Nepal's constitutional transition

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The political situation of Nepal has changed rapidly in 2006. Civil war ended by virtue of a shared constitutional agreement for future peace and development of democracy. In the current transitional phase, constitutional legality and the rule of law may be difficult to preserve. However, the transition will be successful only if the new Constitution can be seen as unquestionably based on people’s sovereignty. This article tries to address a set of specific constitutional questions: (1) Why did the Constitution of 1990 fail? (2) How did the country step into the constitutional transition? (3) Does the Interim Constitution suffer a lack of legitimacy? (4) What about the future role of Parliament? (5) Is Hindu Monarchy over? (6) How Military can be brought to democratic civil control? (7) What kind of electoral system is needed for the Constituent Assembly? (8) How can the future constitution guarantee justice for the violations of human rights and political crimes of the past? (9) How can the Constitution Making Process develop inclusive democracy? (10) Has Federalism a chance? The answers reflect from a European perspective on ideas that are now discussed in Nepal about the constitutional process and could be useful even elsewhere.

1. The Failure of the Constitution of 1990

If we look at Nepal’s constitutional history, the Constitution of 1990 has been criticized as an imperfect instrument of democracy. The question is now whether the failure was due to a bad constitutional architecture, to the misuse and break of the
constitutional legality or to other causes. The answer might be that the break was facilitated by the architecture and, looking at Nepalese constitutional history of trials and errors, even foreseeable, but the dream of constitutionalism goes on.

During last century, constitutions have been used in Nepal first of all as an instrument of monarchical government. The monarchy was configured as a “Hindu and Constitutional Monarchical Kingdom” (art. 4 constitution 1990) and the constitution described the king as “adherent of Aryan culture and the Hindu religion” (art. 27). This clause could be interpreted just as a historical description of a Hindu way to modern secularism, but also as a duty to defend higher values which appear to be not only earlier but also prior to those of democracy affirmed by the constitution itself.

Nepal had a long tradition of Hindu monarchy, since Gorkha King Pithvi Narayan Shaha (1743-75) unified the Kingdom in a commonwealth based on castes and voted to a sacred space, Asli Hindusthan. After the Kot massacre of 1846, Jung Bahadur Rana established an authoritarian Prime Minister regime together with the Hindu Civil code Muluki Ain (1854). Still in 2006, King’s address to World Hindu Federation tried to invoke legitimacy for itself when he called Nepal “the fountainhead of Hinduism” and considered Monarchy a guarantee for religious peace: “Having never faced any kind of discords in the name of religion, Nepal can be taken as a paradigm of perfect harmony between religious tolerance and peaceful co-existence. While holding all religions in high esteem, we firmly believe in the good virtue of creating a peaceful environment.”

The Hindu Kingdom-Clause was contemplated even in the former constitutions. The Government of Nepal Act 1948 considered the supreme authority of King and Prime Minister still vested through sacred “Panja-patra” based on an unalterable succession rule defined by “law, custom and usage”. The same act qualified itself as a “constitution” and transformed the “Bharadari Sabha”, an aristocratic assembly nominated by the king, as the main instrument of a “consultative monarchy” into the second chamber of a “constitutional monarchy”, together with a new “Rastra Sabha” formed by nominated and indirectly elected members in the proportion of 2 to 3. But

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3 “Hinduism, which dates back to the beginning of civilisation itself, embraces the high ideals of tolerance and "Vasudaiva kutumbakam" or universal fraternity. In these ideals lies the strength in the relations amongst various faiths in this Hindu Kingdom.” Address From His Majesty King Gyanendra Bir Bikram Shah Dev at Pipara Muth, Birgunj On The Occasion Of The Silver Jubilee Anniversary Celebrations Of The World Hindu Federation (April 7, 2006).
Nepal was not admitted to United Nations because considered non independent from India and Great Britain, and the Interim Government of Nepal Act of 1951 based on a “Delhi compromise” with the Nepali Congress Party prospected a more radical shift from the Rana oligarchy to a “democratic constitution made by a Constituent Assembly elected on the basis of direct universal suffrage”. But King Mahendra relied again upon Hinduisation and established a new constitutional dictatorship. By way of constitutional amendments the King get “out of Council” and free from its predecessors will to form a Constituent Assembly (1955). Advised by Ivor Jennings, he granted then a new, more liberal constitution (1959), immediately bypassed by the exercise of emergency powers for government dissolution (1960). The final constitutional “octroi” provided the revival of the party-less Panchayat System and declared the primacy of the duties of “devotion to the Nation and loyalty to the State” over fundamental rights (1962). The people’s decision in 1980’s referendum in favor of a revised Panchayat System and against multi-party government has rendered democratization once more difficult.

The Constitution of 1990 has been criticized, inter alia, because it a) was not made a constituent assembly but by a nine-member commission with two royal representatives, b) was considered not completely devoted to democracy, c) did not declare Nepal a secular state and did not protect minority languages, d) granted no freedom to life, admitted suspension of the right to constitutional remedies and lacked of fundamental duties, d) realized an imperfect balance of powers within the form of government.

