

**International IDEA/Nepal**

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Preambles and Directive Principles of State Policy

What is International IDEA?

The International Institute for Democracy and Electoral Assistance—International IDEA—is an intergovernmental organization that supports sustainable democracy worldwide. Its objective is to strengthen democratic institutions and processes.

What does International IDEA do?

International IDEA acts as a catalyst for democracy building by providing knowledge resources and policy proposals or by supporting democratic reforms in response to specific national requests. It works together with policy makers, governments, UN agencies and regional organizations engaged in the field of democracy building.

International IDEA's programmes aim to:

- ▶ provide **knowledge resources** in the form of handbooks, databases and websites, training materials, and foster professional expert networks;
- ▶ **develop policy proposals** based on this knowledge as a means to provoke dialogue and debate on how best to strengthen democratic processes;

Preambles

A preamble explains the purposes of legal documents like Constitutions. Although it is not necessary to have a preamble to a Constitution, many countries include preambles as a prefatory text in their constitutions.

Preambles come in various forms. Some preambles refer to struggles in the past, especially those that have led to the new Constitution, some describe how the new Constitutions were adopted and others refer to the common values and hopes of the people and the orientation the people expect the state to follow. Some preambles are short; others rather long; some are clear and written simply, while others sound pompous and are full of legalese; still others use language which appeals to emotions. The preamble is addressed to the general population as well as to lawyers and legislators.

Besides acting a guide to the Constitution, a preamble has other functions, as well: for example, the legislature can refer to the preamble when enacting laws, and courts can refer to the preamble when interpreting contentious issues in the constitution to see if the issues uphold the spirit of the preamble. The preamble sets the tone for the Constitution, and this thematic relationship between a Constitution and its preamble can be seen in the 1990 Constitution of Nepal, which says that the Constitution must not be amended in such a way as to go against the spirit of the preamble (which included 'constitutional monarchy' as well as human rights, multiparty democracy and other values).

The tradition of putting a preamble in a Constitution probably began with the US Constitution which begins with the words, 'We the People of the United States...' Many other Constitutions also begin with 'We the people...' to emphasize that Constitutions are based on the will of the people, not of kings or gods or governments. By emphasizing people, the preamble also asserts the Constitution is created for and by a political community. Some Constitutions, however, also include statements like 'God bless our country' or make a specific reference to a deity to point to a certain religious orientation.

There are no rules about how preambles should be written or how long they should be. To illustrate this, let's look at some preambles. Here is the Preamble of the Constitution of Portugal (passed after a democratic revolution) in its entirety:

On 25 April 1974, the Armed Forces Movement, setting the seal on the Portuguese people's long resistance and interpreting its deep-seated feelings, overthrew the fascist regime.

The liberation of Portugal from dictatorship, oppression and colonialism represented a revolutionary change and an historic new beginning in Portuguese society.

The revolution restored fundamental rights and freedoms to the people of Portugal. In the exercise of those rights and freedoms, the people's legitimate representatives have met to draw up a Constitution that meets the country's aspirations.

The Constituent Assembly affirms the Portuguese people's decision to defend their national independence, safeguard the fundamental rights of citizens, establish the basic principles of democracy, secure the primacy of the rule of law in a democratic state and open the way to socialist society, respecting the will of the Portuguese people and keeping in view the building of a freer, more just and more fraternal country. The Constituent Assembly, meeting in plenary session on 2 April 1976, approves and decrees the following Constitution of the Portuguese Republic.

This preamble is quite short. The Constitution of Papua New Guinea, on the other hand (passed at the time of Independence), is much longer and begins like this:

WE, THE PEOPLE OF PAPUA NEW GUINEA—

- ▶ united in one nation
- ▶ pay homage to the memory of our ancestors—the source of our strength and origin of our combined heritage
- ▶ acknowledge the worthy customs and traditional wisdoms of our people—which have come down to us from generation to generation
- ▶ pledge ourselves to guard and pass on to those who come after us our noble traditions and the Christian principles that are ours now.

And it goes on to say that

By authority of our inherent right as ancient, free and independent peoples

WE, THE PEOPLE, do now establish this sovereign

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- ▶ provide **assistance to democratic reform processes** in response to national requests and in partnership with regional or other organizations.

Where does International IDEA work?

International IDEA works worldwide. It is based in Stockholm, Sweden, and has offices in Latin America, Africa and Asia.

Who are International IDEA's Member States?

International IDEA's Member States are all democracies and provide both political and financial support to the work of the Institute. They are: Australia, Barbados, Belgium, Botswana, Canada, Cape Verde, Chile, Costa Rica, Denmark, Finland, Germany, Ghana, India, Mauritius, Mexico, Namibia, The Netherlands, Norway, Peru, Portugal, South Africa, Spain, Sweden, Switzerland and Uruguay.

Japan has observer status.

nation and declare ourselves, under the guiding hand of God, to be the Independent State of Papua New Guinea.

AND WE ASSERT, by virtue of that authority

- ▶ that all power belongs to the people—acting through their duly elected representatives
- ▶ that respect for the dignity of the individual and community interdependence are basic principles of our society
- ▶ that we guard with our lives our national identity, integrity and self respect
- ▶ that we reject violence and seek consensus as a means of solving our common problems
- ▶ that our national wealth, won by honest, hard work be equitably shared by all.

The Preamble of the Constitution of India states:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The Nepali people will be drafting their own Constitution soon, and they have a wide range of models to choose from when they draft their preamble to their Constitution. The people will be able to choose whether the preamble should mention the nation's history, as has been done in Portugal, include a reference to a higher power, as has been done in New Guinea, or follow India's example and outline broad principles of ethics and governance that the Constitution seeks to uphold.

Directive Principles of State Policy

The Directive Principles of State Policy, sometimes called National Objectives, can be used to give more specific constitutional directions to governments and to guide the establishment of a just society to promote the welfare of the people. Governments and courts need to keep these principles in mind while framing and interpreting laws, respectively. However, Directive Principles are usually drafted in such a way as to not make them enforceable by courts. Directives Principles do have a certain status because they are part of the Constitution, but they should not be confused with fundamental rights, which are usually enforceable.

The Indian Constitution has a comprehensive list of the Directive Principles of State Policy influenced by the Universal Declaration of Human Rights, the Irish Constitution and the Declaration of the Rights of Man proclaimed by Revolutionary France. The Directive Principles of State Policy require the state to adopt policies that provide the citizens with adequate means of livelihood and to ensure that ownership and control of resources are distributed to serve the common good. The protection and empowerment of workers, equal justice and free legal aid, empowerment of village level units of self government, development of agriculture and animal husbandry, environmental protection, a uniform civil code, free and compulsory education of children, promotion of educational and economic interests of marginalized castes, improved health and nutrition standards are also outlined as State priorities. Also among the Directive Principles of State Policy are the protection of national monuments, separation of the judiciary from the executive and the promotion of international peace and security. The Directive Principles have been the basis for several Land Reform Acts, Minimum Wages Acts and legislation to expand local governance.

The Directive Principles of State Policy in the Indian Constitution in turn have inspired many Constitutions in Africa and Asia, including Nepal. The real value in these principles is the extent to which they inspire governments to be proactive in planning for the welfare of the people by promoting a social order based on social, economic and political justice, and the extent to which they ensure that all national institutions and processes support these objectives.