

THE INTERIM CONSTITUTION OF NEPAL

preamble

WE, THE SOVEREIGNTY AND STATE AUTHORITY INHERENT PEOPLE OF NEPAL,

Respecting the people's mandate expressed in favour of democracy, peace and progression through historical struggles and people's movements launched by the people of Nepal at various times since before 2007 (1951) to till the date ;

Pledging to accomplish the progressive restructuring of the State in order to solve the problems existing in the country relating to class, ethnicity, region and gender;

Expressing our full commitment to democratic values and norms including the competitive multi-party democratic system of governance, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, complete freedom of the press, independent judiciary and concepts of the rule of law;

Guarantee the basic rights of the people of Nepal to make a constitution for them on their own and to take part in a free and fair election to the Constituent Assembly in an environment without fear;

Putting democracy, peace, prosperity, progressive socio-economic transformation and sovereignty, integrity independence and prestige of the country in the center;

Declaring Nepal as a federal, democratic republican state upon duly abolishing the monarchy;

HEREBY DECLARE, with a view to institutionalizing the achievements made through the revolutions and movements till now, the promulgation of this Interim Constitution of Nepal 2063 (2007), which has been made through a political understanding and to be in force until a new constitution is framed by the Constituent Assembly.

Part 1 Preliminary

1 CONSTITUTION AS THE FUNDAMENTAL LAW

(1)

This Constitution is the fundamental law of Nepal. Any laws inconsistent with it shall, to the extent of such inconsistency, be void.

(2)

It is the duty of every person to uphold this Constitution.

2

Sovereignty and State Authority: The sovereignty and the state authority of Nepal shall be vested in the people of Nepal.

3

Nation: Having multiethnic, multilingual, multireligious and multicultural characteristics with common aspirations and being united by a bond of allegiance to national independence, integrity, national interest and prosperity of Nepal, all the Nepalese people collectively constitute the nation.

4 STATE OF NEPAL

(1)

Nepal is an independent, indivisible, sovereign, secular, inclusive and federal, democratic republican state.

(2)

The territory of Nepal shall comprise of:

- (a) The territory existing at the commencement of this constitution; and
- (b) Such other territory as may be acquired after the commencement of this Constitution.

5 LANGUAGE OF THE NATION

(1)

All the languages spoken as mother tongues in Nepal are the languages of nation.

(2)

The Nepali Language in Devanagari script shall be the official language.

(3)

Notwithstanding anything contained in Clause (2), nothing shall be deemed to prevent the using of any language spoken as the mother tongue in a local body and office. The State shall maintain records by translating the languages so used in the official language.

6

National Flag: The National flag of Nepal, as handed down by tradition, consists of two juxtaposed triangular figures with a crimson-coloured base and deep blue borders, there being a white emblem of the crescent moon with eight rays visible out of sixteen in the upper part and a white emblem of a twelve rayed sun in the lower part. The method of drawing out the flag and other particulars relating thereto shall be as set forth in the Schedule -1.

7 NATIONAL ANTHEM ETC

(1)

The national anthem and the coat-of-arms of Nepal shall be as determined by Government of Nepal.

(2)

The Rhododendron Arboreum is the national flower, Crimson Colour shall be the national colour, the Cow shall be the national animal and the Lophophorus shall be the national bird of Nepal.

Part 2 Citizenship

8 CITIZENSHIP AT THE COMMENCEMENT OF THE CONSTITUTION

(1)

At the commencement of this Constitution, the persons who have acquired the citizenship of Nepal and who are eligible to acquire the citizenship by virtue of this part shall be the citizenship of Nepal.

(2)

At the commencement of this Constitution, the following persons who have their permanent domicile in Nepal shall be deemed to be the citizens of Nepal by descent:

- (a) any person who has acquired citizenship by descent prior to the commencement of this Constitution;
- (b) any person whose father or mother was a citizen of Nepal at his or her birth.

(3)

Every child who is found within the territory of Nepal and the whereabouts of whose parents are not known shall, until the father or the mother of the child is traced, be deemed to be a citizen of Nepal.

(4)

Whenever any territory is acquired by way of incorporation into Nepal, every person having his or her domicile in such territory shall become a citizen of Nepal, subject to the provisions of the laws in force.

(5)

Any person who was born in the territory of Nepal before or on the last day of the month of Chaitra of the year 2046 (13 April 1990) and has been permanently domiciled in Nepal shall acquire the citizenship of Nepal by birth pursuant to the laws in force.

Provided that, for the acquisition of citizenship under this provision, any person must make an application within the prescribed period, for one time, as provided in the laws in force.

(6)

A woman of foreign nationality who has a matrimonial relationship with a citizen of Nepal may, if she so wishes, acquire the naturalized citizenship of Nepal, pursuant to the laws in force.

(7)

Notwithstanding anything contained elsewhere in this Article, in the case of a person born from a woman citizen of Nepal married to a foreign citizen, if such person was born in Nepal, has permanently resided in Nepal and has not acquired the citizenship of a foreign country on the basis of the citizenship of his or her father, he or she may acquire the naturalized citizenship of Nepal, pursuant to the laws in force.

9

Naturalized or honorary citizenship: Except as mentioned in Article 8, the Government of Nepal may grant the naturalized or honorary citizenship of Nepal, as provided in the laws.

10

Acquisition and termination of citizenship: Other necessary matters including the acquisition and termination of citizenship shall be as provided in the laws in force.

11

Deputation of citizenship teams: The Government of Nepal may depute citizenship distribution teams to grant citizenship to those persons who are eligible to acquire citizenship as provided in the laws in force.

Part 3 Fundamental Rights

12 RIGHT TO FREEDOM

(1)

Every person shall have the right to live with a dignity, and no law shall be made which provides for the death penalty.

(2)

No person shall be deprived of his or her personal liberty save in accordance with law.

(3)

Every citizen shall have the following freedoms:

- (a) Freedom of opinion and expression;
- (b) Freedom to assemble peaceably and without arms;
- (c) Freedom to form political parties;
- (d) Freedom to form unions and associations;
- (e) Freedom to move and reside in any part of Nepal; and
- (f) Freedom to practice any profession, carry on any occupation, industry and trade.

Provided that:

(1)

Nothing in Sub-clause (a) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religions or communities, or on any act of defamation, contempt of court or incitement to an offence, or on any act which may be contrary to public decency or morality.

(2)

Nothing in Sub-clause (b) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty, integrity or public peace and order of Nepal.

(3)

Nothing in Sub-clauses (c) and (d) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religions or communities, or which may incite violent activities, or which may be contrary to public morality.

(4)

Nothing in Sub-clause (e) shall be deemed to prevent the making of laws which are in the interest of the general public, or which are made to impose reasonable restrictions on any act which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religions or communities.

(5)

Nothing in Sub-clause (f) shall be deemed to prevent the making of laws to impose restrictions on any act which may be contrary to public health or morality of the general public, to confer on the State the exclusive right to undertake any specific industry, business or service, or to prescribe any condition or qualification for carrying on any industry, trade, profession or employment.

13 RIGHT TO EQUALITY

(1)

All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.

(2)

No discrimination shall be made against any citizen in the application of general laws on grounds of religion, color, sex, caste, tribe, origin, language or ideological conviction or any of these.

(3)

The State shall not discriminate against citizens among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these.

Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of women, Dalits, indigenous peoples (Adibasi, Janajati), Madhesi or farmers, workers, economically, socially or culturally backward classes or children, the aged and the disabled or those who are physically or mentally incapacitated.

(4)

No discrimination in regard to remuneration social security shall be made between men and women for the same work.

14 RIGHT AGAINST UNTOUCHABILITY AND RACIAL DISCRIMINATION

(1)

No person shall be discriminated against as untouchable and subjected to racial discrimination in any form, on grounds of caste, race, community or occupation. Such discriminatory treatment shall be punishable, and the victim shall be entitled to such compensation as determined by law.

(2)

No person shall, on grounds of caste or race, be deprived of the use of services, facilities or utilities available to the public or of the access to any public place or public religious sites or of the performance of any religious function.

(3)

In producing or distributing any goods, services or facilities, no person belonging to any particular caste or tribe shall be prevented from purchasing or acquiring such goods, services facilities nor shall such goods, services facilities or facilities be sold or distributed only to the persons belonging to any particular caste or tribe.

(4)

No such act as to purport to demonstrate any superiority or inferiority of the person or persons belonging to any caste, tribe or origin or to justify social discrimination on the ground of caste or race or to publicize ideology based on racial superiority or hatred or to encourage caste discrimination in any manner shall be allowed.

(5)

Any act contrary to clauses (2), (3) and (4) shall be punishable by law.

15 RIGHT RELATING TO PUBLICATION, BROADCASTING AND PRESS

(1)

No publication, broadcasting or printing of any news item, editorial, feature, article or other reading and audio-visual material through any means whatsoever including electronic publication, broadcasting and printing shall be censored.

Provided that nothing shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities, or on any act of treason, defamation, contempt of court or incitement to an offence, or on any act which may be contrary to public decency or morality.

(2)

No radio, television, on-line or other form of digital or electronic equipment, press or other means of communication publishing and broadcasting or printing any material shall be closed nor shall registration thereof be canceled by the reason of the publication, broadcasting or printing of such material through any audio, audio-visual or electronic equipment.

(3)

No newspaper, periodical or press shall be closed or seized nor shall the registration thereof be canceled for printing or publishing any news item, editorial, article or other reading material.

(4)

No means of communication including the press, electronic broadcasting and telephone shall be interrupted except in accordance with law.

16 RIGHT RELATING TO ENVIRONMENT AND HEALTH

(1)

Every person shall have the right to live in a healthy environment.

(2)

Every citizen shall have the right to basic health services free of cost from the State, as provided in law.

17 RIGHT RELATING TO EDUCATION AND CULTURE

(1)

Every community shall have the right to get basic education in its own mother tongue, as provided in law.

(2)

Every citizen shall have the right to get free education up to the secondary level from the State, as provided in law.

(3)

Every community residing in Nepal shall have the right to preserve and promote its language, script, culture, cultural civilization and heritage.

18 RIGHT RELATING TO EMPLOYMENT AND SOCIAL SECURITY

(1)

Every citizen shall

have the right to employment, as provided in law.

(2)

The women, labor, aged, disabled, incapacitated and helpless citizens shall have the right to social security, as provided in law.

(3)

Every citizen shall have the right to food sovereignty, as provided in law.

19 RIGHT TO PROPERTY

(1)

Every citizen shall, subject to the laws in force, have the right to acquire, own, sell, dispose of, and otherwise deal with, property.

(2)

The State shall not, except in the public interest, requisition or acquire, or otherwise create any encumbrance on, the property of any person.

Provided that this Clause shall not apply to any property acquired in an illicit manner.

(3)

Compensation shall be provided for any property requisitioned, acquired or encumbered by the State in the course of enforcing a scientific land reform program or in the public interest, in accordance with law. The amount and basis of compensation and the procedure therefor shall be as determined by law.

20 RIGHTS OF WOMEN

(1)

No discrimination of any kind shall be made against the women by virtue of sex.

(2)

Every woman shall have the right to reproductive health and reproduction.

(3)

No woman shall be subjected to physical, mental or any other kind of violence; and such act shall be punishable by law.

(4)

Sons and daughters shall have the equal right to ancestral property.

Right to social justice: The economically, socially or educationally backward women, Dalits, indigenous peoples, Madhesi communities, oppressed classes, poor farmers and labors shall have the right to take part in the structures of the State on the basis of the principle of 'proportional inclusion.

22 RIGHTS OF THE CHILD

(1)

Every child shall have the right to his or her identity and name.

(2)

Every child shall have the right to nurture, basic health and social security.

(3)

Every child shall have the right against physical, mental or any other form of exploitation. Such exploitative act shall be punishable by law; and any child so treated shall be given such compensation as may be determined by law.

(4)

The helpless, orphan, mentally retarded, conflict victim, displaced, vulnerable and street children shall have the right to get special facilities from the State for their well-ascertained future.

(5)

No minor shall be employed to work in any factory, mine or engaged in any similar other hazardous work or used in army, police or conflict.

23 RIGHT TO RELIGION

(1)

Every person shall have the right to profess, practice and protect his or her own religion as handed down to him or her from ancient times, having due regard to the existing social and cultural practices.

Provided that no person shall be entitled to convert another person from one religion to another; and that no act or action shall be done in such a manner as to jeopardize the religion of each other.

(2)

Every religious denomination shall have the right to maintain its independent existence, and, for this purpose, to operate and protect its religious sites and religious trusts, in accordance with law.

24 RIGHT RELATING TO JUSTICE

(1)

No person who is arrested shall be detained in custody without informing him or her of the reasons for such arrest.

(2)

Every person who is arrested shall have the right to consult a legal practitioner of his or her choice at the time of such arrest. Any consultation made by such person with his or her legal practitioner and advice given by such practitioner shall be secret; and such person shall not be deprived of the right to be defended by his or her legal practitioner.

Explanation: For the purpose of this Clause, the expression "legal practitioner" shall mean any person who is authorized by law to represent any person in any court.

(3)

Every person who is arrested shall be produced before the case trying authority within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to such authority; and any such person shall not be detained in custody except on the order of such authority.

Provided that nothing in Clauses (2) and (3) shall apply to preventive detention and to a citizen of an enemy state.

(4)

No person shall be punished for an act which was not punishable by law when the act was committed nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence.

(5)

Every person charged with an Offense shall be presumed innocent until proved guilty of the offense.

(6)

No person shall be prosecuted or punished for the same offense in a court more than once.

(7)

No person charged with an offense shall be compelled to testify against him/herself .

(8)

Every person shall have the right to be informed of any proceedings taken against him or her.

(9)

Every person shall have the right to a fair trial by a competent court or judicial body.

(10)

Any incapable party shall have the right to free legal aid, as provided in law.

25 RIGHT AGAINST PREVENTIVE DETENTION

(1)

No person shall be held under preventive detention unless there is a sufficient ground of the existence of an immediate threat to the sovereignty, integrity or law and order situation of the State of Nepal.

(2)

Any person held under preventive detention shall, if he or she has been held under such detention by the authority making preventive detention contrary to law or in bad faith, have the right to such compensation as may be prescribed by law.

26 RIGHT AGAINST TORTURE

(1)

No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment.

(2)

Any act referred to in Clause (1) shall be punishable by law, and any person so treated shall be provided with such compensation as may be determined by law.

27

Right to information: Every citizen shall have the right to demand or receive information on any matter of his or her interest or of public interest.

Provided that nothing shall be deemed to compel any person to provide information on any matter of which secrecy is to be maintained by law.

28

Right to privacy: Except as provided by law, the privacy of any person, his or her home, property, document, data, correspondence or matters relating to his or her character shall be inviolable.

29 RIGHT AGAINST EXPLOITATION

(1)

Every person shall have the right against exploitation.

(2)

No one shall be exploited in the name of any custom, tradition and usage or in any manner whatsoever.

(3)

No one shall be trafficked in nor shall one be held in slavery or in servitude.

(4)

No one shall be required to perform forced labor.

Provided that nothing in this clause shall be deemed to prevent the making of law which require citizens to perform compulsory service for public purposes.

30 RIGHT RELATING TO LABOUR

(1)

Every worker and employee shall have the right to appropriate labor exercise.

(2)

Every worker and employee shall have the right to form and join trade unions and to engage in collective bargaining for the protection of their respective interests, as provided in law.

31

Right against exile: No citizen shall be exiled.

32

Right to constitutional remedies: The right to proceed in the manner set forth in Article 107 for the enforcement of the rights conferred by this Part is guaranteed.

Part 4 Obligations, Directive Principles and Policies of the State

33

Obligations of the State: The State shall have the following obligations:

- (a) To concentrate fully on holding the election to the members of the 3 the year 2064 (12 April 2007)4, while recognizing the need for the functional realization of the sovereignty inherent in the people of Nepal;
- (b) To ensure progressive political, economic and social transformations in the country;
- (c) To adopt a political system fully upholding the universally accepted concepts of basic human rights, competitive multi-party democratic system, sovereignty inherent in the people and supremacy of the people, constitutional checks and balances, rule of law, social justice and equality, independence of judiciary, periodic elections, monitoring by the civil society, complete press freedom, right to information of the people, transparency and accountability in the activities of political parties, public participation and impartial, efficient and fair bureaucracy, and to maintain good governance, while putting an end to corruption and impunity;
- (d) To make an inclusive, democratic and progressive restructuring of the State, by ending the existing centralized and unitary structure of the State so as to address the problems including those of women, Dalit, indigenous people, Madhesi, oppressed, excluded and minority communities and backward regions, while at the same time 3 doing way with discrimination based on class, caste, language, gender, culture, religion and region;
- (dl)To have participation of Madhesi, Dalit, indigenous peoples, women, labors, farmers, disabled, backward classes and regions in all organs of the State structure on the basis of proportional inclusion;
- (e) To set a common minimum program on socio-economic transformation to do away with feudalism in all its forms, and keep on implementing the program;

- (f) To pursue a policy of implementing a scientific land reform program by doing away with the feudalistic land ownership;
- (g) To pursue a policy of protecting and promoting domestic industries and means and resources;
- (h) To pursue a policy of establishing the right of all citizens to education, health, housing, employment and food sovereignty;
- (i) To pursue a policy of providing socio-economic security including the land to the economically and socially backward classes including the landless, bonded labors, tillers and Harawa-Charawa;
- (j) To pursue a policy of taking severe action and punishing any one who earns illicit wealth through corruption while holding a public office of profit;
- (k) To build a common development concept for the socio-economic transformation of the country and justice as well as for the prosperity and rapid economic progress and prosperity of the country;
- (l) To pursue a policy of extensively increasing opportunities for employment and income generation by increasing investment for promoting industry, trade and export and ensuring the professional rights of labors;
- (m) To effectively implement the international treaties and agreements of which the State is a party;
- (n) To abolish all discriminatory laws;
- (o) To use natural means and resources including water resources of the country in the interests of nation;
- (p) To make provisions for appropriate relief, recognition and rehabilitation of the family members of those who have died in the course of armed conflicts and those who, being injured in this course, have become disabled and infirm;
- (q) To provide relief to the families of the victims who were subjected to disappearance during the course of armed conflict based on the report of the inquiry commission constituted in relation to such persons;
- (r) To launch a special program in order to rehabilitate the displaced persons, provide relief in the case of private and public properties destructed, and reconstruct the infrastructures devastated, during the course of armed conflict;
- (rl) To develop a culture of resolving major political problems of the country through understanding between, consent of, and collaboration with, major political parties which, having preformed the leading role in the historic people's movement, made an understanding on 2 Kartik 2063(12 November 2006), as well as other political parties having representation the Constituent Assembly;
- (s) To constitute a high level truth and reconciliation commission to investigate the facts about involved in gross violations of human rights crimes against humanity during the course armed conflict, and to create an environment reconciliation in the society.

34 DIRECTIVE PRINCIPLES OF THE STATE

(1)

The main objective of the State shall be to promote the welfare of the people on the basis of the principles of an open society, by establishing a just system in all aspects of the national life including social, economic and political life while at the same time protecting the lives property, equality and liberty of the people.

(2)

The objective of the State shall be to maintain peace and order, protect and promote human rights, promote public welfare in the society, and create opportunities for the maximum participation of the people in the governance by way of self-governance, while at the same time maintaining a system where people can enjoy the fruits of democracy.

(3)

Political objective of the State shall be to build prosperous and affluent Nepal by institutionalizing democracy achieved as a result of the struggle by the people of Nepal, while at the same time creating an atmosphere conducive for the enjoyment of the fruits of democracy.

(4)

The fundamental economic objective of the State shall be to transform the national economy into an independent, self-reliant and progressive economy by preventing the economic resources and means available in the country from being concentrated within a limited section of the society, by making arrangements for the equitable distribution of economic

gains on the basis of social justice, by making such provisions as to eliminate economic inequalities and prevent economic exploitation of any caste, sex, class, origin or individuals, and by giving priority and encouragement to national enterprises, both private and public.

(5)

The social objective of the State shall be to establish and develop a healthy social life on the foundation of justice and morality, by eliminating all types of economic and social inequalities and by establishing harmony amongst the various castes, tribes, religions, languages, races, communities and denominations.

(6)

The State shall direct its international relations towards enhancing the dignity of the nation in the international arena by maintaining the sovereignty, integrity and independence of the country.

35 POLICIES OF THE STATE

(1)

The State shall pursue a policy of raising the standards of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions, by equitably distributing investment of economic investment for the balanced development of the country.

(2)

The State shall pursue a policy of developing economy of the country through the governmental, cooperative and private sectors.

(3)

The State shall pursue a policy of strengthening the national unity by maintaining the cultural diversity of the country by developing healthy and cordial social relations amongst the various religions, cultures, castes, communities, denominations, origins and linguistic groups, based on equality and co-existence, and through the equal development of their languages, literatures, scripts, arts and cultures.

(4)

The State shall pursue a policy of according priority to the local communities while mobilizing the natural resources and heritages of the country in such a manner as to be useful and beneficial to the interests of the nation.

(5)

The State shall make such arrangements as may be required to keep the environment clean. The State shall give priority to the prevention of adverse impacts in the environment from physical development activities, by increasing the awareness of the general public about environmental cleanliness, as well as to the protection of the environment and special safeguard of the rare wildlife. The State shall make arrangements for the protection of, sustainable uses of, and the equitable distribution of benefits derived from, the flora and fauna and biological diversity.

(6)

The State shall develop the agriculture sector as an industry by creating conditions for economic progress of the majority of the people who are dependent on agriculture and raising productivity in the agriculture sector through encouragement to the farmers.

(7)

The State shall pursue a policy of ensuring the right to work of the labor force, which remains as the major social and economic strength of the country, by providing them with employment and raising their participation in the management of enterprises, while at the same time protecting their rights and interests.

(8)

The State shall pursue a policy of making the women participate, to the maximum extent, in the task of national development, by making special provisions for their education, health and employment.

(9)

The State shall pursue a policy of making special provision of social security for the protection and progress of the single women, orphans, children, the helpless, the aged, the disabled, incapacitated persons, and tribes on the verge of extinction.

(10)

The State shall pursue a policy of uplifting the economically and socially backward indigenous peoples, Madhesi, Dalit, marginalized communities, and workers and farmers living below the poverty line, by making a provision of reservation in education, health, housing, food sovereignty and employment, for a certain period of time.

(11)

The State shall, for the progress of the country, pursue a policy of giving priority to the development of science and technology and also pursue a policy of developing local technology.

(12)

The State shall, for the purposes of national development, pursue a policy of attracting foreign capital and technology, while giving priority to indigenous investment.

(13)

The State shall pursue a policy of keeping on accelerating the pace of rural development, keeping in view the welfare of the majority of the rural population.

(14)

The State shall pursue a policy of making a special provision, based on positive discrimination, for the minorities, landless people, landless squatters, bonded labours, the disabled, backward regions and communities and victims of conflict, the women, Dalit, indigenous people, Madhesi and Muslims, as well.

(15)

The State shall pursue a policy of making provision for, the basic land required for the settlement of the bonded labours, and for their education, after determining the number of such labours.