As far as democracy is regarded, the constitution of 1990 declared non amendable the spirit of the preamble, but not explicitly the principle of popular sovereignty set out in article 3. The preamble stated on one hand that “the source of sovereign authority is inherent in the people”, on the other hand, that the government of the country has to be “in consonance with the popular will” and that “the System of multiparty Democracy”


has to be consolidated. The people’s desire could be considered as the “supreme law”, but the king was not prohibited to represent and influence the people’s will. The King conserved therefore the exclusive legislative power over succession to the throne (art. 28), the power to declare a state of emergency even during parliament dissolution (art. 115), the power to “operate and use the Royal Army on the recommendation of the National Defense Council” (art. 118) and the privilege of a national anthem which emphasized traditional solidarity between the king and the people (art. 7). The King could furthermore ask opinion to the Supreme Court (art. 88) and no royal decision’s needed to be countersigned by Government.

At any case, the constitution was promulgated “by virtue of the State authority as exercised by us” with the “widest possible participation of the Nepalese people” in order to consolidate but “Constitutional Monarchy and the system of multi-party democracy” (preamble). Democracy was the goal, but the constitution was not considered a sacred document and the economical and cultural development of the country was considered insufficient for democracy. The British style majority system of election did not provide stable governments because political parties, registered only if “democratic” and not formed on the basis of religion, community, caste, tribe or region, have been regarded as instruments of power politics in the hands of small elites rather than instruments of citizen empowerment policies.

The King gave an extensive interpretation of its own prerogatives, assuming a political role inconsistent with traditional western patterns of constitutional monarchy. He nominated members of the upper house without the consent of the Council of ministers and refused signing parliamentary bills and referred them to the Supreme Court. Nevertheless, the constitution survived for some time and the Supreme Court could contribute to consolidate fundamental rights protection and principles of rule of law, for example the rights of untouchables to have access even to temples and religious places.

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The same court resolved even several parliament dissolution cases (1994, 1995, 1998, 2002), declaring unconstitutional the dissolution of a parliament discussing in extraordinary session a no-confidence vote.\textsuperscript{10}

The final reason for failure was violence. The Maoist People’s War started in 1996 in a low intensive way with a demand for a new constitution, ending privileges of the Royal Family and the rescission of the Nepal-India-Treaty of 1950. In 2001, the Crown Prince massacred the Royal Family and itself. King Gyanendra was crowned under public suspicion and resulted unable to negotiate peace and to use the parliamentary and judicial mechanisms in order to legitimize again the constitution. Elections for local government bodies were cancelled, the House of Representatives dissolved, the government repeatedly dismissed and emergency powers “to remove difficulties” (art. 127) activated. The Maoists concluded that there was a “constitution-less state” and ended in 2003 the ceasefire in a non regular military conflict with Royal Nepalese Army, but they were not qualified by US as terrorists also because their peace talk offers were considered serious within the international community.\textsuperscript{11} On 1\textsuperscript{st} February 2005 the King declared a state of emergency (art. 115), suspending fundamental rights (especially communications), dismissing the prime minister and appointing a cabinet presided by himself in order to save and reestablish “multi-party democracy by restoring peace” with military means.\textsuperscript{12} The coup d’état imitated General Musharrafs suspension of the Pakistan Constitution. The way back to the constitution of 1990 seemed to be more convenient to the king meanwhile the demand for a new constitutional assembly was an instrument for a new consensus between the existing parties and the Maoists.

\textsuperscript{10} Hard Prasad Nepal v. Prime Minister 37 NKP 88 (2052 / 1995); also in: Landmark Decisions cit., 1ss.
2. The steps into the Constitutional Transition

The transition required the establishing of a suitable legal framework to avoid a vacuum of power and to manage the questions arising in this phase. In this regard, the transition was prepared by the so-called 12-point agreement between the Seven (parliamentary) Party Alliance (SPA) and Maoists dated November 22, 2005, in order to “establish absolute democracy by ending autocratic monarchy”, converging upon the formation of an all-party interim government and elections for a Constituent Assembly. After the boycott of local elections in February 2006 and under international pressure, including US and India governments, the King decided in April 24 to reinstate parliament. The House of Representatives’ Proclamation of May 18, 2006, invoking the sovereignty of Nepalese people, asserted its own mandate “to restore an inclusive state by restructuring the state by formulating new constitution” and stated that:

"this House of Representatives is sovereign for the exercise of all the rights until another constitutional arrangement is made to take the responsibility to gear ahead in the direction of full-fledged democracy and make an end to the autocratic monarchy by institutionalising the achievements of the present peoples’ movement, while safeguarding the achievements of the 1990 people’s movement…”

