislation. The phrase “provided for in the law” should therefore be dropped from the provision.

Employment

- **Right to Employment: art. 18(1) & (3):** The article provides that *terms and conditions* of employment shall be as determined by law” and that the “unemployed citizen shall have the right to receive *allowances as provided for in law*.” Assuming that it is necessary to delegate the specifics of the terms of employment or the unemployment allowances to subordinate legislation, it is advisable to insert a ‘reasonableness’ qualification so that it would read: “**Reasonable terms and conditions of employment shall be determined by law**” and “**Every unemployed citizen shall have the right to receive reasonable allowances as provided for in law**” in order to ensure that the subsequent implementing legislation must meet a constitutional standard of ‘reasonableness’ (as is already found, for example, in art. 19(1) and (2): “...the right to *proper* work practices....the right to *proper* remunerations, facilities and social security.”)
- **Right to Employment: Art. 18(1)** guarantees the right of those people who have employment to the benefit of legislatively set minimum *terms and conditions* as provided for in law. These are rights found in binding treaties that Nepal has ratified. However, the restriction of these rights to ‘citizens’ opens the door to i) the exploitation of non-citizens and ii) the risk that Nepali workers’ incomes will be vulnerable to employers who may prefer to pay lower wages to non-citizens. It is advisable to conduct a careful review of all provisions that limit rights to citizens, ensuring compliance with international obligations. [ICESCR art. 2]

Labour

- **Right to Labour: Art. 19(3)** The provision seems inappropriately worded inasmuch as it provides that the rights to form and participate in trade unions, to collectively bargain and to strike are all conditional on there being “provided for in the law.” The ‘as provided for in the law’ wording effectively means that labour rights are NOT constitutionally protected and, therefore, the phrase should be dropped or the wording clarified.

Health

- **Right to Health: Art. 20(1):** In order to conform with Nepal’s obligations under the ICESCR, and bearing in mind the principle of progressive realization, the right to health should not be restricted to “basic” health services but should be worded as follows: “...shall have the right to the highest attainable standard of physical and mental health services free of cost.”

[ICESCR art. 12 & CESCR General Comment 14]

- **Right to Health: Art. 20(1):** The ‘right to basic health services free of cost’ is restricted to "citizens". It is advisable to conduct a careful review of all provisions that limit rights to citizens, ensuring compliance with international obligations.

Food

- **Right to Food: Art 21:** Rights are restricted to "citizens". It is advisable to conduct a careful review of all provisions that limit rights to citizens, ensuring compliance with international obligations.

Housing

- **Right of access to Housing:** These rights are restricted to "citizens". It is advisable to conduct a careful review of all provisions that limit rights to citizens, ensuring compliance with international obligations.
- **Right of access to Housing: Art. 22(1):** Right of *access* to housing should be reformulated to express “the right to adequate housing.” (ICESCR article 11(1) and the CESCR’s General Comment 4). Article **22(1)** refers to ‘access’ to housing while the right to food 21(1) does not. The guarantee to the right to housing should be no weaker than the right to food. The wording of the provision

should be simplified and clarified: “**Every person shall have the right to adequate housing.**”

- **Right to Housing: Art. 22(2)** Rights against arbitrary, including forced, eviction: the provision should be re-worded in order to ensure that any legislation which authorizes evictions is itself neither arbitrary nor unreasonable. Such wording could be:

22(2) No citizen shall be removed from his or her place of residence except as is necessary to serve a reasonable and legitimate public purpose and any laws authorizing evictions must also be reasonable and necessary.

22(3) All reasonable measures must be taken to ensure that any eviction does not lead to homelessness or expose the evicted person to a violation of any other fundamental rights as a consequence of such eviction.