(16)

The State shall pursue a policy of making infrastructures required to impart technical education, training and orientation for the development of that class of people dependent including farmers and workers, to have their participation in the process of development of the State.

(17)

The State shall pursue a policy of providing allowances to the senior citizen, incapacitated women and the unemployed by making laws.

(18)

The State shall pursue a policy of identifying, protecting and modernizing the traditional knowledge, skills and practices existing in the country.

(19)

The State shall pursue a special policy of regulating the operation and management of public and non-governmental organizations established in the country.

(20)

The State shall pursue a special policy of mobilizing the youthful human resources in the development of the country.

(21)

The State shall pursue the foreign policy of Nepal based on the principles of the Charter of the United Nations, non-alignment, the principles of Panchsheel, international law and the norms of world peace.

(22)

The State shall pursue a policy of keeping institutionalizing peace in Nepal through international norms, by promoting cooperative and harmonious relations in the economic, social and other spheres on the basis of equality with neighboring friendly countries and all other countries of the world.

36 QUESTIONS NOT TO BE RAISED IN COURT

(1)

No question shall be raised in any court as to whether the matters contained in this Part have been implemented or not.

(2)

The State shall mobilize, or cause to be mobilized, the means and resources, as required, to implement the principles and policies contained in this Part.

Part 4A President and Vice-President

36A PRESIDENT

(1)

There shall be a President in Nepal.

(2)

The President shall be the head of state of the country, and in that capacity perform his or her functions in accordance with this Constitution and the laws in force.

(3)

The main duty of the President shall be to protect and abide by this Constitution.

36B ELECTION TO PRESIDENT

(1)

The Constituent Assembly shall elect the President on the basis of political understanding.

(2)

If political understanding is not made pursuant to Clause (1), a person who secures a majority of the total number of the then members of the Constituent Assembly shall be deemed elected to the office of President.

(3)

Other procedures relating to the election of President shall be as determined by the Constituent Assembly.

(4)

If any person holding any political office to be filled by way of election, nomination or appointment is elected to the office of President, such political office shall, ipso facto, be vacant.

36C

Term of office of President: The term of office of the President shall be until the commencement of the constitution to be promulgated by the Constituent Assembly.

36D

Qualification for President. In order to become the President, a person must possess the following qualification:

- (a) Being qualified to become a member of the Constituent Assembly; and
- (b) Having attained at least thirty five years of age.

36E

Vacation of office of President: The office of the President shall become vacant in any of the following circumstances:

- (a) if he or she tenders resignation before the Vice-president; I
- (b) if at least two-thirds majority of the total number of the then members of the Constituent Assembly adopts a resolution of impeachment against him or her on the charge of serious violation of the Constitution by him or her; or
- (c) if he or she dies.

36F PRESIDENT TO TAKE OATH

(1)

The President shall, prior to assuming his or her duties, take an oath of office and secrecy before the Chief Justice in a form as referred to in Schedule-1A in official Nepali language.

(2)

Notwithstanding anything contained in Sub-article (1), if the president wants to take oath in his/her mother tongue spoken in Nepal, he/she shall submit a copy in the format of oath to the office of president by translating it into his/her mother tongue Twenty-Four Hour before the prescribed time for swearing in.

(3)

The president, upon taking oath pursuant to this article, shall submit a copy of such oath to the office of president with his/her signature.

Provided that, if the president has taken oath in his/her mother tongue spoken in Nepal, he/she shall sign and submit a copy in the official Nepali language and copy in any other Nepali mother tongue to the office of president.

(4)

The Office of President shall maintain the record of such oath taken pursuant to this Article.

36G VICE-PRESIDENT

(1)

There shall be a Vice-president in Nepal.

(2)

The Vice-president shall perform the functions to be performed by the President in absence of the President or until another President is elected after the removal of the President from his or her office pursuant to Article 36E.

(3)

If any person holding any political office to be filled by way of election, nomination or appointment is elected to the office of Vice-president, such political office shall, ipso facto, be vacant.

36H

Vacation of office of Vice-president: The office of the Vice-president shall become vacant in any of the following circumstances:

- (a) if he or she tenders resignation before the President;
- (b) if at least two-thirds majority of the total number of the then members of the Constituent Assembly adopts a resolution of impeachment against him or her on the charge of serious violation of the Constitution by him or her; or
- (c) if he/she dies.

36I OTHER PROVISIONS RELATING TO VICE-PRESIDENT

(1)

Provisions relating to the qualification, election procedure and term of office of the Vice-president shall be the same as those of the President.

(2)

The vice-President shall, prior to assuming his/her duties, take an oath of office and secrecy before the president in a form as referred to in Schedule-1A in official Nepali language.

(3)

Notwithstanding anything contained in Sub-article (1), if the Vice-president wants to take oath in his/her mother tongue spoken in Nepal he/she shall submit a copy of the format of oath to the office of president by translating it into his/her mother tongue Twenty-Four Hour before prescribed time for swearing in.

(4)

The Vice-president, upon taking oath pursuant to this article, shall submit a copy of such oath to the office of president with his/her signature.

Provided that, if the Vice-president has taken oath in his/her mother tongue spoken in Nepal, he/she shall sign and submit a copy in the official Nepali language and copy in any other Nepali mother tongue to the office of president.

(5)

The Office of president shall maintain the record of such oath taken pursuant to this Article.

36J

Remuneration and facilities of President and Vice-president: The remuneration and other facilities of the President and the Vice-president shall be as determined by an Act and as determined by the Government of Nepal until such Act is made.

36K OFFICE OF PRESIDENT AND VICE-PRESIDENT

(1)

There shall be separate offices for rendering assistance in the functions of the President and the Vice-president.

(2)

The Government of Nepal shall arrange for employees as required for the operation of the activities of, and other matters relating to the management of, the offices referred to in Clause (1)

Part 5 Executive

37 EXECUTIVE POWER

(1)

The executive power of Nepal shall, pursuant to this Constitution and other laws, be vested in the Council of Ministers.

(2)

The responsibility for issuing general directives, controlling and regulating the administration of Nepal shall, subject to this Constitution and other laws, lie in the Council of Ministers.

(3)

The executive functions of Nepal shall be performed in the name of the Government of Nepal.

(4)

Any decision or order to be issued in the name of the Government of Nepal pursuant to Clause (3) and other instruments of authorization pertaining thereto shall be authenticated as provided by law.

38 FORMULATION OF COUNCIL OF MINISTERS

(1)

The Council of Ministers shall be formed under the chairpersonship of the Prime Minister, on the basis of political understanding.

(2)

Failing the understanding as referred to in Clause (1), the Prime Minister shall be elected by a majority of the total number of the then members¹⁸ of the Legislature-Parliament.

(3)

The structure and allocation of business of the Interim Council of Ministers shall be settled through mutual consent.

(4)

The Council of Ministers shall consist of Deputy Prime Minister and other Ministers, as required.

Explanation: For the purposes of this Article, the expression "Minister" shall include a Minister of State holding an independent portfolio of a Ministry.

(5)

The Prime Minister shall, on the recommendation of the concerned parties, appoint Ministers from amongst the members of the Legislature-Parliament.

(6)

The Prime Minister and other Ministers shall be collectively responsible to the Legislature-Parliament, and the Ministers shall be individually responsible for the work of their respective Ministries to the Prime Minister and the Legislature-Parliament.

(7)

The Prime Minister shall be relieved of his or her office in any of the following circumstances:

- (a) if he or she tenders resignation in writing to the President;¹⁹
- (al)²⁰ if a vote of no-confidence is passed against him or her pursuant to Article 55A;
- (b) if he or she ceases to be a member of the Legislature Parliament; or
- (c) if he or she dies.

(8)

The Deputy Prime Minister, Minister of State and Assistant Minister shall be relieved of his or her office in any of the following circumstances:

- (a) if he or she tenders resignation in writing to the Prime Minister;
- (b) if the Prime Minister is relieved of his or her office pursuant to the provisions of Clause (7);
- (c) if, on the recommendation of, or in consultation with, the concerned party, the Prime Minister relieves him or her of his or her office; or
- (d) if he or she dies.

(9)

Even though the Prime Minister is relieved of his or her office pursuant to clause (7), the same Council of Ministers shall continue to function until a new Council of Ministers is constituted.

(10)

If the Prime Minister dies, the Deputy Prime Minister or the senior most Minister shall act as the Prime Minister until a new Prime Minister is selected.

39 MINISTERS OF STATE AND ASSISTANT MINISTERS

(1)

The Prime Minister may, on the recommendation of the concerned party, appoint a Minister of State from amongst the members of the Legislature-Parliament.

(2)

The Prime Minister may, on the recommendation of the concerned party, appoint Assistant Minister from amongst the members of the Legislature-Parliament to assist the Minister in carrying out his or her responsibilities.

40

Appointment of non-member of Legislature-Parliament as Minister: Notwithstanding anything contained in Articles 38 and 39, the Prime Minister may, on the basis of political understanding²¹, appoint a person who is not a member of the Legislature-Parliament as Deputy Prime Minister, Minister, Minister of State or Assistant Minister.

41

Remuneration and other facilities: The remuneration and other facilities of the Prime Minister, Deputy Prime Minister, Minister, Minister of State and Assistant Minister shall be as determined by an Act, and until so determined, shall be as specified by the Government of Nepal.

Oath: The Prime Minister shall take an oath of office and secrecy before the President²², and the Deputy Prime Minister, Minister, Minister of State and Assistant Minister shall take such oath before the Prime Minister.

43 CONDUCT OF BUSINESS OF THE GOVERNMENT OF NEPAL

(1)

The business of the Government of Nepal shall be conducted in consonance with the spirit of the people's joint movement, political understanding and culture of collaboration. The common minimum program set through mutual consent shall be the policy basis of the operation of the Government of Nepal.

(2)

The allocation and transaction of the business of the Government of Nepal shall be carried out as set forth in the rules approved by the Government of Nepal.

(3)

No question whether the Rules referred to in Clause (2) have been observed shall be inquired into in any court.

Council of Ministers after formation of Constituent Assembly: After the formation of the Constituent Assembly, the exercise of the executive power, formulation of the Council of Ministers and other matters pertaining thereto shall be governed by the provisions contained in this Part *mutatis mutandis*.

Part 6 Legislature-Parliament

51 SUMMONING AND PROROGATION OF SESSIONS

(1)

The President shall, on the recommendation of the Prime Minister, summon the session of the Legislature-Parliament from time to time.

(2)

The President shall, on the recommendation of the Prime Minister, prorogue the session of the Legislature-Parliament.

(3)

If, during the prorogation or recess of the session or meeting of the Legislature-Parliament, at least one-fourth of the total number of the then members of the Legislature-Parliament make a petition that it is expedient to convene a session or meeting, the President³² shall, no later than fifteen days, convene such session or meeting by specifying the date and time for the same, and the session or meeting of the Legislature-Parliament shall commence or be held at the date and time so specified.

Explanation: For the purposes of this Clause, the expression "petition" shall mean a document bearing the signature of the petitioner.

52

Address by President: The President shall address the session of the Legislature-Parliament, and present thereat the annual policies and programs of the Government.

53

Quorum: Save as otherwise provided in this Constitution, no question or resolution shall be presented for decision in any meeting of the Legislature-Parliament unless one-fourth of the total number of members are present.

54 CONDUCT OF BUSINESS IN CASE OF VACANCY IN MEMBERSHIP

(1)

The Legislature-Parliament shall have power to conduct its business notwithstanding any vacancy in the seat of any member of the Legislature-Parliament; and no proceedings in the Legislature-Parliament shall become invalid notwithstanding that it is discovered subsequently that some person who was not entitled so to do took part in such proceedings.

(2)

A Minister or Minister of State or Assistant Minister who is not a member of the Legislature-Parliament shall be entitled to attend any meeting of the Legislature-Parliament or any of its committees.

Provided that he or she shall not have the right to vote.

55

Voting: Save as otherwise provided in this Constitution, any question put before for decision in any meeting of the Legislature-Parliament shall be decided by a majority of votes of the members present and voting. Ordinarily, the presiding member shall not have the right to vote.

Provided that, he or she may exercise the casting vote in the case of a tie.

55A VOTE OF CONFIDENCE

(1)

The Prime Minister may, whenever he or she is of the opinion that it is necessary or appropriate to make it clear that the Legislature-Parliament has confidence in him or her, may table a resolution in the Legislature-Parliament for a vote of confidence.

(2)

At least one-fourth of the total number of members of the Legislature-Parliament may table in writing a no-confidence motion that the Legislature-Parliament has no confidence in the Prime Minister.

Provided that, a no-confidence motion shall not be tabled against the same Prime Minister more than once within six months.

(3)

A decision on the resolution or motion tabled pursuant to Clause (1) or (2) shall be made by a36 majority of the number of the then members of the Legislature-Parliament.

56 PRIVILEGES

(1)

There shall be full freedom of speech in any meeting of the Legislature-Parliament; and no member shall be arrested, detained or prosecuted in any court for anything expressed or any vote cast by him or her in such meeting.

(2)

The Legislature-Parliament shall have full power to regulate its internal business, and it shall be the exclusive right of the Legislature-Parliament to decide whether or not any of its proceedings is regular or irregular. No question in this behalf shall be raised in any court.

(3)

No comment shall be made about the good faith concerning any proceeding of the Legislature-Parliament, and no publication and broadcasting of any kind shall be made about anything said by any member, intentionally distorting or misinterpreting the meaning of the speech.

(4)

No proceedings shall be initiated in any court against any person in respect of the publication under the authority of the Legislature-Parliament of any document, report, vote or proceeding.

Explanation: For the purposes of Clauses (1), (2), (3) and (4), the expression "Legislature Parliament" shall include the Legislature-Parliament and any of its committees.

(5)

No member of the Legislature-Parliament be arrested during the session of the Legislature-Parliament.

Provided that nothing in this Clause shall be deemed to prevent the arrest under any law of any member on a criminal charge. If any member is so arrested, the authority making such arrest shall forthwith give information thereof to the person presiding over the Legislature-Parliament.

(6)

A violation of any matter contained in this Article shall be a breach of the privileges of the Legislature-Parliament; and any breach of the privileges of the Legislature-Parliament shall be deemed to constitute contempt of the Legislature-Parliament. The Legislature-Parliament shall have the exclusive right to decide whether any breach of privilege has taken place.

(7)

If any person commits in contempt of the Legislature-Parliament, the person presiding over the meeting may, after a decision by the meeting to that effect, admonish, warn or impose a sentence of imprisonment for a term not exceeding three months or of a fine not exceeding ten thousand rupees on such person. If such person fails to pay such fine, it shall be recovered as government dues.

Provided that if such person submits an apology to the satisfaction of the Legislature-Parliament, it may either pardon him or her or remit or commute the sentence imposed on him or her.

(8)

Other matters relating to privileges not mentioned in this Constitution shall be such as may be determined by law.

57

Procedures relating to conduct of business: The Legislature-Parliament shall, subject to this Constitution, conduct its business on the basis of political understanding, and frame rules for maintaining order during its meetings and regulating the constitution, functions and procedures of the committees or any other matters. Until such Rules are framed, the Legislature-Parliament shall set its own Rules of procedure.

57A OPPOSITION PARTY

(1)

There shall be an opposition party in the Legislature-Parliament and a leader of such party.

(2)

The remuneration and other facilities of the leader of the opposition party shall be as determined by law.

58

Committees: The Legislature-Parliament shall have committees and subcommittees in the required number as provided in its Rules.

59

Powers of Legislature-Parliament to be exercised by Constituent Assembly: Upon the expiration of the term of the Legislature-Parliament pursuant to this constitution³⁸, the Constituent Assembly shall exercise the powers of the Legislature-Parliament as referred to in this Constitution.

60 RESTRICTION ON DISCUSSION

(1)

No discussion shall be held in the House on any matter which is sub judice in any court of Nepal and on any judicial act done by a Judge in the course of performance of his or her judicial duties.

Provided that nothing in this Article shall be deemed to bar the expression of opinions about the conduct of a Judge during deliberations held on a motion of impeachment.

(2)

The provision of clause (1) shall also apply to the Constituent Assembly.

61 SECRETARIAT OF LEGISLATURE-PARLIAMENT

(1)

There shall be a Secretariat for the conduct and management of the business of the Legislature-Parliament. The establishment of the Secretariat and other matters related thereto shall be as determined by law.

(2)

The Government of Nepal shall provide such employees as required for the conduct and management of the business of the Legislature-Parliament.

61A

Secretary general and secretary of Legislature-Parliament: (1) There shall be one secretary general and one secretary in the Legislature-Parliament.

(2)

The President⁴⁰ shall, on the recommendation of the Speaker of the Legislature-Parliament, appoint the secretary general and the secretary.

(3)

The qualification, functions, duties, powers and other terms and conditions of service of the secretary general and the secretary of the Legislature-Parliament shall be as determined by law.

62

Remuneration: The remuneration and facilities of the Speaker, Deputy Speaker, members, and chairpersons of the committees of the Legislature-Parliament shall be as provided by law, and until so determined, shall be as determined by the Government of Nepal.

Part 7 Constituent assembly

63 CONSTITUTION OF CONSTITUENT ASSEMBLY

(1)

A Constituent Assembly shall, subject to this Constitution, be constituted for the making of a new constitution by the people of Nepal themselves.

(2)

Following the commencement of this Constitution, an election to the Constituent Assembly shall be held on such date as may be appointed by the Government of Nepal.

(3)

The Constituent Assembly shall be composed of the following number of members who are elected on the basis of the equality of population, geographical congeniality and specificity, and on the basis of the percentage of the population in Madhes, in accordance with the mixed electoral system, as provided in the law, and who nominated as follows:

- (a) The members elected on the basis of first-past-the-post electoral system consisting of one member from each of the two hundred and forty election constituencies delimited⁴² by the Election Constituency Delimitation Commission constituted pursuant to Article 154A, based on the population fixed by the national census preceding the election of the Constituent Assembly, while treating an administrative district as an election district, and, as far as possible, maintaining the same proportionality between such districts and the number of members;
- (b) Three hundred and thirty five members⁴³ to be elected on the basis of the proportional electoral system where voters vote for parties, while treating the whole country as a single election constituency; and
- (c) Twenty six members to be nominated by the Council of Ministers, on the basis of understanding, from amongst the prominent persons ⁴⁴ who have rendered outstanding contributions to national life, and the indigenous peoples which could not be represented through the elections as referred to in Clauses (a) and (b).⁴⁵

(3a)

⁴⁶ Notwithstanding anything contained in Sub-clause (a) of Clause (3), while delimiting the election constituencies pursuant to that Sub-clause, the number of election constituencies in the administrative districts existing under the laws in force, at the time of the election of the then House of Representatives in 2056 (1999), shall be maintained as it is, and the number of constituencies in the hilly and mountainous areas shall be increased on the basis of the percentage of population growth; and while so delimiting the election constituencies, the number of election constituencies in those administrative districts in Mahesh which have less number of election constituencies in proportion to the percentage of the population of Madhes shall be increased.

(4)

In selecting candidates pursuant to Sub-clause (a) of Clause (3), political parties shall take into account the principle of inclusiveness; and in enlisting candidates pursuant to Sub-clause(b), political parties shall ensure proportional representation of the women, Dalit, oppressed communities/ indigenous peoples, backward regions, Madhesi and other Classes, as provided in law.

(5)

Notwithstanding anything contained in Clause (4), at least one- third of such total number of candidates nominated shall be women as to be derived by adding the number of candidacies made pursuant to Sub-clause (a) of Clause (3) and' the number of candidates on the basis of proportional representation pursuant to Sub-clause (b) of Clause (3).

(6)

Election to the members of the Constituent Assembly shall held through secret ballots, as provided in law.

(7)

For the purpose of the election to the Constituent Assembly, every citizen of Nepal who has attained the age of eighteen years on or before the last day of the month of Mangsir of the year 2063, (15 December 2007) shall be entitled to vote, as provided in law.

(7a)

⁴⁷ If the seat of a member elected or nominated pursuant to clause (3) falls vacant for any reason, such vacancy shall be filled in by the same procedure under which such member was elected or nominated pursuant to the laws in force.

(7b)

Notwithstanding anything contained in the Clause (7), if the position of a member elected pursuant to Sub-clause (a) of Section (3) falls vacant by any reason and needs to be filled by an election pursuant to Clause (7a), every Nepalese citizen who has attained the age of eighteen years at the end of Chaitra of the previous year immediate to the election year shall be entitled to vote as provided for in the law

(8)

Subject to the provisions of this Article, the election to the Constituent Assembly and other matters pertaining thereto shall be as provided in law.

64

Term of Constituent Assembly: Unless dissolved earlier pursuant to a resolution passed by the Constituent Assembly, the term of the Constituent Assembly shall be Three years after the date on which the first meeting of the Constituent Assembly is held. Provided that if the making of constitution cannot be completed by the reason of the proclamation of as State of emergency in the country, the Constituent Assembly may, by a resolution to that effect, extend its term for an additional period not exceeding six months.

65

Qualification for member: In order for a person to become a member of the Constituent Assembly, such person must possess the following qualification:

- (a) being a citizen of Nepal;
- (b) having attained at least twenty five years of age;
- (c) not having been convicted of a criminal offense involving moral turpitude;
- (c) not being disqualified by any law; and
- (d) not holding any office of profit.

Explanation: For the purpose of clause (d), the expression "office of profit" shall mean any position, other than a political position which is to be filled by election or nomination, for which a remuneration or economic benefit is paid out of a government fund.

66

Decision on question as to disqualification of member: If there arises a question as to whether a member of the Constituent Assembly is disqualified or has ceased to possess any of the qualifications set forth in Article 65, the final decision of such question shall be made by the Constituent Assembly Court.

67

Vacation of seat: The seat of a member of the Constituent Assembly shall become vacant in any of the following circumstances:

- (a) if he or she resigns in writing;
- (b) if he or she is no longer 'qualified under or ceases to possess the qualification referred to in Article 65;
- (c) if he or she absents himself or herself from ten consecutive meetings, without giving notice to the Assembly;
- (d) if the political party of which he or she was a member when elected provides a notification as provided in law that he or she has abandoned the party or his or her membership of the party ceases to exist; or
- (f) if he or she dies.

Explanation: The provision of Sub-clause (d) shall not apply to the Chairperson or Vice-chairperson of the Constituent Assembly.

68

Oath by member: Every member of the Constituent Assembly shall, before taking part for the first time in the meeting of the Constituent Assembly or any of its committees, take an oath as provided in law.

69 MEETING OF CONSTITUENT ASSEMBLY

(1)

The first meeting of the Constituent Assembly shall be held as summoned by the Prime Minister within twenty one days after the Election Commission has published the final results of election to the members of the Constituent Assembly; and thereafter, its meetings shall be held at such place and time as may be specified by the person presiding over the Constituent Assembly.

(2)

Notwithstanding anything contained in Clause (1), if no less than one-fourth of the members of the Constituent Assembly make a petition, along with the reason, to the Chairperson of the Constituent Assembly that it is necessary to convene a meeting of the Constituent Assembly, the Chairperson shall convene the meeting of the Constituent Assembly no later than fifteen days.

70 PROCEDURE FOR PASSAGE OF CONSTITUTION BILL

(1)

The Constituent Assembly shall, in passing a constitution bill submitted to it, pass such bill by way of voting on the preamble and every article of the bill.