13 “…and as the sovereign authority is exercised through this House of Representatives, further proclaims the following declaration: 1. Concerning Legislative. 1.1 All the Powers regarding legislature of Nepal shall be exercised by the House of Representatives. The procedures for law making laws shall be as specified by the House of Representatives. 1.2 The House of Representatives shall, as per necessity, specify the procedures for moving to the path of Constituent Assembly. 1.3 Summoning of the session of the House of Representative's and its prorogation shall be as follows: (a) The session shall be summoned by the Prime Minister and be prorogued by the speaker on the recommendation of the Prime Minister. (b) If, during the prorogation or recess of the House of Representatives, one fourth of its members existing for the time being, make a submission to the speaker that it is expedient to convene a session or meeting of the House of Representatives, the Speaker shall fix the date and time for such session or meeting with fifteen days. 1.4 The House of Representatives shall frame and enforce the Regulation of the House of Representatives. 2. Concerning Executive. 2.1 All the executive powers of Nepal shall be vested on the Council of Ministers. "His Majesty's Government" shall be referred as "Government of Nepal" from now onwards. 2.2 Persons who are not the members of the House of Representatives can also be nominated in the Council of Ministers. 2.3 The Council of Ministers shall be responsible towards the House of Representatives. The Council of Ministers and the ministers shall collectively, and for the works of their ministries, individually be responsible towards the House of Representatives for the works of their respective Ministries. All the executive organs including the administration, army, and police shall be under the government that is responsible towards the House of Representatives. 2.4 The regulations of the allocation of business and transaction of business of the Government shall be adopted by the Council Of Ministers, and presented to the House of Representatives. 3. Concerning Army. 3.1. The title "Royal
The Proclamation’s articles formed 9 Sections regarding: (1) legislative, (2) executive, (3) army, (4) Raj Parishad, (5) Royal Palace, (6) citizenship, (7) national anthem, (8) secular character of the state and (9) miscellaneous provisions. Proclamation’s section 2.1. has been construed as an abrogation of all governmental prerogatives of the King and section 5.1 as an abrogation of all royal powers related to legislation.14 The House of Representatives (without the consent of the upper House) and the Council of Ministers were entitled to exercise all the rights regarding, respectively, the legislative and the executive power. Many provisions made reference to a future decision of the House of Representatives or of the Council of Ministers and section 1.2 stated that “The procedures for moving on the path of Constituent Assembly shall be as fixed by the House of Representatives”.

The nature of this Proclamation may be assessed analyzing provisions under section 9. Under section 9 it is clearly stated that:

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Nepal Army” shall be changed to "Nepal Army". 3.2. The Existing provision regarding the National Security Council is hereby repealed. There shall be a National Security Council under the chair personship of the Prime Minister in order to control, use and mobilize the Nepalese Army. 3.3. Chief of the Army Staff of the Nepalese Army shall be appointed by the Council of Ministers. 3.4. The existing arrangement of Supreme Commander of the Army is hereby repealed. 3.5. The decision of the Council of Ministers on mobilizing the Nepalese Army shall be tabled to and endorsed by the special committee assigned by the House of Representatives within 30 days. 3.6. The organization of the Nepalese Army shall be inclusive and national in nature. 4. Concerning Rajparishad. The existing provision of Rajparishad has been repealed. Necessary business being performed by the Rajparishad shall be as provided by the House of Representatives. 5. Concerning Royal Palace. 5.1. The power to make, amend and repeal laws regarding the succession to the throne shall be vested on the House of Representatives. 5.2. The expenditure and facilities of His Majesty shall be as decided by the House of Representatives. 5.3. The private property and income of His Majesty the King shall be taxable pursuant the law. 5.4. A question over the acts performed by His Majesty may be raised in the House of Representatives and in court. 5.5. Existing Royal Palace Service shall be made a part of the civil service. 5.6. The security arrangement for the Royal Palace shall be as made by the Council of Ministers. 6. The existing problem regarding citizenship in the country shall be promptly resolved. 7. The existing "national anthem" shall be changed by making alternative arrangement. 8. Nepal shall be a secular state. 9. Miscellaneous. (a) All the state organs and bodies shall exercise their powers as having been conferred by being Loyal to House of Representatives and, (b) Specified officials holding public office shall take oath of office from the House of Representatives in the specified manner. Officials who refuse to take such oath of office shall be relieved of their posts. (c) The legal arrangements of the Constitution of the Kingdom of Nepal-1990 and other prevailing laws, with this declaration, shall be void to the extent of inconsistency. (d) Any difficulty that may arise while implementing this declaration shall be removed by a decision of the House of Representatives. (e) There shall be a committee in the House of Representatives for the purpose of sub-clause (c) and (d) above.”

14 The combined dispositions implied abrogation of sec. 115 of the Constitution of 1990 on emergency powers. However, it could be asked if the emergency power had been implicitly transferred to the transitional government.
(c) The inconsistent legal arrangements of the Constitution of the Kingdom of Nepal 1990 and other prevailing laws, with this declaration, shall be nullified to the extent of inconsistency.

(d) Any difficulty that may come while implementing this declaration shall be removed by a decision of the House of Representatives.

(e) The previous clauses shall be implemented by a Committee in the House of Representatives.

As a result, the Proclamation assumed the role of the *basic law* to deal with the constitutional process and directly introduced new constitutional principles. The Constitution of 1990 was implicitly assumed as still partially valid, but the Proclamation itself pretended to have a (supra-)constitutional rank because it directly modified the Constitution of 1990 and became the criterion to assess the validity of the constitutional provisions that are not explicitly considered and of the other Nepalese laws, which could be nullified to the extent to which they are inconsistent with the new provisions.

On July 4, the Parliament approved a preliminary report of the Proclamation Implementation Special Committee which identified those provisions.