- **Right to Housing/Right Against Arbitrary Eviction: Art. 22(2):** Even if there is a justification for restricting the right to housing to citizens, there is no justification for failing to recognize the right against arbitrary eviction for everyone (after all, the state will not have provided anything by way of housing to non-citizens). **Article 22(2)** should be drafted to read: “**Except in accordance with law or an order issued by a court of law, no person shall be removed....**”

Social Justice

- **Right to Social Justice:** Given that the purpose of the section is to ensure representation of the historically marginalized in state structures on the basis of proportional inclusion, **art. 27(1)** ought to include “**people living in poverty**” among the list of groups entitled to 'social justice'. That this should be the case is confirmed by the directive, in art. 27(2), that “poorer people” should be given preference in the arrangements for proportional inclusion.
- **Right to Social Justice: Art. 27(9):** Persons with a disability: The promise is for persons with a disability to be given “equal access” to ‘public services and facilities’ but equal access is frequently not good enough. Persons with disabilities, for example, need substantively equal access and accommodation of their circumstances in order for them to be able to use public services (e.g., wheelchair ramps to a school or government building are required in order to be

able to have ‘equal access’). **Article 27(9)** could be improved by having the provision read as follows: **“Persons with a disability shall have the right to live a dignified life with self respect and shall have *substantively* equal access to public services and facilities.”**

- **Right to Social Justice: Art. 27(3)-(10):** The right to receive “special opportunities and benefits” is so vague that one wonders whether it has any real content. In other words, if people who are entitled to ‘social justice’ under **articles 27(3) to 27(10)**, were to go to court to claim their rights, a court might have a very difficult time determining, with any clarity, what it is that the article had guaranteed. As currently drafted, they would undermine the primary reasons for enshrining rights in a constitution: holding government accountable and ensuring that the rights can be claimed and are justiciable. These provisions should be re-worded with a view to making it clearer what is meant by “special opportunities and benefits”.
- **Right to Social Justice:** The elaborate protections set out in the *social justice* article are jeopardized by the uncertainty in the wording of art. 31(1) which may make them subject to being ‘prescribed by subsequent law’. This shortcoming can be resolved by simply deleting article 31(1). (See separate comments on article 31 below).

Social Security

- **Right to Social Security: Art. 28:** The right to social security is limited to members of certain groups rather than being made available to “people in need”. That is, Nepal’s limited financial resources should be provided **on the basis of need** rather than to all members of specific groups—many of whom would not need social security benefits. **Article 28(1)** could simply be worded: **“Everyone has the right to adequate and accessible social security when in need.”**
- **Right to Social Security Art 28:** The current wording lacks any *adequacy* requirement for the amount or form of social security to be provided as required under international standards. There should be wording such as the following: **(“The disadvantaged class, the incapacitated and the helpless, persons with disability..... have the right to adequate social security.”)**
- **Right to Social Security Art 28:** The article purports to offer social security but it then limits it by saying that it is guaranteed only insofar as is “provided for in the law.” The ‘as provided for in the law’ wording effectively means that the right to social security is NOT constitutionally protected and, therefore, the phrase

should be dropped. Even **if** it is intended that the specifics of the amount and form of social security are to be implemented by subsequent legislation, the provision should be strengthened by inserting an adequacy or ‘reasonableness’ qualification so that it would read “**Everyone has the right to reasonable social security when in need.**”

- **Right to Social Security:** The significant right to *social security* article is jeopardized by the uncertainty in the wording of art. 31(1) which may make it subject to being ‘prescribed by subsequent law’. This shortcoming can be resolved by simply deleting article 31(1). (See separate comments on article 31 below).

Implementation

- **Article 31(1):**
 - What does it mean? Article 31(1) is drafted in very ambiguous terms so that its meaning cannot be reliably determined.
 - Under one likely interpretation, article 31(1) could easily make **any** of the articles referring to “education, health, employment, housing, food, social security and social justice” into directive principles and/or “...as provided by law” clauses.
 - The scope of the risk created by article 31(1) crosses into both the substantive articles dealing with these specific rights (the rights to education, right to health, right to employment, right to housing, right to food, right to social security and the right to social justice) as well as any other articles which even mention these interests (“education, health, employment, housing, food, social security and social justice”). Thus, the article concerning rights of **women** (specifically article 23(3) and 23(6); the article relating to rights of **children** esp. 24(2); rights of **Dalits**, esp. art. 25(3), the article relating to **social justice** art. 27(3); and the article relating to **social security** (art. 28) are **all** at risk of being gutted by **articles 31(1) and (2)**.
 - Alternatively, if the purpose of article 31(1) is simply to remind government that it needs to implement the rights, then such a provision is unnecessary and should either be deleted or clarified in a manner to expressly indicate that it is directed towards implementation.