(2)

In a voting referred to in Clause (1), the bill shall be passed by consensus of a meeting attended by at least two-thirds of all the then members of the Constituent Assembly.

(3)

Failing a consensus on the preamble or any article of the constitution bill pursuant to Clause (2), the parliamentary party leaders of the political parties represented in the Constituent Assembly shall hold mutual consultations in order to reach consensus on such matter.

(4)

The holding of consultations pursuant to Clause (3) shall be completed no later than a maximum of fifteen days after the date of failure to reach consensus.

(5)

No later than seven days after the holding of consultations, if any, pursuant to Clause (4), the preamble or any article of such bill shall be again put to vote.

(6)

Failing the consensus referred to in Clause (2) notwithstanding the voting held pursuant to clause (5), the preamble or the article in respect whereof consensus could not be reached shall be again put to vote; and if, in such voting, the preamble or article is passed by a two-thirds majority of a meeting attended by at least two-thirds of all the then members of the Constituent Assembly, such preamble or article shall be deemed to have been passed.

(7)

For the purpose of this Article, if, in a voting on the preamble or any article of the constitution bill introduced in the Constituent Assembly, none of the members does vote against the preamble or any article of such bill, the consensus shall be deemed to have been reached.

71 CHAIRPERSON AND VICE-CHAIRPERSON OF CONSTITUENT ASSEMBLY

(1)

The Constituent Assembly shall, before commencing its business of framing the constitution, elect a Chairperson and a Vice-chairperson from amongst its members on the basis of political understanding.⁵¹

(1a)

Failing the understanding referred to in Clause (1), a member of the Constituent Assembly who secures a majority of the total number of the then members of the constituent Assembly shall be deemed elected to the office of Chairperson or Vice-chairperson.

(2)

In holding election pursuant to Clause (1) or (1a),⁵³ the Chairperson and the Vice-chairperson shall be from different political parties representing to the Constituent Assembly.

(3)

Until the election of the Chairperson and the Vice- chairperson is held pursuant to Clause (1), the member of the Constituent Assembly who is by age the senior most shall preside over the Constituent Assembly.

(4)

While discharging his or her duties pursuant to this Constitution, the Chairperson or the Vice-chairperson shall do so as a neutral person, without favoring or disfavoring any political party.

72 VACATION OF OFFICE OF CHAIRPERSON OR VICE CHAIRPERSON

(1)

The office of the Chairperson or the Vice-chairperson shall become vacant in any of the following circumstances:

- (a) if he or she resigns in writing;
- (b) if he or she ceases to be a member of the Constituent Assembly
- (c) if a resolution is passed by at least two-thirds majority of the total number of members of the Constituent Assembly to the effect that his or her conduct is not compatible with his or her office; or
- (d) if he or she dies.

(2)

The Vice-chairperson or any other member shall preside over a meeting at which deliberations are to be held on a resolution that the conduct of the Chairperson of the Constituent Assembly is not compatible with his or her office; and Chairperson shall be entitled to take part and vote in the deliberations on such resolution.

73

Quorum: Save as otherwise provided in this Part, the quorum to constitute a meeting of the Constituent Assembly shall be at least the one-fourth of the total numbers; and no question or resolution shall be presented decision in any meeting of the Constituent Assembly unless it is attended by the quorum.

74 PROCEEDING OF CONSTITUENT ASSEMBLY IN CASE THE POSITION OF A MEMBER IS VACANT

(1)

The Constituent Assembly shall have power to conduct its business notwithstanding any vacancy if the seat of a member of the Constituent Assembly; and no proceedings in the Constituent Assembly shall become invalid notwithstanding that it is discovered subsequently that any person who, because of qualification, was not entitled to take part in such proceedings.

(2)

A Minister, Minister of State and Assistant Minister may attend the Constituent Assembly or the meeting of any committee thereof notwithstanding that he or she is not a member of the Constituent Assembly.

Provided that he or she shall not have the right to vote.

75

Voting: Save as otherwise provided in this Part, any question or resolution presented for decision by the Constituent Assembly shall be decided by a majority of votes of the members present and voting. ordinarily, the presiding person shall not have the right to vote.

Provided that he or she may exercise the casting vote in the case of a tie.

76

Penalty for unauthorized presence or voting: If a person sits or votes in a meeting of the Constituent Assembly or any of its committees without taking an oath pursuant to Article 68, or knowing that he or she is not qualified for membership in the Constituent Assembly, he or she shall, on order of the person presiding over the meeting, be liable to a fine of five thousand rupees for each instance of such presence or voting. If such person fails to pay the fine so imposed, such fine shall be recovered as government dues.

77 PRIVILEGES

(1)

There shall be full freedom of speech in any meeting of the Constituent Assembly; and no member shall be arrested, detained or prosecuted in any court for anything expressed or any vote cast in such meeting.

(2)

Every meeting of the Constituent Assembly shall have full power to regulate its internal business, and it shall be the exclusive right of the meeting concerned to decide whether or not any of its proceedings is regular or irregular. No question shall be raised in any court in this respect.

(3)

No comment shall be made about the good faith concerning any proceeding of the Constituent Assembly, and no publication and broadcasting of any kind shall be made about any thing expressed by any member, which intentionally distorts or misinterprets the meaning of the speech.

(4)

No proceedings shall be initiated in any court against any person in respect of the publication under the authority of the Constituent Assembly of any document, report, vote or proceeding.

Explanation: For the purposes of Clauses (1), (2), (3) and (4), the expression "meeting of the Constituent Assembly" shall include the Constituent Assembly and any of its committees.

(5)

No member of the, Constituent Assembly shall be arrested during the term of the Constituent Assembly.

Provided that, nothing in this Clause shall be deemed to prevent the arrest under any law of any member on a criminal charge. If any member is so arrested, the authority making such arrest shall forthwith give information thereof to the person presiding over the Constituent Assembly.

(6)

A violation of any matter contained in this Article shall be a breach of the privileges of the Constituent Assembly; and any breach of the privileges of the Constituent Assembly shall be deemed to constitute contempt of the Constituent Assembly. The Constituent Assembly shall have the exclusive power to decide whether any breach of privilege has taken place.

(7)

If any person is in contempt of the Constituent Assembly, the person presiding over the meeting may, after a decision by the meeting to that effect, admonish, warn or impose a sentence of imprisonment for a term not exceeding three months or of a fine not exceeding ten thousand rupees on such person. If such person fails to pay such fine, it shall be recovered as government dues.

Provided that, if such person submits an apology to the satisfaction of the Constituent Assembly, it may either pardon him or her or remit or commute the sentence imposed on him or her.

(8)

Other matters relating to privileges not mentioned in this Constitution shall be such as may be determined by law.

Procedures relating to conduct of business: The Constituent Assembly shall, subject to this Constitution, frame Rules for conducting its business, maintaining order during its meetings and regulating the constitution, functions and procedures of the committees-or any other matters. Until such Rules are framed, the Constituent Assembly shall set its own Rules of procedure.

79

Committees: The Constituent Assembly shall have committees and subcommittees in the required number as provided in law. Support of experts may be availed, as required.

80 SECRETARIAT OF CONSTITUENT ASSEMBLY

(1)

There shall be a Secretariat for the management of the business of the Constituent Assembly. The establishment of the Secretariat and other matters related thereto shall be as determined by law.

(2)

The Government of Nepal shall provide such employees as required for the conduct of the business of the Constituent Assembly.

81

Remuneration: The remuneration and facilities of the Chairperson, Vice- chairperson, members, and chairpersons of the committees, of the Constituent Assembly shall be as provided by law, and until so provided, shall be as determined by the Government of Nepal.

82

Dissolution of Constituent Assembly: The business of the Constituent Assembly shall end on the day of the commencement of the constitution passed by the Constituent Assembly.

Provided that, until the election to the legislature-parliament as set forth in the constitution passed by the Constituent Assembly is held, the business and proceedings of the legislature-parliament shall be as set forth in the constitution passed by that Assembly.

83 TO ACT IN CAPACITY OF LEGISLATURE-PARLIAMENT

(1)

Notwithstanding anything contained elsewhere in this Part, the Constituent Assembly shall, during the existence of its term, also perform the business of the Legislature-Parliament; and the Constituent Assembly may constitute a separate committee for the discharge of necessary regular legislative business.

(2)

The Chairperson and the Vice-chairperson of the Constituent Assembly shall be the Speaker and the Deputy Speaker of the Legislature-Parliament, respectively.

(3)

The secretariat of the Constituent Assembly and its employees shall be the secretariat and employees of the Legislature-Parliament.

(4)

In discharging the business by the Constituent Assembly in the capacity of the Legislature-Parliament, the provisions set forth in Part 8 shall, mutatis mutandis, apply to the Constituent Assembly.

Part 8 Legislative Procedure

84 INTRODUCTION OF BILLS

(1)

Any member of the Legislature-Parliament may introduce a Bill in the House.

Explanation: For the purposes of this Part, the expression "House" shall mean the House of the Legislature-Parliament and "member" means any member of the Legislature-Parliament.

(2)

A Money Bill and a Bill concerning the Nepal Army, Armed Police Force, Nepal Police as well as security body shall be introduced only as a Government Bill.

(3)

The expression "Money Bill" shall mean a Bill concerning any or all of the following subjects:

- (a) the imposition, collection, abolition, remission, alteration or regulation of taxes;
- (b) the preservation of the Consolidated Fund or any other Government Fund, the deposit of moneys into and the appropriation or the withdrawal of moneys from such Funds, or the reduction, increment or cancellation of appropriations or of proposed expenditures from such Funds;
- (c) the regulation of matters relating to the borrowing of money or the giving of guarantee by the Government of Nepal, or any matter pertaining to the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of Nepal;
- (d) the custody and investment of all revenues received by any Government Fund, moneys acquired through the repayment of loans, and grant moneys; or audits of the accounts of the Government of Nepal; or
- (e) matters directly related to any of the subjects specified in Clauses (a) to (d).

Provided that, any Bill shall not be deemed to be a Money Bill by the reason only that it provides for the levying of any charges and fees such as license fee, application fee, renewal fee or for the imposition of fines or penalty of imprisonment or for the levying of any taxes, charges or fees by any local authority.

(4)

If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the Legislature-Parliament thereon shall be final.

85 PROCEDURE FOR PASSAGE OF BILLS

(1)

Any member intending to introduce a Bill in the House shall give a notice thereof to the Secretary General or the Secretary at least seven days prior to the introduction of such Bill.

Provided that, an advance notice of five days shall suffice in the case of a Government Bill.

(2)

A copy of the Bill shall be made available to every member two days in advance of the day for the presentation of the Bill.

(3)

The member introducing the Bill may move a motion in the House that the Bill be taken into consideration.

(4)

If the motion referred to in Clause (3) is carried, the Bill shall be discussed clause by clause in the House or the concerned committee.

(5)

After the conclusion of the Clause by clause discussion in the House or after the conclusion of discussion on the report of the committee where the clause by clause discussion has been held in the committee, the member introducing the Bill shall move a motion that the Bill be passed.

(6)

If the motion moved pursuant to Clause (5) is accepted by a simple majority of the total number of members of the House, the Bill shall be deemed to have been passed.

86

Withdrawal of Bills: The member introducing a Bill may, with the leave of the House, withdraw the Bill.

87

Authentication of Bills: A Bill passed by the House shall become an Act after it is authenticated by the President.

Provided that, such Bill shall be authenticated by the Speaker until the President is elected and assumes his or her duties.

88 ORDINANCE

(1)

If at any time, except when the session or meeting of the Legislature-Parliament is not in recess, the President⁵⁷ is satisfied that it is necessary to take immediate action, the President may, on the recommendation of the Council of Ministers,⁵⁸ promulgate any Ordinance as required without prejudice to the provisions set forth in this Constitution.

(2)

Any Ordinance promulgated under Clause (1) shall have the same force and effect as an Act.

Provided that, every such Ordinance:

- (a) shall be laid before the meeting of the Legislature-Parliament held after the promulgation, and if not passed by such meeting, it shall ipso facto cease to be effective;
- (b) may be repealed at any time by the President; ⁵⁹and
- (c) shall, unless rendered ineffective or repealed under Subclause (a) or (b), ipso facto cease to have effect at the expiration of sixty days from the holding of the meeting of the Legislature-Parliament.

Part 9

FINANCIAL PROCEDURE

89 NO TAX TO BE LEVIED OR LOAN TO BE RAISED EXCEPT IN ACCORDANCE WITH LAW

(1)

No tax shall be levied and collected except in accordance with law.

(2)

No loan shall be raised and guarantee given by the Government of Nepal except in accordance with law.

90

Consolidated Fund: Except for the revenues of religious endowments (Guthi), all revenues received by the Government of Nepal, all loans raised on the security of revenues, all moneys received in repayment of any loans made under the authority of any Act and any other moneys received by the government of Nepal shall be credited to a Government Fund to be known as the Consolidated Fund.

Provided that the revenues of any religious endowments (Guthi) other than any private religious endowments (Guthi) shall be regulated by a law made thereon.

91

Expenditures from Government Fund or a consolidated fund: No expenditure shall be incurred out of the Consolidated Fund or any other Government Fund except the following:

- (a) moneys charged on the Consolidated Fund;
- (b) moneys required to meet the expenditure under an Appropriation
- (c) advance moneys authorized by an Act required to meet expenditures, when an Appropriation Bill, is under consideration; or
- (d) expenditures to be incurred in extraordinary circumstances under a Vote of Credit Act which contains only a description of expenditures.

Provided that, matters relating to the Contingency Fund shall be governed by Article 98.

92

Expenditures chargeable on Consolidated Fund: The expenditures relating to the following matters shall be charged on the Consolidated Fund:

- (a) the amount required as remuneration and facilities of the President and the Vice-president;
- (a1) the amount required as remuneration, facilities and pension payable to the Chief Justice and other Judges of the Supreme Court;
- (b) the amount required as remuneration and facilities payable to the following officials:
- (c) the administrative expenses of the Supreme Court, the Commission for the Investigation of Abuse of Authority, the Auditor General, the Public Service Commission, the Election Commission and the National Human Rights Commission;
- (d) all charges relating to debts for which the Government of Nepal is liable;
- (e) any sum required to satisfy any judgment or decree made by a court against the Government of Nepal; and
- (f) any other sum declared by law to be chargeable on the Consolidated Fund.

93 ESTIMATES OF REVENUES AND EXPENDITURES

(1)

The Minister for Finance shall, in respect of every financial year, present before the Legislature-Parliament an annual estimate setting out the following matters:

- (a) an estimate of revenues;
- (b) the moneys required to meet the charges on the Consolidated Fund; and
- (c) the moneys required to meet the expenditure to be provided for by an Appropriation Act.

(2)

The annual estimate to be laid pursuant to clause (1) shall also be accompanied by a statement of the expenses allocated to every Ministry in the previous financial year and particulars of whether the objectives of the expenses have been achieved.

94

Appropriation Act: The moneys required to meet the expenditure to be provided for by any Appropriation Act shall be specified under appropriate heads in an Appropriation Bill.

95 SUPPLEMENTARY ESTIMATES

(1)

The Minister for Finance shall present before the Legislature-Parliament a supplementary estimate if it is found in any financial year,

- (a) that the sum authorized to be spent for a particular service by the Appropriation Act for the current financial year is insufficient, or that a need has arisen for expenditures upon some new service not provided for by the Appropriation Act for that year; or
- (b) that the expenditures made during that financial year are in excess of the amount authorized by the Appropriation Act.

(2)

The sums included in the supplementary estimates shall be specified under the heads in a Supplementary Appropriation Bill.

96 VOTES ON ACCOUNT

(1)

Notwithstanding anything contained in this Part, a portion of the expenditure estimated for the financial year may, when an Appropriation Bill is under consideration, be incurred in advance by an Act.

(2)

A Vote on Account Bill shall not be introduced until the estimates of revenues and expenditures have been presented in accordance with the provisions of Article 93, and the sums involved in the Vote on Account shall not exceed one-third of the estimate of expenditures for the financial year.

(3)

The expenditures incurred in accordance with the Vote on Account Act shall be included in the Appropriation Bill.

96A SPECIAL PROVISION RELATING TO REVENUES AND EXPENDITURES

(1)

Notwithstanding anything contained elsewhere in this Part, if there arises a special circumstance where an estimate of revenues and expenditures for the forthcoming financial year cannot be laid before the Legislature-Parliament by the end of the current financial year, revenues may be collected in accordance with the Financial Act of the current financial year.

(2)

If there arises a circumstance referred to in Clause (1), the Minister for Finance may, setting out the reasons therefor, present before the Legislature-Parliament a Bill authorizing to spend in the forthcoming financial year an amount not exceeding one-third of the total expenditures of the current financial year.

(3)

The expenditures made pursuant to clause (2) shall be included in the Appropriation Bill.

(4)

Notwithstanding anything contained elsewhere in this Constitution, a Bill presented before the Legislature-Parliament pursuant to clause (2) may be discussed and passed on the same day on which it is introduced.

97

Votes of credit: Notwithstanding anything contained elsewhere in this Part, if owing to a local or national emergency due to either natural causes or a threat of external aggression or internal disturbances or other reasons, it appears to be impractical or inexpedient in view of the security or interest of the State to specify the details required under Article 93, the Minister for Finance may lay before the Legislature-Parliament a Vote of Credit Bill giving only a statement of expenditures.

98

Contingency Fund: An Act may create a Fund to be known as the Contingency Fund into which shall be paid from time to time such moneys as may be determined by the Act. The Fund shall be under the control of the Government of Nepal. Any unforeseen expenditure may be met out of such Fund by the Government of Nepal. The amount of the expenditures so met shall be reimbursed as soon as possible by an Act.

99

Act relating to financial procedures: Matters relating to the transfer of moneys appropriated by the Act from one head to another and other financial procedures shall be governed by an Act.

Part 10 JUDICIARY

100 COURTS TO EXERCISE POWERS RELATING TO JUSTICE

(1)

Powers relating to justice in Nepal shall be exercised by courts and other judicial bodies in accordance with the provisions of this Constitution, other laws and the recognized principles of justice.

(2)

The Judiciary of Nepal shall remain committed to this Constitution by pursuing the concepts, norms and values of the independent judiciary and realizing the spirit of democracy and the people's movement

101 COURTS

(1)

There shall be the following Courts in Nepal:

- (a) Supreme Court;
- (b) Appellate Court; and
- (C) District Court.

(2)

In addition to the Courts referred to in Clause (1), any other courts, judicial bodies or tribunals may be established and constituted by law for the purpose of trying and disposing cases of special types and nature.

Provided that no court, judicial body or tribunal shall be constituted for the purpose of trying and disposing any particular case.

102 SUPREME COURT

(1)

The Supreme Court shall be the highest court in the judicial hierarchy.

(2)

All courts and judicial bodies of Nepal, other than the Constituent Assembly Court, shall be under the Supreme Court. The Supreme Court may inspect, supervise and give necessary directives to its subordinate courts and judicial bodies.

(3)

The Supreme Court shall be a court of record. it may initiate proceedings and impose punishment in accordance with law for contempt of itself and of its subordinate courts or judicial bodies.

(4)

The Supreme Court shall have the final authority to interpret this Constitution and the laws in force, other than on any matter falling under the jurisdiction of the Constituent Assembly Court.

(5)

The Supreme Court shall consist of the Chief Justice and of not more than fourteen other Judges. If, at any time, the number of existing Judges becomes insufficient by the reason of an increase in the number of cases in the Supreme Court, ad hoc Judges may be appointed for a fixed term.

103 APPOINTMENT AND QUALIFICATION OF JUDGES OF THE SUPREME COURT

(1)

The President shall, on the recommendation of the Constitutional Council, appoint the Chief Justice of the Supreme Court, and the Chief Justice shall, on the recommendation of the Judicial Council, appoint other Judges of the Supreme Court. The tenure of office of the Chief Justice shall, subject to Sub-clause (b) of Clause (1) of Article 105, be six years from the date of appointment.

(2)

Any person who has worked as a Judge of the Supreme Court for at least three years shall be eligible for appointment as the Chief Justice of the Supreme Court.

(3)

A person who has worked as a Judge of an Appellate Court or in any equivalent office of the Judicial Service for seven years or has worked in the post of Gazetted First Class or a higher post of the Judicial Service for at least twelve years or has practiced law for at least fifteen years as a law graduate advocate or senior advocate or who is a distinguished jurist having worked for at least fifteen years in the judicial or legal field shall only be eligible for appointment as a Judge of the Supreme Court.

(4)

If the office of the Chief Justice becomes vacant or the Chief Justice is unable to carry out the duties of his or her office by reason of illness or otherwise or he or she cannot be present in the Supreme Court by reason of a leave of absence or his or her being outside of Nepal, the senior most Judge of the Supreme Court shall act as the Acting Chief Justice.

(5)

The Chief Justice or any other Judge of the Supreme Court shall hold office until attain he/she the age of sixty-five years.

104 CONDITIONS OF SERVICE AND FACILITIES OF CHIEF JUSTICE AND JUDGE

(1)

The Chief Justice, and permanent Judges of the Supreme Court, who have served for at least five years, shall, on retirement, be entitled to such pension as may be provided for in the law.

(2)

Save as otherwise provided in this Constitution, the remuneration, leave, allowances, pension and other conditions of service of the Chief Justice and Judges of the Supreme Court shall be provided by law.

(3)

Notwithstanding anything contained in Clauses (1) and (2), the Chief Justice or any Judge of the Supreme Court who has been removed from office by way of impeachment shall not be entitled to gratuity or pension.

(4)

The remuneration, facilities or other conditions of service of the Chief Justice or a Judge of the Supreme Court shall not be altered to their disadvantage.

105 CHIEF JUSTICE AND JUDGE OF SUPREME COURT TO BE RELIEVED OF OFFICE

(1)

The Chief Justice or any other Judge of the Supreme Court shall be relieved of his or her office in any of the following circumstances:

- (a) if the Chief Justice tenders resignation in writing before the President and the Judge tenders resignation in writing before the Chief Justice;
- (b) if he or she attains the age of sixty-five years;
- (c) if a motion of impeachment is passed by the Legislature-Parliament; or
- (d) If he or she dies.

(2)

A motion of impeachment against the Chief Justice or any other Judge may be moved in the Legislature Parliament on the grounds of his or her incompetence, misbehavior or failure to discharge the duties of his or her office in good faith or his or her inability to discharge his or her duties because of physical or mental reason; and if the motion is passed by

a two-thirds majority of the total number of the then members, he or she shall ipso facto be relieved of his or her office.

Provided that, the Chief Justice or the Judge being so charged shall not be deprived of an opportunity to defend him/herself.

(3)

The Chief Justice or the Judge against whom impeachment proceedings are being initiated pursuant to Clause (2) shall not perform the duties of his or her duties until the proceedings are completed.

106 CHIEF JUSTICE AND JUDGE NOT TO BE ENGAGED IN ANY OTHER ASSIGNMENT

(1)

No Chief Justice or Judge of the Supreme Court shall be engaged in or deputed to any assignment other than that of Judge.