From a more formal point of view, the Proclamation can be interpreted as a break of the supremacy of the Constitution over all other sources of law established by art. 1 of the Constitution of 1990. Article 116 (1) of the Constitution of 1990 stated: “A Bill to amend or repeal any article of this Constitution, without prejudicing the spirit of the Preamble of the Constitution, may be introduced in either House of Parliament”. It is explicitly stated that article 116 cannot be amended. The following sub-sections lay down the procedures, which involve the king, who however has limited powers in this case. Nepalese constitutional jurisprudence has discussed the topic making reference to the liberal doctrine of implied limitations of the power of legislation to amend the Constitution and referring the spirit of the Preamble to the doctrine of “basic structure” as developed in Indian Constitutional law.\(^\text{15}\) In this sense, the Proclamations should be seen as totally invalid if the constitution of 1990 would still be (totally) in force. The only way to safe the legitimacy of the Proclamation would be to consider it a first new

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interim constitution or to consider its initial invalidity later indemnified by the approval of the interim constitution.

However the question of legitimacy could be answered also from another, more substantial point of view. The Proclamation could be considered the best instrument to protect the substance of the old constitution. The letter and the spirit of the Proclamation defended its own legitimacy calling directly upon the principle of people’s sovereignty as the source of all powers, a principle which has become binding only by virtue of the Constitution of 1990 (art. 3) that abrogated the kings sovereignty under the Constitution of 1962 (art.20). Applying the principle of sovereignty to the new “desire of the Nepalese people expressed through the recent people’s movement to bring about constitutional changes”, the decision for a constituent assembly seems to be justified by a principle that has already been constitutionalized in 1990. The Proclamation called thus on a sort of “implied constituent power” in order to supersede article 116 (Amendment of the Constitution) and bypass the “amendment power”. From this point of view, the Proclamation legitimacy and validity could be justified (also) as a sort of “reincarnation” of the spirit of 1990.

The crucial point, however, is the ground of authority and legitimacy of this new constitutional framework. The two views may construe the legitimacy in a different way: (1) the ground for legitimacy of the new constitution making process is not anymore the Constitution of 1990 but the new people’s mandate, (2) the Proclamation is a reinterpretation and evolution of the preamble’s “spirit”. In other words, in the first case, the exclusive ground of legitimacy of the interim constitution was the agreement and the proclamation as an expression of people’s constitution making mandate which nonetheless preserved only the consistent contents expressed in the Constitution 1990. In the second case the spirit of the Constitution of 1990 was still a concurring ground of legitimacy.

The first view could be linked to the classical radical idea that constituent power is totally sovereign, i.e. not bound by human rights and has no duty to protect anyone. The second view could be linked to the more recent and moderate idea that contemporary constituent power can be bound by a morally or even legally binding mandate to not destroy the constitutional heritage and render constitutional development sustainable. There is no doubt that the second interpretation would be more convenient for the king.
and Hinduist positions, while the second is more convenient for the revolutionary forces not represented in parliament. But the revolutionary forces did not impose the proclamation and Prime Minister Koirala insisted both to swear on the basis of the old constitution and to administer himself the oath to the other ministers. The supreme court decided against any reappointment and new oath and defended the restoration of parliament as justified by necessity.

However, the differences between these two interpretations should not be overestimated, even if one could draw different conclusions from them. The step into transition by an autocratic regime and unilateral rupture was avoided, a way to multilaterally negotiated rupture and reform opened. The new constitutional framework resulting from the Constitution of 1990 and the Proclamation, was accepted by royal quiescence and military obedience and consolidate by another “interim Constitution”. The revolution has taken a “constitutional path”.

3. The legitimacy of the “Interim Constitution”

Following the conclusion of a Ceasefire Code of Conduct, the Seven Party Alliance (SPA) and Maoist made an eight-point-agreement including the formation of an interim constitution (June 15, 2006). A Constitution drafting committee of six lawyers, headed

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18 1. To follow the 12-point understanding between the SPA and the CPN (Maoist) and the 25-point code of conduct signed by the Nepal government and the CPN (Maoist) with honesty and firmness. 
2. By expressing commitment towards democratic norms and values including competitive multi-party system of governance, civil liberties, fundamental rights, press freedom and rule of law, launch activities in a peaceful manner. 
3. To urge the United Nations to help in the management of arms and armed personnel of both the sides and to monitor it in order to conduct elections for the Constituent Assembly in a free and fair manner. 
4. To form an interim constitution, constitute an interim government accordingly, to announce the date for elections of the Constituent Assembly (CA), to dissolve the House of Representatives on the basis of consensus and after making alternative arrangements, and dissolve the "people's governments" formed by the CPN (Maoist) on the basis of 12-point understanding between the SPA and the CPN (Maoist), the spirit of the preamble of the ceasefire code of conduct and by guaranteeing the people's rights acquired from the people's movement of 1990 and the recent historic people's movement. 
5. To take decisions on the basis of consensus on the issues of national importance that may have far-reaching consequences.
by a former member of the 1990 Constitution Drafting Committee and Supreme Court judge and - following critics for under-representation of woman, dalits and ethnic groups - integrated by other ten lawyers collected public petitions and submitted a draft in August largely based on the structure and articles of the Constitution of 1990. The draft was not completed and offered different options on issues such as the form of state (federal, socialist, republic-oriented), the way to decide the fate of monarchy (immediate abolition vs. referendum), the future of Armed Forces (two forces vs. formation of militias), the way to appoint the heads of constitutional bodies (Constitutional Committee vs. Government) etc.