- Therefore, if the intention of **art. 31(1)** is to remind and encourage government vis-à-vis its obligations in the area of ESCRs, one option would be to have clearer wording such as the following:
“The rights relating to education, health, employment, housing, food, social security and social justice are binding on all levels of government and are fully justiciable in court. The state shall take all reasonable legislative and other measures, within its available resources to implement these rights.”

- **Article 31(2):** **Article 31(2)** calls upon the Government to enact implementing legislation regarding rights “in this Part” within two years. This provision undermines the constitutional recognition, status and guarantee of rights that already exist. In other words, it is advisable that the rights in this part unambiguously take effect immediately. This can be achieved simply by deleting article 31(2).

Outstanding Issues which should be addressed in the FRC's Concept Paper

Application of the rights provisions: Who bears the burden of the obligations in the fundamental rights chapter? Do all levels of government (federal, provincial and local) have obligations within their respective constitutional fields of responsibility? What about individuals or private companies? For example, the current equality provisions (**arts. 3(4)** and **art. 9**) appear to create responsibilities vis-à-vis non-discrimination as between private individuals or between private companies—is this the intended effect? Frequently, though not always, constitutional bills of rights only create obligations (both positive and negative) on governments not on individuals or private companies.

Of interest is article 9(4) of the South African constitution which prohibits discrimination by one person against another but then says that such ‘private discrimination’ is to be the subject of subsequent implementing legislation: “**National legislation must be enacted to prevent or prohibit unfair discrimination.**”

Proposed Wording: It is suggested that the above wording from South Africa could be a helpful model for Nepal to follow.

Remedy and Reparation Provision: The Chapter contains no clear provision on remedy and reparations and simply refers [in art. 31(3)] to another Part of the Constitution. This needs to be clarified and bolstered. Human rights and remedies for their violation are unique and specialized and deserve their own provision; reliance on a generic remedy provision imported from elsewhere in the civil law cannot provide the full range of remedies which human rights violations can require.

There should also be a statement that claims for enforcement of rights can also be made in subordinate courts. In other words, any court with jurisdiction to determine rights violations should also have full remedial jurisdiction to order any and all remedies that may be appropriate and effective in the circumstances of the case.

Anyone whose rights or freedoms, as guaranteed by this Chapter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers necessary in order to impart full justice and which provides an appropriate and effective remedy and reparation in the circumstances.

-or-

Anyone whose rights or freedoms, as guaranteed by this Chapter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers necessary in order to impart full justice and which provides an appropriate and effective remedy and full reparation in the circumstances. Without limiting the generality of the foregoing, a court may issue orders such as ones for, reparation, (including compensation, satisfaction, guarantees of non-repetition, restitution and rehabilitation) declarations, etc., and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto.

Interpretation Clause: As a way of informing the interpretation of the rights, freedoms and duties, it would be appropriate to include a provision which directs the government and the courts to interpret and apply the provisions in the Chapter in accordance with international law (both customary and treaty law) to which Nepal is party.

Proposed wording:

“When applying a provision of the Fundamental Rights Chapter a court shall ensure full conformity with the Nepal’s legal obligations and international law and standards.”

Supremacy Clause: The supremacy clause proposed as article 1 in the Concept Paper of the Constitutional Committee makes clear that the Fundamental Rights provisions are paramount to legislative provisions and that: “All laws inconsistent with this Constitution shall, to the extent of such inconsistency, be void.” However, this wording fails to make clear that a violation can also result when the state fails to discharge its constitutionally imposed obligations. For proposed wording see, for example, s. 2 of the South African Constitution:

“Supremacy of Constitution

This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.”

-or-

Kenya's Model Constitution:

Supremacy of the Constitution

2. (1)

(4) Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency and any act or omission in contravention of this Constitution is invalid.

Proposed wording of Nepal's Supremacy Clause (as adapted from article 1(1) of the Concept Paper from the Constitutional Committee):

Constitution as the Fundamental Law:

(1) This Constitution is the fundamental law of Nepal. All laws inconsistent with this Constitution **and any failure to discharge an obligation imposed by this Constitution** shall, to the extent of such inconsistency, be void.

Constitutional Bodies/Enforcement: In addition to conventional litigation-based enforcement of the fundamental rights provisions, it would be would be highly advantageous to establish a specialized constitutionalized quasi-judicial body with full power to monitor, investigate and enforce (including the power to issue legally enforceable orders) the fundamental rights provisions.