Provided that the Government of Nepal may, in consultation with the Judicial Council, depute the Chief Justice or any Judge of the Supreme Court to work concerning judicial inquiry, or to legal or judicial investigation or research, or to any other work of national concern, for a specified period.

(2)

No person who has once held the office of Chief Justice or a Judge of the Supreme Court shall be eligible for appointment to any government office other than the office as referred to in Sub-clause (a) of Clause (1) of Article 131 nor shall such person be entitled to practice law before any office or court.

107 JURISDICTION OF THE SUPREME COURT

(1)

Any citizen of Nepal may file a petition in the Supreme Court to have any law or any part thereof declared void on the ground of inconsistency with this Constitution because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred by this Constitution or on any other ground; and the Supreme Court shall have extraordinary power to declare that law to be void either ab initio or from the date of its decision if it appears that the law in question is inconsistent with this Constitution.

(2)

The Supreme Court shall, for the enforcement of the fundamental rights conferred by this Constitution or for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such right or settle such dispute. For these purposes, the Supreme Court may, with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto.

Provided that, except on the ground of absence of jurisdiction, the Supreme Court shall not under this Clause interfere with any proceedings and decisions of the Legislature-Parliament concerning violation of its privileges and penalties imposed therefor.

(3)

The Supreme Court shall have jurisdiction as prescribed by law to try original cases, to hear appeal references, to revise cases or hear petitions.

(4)

The Supreme Court may review its own judgments or final orders subject to such conditions and in such circumstances as may be, prescribed by law. Judges other than those having handed down the previous judgment shall make such review.

(5)

Other powers and procedures of the Supreme Court shall be as prescribed by law.

108

Establishment, management and jurisdiction of Appellate Courts and District Courts: The establishment and management of the Appellate Courts, District Courts and other courts and judicial bodies subordinate to the Supreme Court shall be determined by law subject to this Constitution.

109 APPOINTMENT, QUALIFICATION, CONDITIONS OF SERVICE AND FACILITIES OF: JUDGES OF APPELLATE COURTS AND DISTRICT COURTS

(1)

The Chief Justice shall, on the recommendation of the Judicial Council, appoint any Chief Judge and Judges of the Appellate Courts and any Judges of the District Courts.

(2)

Any citizen of Nepal who has a Bachelor's Degree in law and has worked as a Judge of a District Court or in the post of Gazetted First Class of the Judicial Service for at least seven years or has practiced law for at least ten years as a law graduate advocate or senior advocate or who has taught law or done research thereon or worked in any other field of law or justice for at least ten years shall be considered eligible for appointment as the Chief Judge or a Judge of an Appellate Court.

(3)

Any citizen of Nepal who has a Bachelor's Degree in law and has worked in the post of Gazetted Second Class of the Judicial Service for at least three years or has practiced law for at least eight years as a law graduate advocate shall be considered eligible for appointment as a District Judge.

(4)

In appointing a law graduate advocate as a District Judge pursuant to Clause (3), a person who has passed the written and oral examination conducted by the Judicial Council shall be so appointed. The method of such examination and other procedures shall be as determined by law.

(5)

The Judicial Council shall, taking into account, inter alia, his or her qualification, competency, experience, dedication and contribution to justice, reputation gained in public life and high moral character, recommend any person who is qualified under this Article for appointment to the office of Judge of the Appellate Court and the District Court.

(6)

Unless the subject or the context otherwise requires, the expression "Judge" as mentioned in this Article and ensuing Articles shall include an Additional Judge.

(7)

The remuneration, allowances, pension, leave, gratuities and other facilities and other conditions of service of the Chief Judges and other Judges of the Appellate Courts or the Judges of District Courts shall be as determined by law.

(8)

The remuneration, facilities and conditions of service of the Chief Judges and Judges of the Appellate Courts and the Judges of District Courts shall not be altered to their disadvantage.

(9)

Notwithstanding anything contained in Clause (7), any Judge of an Appellate Court or of a District Court who has been removed from office pursuant to Sub-clause (c) of Clause (10) shall not be entitled to gratuity and pension.

(10)

A Judge of an Appellate Court or of a District Court shall be relieved of his or her office in any of the following circumstances:

- (a) if he or she tenders resignation in writing before the Chief Justice;
- (b) if he or she attains the age of sixty-three years;
- (c) if, by virtue of a decision of the Judicial Council to remove him or her from office on the grounds of incompetence, misbehavior or failure to discharge the duties of his or her office in good faith or his or her inability to discharge his or her duties because of physical or mental reason or his or her deviation from justice, he or she is removed by the Chief Justice from his or her office; A Judge of an Appellate Court or of a District Court who is facing a change pursuant to this Sub-clause shall be given a reasonable opportunity to defend himself or herself, and for this purpose, the Judicial Council may form a committee of inquiry for the purposes of recording the statements of the Judge, collecting evidence and submitting a report accompanied by its findings. The Rules of procedure of the committee shall be as determined by law.
- (d) if he or she dies.

(11)

The Judge of an Appellate Court or of a District Court against whom the proceedings are being initiated pursuant to Sub-clause (c) of clause (10) shall not perform the duties of his or her office until the proceedings are completed.

110 JUDGE OF APPELLATE COURT AND DISTRICT COURT NOT TO BE TRANSFERRED TO OR ENGAGED IN ANY OTHER ASSIGNMENTS

(1)

No Judge shall be transferred to or engaged in or deputed to any office other than that of Judge.

Provided that, the Government of Nepal may, in consultation with the Judicial Council, depute any Judge of the Appellate Court and of the District Court to work concerning judicial inquiry, or to legal or judicial investigation or research, or to any other work of national concern, for a specified period. In the case of the Judges of the Appellate Courts or the District Courts, the Chief Justice may, in consultation with the Judicial Council, depute them to the aforesaid work, including work relating to elections.

(2)

The Chief Justice may, on the recommendation of the Judicial Council transfer a Judge of an Appellate or of a District Court from one court to another.

(3)

Taking into consideration, inter alia, the case-load and matters of dispute to be settled judicially, the Chief Justice may depute a Judge of a Court to act as a Judge of another Court of the same level for a certain period of time.

(4)

The Supreme Court may, as provided for in law, authorise a Judge in any area to issue, through electronic or other media, a preliminary or interim order in the course of proceedings of a case pending in another Court of the same level situated in a geographically nearby area.

111

Transfer of cases: If the Supreme Court is satisfied with the reason that there exists a situation where justice can be adversely affected if a case filed in a Court is tried by that Court, the Supreme Court may order such case to be tried by another Court of the same level.

112

Responsibility of Chief Justice: The Chief Justice shall have the final responsibility to make effective the administration of justice of the country; and to that end, he or she may, subject to this Constitution and other laws, give necessary directives to the Supreme Court and subordinate Courts.

113 JUDICIAL COUNCIL

(1)

There shall be a Judicial Council to make recommendation or give advice, in accordance with this Constitution, on the appointment of, transfer of, disciplinary action against, and dismissal of, Judges, and other matters relating to the administration of justice, which shall consist of the following as its chairperson and members:

- (a) The Chief Justice -Chairperson
- (b) The Minister for Justice -Member
- (c) Senior most Judge of the Supreme Court -Member
- (d) One jurist nominated by the President on the recommendation of the Prime Minister -Member
- (e) A senior advocate or an advocate who has gained at least twenty years of experience, to be appointed by the Chief Justice on the recommendation of the Nepal Bar Association -Member Explanation: For the purpose of this Part, the expression "Minister" shall include a Minister of State with independent portfolio.

(2)

The term of office of the members as referred to in Sub- clauses (d) and (e) of Clause (1) shall be four years, and their remuneration and facilities shall be equivalent to those of a Judge of the Supreme Court.

(3)

The members as referred to in Sub-clauses (d) and (e) of clause (1) may be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.

(4)

The chairperson and a member of the Judicial Council may obtain and study the documents and files associated with any complaint filed against any Judge, and give information thereof to the Judicial Council.

(5)

If a preliminary inquiry of a complaint filed against any Judge reveals a need to have a detailed inquiry by an expert, the Judicial Council may form an inquiry committee.

(6)

Other functions, duties and powers of the Judicial Council shall be as determined by law.

114 JUDICIAL SERVICE COMMISSION

(1)

In appointing, transferring or promoting gazetted officers of the Judicial Service or taking departmental action concerning such officers in accordance with law, the Government of Nepal shall act on the recommendation of the Judicial Service Commission.

Provided that, the Government of Nepal shall act shall act on the recommendation of the public service commission for the purpose of permanent recruitment to the gazetted posts of the Judicial Service from a persons who are not already in the Government Service or from person being promoted from non-gazetted to gazetted post within the judicial service.

(2)

The Judicial Service Commission shall consist of the following as its chairperson and members:

- (a) The Chief Justice -Chairperson
- (b) The Minister for Justice -Member
- (c) The senior most Judge of -Member the Supreme Court
- (d) The Chairperson of the Public Service Commission -Member
- (e) The Attorney General -Member

(3)

Other functions, duties, powers and procedures of the Judicial Service Commission shall be as determined by law.

115

Duty to extend cooperation to the Courts: It shall be the duty of the Government of Nepal and all offices or officials subordinate to it to act in aid of the Supreme Court and other Courts in carrying out the functions of dispensing justice.

116 ORDERS AND DECISIONS OF COURTS TO BE BINDING

(1)

All shall abide by the orders and decisions made in the course of hearing a lawsuit a by the Courts.

(2)

Any interpretation given to a law or any legal principle laid down by the Supreme Court in the course of hearing a lawsuit shall be binding on the Government of Nepal and all offices and courts.

117 ANNUAL REPORT

(1)

The Supreme Court shall, every year, submit an annual report to the President; 66and the President67 shall arrange to submit such report to the Legislature-Parliament through the Prime Minister.68

(2)

The annual report to be submitted pursuant to clause (1) shall set out, inter alia, the following details:

- (a) The number of cases filed in the Supreme Court and subordinate Courts;
- (b) Number of cases already disposed of and pending cases out of the cases filed pursuant to Sub-section (a); and the reasons for such pending;
- (c) Details of new precedents laid down by the Supreme Court;
- (d) Number of cases reviewed by the Supreme Court;
- (e) Details of judicial stricture, if any, made by the Supreme Court on the matter of competence regarding the dispensation of justice by a Judge of the subordinate Court;
- (f) Details of recovery of penalties or fines;
- (g) Details regarding the execution of judgments;
- (h) Statements of budget appropriated to the Supreme Court and subordinate Courts, and of expenditures.

(3)

while submitting the annual report pursuant to Clause (1) the supreme court shall also include the details of work performed by Judicial Council and by the Judicial Service Commission.

118 CONSTITUENT ASSEMBLY COURT

(1)

A constituent Assembly court shall be constituted to resolve the complaints regarding election of the constituent Assembly .

(2)

The composition, jurisdiction and other matters of the Constituent Assembly Court as referred to in Clause (1) shall be as determined by law.

(3)

Notwithstanding anything contained elsewhere in this Constitution, no question may be raised in any court in respect of any election to the members of the Constituent Assembly unless a petition is filed in the Court as referred to in Clause (1) as prescribed by law.

(4)

Notwithstanding anything contained elsewhere in this Constitution, no question may, after the process of election to the Constituent Assembly has commenced, be raised in any Court in such a manner as to interrupt such election.

Part 11 COMMISSION FOR THE INVESTIGATION OF ABUSE OF AUTHORITY

119 COMMISSION FOR THE INVESTIGATION OF ABUSE OF AUTHORITY

(1)

There shall be a Commission for the Investigation of Abuse of Authority of Nepal, consisting of the Chief Commissioner and such number of other Commissioners as may be required. If, apart from the Chief Commissioner, any other Commissioner is appointed, the Chief Commissioner shall act as the chairperson of the Commission for the Investigation of Abuse of Authority.

(2)

The President⁶⁹ shall, on the recommendation of the Constitutional Council, appoint the Chief Commissioner and other Commissioners.

(3)

The term of office of the Chief Commissioner and other Commissioners shall be six years from the date of appointment, subject to Sub-clause (a) of the proviso to Clause (7).

Provided that

- (a) if before the expiry of his or her term, the Chief Commissioner or a Commissioner attains the age of sixty-five years, he or she shall retire.
- (b) the Chief Commissioner or a Commissioner may be removed from his or her office on the same grounds and in the same manners as has been set forth for the removal of a judge of the supreme court.

(4)

The office of the Chief Commissioner or a Commissioner shall be deemed vacant in any of the following circumstances:

- (a) if he or she tenders resignation in writing to the President;
- (b) if, pursuant to Clause (3), his or her term expires or he or she ceases to hold his or her office; or
- (c) if he or she dies.

(5)

No person shall be eligible to be appointed as the Chief Commissioner or a Commissioner unless he or she possesses the following qualification:

- (a) holds a bachelor's degree from a university recognized by the Government of Nepal;
- (b) Is not a member of any political party immediately before the appointment;

- (c) has at least twenty years of experience in the field of either accounting, revenue, engineering, law, development or research and is a distinguished person;
- (d) has attained the age of forty five years; and
- (e) possess a of high moral character.

(6)

The remuneration and other conditions of service of the Chief Commissioner and the Commissioners shall be as determined by law. The remuneration and other conditions of service of the Chief Commissioner and the Commissioners shall not, so long as they hold office, be altered to their disadvantage.

(7)

A person once appointed as the Chief Commissioner or Commissioner shall not be eligible for appointment in any other government service.

Provided that,

- (a) nothing in this Clause shall be deemed to be a bar to the appointment of a Commissioner of the Commission for the Investigation of Abuse of Authority as its Chief Commissioner, and when a Commissioner is so appointed as the Chief Commissioner, his or her term of office shall be so computed as to include his or her term as the Commissioner.
- (b) nothing in this Clause shall be deemed to be a bar to the appointment to any political position or to any position which has the responsibility of making investigations, inquiries or findings on any subject, or to any position which has the responsibility of submitting advice, opinion or recommendation after carrying out a study or research on any subject.

120 FUNCTIONS, DUTIES AND POWERS OF THE COMMISSION FOR THE INVESTIGATION OF ABUSE OF AUTHORITY

(1)

The Commission for the Investigation of Abuse of Authority may, in accordance with law, conduct, or cause to be conducted, inquiries into, and investigations of, any abuse of authority committed, through improper conduct or corruption by a person holding any public office.

Provided that, this Clause shall not apply to any official in relation to whom this Constitution itself separately provides for such action and to any official in relation to whom any other law provides for separate special provision.

(2)

In the case of the officials of a Constitutional body who can be removed from office following a motion of impeachment on the ground of misconduct, the Judges who can be removed by the Judicial Council similar changes and the persons who are liable to action under the Army Act, it may conduct inquiries and investigations in accordance with law after they have been so removed from office.

(3)

If the Commission for the Investigation of Abuse of Authority finds, upon inquiry and investigation conducted pursuant to Clause (1), that a person holding any public office has misused authority by committing any act which is defined by law as an improper conduct, it may admonish such person or write to the concerned authority for taking departmental action or any other necessary action against such person as provided in law.

(4)

If the Commission for the Investigation of Abuse of Authority finds, upon inquiry and investigation conducted pursuant to Clause (1), that a person holding any public office has committed an act which is defined by law as corruption, it may file, or cause to be filed, a case against such person and any other person involved in that offense in the competent court in accordance with law.

(5)

If, upon inquiry and investigation conducted pursuant to Clause (1), any act or action done or taken by a person holding any public office appears to be of such nature as to be falling under the jurisdiction of another official or body, the Commission for the Investigation of Abuse of Authority may write to the concerned official or body for necessary action.

(6)

Subject to this Constitution, other functions, duties and powers and Rules of procedure of the Commission for the Investigation of Abuse of Authority shall be as provided by law.

(7)

The Commission for the Investigation of Abuse of Authority may delegate any of its functions, duties and powers relating to the inquiry and investigation or filing of cases, to the Chief Commissioner, a Commissioner or any employee of the Government of Nepal to be exercised and complied with subject to the specified conditions.

121 ANNUAL REPORT

(1)

The Commission for the Investigation of Abuse of Authority shall submit to the President an annual report on the works it has performed in accordance with this Constitution; and the President⁷² shall arrange to submit such report to the Legislature-Parliament through the Prime Minister.⁷³

(2)

The annual report to be submitted pursuant to Clause (1) shall set out, inter alia, the complaints filed in the Commission for the Investigation of Abuse of Authority, the number of cases filed in the competent court in accordance with law after conducting inquiries and investigations and the number of cases of which proceeding has been terminated, the number of instances where admonishing has been made or it has been written for departmental or any other action for the commission of the improper act, achievements made in the field of prevention of corruption and reforms to be made in the future in this respect.

Part 12 AUDITOR GENERAL

122 AUDITOR GENERAL

(1)

There shall be an Auditor-General of Nepal.

(2)

The President⁷⁴ shall, on the recommendation of the Constitutional Council, appoint the Auditor General.

(3)

The term of office of the Auditor General shall be six years from the date of appointment, subject to the proviso to Clause (7).

Provided that

- (a) if before the expiry of his or her term, the Auditor General attains the age of sixty-five years, he or she shall retire .
- (b) the Auditor General may be removed from his or her office on the same ground and in the same manner as has been set forth for the removal of Judge of the Supreme Court.

(4)

The office of the Auditor General shall be deemed vacant in any of the following circumstances:

- (a) if he or she tenders resignation writing to the President;
- (b) if, pursuant to Clause (3), his or her term expires or he or she ceases to hold his or her office; or
- (c) if he or she dies.

(5)

No person shall be eligible to be appointed as the Auditor General unless he or she possesses the following qualification:

- (a) has served in the Special Class of the Government of Nepal or having at least twenty years of experiences in audit related work after having obtained a bachelor's degree in management, commerce or accounts from a university recognized by the Government of Nepal or having passed a chartered accountancy examination;
- (b) Is not a member of any political party immediately before the appointment;
- (c) has attained the age of forty five years; and
- (d) possesses high moral character.

(6)

The remuneration and other conditions of service of the Auditor General shall be as determined by law. The remuneration and other conditions of service of the Auditor General shall not, so long as he or she holds office, be altered to his or her disadvantage.

(7)

A person once appointed as the Auditor General shall not be eligible for appointment in any other government service.

Provided that, nothing in this Clause shall be deemed to be a bar to the appointment to any political position or to any position which has the responsibility of making investigations, inquiries or findings on any subject, or to any position which has the responsibility of submitting advice, opinion or recommendation after carrying out a study or research on any subject.

123 FUNCTIONS, DUTIES AND POWERS OF THE AUDITOR-GENERAL

(1)

The accounts of the Supreme Court, the Legislature-Parliament, the Constituent Assembly, the Commission for the Investigation of Abuse of Authority, the Office of the Auditor-General, the Public Service Commission, the Election Commission, the National Human Rights Commission, the Office of the Attorney General and other offices of the Constitutional Bodies, the Nepal Army, the Armed Police or Nepal Police, and all other government offices and courts shall be audited by the Auditor-General in such manner as may be determined by law, with due consideration given to the regularity, economy, efficiency, effectiveness and the propriety thereof.

(2)

The Auditor General shall be consulted in the matter of appointment of an auditor to carry out the audit of any corporate body of which the Government of Nepal owns more than fifty percent of the shares or assets. The Auditor General may also issue necessary directives setting forth the principles for carrying out the audit of such corporate body.

(3)

The Auditor General shall, at all times, have access to the documents concerning the accounts for the purpose of carrying out the functions stipulated in clause (1). It shall be the duty of the concerned chief of office to provide all such documents and information as may be demanded by the Auditor General or any of his or her employees.

(4)

The accounts to be audited pursuant to Clause (1) shall, subject to the relevant laws in force, be maintained in such form as may be prescribed by the Auditor General.

(5)

In addition to the accounts of the offices referred to in Clause (1), the law may also require that the accounts of any other office or institution be audited by the Auditor General.

124 ANNUAL REPORT

(1)

The Auditor General shall submit to the President⁷⁶ an annual report on the works the office has performed; and the President shall arrange to submit such report to the Legislature Parliament, through the Prime Minister.

(2)

The annual report to be submitted pursuant to Clause (1) shall set out, inter alia, the details of bodies audited by the Auditor General throughout the year, situation of irregular amounts, attempts made to settle such irregular amounts and achievements made on the settlement of irregular amounts, and reforms to be made in the future in respect of audit.

Part 13 PUBLIC SERVICE COMMISSION

125 PUBLIC SERVICE COMMISSION

(1)

There shall be a Public Service Commission of Nepal, consisting of the Chairperson and such number of other Members as may be required.

(2)

The President⁷⁹ shall, on the recommendation of the Constitutional Council, appoint the Chairperson and other Members of the Public Service Commission.

(3)

At least fifty percent of the total number of the Members of the Public Service Commission shall be appointed from amongst the persons who have worked for at least twenty years in any government service, and the rest of the Members shall be appointed from amongst the persons, who have done research, investigation, teaching or any other significant work in the field of science, technology, art, literature, law, public administration, sociology or any other sphere of national life and who hold a high reputation.

(4)

The term of office of the Chairperson and the Members of the Public Service Commission shall be six years from the date of appointment, subject to Sub-clause (a) of the proviso to Clause (8).

Provided that

- (a) if, before the expiry of his or her term, the Chairperson or a Member of the Public Service Commission attains the age of sixty-five years, he or she shall retire .
- (b) the Chairperson or a Member of the Public Service Commission may be removed from his or her office on the same ground and in the same manner as has been set forth for the removal of a Judge of the Supreme Court.

(5)

The office of the Chairperson or a Member of the Public Service Commission shall be deemed vacant in any of the following circumstances:

- (a) if he or she tenders resignation in writing to the President
- (b) if, pursuant to Clause (4), his or her term expires or he or she ceases to hold his or her office; or
- (c) if he or she dies.

(6)

No person shall be eligible to be appointed as the Chairperson or a Member of the Public Service Commission unless he or she possesses the following qualification:

- (a) holds a Master's Degree from a university recognized by the Government of Nepal-,
- (b) is not a member of any political party immediate before appointment;
- (c) has attained the age of forty five years-, and
- (d) possesses high moral character.

(7)

The remuneration and other conditions of service of the Chairperson and the Members of the Public Service Commission shall be as determined by law. The remuneration and other conditions of service of the Chairperson and the Members of the Public Service Commission shall not, so long as they hold office, be altered to their disadvantage.

(8)

A person once appointed as the Chairperson or a Member of the Public Service Commission shall not be eligible for appointment in any other government service.

Provided that

- (a) nothing in this Clause shall be deemed to be a bar to the appointment of a Member of the Public Service Commission as its Chairperson, and when a Member is so appointed as the Chairperson, his or her term of office shall be so computed as to include his or her term as the Member.
- (b) nothing in this Clause shall be deemed to be a bar to the appointment to any political position or to any position which has the responsibility of making investigations, inquiries or findings on any subject, or to any

position which has the responsibility of submitting advice, opinion or recommendation after carrying out a study or research on any subject.

126 FUNCTIONS, DUTIES AND POWERS OF PUBLIC SERVICE COMMISSION

(1)

It shall be the duty of the Public Service Commission to conduct examinations for the selection of suitable candidates to be appointed to the positions in the civil service.