The final choices have been negotiated at a SPA-Maoist summit meeting (8 November 2006) and through the Comprehensive peace agreement between the Government of Nepal and the Communist Party of Nepal (Marxists) on November 21, 2006. The agreement has several sections devoted to arms, ceasefire, conflict ending and human rights and starts with a general part on “Political-Economic-Social Transformations and Conflict Management” that prospects the creation of a “Legislature-Parliament” (a mediation between the Maoist and the Seven-Party-Alliance terminology), the complete loss of state power of the King, the transfer of royal properties to a national trust and the end of specific social discriminations.19

6. To guarantee the fundamental right of the Nepali people to take part in the constitution making process and in the elections for the CA in an environment free of fear, intimidation and violence and invite international observers to monitor the CA elections as per the need.
7. To transform the ceasefire between the government of Nepal and the CPN (Maoist) in a permanent peace and to resolve the problems through negotiated settlement by forward-looking restructuring of the state so as to address the problems related to class, ethnicity, regionalism and gender and by placing the issue of democracy, peace, progress, forward-looking movement and independence, dignity and sovereignty of the nation in the centre.
8. The government and Maoist negotiating teams have been directed to accomplish all the above-mentioned tasks immediately. (www.nepalnews.com/archive/2006/jun/jun16/eight_point_agreement.php)

19 “Both the parties are in agreement to adopt following policy and program for political-economic and social transformation and to affirmatively resolve existing conflict in the country:
3.1. To ensure forward moving political, economic and social transformation on the basis of decision made in summit meeting between seven political parties and CPN (Maoist) held on Nov. 8, 2006.
3.2. To guarantee sovereignty inherent in Nepalese people in practice by forming interim legislature - parliament according to interim constitution and by holding election to constituent assembly in free and fair manner till the Month of Jeth, 2064 BS by Interim Government.
3.3. To not allow any authority regarding affairs of governance of the country to remain with the king. To bring the properties of late King Birendra, late queen Aishworya and their family under Government of Nepal and to make use of the property in the interest of the state by forming a trust. To nationalise all the properties (like palaces situated in different places, forest and parks, heritages with historical and archeological importance) received by King Gyanendra in his capacity as the King. To decide the issue of whether or not to retain the monarchy by simple majority in the first meeting of constituent assembly.
The Interim constitution promulgated by the House of Representatives on January 15, 2007 has been criticized because of a) the deficits of transparency and participation in its framing procedure, b) its length and not strictly transitional character, c) the increasing executive power and the decreasing power of judiciary.

a) The international analysts have pointed out that the promotion of democracy has to start even with the making of a the interim constitution, being necessary not only invitation for public submissions but also an administrative structure able to analyze them, submit findings to the decision makers and report back to the public. Interim constitutions can not be made exclusively by technicians, but need also a political investiture and control by public opinion.20 The secrecy of the selection of the commissioners and the insufficient publication of the first draft can thus be criticized, but it would be incongruent even for European standards to establish too high expectations for an interim arrangement that has only to realize well measured steps on the way of democratization. Under the existing conditions, the drafting procedure seems to be at least more democratic than the previous procedure of constitution making.

3.4. To adopt a political system that complies with universally accepted fundamental human rights, multiparty competitive democratic system, sovereignty inherited in people, supremacy of the people, constitutional check and balance, rule of law, social justice, equality, independent judiciary, periodic election, monitoring by civil society, complete press freedom, people's right to information, transparency and accountability in the activities of political parties, people's participation, impartial, competent, and fair concept of bureaucracy.

3.5. To address the problems related to women, Dalit, indigenous people, Janajatis, Madheshi, oppressed, neglected, minorities and the backward by ending discrimination based on class, caste, language, sex, culture, religion, and region and to restructure the state on the basis of inclusiveness, democracy and progression by ending present centralised and unitary structure of the state.

3.6. To keep implementing at least programs of common consensus for the economic and social transformation to end all forms of feudalism.

3.7. To adopt the policy to implement scientific land reform program by ending feudalistic system of land holding.

3.8. To follow the policy for the protection and promotion of national industries and resources.

3.9. To adopt policy to establish rights of all citizens in education, health, housing, employment and food reserve.

3.10. To adopt policy to provide land and other economic protection to landless squatters, Kamaiya, Halia, Harwa, Charwa and economically backward section.

3.11. To adopt policy to severely punish people amassing properties by means of corruption while remaining in government posts.

3.12. To form common development concept for economic and social transformation and justice and to make the country developed and economically prosperous, at the earliest.

3.13. To follow the policy to increase investment in industries, trade and export promotion in order to increase opportunities for income generation by ensuring professional rights of the labourers.”