Explanation: For the purposes of this Article, all services or positions in the Government of Nepal, other than the services and positions of army officers or soldiers and of armed police and police personnel and such other services and positions as are excluded by an Act from the civil service or positions thereof, shall be deemed to be the civil service or positions thereof.

(2)

No permanent appointment to any pensionable position in the civil service shall be made except in consultation with the Public Service Commission.

(3)

The Public Service Commission shall be consulted:

- (a) on matters concerning the law relating to the conditions of service of the civil service;
- (b) on the general principles to be followed in making appointment and promotion to the civil service or positions thereof and in taking departmental action;
- (c) on matters concerning the suitability of any candidate for appointment to a civil service position for a period of more than six months;
- (d) on matters concerning the suitability of any candidate for transfer or promotion from one service to another with the civil service or from any other government service to the civil service;
- (e) on matters concerning the, permanent transfer or promotion of any employee working in any position which does not require consultation with the Public Service Commission to any position which requires consultation with the Public Service Commission; and
- (f) on matters relating to departmental action proposed against any civil servant.

(4)

Notwithstanding anything contained in Clause (3), matters falling within the purview of the Judicial Service Commission pursuant to Article 114 shall be governed by that Article.

(5)

The Public Service Commission shall be consulted on the general principles to be followed in the course of making appointment and promotion to any position of the military service, armed police service or police service or other government service.

(6)

If any public corporate body intends to seek advice of the Public Service Commission on the laws in force relating to the conditions of service of the employees in the service of such body and on the general principles to be followed in the course of making appointment and promotion to any position of such service and in taking departmental action against any such employee, the Public Service Commission may advise on such matters.

Explanation: For the purposes of this Article, the expression "public body" shall mean any corporate body of which the Government of Nepal owns or controls fifty percent or more of the shares or assets.

(7)

The Public Service Commission may delegate any of its functions, duties and powers to any of its members, a committee of such members or any employee of the Government of Nepal as to be exercised and complied with subject to the specified conditions.

(8)

Subject to this Constitution, other functions, duties and Rules of procedure of the Public Service Commission shall be as determined by law.

127 ANNUAL REPORT

(1)

The Public Service Commission shall, every year, submit to the President; an annual report on the works it has performed, and the President⁸² shall arrange to submit such report to the Legislature-Parliament, through the Prime Minister.⁸³

(2)

The annual report to be submitted pursuant to Clause (1) shall set out, inter alia, the details of examinations conducted by the Public Service Commission to select candidates throughout the year, details of examinees who have passed such examinations, details of advice made to various corporate bodies, details of advice made in relation to departmental action and punishment proposed to be taken against and imposed on civil servants, statements whether such advice has been complied with, details of advice, if any, made in relation to the general principles to be followed while making appointment and promotion to any position of any government service and while taking departmental action concerning such position and details of future reforms to be made in the field of civil service.

Part 14 ELECTION COMMISSION

128 ELECTION COMMISSION

(1)

There shall be an Election Commission of Nepal, consisting of the Chief Election Commissioner and a maximum of four other Election Commissioners as may be required. If, apart from the chief election commissioner, any other Election Commissioner is appointed, the Chief Election Commissioner shall act as the Chairperson of the Election Commission.

(2)

The President ⁸⁴shall, on the recommendation of the Constitutional Council, appoint the Chief Election Commissioner and other Election Commissioners.

(3)

The term of office of the Chief Election Commissioner and other Election Commissioners shall be six years from the date of appointment, subject to Sub-clause (a) of the proviso to Clause (7).

Provided that

- (a) if before the expiry of his or her term, the Chief Election Commissioner or an Election Commissioner attains the age of sixty five years, he or she shall retire.
- (b) the Chief Election Commissioner and an Election Commissioner may be removed from his or her office on the same ground and in the same manner as has been set forth for the removal of a Judge of the Supreme Court.

(4)

The office of the Chief Election Commissioner or of an Election Commissioner shall be deemed vacant in any of the following circumstances:

- (a) if he or she tenders resignation in writing to the President;
- (b) if, pursuant to Clause (3), his or her term expires or he or she ceases to hold his or her office; or
- (c) if he or she dies.

(5)

No person shall be eligible to be appointed as the Chief Election Commissioner or an Election Commissioner unless he or she possesses the following qualification:

- (a) holds a Bachelor's Degree from a university recognized by the Government of Nepal;
- (b) is not a member of any political party immediately before the appointment;
- (c) has attained the age of forty five years; and
- (d) Possess a moral character.

(6)

The remuneration and other conditions of service of the Chief Election Commissioner and the Election Commissioners shall be as determined by law. The remuneration and other conditions of service of the Chief Election Commissioner and the Election Commissioners shall not, so long as they hold office, be altered to their disadvantage.

(7)

A person once appointed as the Chief Election Commissioner or the Election Commissioner shall not be eligible for appointment in other government service.

Provided that

- (a) nothing in this Clause shall be deemed to be a bar to the appointment of an Election Commissioner as the Chief Election Commissioner, and when an Election Commissioner is so appointed as the Chief Election Commissioner, his or her term of office shall be so computed as to include his or her term as the Election Commissioner.
- (b) nothing in this clause shall be deemed to be a bar to the appointment to any political position or to any position which has the responsibility of making investigations, inquiries or findings on any subject, or to any position which has the responsibility of submitting advice, opinion or recommendation after carrying out a study or research on any subject.

129 FUNCTIONS DUTIES AND, POWERS OF ELECTION COMMISSION

(1)

The Election Commission shall, subject to the provisions of this Constitution and other laws, conduct, supervise, direct and control the election to the Constituent Assembly, any referendum to be held under Article 157 of this Constitution and elections to the Local Authorities. For these purposes, the Election Commission shall prepare the electoral rolls.

(2)

If, after nominations of candidacy for the member of the Constituent Assembly have been filed but before the election is completed, a question arises whether a candidate is disqualified or has ceased to possess the qualification set forth in Article 65, the Election Commission shall make decision thereon.

(3)

The Election Commission may delegate any of its functions, duties and powers to the Chief Election Commissioner, Election Commissioner or any employee of the Government of Nepal as to be exercised and complied with subject to the specified conditions.

(4)

Subject to this Constitution, other functions, duties and rules of procedure of the Election Commission shall be as determined by law.

130

Government of Nepal to provide necessary employees to Election Commission: The Government of Nepal shall provide the Election Commission with such employees and other things as may be required to perform its functions in accordance with this Constitution.

Part 15 NATIONAL HUMAN RIGHTS COMMISSION

131 NATIONAL HUMAN RIGHTS COMMISSION

(1)

There shall be a National Human Rights Commission of Nepal, which shall consist of the Chairperson and Members, as follows:

- (a) one person from amongst the retired Chief Justices or Judges of the Supreme Court who have rendered an outstanding contribution to the protection and promotion of human rights or a person who holds a high reputation and has been actively involved in the field of, and rendered an outstanding contribution to the protection and promotion of human rights, or social service. -chairperson
- (b) Four persons from amongst the persons who hold a high reputation and have been actively involved in the field of, and rendered an outstanding contribution to, the protection and promotion of human rights, or social service. -member

(2)

There shall be maintained diversity including gender perspective while making appointment of the Chairperson and Members of the National Human Rights Commission.

(3)

The President⁸⁶ shall, on the recommendation of the Constitutional Council, appoint the Chairperson and the Members of the National Human Rights Commission.

(4)

The term of office of the Chairperson and Members of the National Human Rights Commission shall be six years from the date of appointment.

Provided that the Chairperson or a Member of the National Human Rights Commission may be removed from his or her office on the same ground and in the same manner as has been set for the removal of a Judge of the Supreme Court.

(5)

The office of the Chairperson or a Member of the National Human Rights Commission shall be deemed vacant in any of the following circumstances:

- (a) if he or she tenders resignation in writing to the President⁸⁷
- (b) if, pursuant to Clause (4), his or her term expires or he or she ceases to hold his or her office; or
- (c) if he or she dies.

(6)

No person shall be eligible to be appointed as the Chairperson or a Member of the National Human Rights Commission unless he or she possesses the following qualification:

- (a) holds a Bachelor's Degree from a university recognized by the Government of Nepal; and
- (b) possess a high moral character.

(7)

The remuneration and other conditions of service of the Chairperson and the Members of the National Human Rights Commission shall be as determined by law. The remuneration and other conditions of service of the Chairperson and the Members of the National Human Rights

(8)

A person once appointed as the Chairperson or a Member of the National Human Rights Commission shall not be eligible for appointment in any other government service.

Provided that nothing in this clause shall be deemed to be a bar to the appointment to any political position or to any position which has the responsibility of making investigations, inquiries or findings on any subject, or to any position which has the responsibility of submitting advice, opinions or recommendation after carrying out a study or research on any subject.

132 FUNCTIONS, DUTIES AND POWERS OF NATIONAL HUMAN RIGHTS COMMISSION

(1)

It shall be the duty of the National Human Rights Commission to ensure the respect for, protection and promotion of human rights and their effective implementation.

(2)

For the accomplishment of the duty mentioned in clause (1), the National Human Rights Commission shall carry out the following functions:

- (a) To conduct inquiries into, and investigations of the instances of the violation of the human rights of any person or a group of persons or abetment thereof, on a petition or complaint presented or communicated to the Commission by the victim of such violation or by any person on his or her behalf or on any information received by' the Commission from any source or on its own initiative, and make recommendation for action against the perpetrators;
- (b) If any official who has the responsibility or duty to prevent violations of human rights fails to fulfill or perform his or her responsibility or duty or shows reluctance in the fulfillment or performance of his or her responsibility or duty, to make recommendation to the concerned authority to take departmental action against such official;
- (c) If it is required to institute a case against any person who has violated human rights, to make recommendation to file case in the court in accordance with law;
- (d) To coordinate and collaborate with the civil society in order to enhance awareness on human rights;
- (e) To make recommendation, accompanied by the reasons and grounds, to the concerned body for taking departmental action against, and imposing punishment on, those who have violated human rights;
- (f) To carry out periodic reviews of the laws in force relating to human rights and make recommendation to the Government of Nepal for necessary improvements in and amendments to, such laws;
- (g) If it is necessary that Nepal should become a party to any international treaty or agreement on human rights, to make recommendation, accompanied by the reasons therefor, to the Government of Nepal; and monitor whether any such treaty or agreement to which Nepal is already a party has been implemented, and if it is found not to have been implemented, to make recommendation to the Government of Nepal for its implementation;
- (h) To publish, in accordance with law, the names of the officials, persons or bodies who have failed to observe or implement any recommendations or directives made or given by the National Human Rights Commission in relation to the violations of human rights, and record them as violators of human rights.

(3)

In discharging its functions or performing its duties, the National Human Rights Commission may exercise the following powers:

- (a) To exercise all such powers as of a court in respect of the summoning and enforcing the attendance of any person before the Commission and seeking and recording his or her information or statement or deposition, examining evidence and producing exhibits and proof;
- (b) On receipt of information by the Commission in any manner that a serious violation of human rights has already been committed or is going to be committed, to search any person or his or her residence or office, enter such residence or office without notice, and, in the course of making such search, take possession of any document, evidence or proof related with the violation of human rights;
- (c) In the event of necessity to take action immediately on receipt of information that the human rights of any person are being violated, to enter any government office or any other place without notice and rescue such person;
- (d) To order the provision of compensation, in accordance with law, to any person who is a victim of the violations of human rights;
- (e) To exercise and perform, or cause to be exercised and performed, such other powers and duties as provided in law.

(4)

Notwithstanding anything contained elsewhere in this Article, the National Human Rights Commission shall have no jurisdiction over any matter falling within the jurisdiction of the Army Act. Provided that nothing shall bar the institution of, actions on any matters of the violations of human rights or humanitarian laws.

(1)

The National Human Rights Commission shall submit to the President⁸⁸ an annual report on the works which it has performed pursuant to this Constitution; and the President⁸⁹ shall arrange to submit such report to the Legislature-Parliament through the Prime Minister.⁹⁰

(2)

The annual report to be submitted pursuant to Clause (1) shall set out, inter alia, the details of complaints filed in the National Human Rights Commission throughout the year, inquiries into, and investigations of, such complaints, details of recommendations made to the Government of Nepal on various matters, the number of cases, if any, filed against those who have violated human rights and the details of reforms to be made in the future in relation to the protection and promotion of human rights.

Part 16 ATTORNEY GENERAL

134 APPOINTMENT OF ATTORNEY GENERAL

(1)

There shall be an Attorney General of Nepal, who shall be appointed by the President, on the recommendation of the Prime Minister.⁹¹ The Attorney General shall hold office during the pleasure of the Prime Minister.

(2)

No person shall be eligible to be appointed as the Attorney General unless he or she is qualified to be appointed as a Judge of the Supreme Court.

(3)

The office of the Attorney General shall be deemed vacant in any of the following circumstances:

- (a) if he or she tenders resignation in writing to the President, through the Prime Minister;⁹²
- (b) if he or she is relieved of his or her office by the President, on the recommendation of the Prime Minister;
or
- (c) if he or she dies.

(4)

The remuneration and other facilities of the Attorney General shall be similar to those of a Judge of the Supreme Court. Other conditions of service of the Attorney General shall be as determined by law.

135 FUNCTIONS DUTIES AND POWER OF ATTORNEY GENERAL

(1)

The Attorney General shall be the chief legal advisor to the Government of Nepal. It shall be the duty of the Attorney General to give opinions and advices on constitutional and legal matters to the Government of Nepal and such other authorities as the Government of Nepal may specify.

(2)

The Attorney General or officers subordinate to him or her shall represent the Government of Nepal in lawsuits wherein the rights, interests or concerns of the Government of Nepal are involved. Save as provided otherwise in this

Constitution, the Attorney General shall have the right to make the final decision as to whether to institute any case on behalf of the Government of Nepal in any court or judicial authority.

(3)

Subject to Clause (2), in the course of performing his or her duties, the Attorney General shall have the power to do the following acts:

- (a) To defend, on behalf of the Government of Nepal, any lawsuit in which the Government of Nepal is a plaintiff or a defendant;
- (b) To monitor, or cause to be monitored, whether any interpretation given to a law or any legal principle laid down by the Supreme Court in the course of trying lawsuits has been implemented;
- (c) On a complaint alleging that any person held in custody has not been treated humanely subject to this Constitution or such person has not been allowed to meet his or her relative in person or through his or her legal practitioner, or on receipt of information of such matter, to inquire there into and give necessary directive to the concerned authority to prevent such act.

(4)

In addition to the functions, duties and powers mentioned in this Article, other functions, duties and powers of the Attorney General shall be as determined by this Constitution and other laws.

(5)

In the course of discharging the duties of his or, her office, the Attorney General shall have the right to appear in any Court, office and authority of Nepal.

(6)

The Attorney General may delegate his or her functions, duties and powers under this Article to his or her subordinates as to be exercised and complied with subject to the specified conditions.

136 ANNUAL REPORT

(1)

The Attorney General shall, every year, submit to the President an annual report on the works which he or she has performed pursuant to this Constitution and other laws; and the President⁹⁵ shall arrange to submit such report to the Legislature-Parliament through the Prime Minister.

(2)

The annual report to be submitted pursuant to Clause (1) shall set out, inter alia, the number of advices and opinions on constitutional and legal matters rendered by him or her throughout the year, details of instituted governmental cases, details of defense made in lawsuits in which the Government of Nepal is a plaintiff or defendant, details relating to crimes and details of reforms to be made in the future in relation to cases to be instituted as governmental cases.

137

Right to appear in Legislature-Parliament: The Attorney General shall have the right to appear and express his or her opinion on any legal question in any meeting of the Legislature-Parliament, the Constituent Assembly or any of their committees.

Provided that, he or she shall not have the right to vote.

Part 17 STRUCTURE OF STATE AND LOCAL SELF-GOVERNANCE

138 PROGRESSIVE RESTRUCTURING OF THE STATE

(1)

There shall be made progressive restructuring of the State with inclusive, democratic federal system of governance,⁹⁷ by doing away with the centralized and unitary structure of the State so as to end discriminations based on class, caste, language, gender, culture, religion and region.

(1a)

98 Recognizing the desire of the indigenous peoples and of the people of backward and other area including Madhesi people towards autonomous provinces Nepal shall be a federal democratic republican state.

Provinces shall be autonomous and vested with full authority. The boundaries, number, names and structures, as well as full details of the lists, of autonomous provinces and the center and allocation of means, resources and powers shall be determined by the Constituent Assembly, while maintaining the sovereignty, unity and integrity of Nepal.

(2)

There shall be constituted a high level commission to make suggestions on the restructuring of the State as referred to in Clauses (1) and (1a) 99 The composition, function, duty, power and condition of service of such commission shall be as determined by the Government of Nepal.

(3)

The final settlement on the matters relating to the restructuring of the State and the form of federal system of governance¹⁰⁰ shall be as determined by the Constituent Assembly.

139 PROVISIONS ON LOCAL SELF-GOVERNANCE

(1)

The election to local self- governance bodies shall be held¹⁰¹ based on decentralization and devolution of authority in order to promote the participation of people, to the maximum extent possible, in the system of governance of the country by creating such environment as is conducive to the exercise of sovereignty by the people even from the local level, deliver services to the people at the local level and have institutional development of democracy even from the local level.

(2)

Interim local bodies shall be formed at the district, municipal and village levels by the Government of Nepal, with the consent and participation of the political parties which are actively involved at the local level pending the election to the local authorities.

Explanation: For the purpose of this clause, the expression "political parties which are actively involved at the local level" shall mean the political parties which have representation in the Constituent Assembly and filed candidacy in the concerned district under the first-past-the-post electoral system in the election, to that Assembly.

(3)

The organizational structure, framework, territorial boundaries and mode of formation of the local self-governance bodies shall be as provided by law.

140 ARRANGEMENT AND MOBILIZATION OF REVENUE

(1)

There shall be mobilization and allocation of responsibilities and revenues between the Government of Nepal and the local self-governance bodies as provided by law in order to make the local self-governance bodies accountable for the identification, formulation and implementation of local level plans, while maintaining equality in the mobilization, appropriation of means and resources and in the balanced and equitable distribution of the fruits of development with a view to strengthening the local self-governance bodies for local development.

(2)

While mobilizing and allocating revenues pursuant to Clause (1), special attention shall be accorded to the overall upliftment of those classes and communities who are backward socially and economically in such a manner as to have a balanced and equal development of the country.

Part 18 POLITICAL Parties

141 PROHIBITION ON IMPOSITION OF RESTRICTIONS ON POLITICAL PARTIES

(1)

Persons who are committed to common political ideology, philosophy and program shall, subject to laws made under proviso (3) to Clause (3) of Article 12, be entitled to form and operate political parties of their choice and to generate, or cause to be generated, publicity in order to secure support and cooperation from the general public for their ideology, philosophy and program or to carry out any other activity for this purpose. Any law, arrangement or decision which restricts any of such activities shall be deemed to be inconsistent with this Constitution and shall, ipso facto, be void.

(2)

Any law, arrangement or decision which allows for participation or involvement of only a single political party or persons having similar political ideology, philosophy or program in the elections or in the political system of, or in the conduct of governance of the country shall be inconsistent with this Constitution and shall, ipso facto, be void.

(3)

No party which has objectives prejudicial to the basic spirit and essence of the Preamble of this Constitution shall be deemed to be qualified for registration as a party.

142 REGISTRATION REQUIRED FOR SECURING RECOGNITION FOR THE PURPOSE OF CONTESTING ELECTIONS AS POLITICAL PARTY

(1)

Every political party wishing to secure recognition from the Election Commission for the purposes of elections shall be required to, register it with the Election Commission in fulfillment of the procedures as determined by the Election Commission. The name of any political party failing to have such registration shall be removed from the list of the Election Commission.

(2)

A petition to be made for registration pursuant to Clause (1) shall be accompanied by the constitution, manifesto and Rules of the political party proposed to be registered, and contain, inter alia, the following details:

- (a) Name of the political party and address its central office;
- (b) The names and addresses of the members and other office bearers of the executive committee or of similar other committee of the political party;
- (c) Details of funds, income source of the political party and resources for bringing about such funds.

(3)

Every political party shall be required to fulfil the following conditions in order to qualify for registration pursuant to Clause (1):

- (a) The constitution and rules of the political must be democratic;
- (b) The constitution or rules of the political party must provide for election of office bearers of the party at all levels at least once in every five years;
- (c) There must be an inclusive provision that the executive committees at various levels the executive committee at various levels include the members from women, Dalit and the excluded and oppressed sectors; and
- (d) The constitution of the party must have an effective provision to maintain discipline of its members.

(4)

The Election Commission shall not register any political party or organization which discriminates against any citizen of Nepal in becoming its member on the basis merely of religion, caste, tribe, language or sex or the name, objective, insignia or flag of which is of such a nature as to jeopardize the religious and communal unity of the country or to fragment the country or the Constitution or Rules of such party or organization have the objective of protecting and promoting party-less or single party system.

(5)

A petition with the support and signature of at least ten thousand voters shall be required for the purpose of registration of a party for election.

Provided that, this provision shall not apply to the parties represented in the Interim Legislature-Parliament.

(6)

Provisions on the establishment, registration, recognition of political parties and other matters except those mentioned in this Part shall be as provided in law.

Part 19 EMERGENCY POWER

143 EMERGENCY POWER

(1)

If a grave emergency arises in regard to the sovereignty or integrity of Nepal or the security of any part thereof, whether by war, external aggression, armed rebellion or extreme economic disarray, the President may, on the recommendation of the Government of Nepal Council of Ministers,¹⁰³ declare, by proclamation or order, a state of emergency in respect of the whole of Nepal or of any specified part thereof.

(2)

Every proclamation or order issued under Clause (1) Shall be laid before a meeting of Legislature-Parliament for approval within a month from the date of issuance of such proclamation or order.

(3)

If a proclamation or order laid for approval pursuant to Clause (2) is approved by a two-thirds majority of the members present in the meeting of the Legislature-Parliament, such proclamation or order shall continue in force for a period of three months from the date of its issuance.

(4)

If a proclamation or order laid before a meeting of the Legislature-Parliament for approval pursuant to Clause (2) is not approved pursuant Clause (3), such proclamation or order shall ipso facto be deemed to cease to operate.

(5)

Before the expiration of the period referred to Clause (3), if a meeting of the Legislature -Parliament, by a two-thirds majority of the members present therein, passes a resolution to the effect that the circumstances referred to in Clause (1) continue to exist, it may extend the period of the proclamation or order of the state of emergency for another one period, not exceeding three months as specified in such resolution.

(6)

After a state of emergency has been declared or order issued pursuant to Clause (1), the President may, on the recommendation of the Government of Nepal, Council of Ministers,¹⁰⁴ issue such orders as are necessary to meet the exigencies. Orders so issued shall be operative with the same force and effect as law so long as the state of emergency is in operation.

(7)

The President¹⁰⁵ may, at the time of making a proclamation or order of a state of emergency pursuant to Clause (1), suspend the fundamental rights as provided in Part 3 for as long as the proclamation or order is in operation.

Provided that clauses (1) and (2) of Article 12 and Sub-clauses (c) and (d) of Clause (3), Articles 13 and 14, Clauses (2) and (3) of Article 15, Articles 16, 17, 18, 20, 21, 22, 23, 24, 26, 29, 30 and 31 and the right to constitutional remedy in relation to such Articles pursuant to Article 32 and the right to the remedy of habeas corpus shall not be suspended.

(8)

In cases where any Article of this Constitution has been suspended pursuant to Clause (7), no petition may lie in any court for the enforcement of the fundamental right conferred by such Article nor may a question be raised in any court in that respect.

(9)

If during the continuance of a proclamation or order under Clause (1), any damage is inflicted upon any person from any act done by any official in contravention of law or in bad faith, the affected person may, within three months from the date of termination of the proclamation or order file a petition for compensation for the said damage: and if the court finds the claim valid, it shall cause the compensation to be paid.

(10)

A proclamation or order of a state of emergency issued pursuant to Clause (1) may be revoked by the President, on the recommendation of the Government of Nepal Council of Ministers,¹⁰⁶ at any time during its continuance.

Part 20 PROVISIONS RELATING TO ARMY

144 CONSTITUTION OF THE NEPAL ARMY

(1)

There shall be an organization of the Nepal Army in Nepal.

(1a)

The President shall be the supreme commander-in-chief of the Nepal Army.

(2)

The President shall, on the recommendation of the Council of Ministers, appoint the Commander-in-Chief of the Nepal Army.

(3)

The President shall, on the recommendation of the Council of Ministers control, mobilize and manage the Nepal Army in accordance with law. The Council of Ministers shall, with political understanding and on suggestions of the concerned committee of the Legislature-Parliament, prepare and enforce a detailed action plan on the democratization of the Nepal Army.

(4)

The action plan to be prepared and enforced pursuant to clause (3) shall include acts of rightsizing Nepal Army, building its democratic structure, national and inclusive character and imparting trainings to the Army in accordance with the values of democracy and human rights.

(4a)

In order to make the Nepal Army inclusive and national in character, the entry of the Mahesi, indigenous peoples, Dalit, women and people in backward area shall be ensured by law, on the basis of the principles of equality and inclusion.

(5)

Other matters pertaining to the Nepal Army shall be as provided in law.

145 NATIONAL DEFENCE COUNCIL

(1)

There shall be a National Defence Council of Nepal for making recommendation to the Council of Ministers on the mobilization, operation and use of the Nepal Army, which shall consist of the following as the chairperson and members:

- (a) The Prime Minister -Chairperson

- (b) The Minister for Defence -Member
- (c) The Minister for Home Affairs -Member
- (d) Three Ministers so designated by the Prime Minister as to have representation of different parties out of the political parties having representation in the Council of Ministers -Member

Provided that, where there is representation of less than three political parties in the Council of Ministers, nothing shall be deemed to bar the making of designation in such a manner as to have representation of less than three political parties.

(2)

In cases where the same person is both the Prime Minister and the Minister for Defense, the senior-most Member of the Council of Ministers shall be a member of the National Defence council.

(3)

The National Defence Council may invite any other person to its meeting, as per necessity.

(4)

The secretary at the Ministry of Defense shall act as the secretary of the National Defence Council; and in his or her absence, any officer designated by the Prime Minister shall carry out such act.

(5)

Except in cases where the Nepal Army has been mobilized by reason of a natural calamity, any decision made by the Government of Nepal, Council of Ministers, on the mobilization of Army shall be presented to and approved by the special committee specified by the Legislature-Parliament no later than one month of the decision.

(5)

The National Defence Council may set its Rules of procedure on its own.

146

Transitional provisions on combatants: The Council of Ministers shall form a special committee for the supervision, adjustment and rehabilitation of the Maoist army combatants, in such a manner as to consist of representation of major political parties represented in the Constituent Assembly and the functions, duties and powers of such committee shall be as determined by the Council of Ministers.

147

Management and monitoring: Other provisions on the management and monitoring of the arms and armies shall be as mentioned in the Comprehensive Peace Accord and the Agreement on Monitoring of the Management of Arms and Armies concluded between the Government of Nepal and CPN (Maoist) on 5 Mangsir 2063 (21 November 2006) and 22 Mangsir 2063 (8 December 2006), respectively.

Part 21 AMENDMENT TO CONSTITUTION

148 AMENDMENT TO CONSTITUTION

(1)

A Bill to amend or repeal any Article of this Constitution may be introduced in the Legislature-Parliament.

(2)

If a Bill introduced pursuant to Clause (1) is approved by at least two-thirds of all the then members of the Legislature-Parliament, the Bill shall be deemed to have been passed.

Part 22 MISCELLANEOUS

149 CONSTITUTIONAL COUNCIL

(1)

There shall be a Constitutional Council for making recommendations for appointment of officials to Constitutional Bodies in accordance with this Constitution, which shall consist of the following as the chairperson and members:

- (a) The Prime Minister -Chairperson
- (b) The Chief Justice -Member
- (c) The Speaker of the Legislature-Parliament -Member
- (d) Three Ministers so designated by the Prime Minister as to have representation of different political parties out of the political parties having representation in the Council of Ministers -Member
- Provided that, where there is representation of less than three political parties in the Council of Ministers, nothing shall be deemed to bar the making of designation in such a manner as to have representation of less than three political parties.
- (e) Leader of Opposition Party in the Legislature-Parliament -Member

(2)

While making recommendation for appointment to the office of the Chief Justice in the event that such office falls vacant, the Constitutional Council shall include the Minister for Justice as its member.

(3)

The procedures on the appointment of officials to Constitutional Bodies and other functions, duties and powers and Rules of procedures of the Constitutional Council shall be as determined by law.

(4)

The Chief Secretary of the Government of Nepal shall act as the secretary of the Constitutional Council.

150

Nepalese ambassadors and emissaries: The President may, on the recommendation of the Council of Ministers, 115 appoint the Nepalese ambassadors, and special emissaries for any specific purposes.

151

Pardons: The President may, on the recommendation of the Council of Ministers, grant pardons and suspend, commute or remit any sentence passed by any court, special court, and military court or by any other judicial quasi-judicial or administrative authority or body.

152 TITLES, HONORS AND DECORATIONS

(1)

The titles, honors and decorations to be conferred on behalf of the State shall be conferred by the President, on the recommendation of the Council of Ministers. 117

(2)

No citizen of Nepal shall, without the approval of the Government of Nepal, accept any title, honor or decoration from the government of any foreign country.

153

Constitution of Government Service: The Government of Nepal may, in order to run the Administration of the country, constitute the Civil Service and such other government services as may be required. The constitution, operation and conditions of service thereof shall be as determined by an Act.

154

Constitution of commissions: The Government of Nepal may constitute such commissions as may be required for the protection and promotion of the rights and interests of various sectors including women, Dalit, indigenous peoples, Madhesi, disabled, labours or farmers. The provisions relating to the formation, functions, duties and powers of such commissions shall be as determined by law.

154A ELECTION CONSTITUENCY DELIMITATION COMMISSION

(1)

The Government of Nepal may constitute an Constituency Delimitation Commission, to determine election constituencies for the purpose of the election to the members of the Constituent Assembly, which shall consist of the following as the chairperson and members:

- (a) Retired Judge of the Supreme Court -Chairperson
- (b) Geographer -Member
- (c) Sociologist or demographer -Member
- (d) Administrator or management expert -Member
- (e) Gazetted special class officer in the service of the Government of Nepal -Member-secretary

(2)

The chairperson and members of the Constituency Delimitation Commission shall be appointed by the Government of Nepal.

(3)

The term of office of the Constituency Delimitation Commission shall be as prescribed by the Government of Nepal at the time of the constitution of the Commission, and such term may be extended, if required, by the Government of Nepal.

(4)

Without prejudice to the generality of clause (1), no person shall be eligible to be appointed as the chairperson or a member of the Constituency Delimitation Commission unless he or she possesses the following qualification:

- (a) holds at least Bachelor's Degree in related subject from a University recognized by the Government of Nepal;
- (b) has attained the age of forty five years; and
- (c) Possess a moral character.

(5)

The office of the chairperson or member of the Constituency Delimitation Commission shall be deemed vacant in any of the following circumstances:

- (a) if he or she tenders resignation in writing to the Prime Minister: or
- (b) if he or she dies.

(6)

While delimiting constituencies pursuant to this Article. the Constituency Delimitation Commission shall, subject to Clauses (3) and (3a) of Article 63, determine the number of members to be elected from each district on the basis of the population of that district, by maintaining the proportionality, as far as practicable, between the population of such districts, and the number of members of the Constituent Assembly, and shall determine the number of election constituencies equal to such number, for the purpose of the election to the members of the Constituent Assembly.

(7)

In delimitating constituencies pursuant to clause (6), due consideration shall be given to inter alia, the boundaries, geographical conditions, density of population, transportation facilities of each administrative district and communal and cultural aspects of the inhabitants in such district, on the basis of equal population and geographical specificity and congeniality.

(8)

Notwithstanding anything contained in Clause (7), the election constituencies shall not be so delimited as to be below the number of election constituencies existed in the election districts at the time of the commencement of this Constitution.

(9)

No question shall be raised in any court on any matter of the delimitation of constituencies made by the Constituency Delimitation Commission or on the review thereof made pursuant to Clause (10c).¹¹⁹

(10)

The Constituency Delimitation Commission shall submit a report on the works it has performed to the Prime Minister.

(10a) The Prime Minister shall lay the report received pursuant to Clause (10) before the Council of Ministers; and the Council of Ministers shall send the report to the Election Commission and other concerned bodies for its implementation.

(10b)

Notwithstanding anything contained in Clause (10a), if the Council of Ministers considers that it is necessary to review the report submitted to the Prime Minister pursuant to Clause (10), in the case of a district of which delimitation is not in order technically, the Council of Ministers may, in such a special circumstance, request the chairperson and members of the Commission constituted pursuant to Clause (1) to review the report for one time, specifying the deadline for such review.

(10c)

If the Council of Ministers makes a request pursuant to clause (10b), the chairperson and members of such Commission shall make review of the matter as requested by the Council of Ministers and submit a report thereof to the Prime Ministers within that deadline.

(10d)

If a report is received pursuant to Clause (10c), action as referred to in clause (10a) shall be taken in respect of that report.

(10e)

Notwithstanding anything contained elsewhere in this Article, in making a review pursuant to Clause (10c), the Constituency Delimitation Commission shall be deemed to be in existence for the period referred to in Clause (10b) for that purpose.

(11)

The Constituency Delimitation Commission shall determine its rules of procedures itself.

(12)

The remuneration and facilities of the chairperson and the members of the Constituency Delimitation Commission shall be similar to those of the Chief Election Commissioner and the Election Commissioners, respectively.

(13)

The Government of Nepal shall provide such employees as may be required for the Constituency Delimitation Commission.

155 PROVISIONS RELATING TO HEARING ABOUT, AND CITIZENSHIP OF OFFICIALS OF CONSTITUTIONAL BODIES

(1)

Prior to the appointment of any persons to constitutional positions to which appointments are made on the recommendation of the Constitutional Council pursuant to this Constitution, to positions of Judges of the Supreme Court and to positions of ambassadors, there shall be parliamentary hearing about them as provided in law.

(2)

Only those persons who are citizens of Nepal by descent or birth or who, having acquired naturalized citizenship, have resided in Nepal for at least ten years shall be eligible to be appointed to constitutional positions to which appointments are made pursuant to this Constitution.

156 RATIFICATION OF, ACCESSION TO, ACCEPTANCE OF OR APPROVAL OF, TREATIES OR AGREEMENTS

(1)

The ratification of, accession to, acceptance of or approval of, treaties or agreements to which the State of Nepal or the Government of Nepal is to become a party shall be as determined by law.

(2)

Any law to be made pursuant to Clause (1) shall, inter alia, require that the ratification of, accession to, acceptance of, or approval of, treaties or agreements on the following subjects must be made, by a two-thirds majority of the total number of the then members of the Legislature-Parliament:

- (a) Peace and friendship;
- (b) Defense and strategic alliance;
- (c) Boundaries of the State of Nepal; and
- (d) Natural resources, and the distribution of their uses.

Provided that, out of the treaties or agreements referred to in Sub-clauses (a) and (d), if any treaty or agreement is of an ordinary nature, which does not affect the nation extensively, seriously or in the long term, the ratification of, accession to, acceptance of, or approval of, such treaty or agreement may be made by a simple majority of the members present in a meeting of the Legislature-Parliament.

(3)

After the commencement of this Constitution, unless a treaty or agreement is ratified, acceded to, accepted or approved in accordance with this Article, such treaty or agreement shall not be deemed to have come into force for the Government of Nepal or the State of Nepal.

(4)

Notwithstanding anything contained in clauses (1) and (2), no treaty or agreement shall be concluded in detrimental to the territorial integrity of the State of Nepal.

157 POWER TO MAKE DECISION THROUGH REFERENDUM

(1)

Save as otherwise provided elsewhere in this Constitution, if a two-thirds majority of the total number of the then members of the Constituent Assembly decides that it is necessary to decide any issue of national importance through referendum, such issue may be decided through referendum.

(2)

The procedures on making decision through the process as referred to in Clause (1) shall be as determined by law.

158

Power to remove difficulties: If any difficulty arises in connection with the implementation of this Constitution, the President may on the recommendation of the Council of Ministers, issue any orders to remove such difficulty; and such orders shall have to be ratified by the Legislature Parliament within one month.

Part 23 TRANSITIONAL PROVISIONS

159 PROPERTIES TO BE HELD IN TRUST

(1)

The properties of the then King Birendra, Queen Aishwarya and their families shall be brought under control of the Government of Nepal and held in a trust, to be used for the interests of the nation.

(2)

All properties acquired by Gyanendra Shah in capacity of the then King (such as palaces, forests, parks and heritages of historical and archaeological importance situated in various places) shall be nationalized.

160 PROVISIONS RELATING TO THE COUNCIL OF MINISTERS

(1)

The Council of Ministers existing at the time of commencement of this Constitution shall be deemed to have been constituted under this Constitution.

(2)

The Council of Ministers as referred to in Clause (1) shall exist until the Council of Ministers is constituted pursuant to Article 38.

161 PROVISIONS RELATING TO THE LEGISLATURE-PARLIAMENT

(1)

The Legislature-Parliament as referred to in this Constitution shall be constituted immediately after the promulgation of this Constitution.

(2)

The House of Representatives and the National Assembly existing for the time being shall ipso facto be dissolved on the promulgation of this Constitution; and the first meeting of the Legislature-Parliament as referred to in this Constitution shall be held on the same day.

(3)

The Bills pending in the House of Representatives at the time of the promulgation of this Constitution shall be transferred to the Legislature-Parliament as referred to in this Constitution.

(4)

The Parliament Secretariat existing at the time of promulgation of this Constitution and the officials and employees serving in that Secretariat shall be deemed to be the Legislature-Parliament Secretariat and to have been appointed as officials and employees thereof under this Constitution.

162 PROVISIONS RELATING TO JUDICIARY

(1)

The Supreme Court, Appellate Courts and Districts Courts existing at the time of the commencement of this Constitution shall be deemed to have been established under this Constitution, and this Constitution shall not be deemed to bar the disposal by the respective Courts of the cases filed prior to the commencement of this Constitution.

(2)

The Judges serving in the Supreme Court, Appellate Courts and Districts Courts shall, after the commencement of this Constitution, take an oath of commitment to this Constitution in such form as determined by the Government of Nepal. Any Judge who refuses to take the oath shall ipso facto be relieved of his or her office.

(3)

Necessary legal provisions shall be made to keep on making reforms in the judicial sector based on democratic values and norms for the independent, fair, impartial and competent Judiciary.

163 PROVISIONS RELATING TO CONSTITUTIONAL BODIES AND, OFFICIALS THEREOF

(1)

Out of the Constitutional Bodies and Officials thereof existing at the commencement of this Constitution, those Bodies and Officials which or who are not mentioned in this Constitution shall cease to exist after the commencement of this Constitution.

(2)

The Constitutional Bodies existing at the commencement of this Constitution shall be deemed to have been established under this Constitution; and this Constitution shall not be deemed to prevent from giving continuity to the issues pending in these Bodies pursuant to the laws in force. Necessary legal provisions shall be made to keep on making reforms in the Constitutional Bodies and their Officials in consonance with democratic norms and values.

(3)

The National Human Rights Commission constituted pursuant to the laws in force shall continue to exist pending the constitution of the National Human Rights Commission as provided in this Constitution; and, after the constitute of the National Human Rights Commission as referred to in this Constitution, the petitions and complaints pending before that Commission shall be transferred to this Commission; and the Commission shall deal with such petitions and complaints in accordance with this Constitution and laws made hereunder.

164 EXISTING LAWS TO REMAIN IN FORCE

(1)

All decisions, acts and proceedings made and carried out by the reinstated House of Representatives shall be deemed to have been made and carried out under this Constitution to the extent that they are not inconsistent with this Constitution.

(2)

The laws existing at the time of the commencement of this Constitution shall continue to be in force unless and until such laws are repealed or amended.

Provided that, any law which is inconsistent with this Constitution shall ipso facto be invalid to the extent of such inconsistency, after three months of the commencement of this Constitution.

Part 24 DEFINITIONS

165 DEFINITIONS

(1)

Unless the subject or the context otherwise requires, in this Constitution:

- (a) "Article" means an Article of Constitution.
- (b) "Nepal" means the State of Nepal.
- (c) "Citizen" means a citizen of Nepal.
- (d) "Bill" means a draft of Constitution or Act which has been introduced in Legislature-Parliament or the Constituent Assembly.
- (e) "Remuneration" shall include salary, allowances, pension and any other forms of emoluments and facilities.

(2)

Unless the subject or the context otherwise requires, the prevailing legal provisions on the interpretation of law shall, subject to the provisions of this Constitution, apply to the interpretation of this Constitution in the same manner as that law applies to the interpretation of the laws of Nepal.

Part 25 SHORT TITLE, COMMENCEMENT AND REPEAL

166 SHORT TITLE AND COMMENCEMENT

(1)

This Constitution may be called "Interim Constitution of Nepal, 2063(2007)".

(2)

This Constitution shall be promulgated by the House of Representatives and ratified by the Interim Legislature-Parliament. The details in relation to its implementation shall be as mentioned in Schedule 3.

(3)

The Comprehensive Peace Accord and the Agreement on Monitoring of the Management of Arms and Armies concluded between the Government of Nepal and CPN (Maoist) on 5 Mangsir 2063 (21 November 2006) and 22 Mangsir 2063 (8 December 2006), respectively, are in Schedule-4.

(4)

This Constitution shall come into force on Monday, the first day of the month of Magha of the year 2063 Bikram Sambat (15 January 2007).

Repeal: The Constitution of the Kingdom of Nepal, 2047(1990) is, hereby, repealed.

S1 NATIONAL FLAG

- None

(A) Method of making the shape inside the border

- (1) On the lower portion of a crimson cloth draw line AB of the required length from left to right.
- (2) From A draw a line AC perpendicular to AB making AC equal to AB plus one third AB. From AC mark off D making line AD equal to line AB. Join B and D.
- (3) From BD mark off E making BE equal to AB.
- (4) Touching E draw a line FG, starting from the point F on line AC, parallel to AB to the right hand-side. Mark off FG equal to AB.
- (5) Join C and G.

(B) Method of making the moon

1. From AB mark off AH making AH equal to one fourth of line AB and starting from H draw a line HI parallel to line AC touching line CG at point I.
2. (7) Bisect CF at J and draw a line JK parallel to AB touching CG at point K.
3. (8) Let L be the point where lines JK and HI cut one another.
4. (9) Join J and G.
5. (10) Let M be the point where line JG and HI cut one another.
6. (11) With centre, M and with a distance shortest from M to BD mark off N on the lower portion of line HI.
7. (12) Touching M and starting from O, a point on AC, draw a line from left to right parallel to AB,
8. (13) With centre L and radius LN draw a semi-circle on the lower portion and let P and Q be the points where it touches the line OM respectively.
9. (14) With centre M and radius MQ draw a semi-circle on the lower portion touching P and Q.
10. (15) With centre N and radius NM draw an arc touching PNQ at R and S. Join RS. Let T be the point where RS and HI cut one another.
11. (16) With centre T and radius TS draw a semi-circle on the upper portion of PNQ touching it at two points.
12. (17) With centre T and radius TM draw an arc on the upper portion of PNQ touching at two points.
13. (18) Eight equal and similar triangles of the moon are to be made in the space lying inside the semicircle of No. (16) and outside the arc of No. (17) of this Schedule.

(c) Method of making the sun

1. Bisect line AF at U, and draw a line UV parallel to AB line touching line BE at V.
2. (20) With centre W, the point where HI and UV cut one another and radius MN draw a circle.
3. (21) With centre W and radius LN draw a circle.
4. (22) Twelve equal and similar triangles of the sun are to be made in the space enclosed by the circles of No. (20) and of No. (21) with the two apexes of two triangles touching line HI.

(D) Method of making the border.

1. The width of the border will be equal to the width TN. This will be of deep blue color and will be provided on all the side of the flag. However, on the five angles of the flag the external angles be equal to the internal angles.
2. (24) The above mentioned border will be provided if the flag is to be used with a rope. On the other hand, if it is to be hoisted on a pole, the hole on the border on the side AC can be extended according to requirements.
3. Explanation: The lines HI, RS, FE, ED, JG, OQ, JK and UV are imaginary. Similarly, the external and internal circles of the sun and the other arcs except the crescent moon are also imaginary. These are not shown on the flag.
4. s.1A

5. I (full name of the President/Vice-president) solemnly promise/swear in the name of God that I will bear true faith and allegiance to the country and people, that I will bear true faith and allegiance to the Interim Constitution of Nepal, 2063 (2007) vesting the sovereignty and state authority of Nepal in the people of Nepal, 130that I will faithfully discharge the duties of the office of President/Vice-president, subject to the prevailing laws, doing right to the country and people, without fear, favor, affection or ill will, and that I will not in any manner communicate or reveal any matter which shall become known to me in the course of discharging my duties, irrespective of whether I hold or cease to hold the office, except as may be required in the observance of law.
6. Name, surname:
7. signature:
8. Date

S2

Deleted by the Fifth Amendment.