The document has been published at the first page of the web-side of the Nepali Embassy in the USA.

b) The interim constitution is already a renewed constitution, but should not do the work of the Constituent Assembly. An interim constitution has to be short, a minimum, because its legitimacy depends more on the future than on the past. The choices of the Constituent Assembly can be conditioned but should not be bound by the interim constitution. Therefore, the existing 167 articles can be considered neither a perfect nor a definitive arrangement, just a model and pathfinder for the final choices. On the other hand, if the constitution making process needs more than two years and is a way to end a war, a longer texture could be useful for a gradual development of constitutional culture. The responsibilities, directive principles and state policies set up in part 4 of the interim constitution seem to be more a governmental program for more than one legislature than a definitive element of the future constitution. The legislative activism of the interim legislature could improve a sense for constitutional balances on the basis of “learning by doing”. The democratic legitimacy of a long interim constitution is necessarily more output grounded and has to grow from day to day. We have to remember that interim constitutions are always “provisional” and can be amended or even substituted. The power to amend the interim constitution by two-third vote is conferred to the “legislature-parliament”.

c) From a western point of view, an interim constitution has to develop democracy and rule of law. The development of democracy dealt with sovereignty (art. 2: “and state authority … vested in the Nepalese people”), national identity and pluralism (art. 3: “common aspiration of multiethnic, multilingual, multi-religious, multicultural characteristics”), clear rules on citizenship (art. 8-11), freedom of political parties (art. 1221), free media (art. 15: lacking guarantees of pluralism), a parliament based on an enlarged consensus and deciding by majority rule (art. 45, see infra), an executive power based on the “political consensus” of a most-party coalition or qualified majority within parliament (art. 38), the election of a Constituent Assembly (art. 63), the creation of interim local self governance bodies (art. 139) and the non interference of technical powers in political questions.

The development of the rule of law dealt with the revision of the fundamental rights catalogue (for example: art. 12: new “right to live with dignity”; art. 13: positive action

21 Freedom of expression has not been increased, see www.article19.org/pdfs/analysis/nepal-const-interim-comment.pdf.
for “Dalits, indigenous tribes, Madeshi, or peasants, laborers or those who belong to a class which is economically, socially or culturally backward”; art. 14: new “right against Untouchability and Racial Discrimination”; art. 24: new rights to “fair trial” and “free legal aid”; art. 30: new “right to proper work practice”). The Human Rights Commission has now specific constitutional guarantees (art. 131). The legitimacy of the Interim Constitution can be thus construed in terms of a more inclusive democracy and social rule of law (see infra 9.).

On the other hand, the interim Constitution has reformed several aspects of the constitutional framework of powers. It has been criticized that the entire judiciary is considered to need gradual reform in order to “make it independent, clean impartial and competent” (art. 162 (3)). “Bearing in mind the aspiration of the people’s movement and democracy”, all judges “shall be committed to this constitution” (art. 100 (2)) by a special oath (art. 162). A special “Constitutional Assembly Court” will have final jurisdiction over the election and qualification of Constituent Assembly members (art. 118). In cases of impeachment of judges, the Constitution grants no more “a reasonable opportunity to defend” (art. 88 (8) Const. 1990). The superior judges, including the chief justice, may still be deputed by act of Government “in consultation with the Judicial Council … to work concerning judicial inquiry or to legal or judicial investigation or research, for a specified period or to any other work of national concern” (art. 106). Lower judges may now be removed even in cases of “deviation of justice” (art. 109 (10)). The Judicial Council finally has no more a majority of judges, because the Minister of Justice can constitute a majority together with an experienced advocate appointed on recommendation of the Nepal Bar Association and a person nominated by the Prime Minister from amongst the jurists”, both members being subject to removal by impeachment procedures (art. 113). All these clauses and other modifications, opposed by the Supreme Court Judges themselves, show that the legal standard of judicial independence has been lowered.

Finally, the Interim Constitution has strengthened the executive power. The Prime Minister, a member of parliament, and the Council of Ministers are selected through a “political consensus” among the parties that inspired the constitution or elected by a

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majority of two-thirds of parliament, but can no more removed by a no-confidence vote (art. 38). Emergency (art. 143) and orders to “remove difficulties” regarding the implementation of the constitution (art. 158) are now decided by Government as well as ordinances made when the legislature is not in session (art. 88). These acts have to be ratified by the legislature, but it is always the Prime Minister to decide on summoning and prorogation of a session (art. 51).

4. The “come back” of parliament

The 12-Point-Agreement of November 22, 2005 shows that the roadmap of the Maoist rebels prospected the substitution of parliament by a “political conference” (on the “United Front” model), meanwhile the SPA urged for restoration. The restoration of Parliament conceded by the King was thus a move to divide them and the proclamation of the HoR left to SPA always the option for a reconciliation with the King. However the main arguments for the dissolution demand were not only the fact that Maoists and one of the parties of the alliance (ULF) were not represented in parliament but also that a) the HoR had been elected under non optimal democratic conditions, b) the time had running and the democratic ratification of the HoR elected in 1999 was going to expire.