S3

After the commencement of the management and monitoring of arms pursuant to the Comprehensive Peace Accord and the agreement on Monitoring of the Management of Arms and Armies concluded between the Government of Nepal and CPN (Maoists) on 5 Mangsir 2063 (21 November 2006) and 22 Mangsir 2063 (8 December 2006), respectively, this Constitution shall be promulgated by the House of Representatives and ratified by the Interim Legislature-Parliament

S4

The Comprehensive Peace Accord concluded between the Government of Nepal and Communist Party of Nepal (Maoist)

Preamble

Respecting the people's mandate expressed in favour of democracy, peace and progression through the historical struggles and people's movements launched by the people of Nepal at various times since before 2007 (1951) till now;

Reaffirming the full commitment to the Twelve-point Understanding,

Eight-point Agreement and Twenty-five-point Code of Conduct concluded between the Seven Political Parties and CPN (Maoist), Decisions of the

Meeting of Top Leaders of Seven Political Parties and CPN (Maoist) held on 22 Kartik 2063 (8 November 2006) including all agreements, understandings and codes of conduct entered into between the Government of Nepal and CPN (Maoist) and the letter carrying similar perceptions sent to the United Nations;

Pledging to accomplish the progressive restructuring of the State in order to solve the existing problems of the country relating to class, caste, region and gender;

Reiterating the full commitment to competitive multi-party democratic system of governance, civil liberties, fundamental rights, human rights, full freedom of press, and concept of rule of law including democratic values and norms;

Remaining committed to the Universal Declaration of Human Rights, 1948, international humanitarian laws and basic principles and values relating to human rights;

Guaranteeing the basic right of the people of Nepal to take part in the election to the Constituent Assembly in a free, fair and fearless environment;

Putting democracy, peace, prosperity, progressive socioeconomic transformation and independence, integrity, sovereignty and prestige of the country in the center;

Expressing resolution to hold election to the Constituent Assembly in a free and fair manner no later than the month of Jestha of the year 2064 (14 June 2007);

Declaring the beginning of a new chapter of peaceful collaboration by ending, on the basis of political understanding reached between both parties, the armed conflict which has taken place in the country since 2052 (1996), in order to accomplish, through the Constituent Assembly, the guarantee of sovereignty of the People of Nepal, progressive political outlet, democratic restructuring of the State and social-economic-cultural transformation;

This Comprehensive Peace Accord has been concluded between the

Government of Nepal and CPN (Maoist) with a commitment to transform the ceasefire reached between the Government of Nepal and CPN (Maoist) into sustainable peace.

- 1 Preliminary
- 2 Definitions: Unless the subject or the context otherwise requires, in this Agreement,
- 3 Political-economic-social transformation and conflict management: Both parties agree to adopt the following policies and programs for the political, economic and social transformation and to positively manage the conflicts existing in the country:

3

1 To ensure progressive political, economic and social transformation on the basis of the Decisions of the Meeting of Top Leaders of Seven Political Parties and CPN (Maoist) held on 22 Kartik 2063 (8 November 2006) (As attached in Annex-6).

3.2 To constitute the Interim Legislature-Parliament based on the Interim Constitution; and the Interim Government is to hold election to the Constituent Assembly freely and fairly no later than the month of Jestha of the year 2064 (mid-June 2007); and to guarantee sovereignty inherent in the people of Nepal.

3.3 The King shall have no power relating to the governance of the country. The properties of the late King Birendra, late Queen Aishwarya and their families are to be brought under control of the Government of Nepal and held in a trust, to be used for the interests of the nation. All properties acquired by King Gyanendra in capacity of the King (such as palaces, forest parks and heritages of historical and archaeological importance situated in various places) are to be nationalized. The first meeting of the Constituent Assembly is to decide, by a simple majority, whether the institution of monarchy is to be retained or not.

3.4 To adopt a political system which is in full compliance with the universally accepted basic human rights, competitive multi-party democratic system, sovereignty inherent in the people and supremacy of the people, constitutional checks and balances, rule of law, social justice equality, independent judiciary periodic elections, monitoring by the civil society, complete press freedom, right of the people to information, transparency and accountability in the activities of political parties, public participation and concepts of impartial, efficient and fair bureaucracy, and maintain good governance while putting an end to corruption and impunity.

3.5 To end the existing centralized and unitary structure of the State so as to address the problems including those of women, Dalit, indigenous peoples, Madhesi, oppressed, excluded and minority communities and backward regions, and make an inclusive, democratic and progressive restructuring of the State, while at the same time doing away with discriminations based on class, caste, language, gender, culture, religion and region.

3.6 To set, through mutual understanding, a common minimum program on socio-economic transformation, doing away with all forms of feudalism and keep on implementing the program.

3.7 To pursue a policy of implementing a scientific land reforms program by doing away with the feudalistic land ownership.

3.8 To pursue a policy of protecting and promoting domestic industries and means and resources.

3.9 To pursue a policy of establishing the right of all citizens to education, health, housing, employment and food sovereignty.

3.10 To pursue a policy of providing socio-economic security including land to the landless squatters, bonded labors, tillers, Harawa-Charawa as well as the economically and socially backward classes.

3.11 To pursue a policy of taking strict action against and punishing those who amass illicit wealth through corruption while holding a public office of profit.

3.12 To build a common development concept for socio-economic transformation of the country and justice, and making the country prosperous and economically sound rapidly.

3.13 To pursue a policy of extensively increasing, income-generating opportunities by increasing investment in industry, trade, export promotion etc., while at the same time ensuring the professional ,rights of labors.</list_4>

4 Management of armies and arms: With a view to holding the election to the Constituent Assembly in a peaceful, fair and free of fear environment and democratizing and restructuring the Army, to carry out the following acts in consonance with the Twelve-point Understanding, Eight-point Agreement, Twenty five- point Code of Conduct concluded in the past, the Five-point Letter sent to the United Nations, and the Decisions of the Meeting of Top Leaders held on 22nd Kartik (8 November): Relating to the Maoist army:

4

1 In accordance with the commitment expressed in the letter sent on behalf of the Government of Nepal and the CPN (Maoist) to the United Nations on 24 Shrawan 2063 (9 August 2006), the Maoist army combatants shall be confined within the following cantonment areas. The United Nations is to verify and monitor them. The main cantonments shall be placed in following locations:

- 1 Kailali
- 2 Surkhet
- 3 Rolpa
- 4 Nawalparasi
- 5 Chitwan
- 6 Sindhuli
- 7 Ilam Three satellite cantonments shall be placed in the periphery of each of these main cantonments.

4

2 After confining the Maoist army combatants in the cantonments, all arms, other than the arms and ammunitions required for the security of the cantonments, are to be securely stored within the cantonments, to be sealed with a single-lock, and the concerned party is to hold the key. In the process of installing the lock, to assemble a device including a siren and register for the monitoring by the United Nations. While carrying out the necessary examination of the stored arms, the United Nations is to do so under the presence of the concerned party. Other detailed technical specifications in this respect including camera monitoring are to be prepared with the consent of the United Nations, the CPN (Maoist) and the Government of Nepal.

4.3 After the Maoist army combatants stay in the cantonments, the Government of Nepal is to provide food supplies and other necessary arrangements for them.

4.4 The Interim Council of Ministers is to form a special committee for the supervision, integration and rehabilitation of the Maoist combatants.

4.5 Security provisions are to be made for Maoist leaders through understanding with the Government. Relating to the Nepal Army:

4.6 In accordance with the commitment expressed in the letter sent to the United Nations, the Nepal Army shall remain in its barracks. That its arms are not to be used in favor of or against any side shall be guaranteed. The Nepal Army is to securely store arms in equal numbers to that of the Maoist army, to seal it with a single-lock; and the concerned party is to hold the key. In the process of installing the lock, to assemble a device including a siren and register for the monitoring by the United Nations. While carrying out the necessary examination of the stored arms, the United Nations is to do so under the presence of the concerned party. Other detailed technical specifications in this respect including camera monitoring are to be prepared with the consent of the United Nations, the Government of Nepal and the CPN (Maoist).

4.7 The Council of Ministers shall control, mobilize and manage the Nepal Army as per the new Army Am The Interim Council of Ministers is to prepare and implement the detailed action plan for the democratization of the Nepal Army, with political understanding and by taking suggestions from the concerned committee of the Interim Parliament Under this, to carry out activities like to assess the appropriate number of the Nepal Army, to train the army in democratic and human rights values, while developing democratic stricture, national and inclusive character.

4.8 The Nepal Army is to continue to perform functions including border security, security of the conservation areas, protected areas, banks, airports, power houses, telephone towers, central secretariats and security of VIPs.</list_5>

5 Ceasefire:

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1 Termination of military action and armed mobilization:

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1.1 Both sides express their commitment to refrain from carrying out any of the following activities:

- (a) Any type of arms and weapons targeted against each other in a direct or indirect way or any attack;
- (b) Searching or seizing arms and weapons belonging to the other side, with or without weapons, at the place where the arms have been stored with the understanding of both parties;
- (c) Hurting any person or subjecting any person to mental pressure;
- (d) Laying ambushes targeted against each other;
- (e) Committing murder and violent operations;
- (f) Any act of kidnapping/arrest/ detention/ disappearance;
- (g) Destroying any public/private/ governmental or military property;
- (h) Making aerial attacks or bombardments;
- (h) Planting mines and conducting sabotage;
- (i) Conducting military espionage against each other.

5

1.2 Both parties shall not recruit additional armed forces or conduct military activities against each other, including transporting weapons ammunitions and explosives. Provided that the security forces deployed by the Interim Government shall have authority to conduct routine patrol, explore in order prevent illegal trafficking of the weapons, explosives or raw materials used in assembling weapons at the international border and custom, points and seize them.

5.1.3 No person or group shall move carrying illegal arms, ammunitions and explosives.

5.1.4 Both parties shall assist each other to mark the landmines and booby-traps used during the time of armed conflict by providing necessary information about their sketches, maps and storage within 30 days and defuse and destroy the same within 60 days.

5.1.5 Armies of both parties shall not be present with arms or in combat fatigue in any civil assembly or political assembly or public program.

5.1.6 The Nepal Police and Armed Police Force shall continue the task of maintaining law and order and conduct criminal investigations as per the spirit and sentiment of the people's movement (Jana Andolan) and Peace Accord as well as the laws in force.

5.1.7 Both parties shall issue circulars to their respective armed bodies and personnel to stop addressing any armed personnel of the other party as 'enemy' and to behave in similar manner.

5.1.8 Both parties agree to establish an inventory of the government, public, private buildings, lands and other properties seized, locked up or not allowed to be used in the course of armed conflict and to return them back immediately.</list_8>

5

2 Measures for normalization of situation:

<list_10>

5.2.1 Collecting cash or goods and levying tax against one's wishes and against the laws in force shall be prohibited.

5.2.2 Both parties agree to make public the status of people in their custody and release all of them within 15 days.

5.2.3 Both parties agree to make public, within 60 days after the signing of the Peace Accord the real names, surnames and addresses of the people disappeared by them and of those killed during the war and provide information thereof to the family members, as well.

5.2.4 Both parties agree to constitute a national peace and rehabilitation commission and carry out works through it to maintain peace in the society and operate relief and rehabilitation works for the people victimized from and displaced as a result of the war/conflict, while normalizing the adverse situation emerged from the armed conflict.

5.2.5 Both parties agree to constitute, with mutual understanding, a high level truth and reconciliation commission for finding out the truth about those who committed the gross violation of human rights and were involved in the crime against humanity in the course of armed conflict and for creating an environment of reconciliation in the society.

5.2.6 Both parties pledge to abandon all types of war, attack, counter-attack, violence and counter-violence existing in the country, with a commitment to ensure democracy, peace and progressive transformation in the Nepalese society. It is also agreed that both parties shall assist each other in establishing peace and maintaining peace and security.

5.2.7 Both parties guarantee to withdraw accusations, claims, complaints and sub judice cases made or filed against various persons on political grounds and immediately make public the status of detainees and release them at once.

5.2.8 Both parties express commitment to allow without any political prejudice, the people displaced in the course of conflict to return back voluntarily to their respective ancestral or former residence, reconstruct the infrastructures destroyed, as a result of the hostilities and to rehabilitate and socialize the displaced persons with honor.

5.2.9 Both parties agree to take individual and collective responsibility of resolving, also with the support of all political parties, civil society and local institutions, any problems arising in the said context, through mutual understanding, and creating an atmosphere conducive to the normalization of mutual relations and reconciliation.

5.2.10 Both parties express commitment not to make any discrimination against nor to exert any kind of pressure on any member of the family on the ground that such member is affiliated with other party.

5.2.11 Both parties agree to let employees of the Government of the Nepal and public agencies travel freely to any part of the country, to fulfill their duties and not to create any obstacles or obstruction while executing their work or not to let obstruction to arise and to facilitate their work.

5.2.12 Both parties agree to allow the United Nations, international donors agencies and diplomatic missions based in Nepal, national or international non-governmental organizations, press, human rights activists, election observers and foreign tourists to travel unrestricted in the State of Nepal in accordance with law.

5.2.13 Both parties are committed to operate publicity programs in a decent and respectable manner.

</list_10></list_7>

6 Cessation of hostilities:

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6.1 Based on the historic agreement reached between the Seven Political Parties and the CPN (Maoist) on 8 November 2006, we hereby declare the cessation of the armed hostilities having taken place since 2052 (1995), while giving permanency to the ongoing ceasefire between the Government and the Maoist.

6.2 The Decisions of the Meeting of Top Leaders Seven Political Parties and CPN (Maoist) held on 22 Kartik 2063 (8 November 2006) shall be the main policy basis for long-term peace.

6.3 After the confinement of the Nepal Army in the barracks and the Maoist Army combatants in the cantonments, holding, displaying the arms, intimidation and any type of use of violence and arms, in contravention of the understanding, agreement and law, shall be legally punishable.

6.4 Armies of both parties shall not be allowed to canvass, and be engaged in, for or against any side. Provided that they shall not be deprived of the right to vote.

</list_11>

7 Observance of human rights, fundamental rights al humanitarian law: Remaining committed to the Universal Declaration of Human rights, 1948, international humanitarian law and basic principles and values relating to human rights, both parties express their consent to the following matters:

<list_12>

7.1 Human rights:

<list_13>

7.1.1 Both parties reiterate their commitment to the respect for and protection of human rights and to international humanitarian law, and accept that no person shall be discriminated against on the ground of color, sex, language, religion, age, race, national or social origin, wealth disability, birth and other status, opinion or belief.

7.1.2 Both parties agree to create an environment where the Nepalese people can enjoy their civil, political, economic, social and cultural rights, and are committed to make such an environment that such rights are not violated in any circumstances in the future.

7.1.3 Both parties express the commitment that in accordance with law, impartial investigation shall be carried out in respect of, and action taken against, those persons who are responsible for obstruction in the enjoyment of the rights mentioned in this Peace Accord and ensure that impunity shall not be encouraged. In addition, they shall also ensure the right of the victims of conflict and torture and the right of the families of the disappeared persons to obtain relief.

7.1.4 Both parties shall not do any act to torture, kidnap the general public and forcefully engage them in work, and shall also take necessary action to discourage such act.

7.1.5 Based on the values and norms of secularism, both parties shall respect social, cultural and religious sensitivity, religious sites and the religious faith of individuals.

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7.2 Right to life 7.2.1 Both parties shall respect and protect the .basic right of a person to life. No person shall be deprived of this basic right; and no law shall be made which provides for the death penalty.

7.3 Personal dignity, freedom and movement:

<list_14>

7.3.1 Both parties respect and safeguard the right to personal dignity. In this respect, any person including a person who is deprived of freedom in accordance with law shall not be subjected to torture or any other cruel, inhuman or degrading treatment or punishment. The citizen's right to privacy shall be respected in accordance with law.

7.3.2 Both parties shall fully respect the right of person to freedom and security and shall not arbitrarily or illegally detain any person nor shall kidnap, or take any person in hostage. Both parties agree to make public the status of the persons who have been disappeared and held in captivity by them and provide information in this respect to their families, legal advisers and other authorized persons.

7.3.3 Both parties shall respect and protect the right of every citizen to free movement and freedom to choose one's place of, residence in accordance with legal norms, and express the commitment to respect the right of the persons displaced by the conflict and their families to return back to their homes or to settle in any other place of their choice.

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7.4 Civil and political rights:

<list_15>

7.4.1 Both parties are committed to respect and, protect the freedom of every person to opinion, expression, form unions an-organizations and assemble peaceably and the right of every person against exploitation.

7.4.2 Both parties respect the right of every citizen to take part directly or through representative of his or her choice in issues of public concern, to vote, to be elected and to equality in admission to public services.

7.4.3 Both parties are committed to respect the right of every person to be informed.

</list_15>

7.5 Economic and social rights:

<list_16>

7.5.1 Both parties are committed to respect and protect the right of every person to livelihood by doing employment which he or she chooses or accepts freely.

7.5.2 Both parties are committed to respect and guarantee the right of all people to food security and ensure that there shall be no interference in the use, transport and distribution of food items, food production and food grains.

7.5.3 Both parties realize the fact that the right of every citizen to health must be respected and protected. Both parties shall not hinder drug supplies and aid and health related campaigns, and express commitment to do medical treatment and have rehabilitation of those who are injured in the course of conflicts.

7.5.4 Realizing that the right of all to education must be guaranteed and respected, both parties are committed to maintain conducive educational environment in educational institutes. Both parties agree to ensure that the right to education shall not be violated. They agree to immediately stop acts to take possession of and use educational institutes and disappear or control or abduct teachers and students and not to put army barracks in such a manner as to affect schools and hospitals.

7.5.5 Both parties agree that no private property of any person shall be expropriated or seized except in accordance with law.

7.5.6 Both parties believe in encouraging to give continuity to production works without disturbing the industrial climate in the country, to respect the right to collective bargaining and social security in industrial enterprises, to pacifically resolve problems, if any, arising between the industrial enterprises and labors, and respect the right to work as prescribed by the International Labor Organization.

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7.6 Rights of the women and the child: 7.6.1 Both parties fully agree to have special protection of the rights of the women and the child, to immediately prevent all forms of violence against women and children, including sexual exploitation and abuse as well as child labor and not to include or use children who are 18 years old or under in the armed forces. Children thus affected shall be immediately rescued, and necessary and appropriate assistance shall be provided for their rehabilitation.

7.7 Right to personal liberty: 7.7.1 Both parties agree to the freedom of opinion and ideology, freedom of speech and publication, freedom to assemble peaceably and without arms, freedom to make movement, freedom to practice or carry on any profession or occupation of one's own choice, freedom to acquire, own and possess any property, freedom to take part in peaceful political activities, the right to be equal before the law, and to carry out, or cause to be carried out, harmonious justice system.

</list_12>

8 Settlement of differences, and implementation mechanism:

<list_17>

8.1 Both parties agree to be so individually and collectively responsible as not to repeat mistakes made in the past and to keep on correcting such mistakes in gradual manner. The National Peace and Rehabilitation Commission may set up any such mechanism as may be required to make the peace campaign successful. The composition and rules of procedure of the Commission shall be as determined by the Interim Council of Ministers.

8.3 Both parties are committed to settle all kinds of present and future mutual differences or problems through mutual dialogue, understanding, agreement and negotiation.

8.4 Both parties express commitment that the Interim Council of Ministers may constitute, and determine rules of procedure of, the National Peace and Rehabilitation Commission, the Truth and Reconciliation Commission, the High-level Recommendation Commission on State Restructuring as well as such other mechanisms as may be necessary for the implementation of this Peace Accord, the Interim Constitution and all decisions, agreements and understandings reached between the Seven Parties, the Government of Nepal and the CPN (Maoist).

</list_17>

9 Implementation and monitoring: Both parties agree to make the following arrangements for the implementation and monitoring of the agreements mentioned in this Agreement:

<list_18>

9.1 Both parties agree to give continuity to the monitoring of the human rights related provisions contained in this Agreement by the United Nations Office of the High Commissioner Human Rights, Nepal.

9.2 Both parties agree to have the management of arms and armies monitored by the United Nations Mission in Nepal in accordance with the five-point letter sent previously and the provisions contained in this Agreement and express the commitment to render assistance in this respect.

9.3 Both parties agree to have the election to the Constituent Assembly supervised by the United Nations.

9.4 The National Human Rights Commission shall also carry out tasks related to the monitoring of human rights as mentioned in this Agreement, in addition to its statutory functions and responsibilities. In the course of discharging its functions, the Commission may make necessary coordination with and seek assistance of national and international organizations on human rights.

9.5 Both parties agree to receive reports made by and provide such information as sought by all bodies mentioned above, and to implement, through agreements and discussions, any suggestions and recommendations made by such bodies.

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10 Miscellaneous:

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10.1 Both parties agree not to operate any parallel structure or any structure in any form in any area of the State or Government mechanism in consonance with the letters of the Decision of November 8 and the spirit of this Agreement.

10.2 Both parties consent to sign any other complementary understandings, as necessary, for the implementation of this Agreement.

10.3 This Agreement may be revised at any time with the consent of both parties. Both parties agree to provide to each other prior written information if they wish to make any amendment. Such amendment can be made with the consent of both parties after receiving such information. The provisions to be made by such an amendment shall not fall below the minimum standards of accepted international human rights and humanitarian law and the main essence of peace building.

10.4 If there arises any dispute in respect of any interpretation of this Agreement, the joint mechanism comprising both parties shall make interpretation on the basis of the Preamble and the documents included in the Appendices of this Agreement, and such interpretation shall be final.

10.5 The concept and situation of 'two parties' as mentioned in this Agreement shall ipso facto cease to exist after the constitution of the Interim Legislature-Parliament. Thereafter, the obligation to implement, or cause to be implemented, all responsibilities mentioned in this Agreement shall be as provided by the Interim Council of Ministers. It shall be the duty and responsibility of all political parties to extend cooperation in the observance and implementation of this Agreement.

10.6 We heartily appeal all to resolve their problems and demands through dialogue and negotiation and extend cooperation in holding the election to the Constituent Assembly and maintaining law and order, at a time when the entire country is focusing on the main campaign of the election to the Constituent Assembly.

10.7 We heartily appeal the political parties, civil society, professional communities, people's class organizations,

journalists, academicians and all the Nepalese people to actively participate in this historic campaign of building a new democratic Nepal and establishing sustainable peace through the election to the Constituent Assembly, by ending the armed conflicts.

10.8 We heartily urge all friendly countries and the United Nations as well as the international community to extend support to Nepal in this campaign of establishing absolute democracy and sustainable peace. In realization of the responsibility towards the future of the country and the people, and with full commitment to this Comprehensive Peace Accord, we, on behalf of the Government of Nepal, and the Communist Party of Nepal (Maoist), sign this Comprehensive Peace Accord and hereby make it public. Sd.

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S5 AGREEMENT ON MONITORING OF THE MANAGEMENT OF ARMS AND ARMIES

Preamble

In keeping with the letters to the United Nations (UN) Secretary-General of 9

August and the Comprehensive Peace Accord of 21 November 2006;

Guaranteeing the fundamental right of the Nepali people to take part in the constituent assembly elections in a free and fair environment without fear;

Declaring the beginning of a new chapter of peaceful democratic interaction by ending the armed conflict taking place in the country since 1996, based on the

Comprehensive Peace Accord between the two parties in order to accomplish, through the constituent assembly, certainty of sovereignty of the Nepali people, progressive political outlet, democratic restructuring of the state, and social- economic-cultural transformation; and,

Affirming the will to fully observe the terms of this bilateral agreement witnessed by the United Nations:

The parties agree to seek UN assistance in monitoring the management of the arms and armies of both sides by the deployment of qualified UN civilian personnel to monitor, according to international norms, the confinement of Maoist army combatants and their weapons within designated cantonment areas and monitor the Nepal Army (NA) to ensure that it remains in its barracks and its weapons are not used against any side.