The King’s power of parliaments dissolution under art. 53 (4) of the Constitution of 1990 could be qualified as an executive power by virtue of the proclamation transferred to the Prime Minister under section 2.1. However, the preamble of the Proclamation asserted parliaments sovereignty and sect. 1.1. of the proclamation transferred “all the rights regarding the legislative body” to the HoR. These rights could include the right to decide over auto-prorogation and dissolution. If the British model was still inspiring the Nepali form of parliamentary government, the responsibility of the executive to the legislature should be theoretically counterweighted by a responsibility of the parliament towards the electing people. A third - and more reasonable - solution seemed thus to be to hold the dissolution power entrusted to both government and parliament.

Another question was whether it would be wise to dissolve the HoR or hold it in an “inactivated position”. On the one hand, the Parliament elected under the old constitution lost democratic legitimacy, on the other hand, to hold the HoR inactivated
would have rendered impossible any political control over the transitional government. Any such situation without an institutional equilibrium and control over government could be dangerous for the whole constituent process. The parliament itself is a guarantee for a democratic and pacific outcome of the constituent process, at least until the Constituent Assembly has not been created. The final solution of the interim Constitution was to dissolve the old House of Representatives recycling the members for an expanded “Legislature-Parliament”. The composition of the latter includes 209 still existing elected members of both chambers, excluded those “against the people’s movement”, 73 members “from and behalf” of the Maoist NCP and other 48 members, selected “through understanding” among the party of the SPA non represented in the former parliament and social categories, including “oppressed tribe, backward region, indigenous tribe, women”. The integration of representation did not prevent groups representing the Madhesi, the people of the Terai plains along Nepal’s southern border, from widening protests throughout the period from January to March 2007. They demanded amendments to the interim Constitution and changes in electoral arrangements to guarantee representation in accordance with their proportion of the population in the Constituent Assembly and official bodies, together with a commitment to a federal State.

The lack of input legitimacy of parliament enforced the research for further legitimacy. The interim parliament engaged not only in discussing far reaching reform bills, but also in two amendments to the interim constitution. The first amendment declared Nepal a federal state and increased the number of electoral constituencies in the southern plains in order to allow for better representation of its population. The second changed 10 articles of the interim constitution, including key issues of parliament itself.

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23 An earlier version of this paper prospected two solutions. The first scenario proposed a) to initiate a process of democratic inclusion within the HoR procedures by organizing a democratic “Round Table” convention, b) to charge the Government with the presentation of the Constituent Assembly Election Bill, c) to dissolve the parliament when it has adopted the Constituent Assembly Election Act and to consider the Constituent Assembly as a one chamber parliament which delegates ordinary legislation powers to an all-party government and control over government to a special committee. The second scenario was the Polish Solution to create a Senate by majority on a strict territorial basis (at the first election the candidates of Solidarnosz obtained 99 of the 100 senators).

First of all, the parliament can upon motion of one fourth of its members discuss a no confidence motion and with two-thirds majority remove the Prime minister (art. 55). Furthermore a new clause (art. 57A) provided for an opposition bench in parliament and a parliamentary audition was provided for the candidates for Supreme Court nominations. Even the provision, that parliament can, if requested by Government, anticipate by a two/third majority the decision on the ending of monarchy if the king is obstructing the Constitutional Assembly elections can be interpreted as a gain of power for parliament.

The more active role of parliament has been favoured by the entry of Maoist Ministers in the Government, but also by the necessity to have an institution able to consolidate the ongoing agreements over constitutional issues. The more active role of Parliament and its search for a more differentiated basis of legitimacy through federalism could even render possible a future shift from monocameralism to bicameralism. If the objective for the more radical parties is neither an Indian-style “parliamentary Republic”, nor a Chinese-style “People's Republic”, the future of parliament in the multiparty-democracy seems to be open for a “come back”.

5. The ending Hindu monarchy

The Proclamation of May 2005 has already abrogated all governmental prerogatives of the King, even those consistent with the limit of “constitutional monarchy” provided for the amendments of the Constitution of 1990. The Proclamation embodied a principle of “non autocratic monarchy”, which allowed a political balance and left open the future choice between ceremonial monarchy and republic.

There could be good reasons for keeping a symbolic monarchy where the King “shall reign but shall not govern”. The European principle of constitutional monarchy, with different developments in the British, French and German Empire of 19th century has been developed for example in Jordan or in Cambodia. In Spain (but not in Thailand), the King has even become a defender of democracy and guardian of the constitution against a military “coup d’état”. In a “constitutional monarchy”, a King can be just the “first servant” and perhaps even the “first citizen”, i.e. the one who shows the way to a
new “republican spirit”, if we understand republicanism in a substantial way as for example the German philosopher Kant still did during French Revolution.25 But the case of Nepal could be different, first of all because the King stands not only for a traditional absolute monarchy and secondly because he represented a Hindu Kingdom.26 In Hindu tradition, the King has a more pregnant role as a protector of subjects and territories, if necessary by way of punishment, and this active role framed historically even the self-understanding of the Nepalese Monarchy. The King is considered not a sun of heaven but incarnation of dharma and a god itself.27 The symbols of the umbrella and the stick (danda), symbols of the royal protection and punishment, have been part of the coat of arms that has been changed immediately. The Proclamation and the Interim Constitution have already underlined the “secular” character of the State of Nepal. Generally speaking, the secular character of a State is not necessarily affected from the fact that the monarch has traditionally a close relationship with a given religion. The secular state is however under menace when a non secular monarchy is not only a symbol for a religious heritage and history but has the duty to protect the Kingdom and risks to be actively involved in the process of law making and government. In fact, in this case the risk of an involvement of religious principles in the political competition is real and the religious freedom of the citizens of other religions could than be violated.