- 1 Modalities of the Agreement

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1 Principles: Neither of the parties shall engage in movement or redeployment of forces resulting in tactical or strategic advantage. Any claims or reports of violations of this agreement will be reported to UN monitors, substantiated or not substantiated, and subsequently reported to the parties through the appropriate representative of the UN Mission in Nepal. The security forces deployed by the interim government shall have authority to conduct routine patrol, explore in order to prevent illegal trafficking of the weapons, explosives or raw materials used in assembling weapons at the international border or custom points and seize them. Both parties agree to allow the United Nations, international donor agencies and diplomatic mission based in Nepal, national and international non-governmental organizations, press, human rights activists, election observers and foreign tourists to travel unrestricted according to law in the state of Nepal. The parties will ensure the safety, security freedom of movement and well-being of UN Mission and associated personnel, goods and services in all parts of Nepal. The parties shall immediately take all necessary measures to cooperate with efforts aimed at controlling illicit trafficking of arms and the infiltration of armed groups. Both parties fully agree to not include or use children who are 18 years old and under in the armed forces. Children thus affected would be immediately rescued and necessary and appropriate assistance will be provided for their rehabilitation.

1.2 Definitions: The following definitions are accepted:

1. Cantonment (Maoist army) is a temporarily designated and clearly defined geographical area for encampment and provision of services for the Maoist combatant units including weapons, ammunition and equipment. The cantonments are provided for all echelons of the Maoist army.
2. (2) Barracking (NA) is the deployment of Nepal Army units to barracks, including weapons, ammunition and equipment. No units below a company level will be independently deployed unless for activities specified elsewhere in this agreement or otherwise mutually agreed by the parties.
3. (3) Secure arms storage areas are either military barracks with regular armoury stores used for storage of weapons, munitions and explosives, or storage containers established in special perimeters at cantonment sites controlled and guarded by the responsible unit.
4. (4) "The parties" refers to the party of Government of Nepal (including the Nepal Army) and the party of the Communist Party of Nepal (Maoist), (including the Maoist Army).
5. (5) UN Monitoring refers to all efforts by the United Nations Mission to determine relative compliance with the terms spelled out in this agreement and to report to all the parties and others concerned its findings.
6. (6) The Joint Monitoring Coordination Committee (JMCC) is the monitoring, reporting and coordinating body chaired by the UN, with membership of the parties. The JMCC is responsible for supervising compliance by the parties with this agreement in accordance with provision 6.1 of this agreement.
7. (7) Joint Monitoring Teams (JMTs) are the bodies which will assist in monitoring the cessation of hostilities. The Joint Monitoring Teams will be active at the regional and local level and in mobile teams. Each team will be comprised of one UN monitor serving as team leader, one monitor from Nepal Army and one monitor from the Maoist Army. Joint Monitoring Teams will not be used for weapons storage inspections. Inspections at Maoist army cantonments will take place with a UN monitoring team and a representative of the Maoist army. Inspections at Nepal Army barracks will take place with a UN monitoring team and a Nepal Army representative.
8. (8) Maoist army combatants: For purposes of agreement this will include regular active duty members of the Maoist army who joined service before 25 May 2006, who are not minors and who are able to demonstrate their service, including by CPN (M) identity card and other means agreed by the parties.

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3 Promotion: The parties shall promote awareness of this agreement, and adherence to its provisions, among their commanders, members and affiliated groups. The parties, Government of Nepal, Nepal Army (NA), CPN (M) and the Maoist army, shall design, in cooperation with the UN Mission, an awareness programme to ensure that local communities and the parties' commanders, members and affiliated groups understand the mandate of the UN Mission and all of the obligations of the parties spelled out in this agreement. The information programmes shall include the use of meetings and print and electronic media in local languages.

1.4 Phases: This agreement shall come into force upon signing. Thereafter it shall be implemented in phases, as follows:

1. Reporting and verification;
2. (2) Redeployment and concentration of forces;
3. (3) Maoist army cantonment, NA barracking and arms control; and,
4. (4) Full compliance with the agreement. A full and practical timeline will be established by the parties for all of these activities to take place in consultation with the UN.
5. </list_2>

2 Reporting and verification: the parties will report detailed information about their troops and this information will be treated with appropriate confidentiality by the United Nations. The parties will provide maps and sketches showing current dispositions, including:

1. Order of battle/military structure, organization, deployment and number of troops;
2. (2) Minefields, landmines, unexploded ordnance, standard explosives, improvised explosive devices and exact location of such items;
3. (3) All necessary information about roads, tracks, trails and passages related to encampments;
4. (4) Information regarding armed or unarmed groups working along with the parties, the Nepal Army (NA) and the Maoist army, including their responsibilities and,
5. (5) Other information required by the UN for proper monitoring of the disposition of arms and armies. The UN Mission shall check this information immediately after monitors are deployed.

3 Redeployment and concentration of forces Comprehensive plans, timelines and routes for the redeployment and concentration of forces will be provided by both the NA and Maoist army to the UN Mission. The redeployment and concentration of all combatants in Nepal --with the NA in barracks and the Maoist army moving in to cantonment sites --shall be carried out in consultation with the UN. The redeployment and cantonment of forces will be monitored by UN the monitors after they are deployed. Both sides express an understanding to create a record of government, public and private buildings, land and other properties and return them immediately. The parties will withdraw all military and paramilitary, checkpoints (unless explicitly permitted in this agreement) to promote and guarantee free movement and create an environment free of fear and intimidation. The Nepal Police and Armed Police Force shall continue the task of maintaining law and order and conduct criminal investigations as per the spirit and sentiment of the Jana Andolan and peace accord as well as the prevailing law. Both parties agree not to operate parallel or other forms of mechanism in any areas of the state or state machinery as per the spirit of the decisions of November 8, 2006 and the essence of the peace accord. All sides agree to let employees of Nepal Government and public agencies travel freely to any part of the country, to fulfill their duties and not to create any obstacle or obstruction while executing their work or not to let obstructions to arise and to facilitate their work.

4 Maoist Army cantonment, barracking of the NA and arms control

4

1 Maoist army cantonment: In accordance with the commitment expressed in the letter sent to the United Nations, Maoist army combatants and their weapons shall be confined within designated cantonment areas. The cantonment shall be based on comprehensive planning and preparation before implementation. After the Maoist army combatants stay in the temporary cantonments, the Government of Nepal will provide food supplies and other necessary arrangements. When implemented, the comprehensive concept shall ensure good communications and proper logistics. UN monitors will have access to any and all cantonment sites for purposes of monitoring.

4

1.1 Commanders' responsibilities: The normal Maoist army chain of command, control, communication and information will be utilized to control the Maoist army cantonment, using the normal Maoist army structure in administration of the sites. There will be seven main cantonment sites and 21 satellite cantonment sites of three per main cantonment site. The satellite sites will be clustered no more than two hours driving distance from the main sites unless otherwise agreed by the parties. The designated seven main sites will be under command, control, communication and information of the Maoist army site commander and the satellite sites by the designated satellite commanders. The site commanders shall provide the following information in detail for each site to the UN Mission:

1. Command structure for the unit and sub-units plotted on a map;
2. (2) Names of commanders down to company level;
3. (3) Communication system;
4. (4) complete list of personnel;
5. (5) Complete list of weapons, i.e. types, numbers, serial number and caliber under storage at the main cantonment sites;
6. (6) Ammunition inventory type, lot number and amount; and,
7. (7) List of names for the site security guards detachment, and complete list of weapons and ammunition for the detachment (main and satellite cantonment levels).

Site commander's responsibilities include:

1. Camp security, including access control to the site;
2. (2) Ensuring the security, freedom of movement and well-being of UN Mission and associated personnel, goods and services;
3. (3) providing information in cooperation with the UN Mission in accordance with Section 2;
4. (4) Maintenance of discipline, morale and normal training in the spirit of the Comprehensive Peace Accord, excluding live fire exercises;
5. (5) Daily routines and control of troops; and,
6. (6) Logistics and camp services (in cooperation with the Government of Nepal and other assisting agencies).

1.2 Weapons storage and Control: The parties agree upon the safe storage of all Maoist army weapons and ammunition, in the seven main cantonment areas under UN monitoring, except as provided below for perimeter security purposes. Both sides shall assist each other to mark landmines and booby-traps used during the time of armed conflict by providing necessary information within 30 days and to defuse and remove/lift and destroy them within 60 days. All improvised explosive devices will be collected at designated sites a safe distance from the main cantonment areas. These sites shall be agreed by the parties to consultation with the UN Mission. Unsuitable devices will be destroyed immediately. Stable devices will be stored safely and under 24-hour armed guard provided for by the guard agreements cited below. The parties, in consultation with the UN, will determine a timeline a process for the later destruction of all improvised explosive devices. To ensure the safety of both monitors and Maoist army personnel, no improvised explosive devices or crude bombs will be brought inside the cantonment sites. In the main cantonment sites the weapons and ammunition storage area will be secured by the following system:

<list_10>

- (1) A solid fence will surround the specified area, including a gate with a lock. There will be signs on the fence clearly identifying the restricted area.
- (2) The weapons storage depot will be composed of storage containers painted white and furnished with shelves for safe weapons storage and easy control, and with a complete inventory (weapon type, caliber and serial number).
- (3) A single lock provided by the UN will secure each storage container. The key will be held by the designated main cantonment site commander. A 24-hour surveillance camera provided by the UN Mission will cover the storage site and will be monitored from the UN office in cantonment site. Floodlights will be switched on automatically during hours of darkness.
- (4) The UN Mission will provide an inspection registration device mounted on each container door indicating when the storage container has been opened.
- (5) An alarm system provided by the UN Mission will be connected to sirens in both the UN office and the camp commander's office. The system will be activated if the container door is opened without "safe button" having been switched off in connection with regular inspections.
- (6) UN monitors will carry out the inspections of the arms storage area and containers in the presence of a Maoist army representative. Each main cantonment site will be allowed 30 weapons of the same make and model to be used only for clearly defined perimeter security by designated guards, with each satellite allowed 15 such weapons under the same conditions. These weapons will all be properly registered with make and serial number and locked in a guardhouse when not in use. The parties, in consultation with the UN, will periodically review the number of weapons needed for perimeter security purposes on the basis of a shared threat assessment. Security provisions will be made for CPN (M) leaders through understanding with the government. The UN Mission shall monitor these commitments with a full-time presence at the Maoist army main cantonment sites and through field visits and regular inspections. These inspections will be carried out randomly and without warning.

</list_10>

4.1.3 Registration of Maoist army combatants at cantonment sites: All Maoist army combatants will registered at the main cantonment sites. This registration will include the provision of age, name, rank, responsibilities within unit/formation, date of entry into service and

will provide the basis for a complete list of personnel. Maoist combatants will be registered regardless if they are in condition of weapon will be specified. The total number of weapons will be categorized by unit/formation. Only those individuals who were members of the Maoist army before 25 May 2006 will be eligible for cantonment. The parties will agree as to how this pre-existing service is to be confirmed in consultation with the UN. As part of this registration, all Maoist army combatants will present their Maoist army identity card to be marked by the UN. The process for marking the cards will be assistance received by Maoist army members. Unregistered persons will not be eligible for assistance or permitted to remain in cantonments. Only those Maoist army combatants who have been properly registered at cantonment sites will be eligible for possible integration into the security forces fulfilling the standard norms. Any discharged personnel will be ineligible for possible integration. Those who are eligible for integration into the security forces will be determined by a special committee as agreed in the Comprehensive Peace Accord. This integration process will be determined in subsequent agreement with the parties. Upon registration Maoist army combatants, if found to be born after 25 May 1988, will be honorably and automatically discharged. Discharged Maoist army combatants must; release all weapons, uniforms and other military gear; and agree not to return to cantonment sites unless mutually agreed by UN monitors in consultation with the parties. The assistance packages to be provided to voluntarily discharged personnel will be agreed by the parties in advance of cantonment. The Interim Council of Ministers will form a special committee to supervise, integrate and rehabilitate the Maoist army combatants.</list_7>

4

2 Barracking of the Nepal Army

<list_11>

4.2.1 General regulations: In accordance with the commitment expressed in the letter sent to the United Nations, the Nepal Army shall remain in its barracks and its arms are not to be used in favour of or against any side. UN monitors will have access to any and all NA barracks for purposes of monitoring whether Nepal Army forces or weapons are being used for or against any party. Upon visiting any Nepal Army barracks for inspection, the site commander will be duly notified, and UN inspections will relate only to matters regarding the disposition of forces and weapons. The Council of Ministers will control, mobilize and manage the Nepal Army as per the Army Act of 2006 (Sainik Ain 2063) or its successor legislation. The Interim Council of Ministers to prepare and implement the detailed action plan of the Nepal Army's democratization by taking suggestions from the concerned committee of the Interim Parliament/legislature. Under this to carry out activities like assessing the appropriate number of the Nepal Army, to train the army in democratic and human rights values while developing democratic structure, national and inclusive character.

4.2.2 Commander responsibilities: The normal NA chain of command, control, communication and information will be utilized to monitor the NA deployment to barracks. The commanders shall provide the following information in detail to the UN Mission:

<list_12>

- (1) Command structure for the unit and sub-units plotted on a map;
- (2) Names of commanders down to company level;
- (3) Communication system;
- (4) Order of battle/military structure, organisation, deployment and number of troops;
- (5) Minefields, landmines, unexploded ordnance, standard explosives, improvised explosive devices and exact location of such items; and,
- (6) Other information required by the UN Mission for proper monitoring of the disposition of arms and armies. The NA will ensure the safety, security, freedom of movement and well-being of UN Mission and associated personnel, goods and services, and provide information in cooperation with the UN Mission according to Section 2. The UN Mission shall monitor these commitments through daily presence in selected NA barracks, field visits and regular inspections.

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4.2.3 Weapons storage and control: The Nepal Army will remain within the barracks as per the commitment expressed in the letter sent to the UN to ensure that their arms are not used for or against any party. The Nepal Army to store arms in equal numbers to that of the Maoist army, to seal it with a single-lock and give the key to the concerned party. In the process of installing the lock, to assemble a mechanism including a siren and register for the monitoring by the UN. While carrying out the necessary examination of the stored arms, the UN will do so under the presence of a Nepal Army representative. The barrack/barracks where NA arms will be monitored under the conditions spelled out in section 4.1.2 will be identified and agreed by the parties. The arms will be stored in storage containers.

4.2.4 Deployment and Concentration of Forces – NA permitted activities: In accordance with the spirit of the Comprehensive Peace Accord, continuity will be given to functions of the Nepal Army including border security, security of the conservation areas, protected areas, banks, airports, power houses, telephone towers, central secretariat and security of VIPs. A detailed list of these institutions and installations will be kept by the Secretary Ministry Defence, along with the number and types of forces assigned to such duties. The list of such institutions and installations will be kept by the NA under seal, and this list will be made available to UN monitors when they deem necessary on a case-by-case basis. Permitted NA activities are as follows:

<list_13>

- (1) Routine military activities within the barracks and regular training in barracks and camps. The JMCC will be notified 48 hours in advance before undertaking limited live fire exercises at designated live firing ranges.
- (2) Participation in official ceremonies, parades, etc. as directed by the Government.
- (3) Provision of Border Security as directed by the Government.
- (4) Relief of troops on a one-to-one basis, including transport as mentioned.
- (5) Regular maintenance and replacement of non-lethal equipment, including transport as mentioned. Maintenance and replacement of lethal weapons will take place only with the determination of the interim government or agreement by both parties.
- (6) Execution of development and construction tasks as directed by the civilian authorities, on central, regional and local levels.
- (7) Provision of support in relief work in times of natural and other disasters as directed by the Government.
- (8) Participation in Peacekeeping Operations called for by the United Nations, and all preparations, transport, training, transfer of equipment, etc. connected to this.
- (9) Provision of security for VVIPs and VIPs.
- (10) Provision of security of vital installations as directed by the Government.
- (11) Provision of security of transportation of Nepal Rastra Bank funds. For all of the above activities the rules regarding notification of troop, air movements and exercises spelled out in section 5.2 apply

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5 Compliance with the Agreement

<list_14>

5.1 Prohibited Activities: In the spirit of the Comprehensive Peace Accord, and in light of this agreement, after the placement of the Nepal Army in the barracks and the Maoist Army combatants in cantonment, the parties shall scrupulously refrain from the following activities:

<list_15>

- (1) Holding and carrying arms is in violation of the law. Displaying arms, intimidation and any type of use of violence is prohibited, and use of arms is legally punishable.
- (2) Any type of arms and weapons targeted against each other in a direct or indirect way or any act of attack.
- (3) Harming or intimidating any person, including internally displaced persons, humanitarian and development workers and other non-combatants, and any seizure of their equipment and property.
- (4) Ambushes, murder or violent operations.
- (5) Kidnapping, unlawful detention or imprisonment, disappearances;
- (6) All offensive military flights in and over Nepal.
- (7) Damaging or seizing public/private/government, military or UN property and all attacks on UN and associated personnel.
- (8) Planting mines or improvised explosive devices, conducting sabotage or military espionage.
- (9) Recruiting additional armed forces or conducting military activities against each other, including transporting weapons, ammunitions and explosives (unless mutually agreed by the parties and notified in advance according to the terms of this agreement.)
- (10) Collecting cash or goods and services or levying tax against one's wishes and against the existing law.
- (11) Any actions that impede or delay the provision of humanitarian assistance or protection to civilians.
- (12) Any restrictions on the safe, free and unimpeded movement of humanitarian or development agencies undertaking activities approved by the interim government or its successor.
- (13) All acts and forms of gender-based violence.
- (14) Any restrictions on the free movement of people and goods.
- (15) All activities that obstruct the efforts of the UN Mission and amount to a failure to cooperate with the UN Mission, including the prohibition of the UN Mission patrols and flights over any location.
- (16) Any attempt by a party to disguise its equipment, personnel or activities as those of the UN Mission, other United Nations agencies, the International Committee of the Red Cross/Crescent or any other similar organization.
- (17) Any attempt to redeploy military forces and equipment or occupation of any positions out of their respective deployment positions without the consent of the Joint Monitoring Coordination Committee.
- (18) The use of children who are 18 years old and under in the armed forces.
- (19) All hostile propaganda and incitement to military action. The parties shall also refrain from all activities that are prohibited elsewhere in this agreement.

</list_15>

5.2 Permitted activities: The key principle that shall underpin permitted activities for both sides shall be to alleviate the effects of the armed conflict on civilians and the war-affected areas and to galvanise popular support for peace. Permitted activities for both sides will be conducted as per the decisions of the interim government. Troop, air movements and exercises have to be properly notified and approved by the Joint Monitoring Coordination Committee at least 48-hours in advance. Permitted activities include:

<list_16>

- (1) De-mining and decommissioning of military hazards;
- (2) Development activities to include improvement and opening of roads, rehabilitation of bridges and passages and airstrips according to the decisions of the interim government;
- (3) Humanitarian relief;
- (4) Socioeconomic activities such as assisting free movement of people, goods and services;
- (5) Free movement of unarmed soldiers in plain civilian clothes who are on granted leave, medical referrals, or visiting families – no more than 12 percent of the total retained force at a given cantonment or barracks will be on authorised leave at any given time unless mutually agreed by the parties;
- (6) Supply of non-lethal items to military units, food, water, medicine, petrol, oil and lubricants, stationary, uniforms etc; and,
- (7) Medical evacuation.

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5.3 Violations The following acts shall constitute violations of the agreement:

<list_17>

- (1) Any act that contravenes this agreement;
- (2) Unauthorised troop movements;
- (3) Unauthorised recruitment, conscription or mobilisation;
- (4) Unauthorised replenishment of military equipment;
- (5) Violation of human rights, humanitarian law or obstruction of freedom of movement of people, goods and services;
- (6) Espionage, sabotage, air surveillance and acts of subversion; and,
- (7) Military flights, or military flights utilising civilian aircraft, over cantonment sites without 48-hour notification to the parties and the UN mission, except in emergency situations or medical evacuations.

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6 The United Nations Mission Monitoring of compliance with this agreement will be carried out:

<list_18>

- (1) By UN Monitors; or,

(2) By Joint Monitoring Teams, if so decided by the JMCC and in keeping with other provisions of this agreement. The UN Mission will submit reports to the parties on compliance with this agreement. It will do so either directly or through the JMCC.

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6.1 The Joint Monitoring Coordination Committee The nine-member Joint Monitoring Coordination Committee (JMCC) will have a chairman appointed by the UN Mission. There will be two Vice-Chairmen, one each from the Maoist Army and the NA. The remaining six members will be two UN, two NA and two Maoist army, all as selected by the parties respectively. The JMCC shall reach its decisions by consensus. In the event of a deadlock, the representative of the UN Secretary-General shall have final authority for reporting on the compliance of the parties with this agreement to the Secretary-General and to the interim government for resolution. The Chairman shall report regularly to the representative of the Secretary-General and to the designated representatives of the parties regarding the activities of the JMCC. The JMCC shall serve three main functions:

<list_20>

(1) To assist the parties in implementing this agreement. The JMCC shall be the central coordinating body for monitoring arms and armies in accordance with the terms of this agreement and to approve, where appropriate those activities specified in Section 5.2.

(2) To serve as a dispute resolution mechanism. The JMCC shall resolve all disputes and military or operational difficulties, complaints, questions or problems regarding implementation of this agreement.

(3) To assist in confidence building. The JMCC shall work to gain the trust and confidence of the parties and promote the overall goals of this agreement among the people of Nepal. In order to achieve these goals, the JMCC shall operate according to the following basic principles:

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<list_21>

(1) Resolve all problems and disputes at the lowest level possible, i.e. delegation of authority to the JMTs;

(2) Promote joint problem-solving and build trust and confidence through active efforts to appropriately investigate and report on all incidents of concern to the parties; and,

(3) Build on lessons learned in the process. The Joint Monitoring Teams (JMTs) will assist the Joint Monitoring Coordination Committee at the local level and through site visits. The JMTs will comprise one international monitor as the team leader and one monitor from Nepal Army and one monitor from the Maoist Army. The number of JMTs and their deployment will be determined by the Chairman of the JMCC in consultations with that body. The tasks of the JMTs will include:

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<list_22>

(1) Village and community visits and liaison with the civilian community;

(2) Cooperation with other UN-agencies, and liaison with international organizations and nongovernmental organizations;

(3) Assistance to the parties in creating a favorable operational environment for the conduct of the ceasefire by information sharing and defusing local tension;

(4) A pro-active concept for initiation of conflict management at the local level; and,

(5) Investigation of complaints linked to possible alleged violations of the agreement, reference paragraph 5.1, and to recommend measures to ensure compliance. Joint Monitoring Teams will not be used for designated weapons storage inspections.

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7 Miscellaneous: This agreement can be revised at any time with the consent of both parties. Both parties agree to provide to each other prior written information if they wish to make any change. The amendments can be made to the agreement with the consent of both parties after receiving the information. The provisions to be made by such an amendment will not fall below the minimum standards of accepted international human rights and humanitarian laws. Both parties consent to sign any complementary understandings, as necessary, for the implementation of the present agreement. This agreement will be signed by both parties in Nepali and English. The United Nations will witness the English language version of this agreement and, accordingly, the English-language version of this agreement will be considered as authoritative in matters of dispute. The spirit of the Comprehensive Peace Accord shall guide the interpretation and implementation of this agreement by all the parties. This agreement shall come into force upon signature, and it supersedes the agreement of the same name done on the 28th day of November 2006 (12 Mangsir 2063 BS).</list_1>