The basic principle of the secular state does not involve as such, from an historical and theoretical point of view, the elimination of the monarchy, but the preservation of monarchy in democracies is based on the acceptance the King receives among the people. Once established the principle of people’s sovereignty, the form of the state and the possible role of the king are at the full disposal of the people’s will. Significantly, this means also that in democracies the monarchy can not be legitimized by an identification of the King with conservative policies.

25 R. Smend Verfassung und Verfassungsrecht, Berlin 1928, 113. Constitutionalism is an art to combine even such principles that appear to be in antagonism.
26 See for a comparison M Hutt, Nepal and Bhutan in 2005: Monarchy and Democracy, Can they Co-exist?, (2006)
On the one hand, democracy needs to be defended against authoritarians, while on the other hand, the objective of inclusive democracy could be invoked also by those “backward political classes” who would like Nepal to remain a constitutional monarchy. The Interim Constitution has not approved the proposal – inspired to the Italian model - to leave to a constitutional referendum the question whether to retain monarchy with specific guarantees (see art.157 (1)). The choice should be made by “the simple majority in the first meeting of the Constitutional Assembly shall take decision about whether or not to give continuation to the monarchy”, but all royal properties shall be nationalized, those of King Birendra through a trust (art. 159). By way of the referendum, awareness of sovereignty would have been enhanced among people helping them to understand their own legitimacy and responsibility for sovereignty. By way of an assembly decision, the choice is made first by parties and only secondly by the electorate. In the first case, the King could defend monarchy by himself (or by abdication), in the second case he can only participate to the Constituent Assembly through a monarchical party. The second amendment to the Constitution, while postponing the elections of the Constituent Assembly, has given now to the government the right to table a motion for the abolition of the monarchy if the cabinet concludes that the king is creating serious obstacle to constituent assembly polls. The King has always a symbolic power that could be used to influence those polls, specially if he would rely on the frustration over day to day decisions of the interim government. The parliamentary decision over monarchy, as Maoists urge, is not clearly foreseeable. The King could also ask to defend monarchy in Parliament.

On the other hand, the King exercised in 1990 constituent power as a fiduciary of democracy. His choices in order to protect the constitution did not succeed. Therefore, if the decisions of democratic constituent power can bring back peace, democracy and national unity, the King has to serve its people even by a sacrifice of its own prerogatives. Another question is whether maintaining immunity and other privileges could be a reward for the success of the constituent process.

28 Art. 157 allows to opt by a two-thirds majority for a referendum “on any matter of national importance”, but the duty to decide in the first meeting seems to be a case to which applies the clause “except as otherwise provided elsewhere in the Constitution”.
6. The democratization of Military Power

Post-authoritarian states usually have more detailed military constitutional law than other democracies.\(^{29}\) This is also the case of Nepal where the King has no more legal power over any military instrument.

Section 3 of the Proclamation has changed the constitution of civil-military-relations by eliminating the royal supreme command and the existing National Security Council and by transforming the "Royal Nepal Army" into a "Nepal Army", organized as “inclusive and national in nature”. The Interim Constitution has assigned to the Council of Ministers the power to appoint the Commander-in-Chief and to “control, mobilize and manage the Nepal Army in accordance with law”, a clear reference to the rule of law. The government has furthermore to implement “an extensive work plan for the democratization” adopted “with the consent of political parties and by seeking the advice of the concerned committee of the Legislature-parliament” (art. 144 (3)). The same provision makes reference to “national and inclusive character” that can be interpreted as a refusal of officials training by foreigners (f. i. in the United States), but not as a refusal of international missions.

The plan of democratization could also face the problem of loyalty, including the right of soldiers to join worker unions. It could be useful to require an oath on the interim Constitution at least from the higher ranks. Even the choice to have no more a Supreme commander of the Army could be reconsidered, because a supreme command of a civilian (president, prime minister, council of Ministers) could be considered a better guarantee of the real separation of military from civil powers.

At any case, the elimination of the military symbols represented in the national coat-of-arms could have already lowered the risk of military disobedience towards civil commands. But the final constitution could give more powers to parliamentary control over the Army, especially the power to investigate over the respect “the norms and values of democracy and of human rights” (art. 144 (4)), specially democratic equality inside and outside the barracks. Even a more active role of the Human Rights

Commission within the Armed Forces could be useful. At any case, the main problem of the interim period, the management and monitoring over the now constitutionalized peace agreements (art. 147) can be faced also by parliament, perhaps even the special parliamentary committee formed in order to “supervise, integrate and rehabilitate the combatants of the Maoist Army” (art. 146).

The democratization of Military power is only the final step of a more complex peace-building process, and constitution-making is once more a specific practice of peace-building.30

7. Election and Procedure of the Constituent Assembly

From a comparative point of view, popular sovereignty can play different roles in constitution making procedures, but the first and most prominent is the election of a constituent assembly31 that has normally a unicameral format.32

The future constitution will gain legitimacy only if the constituent assembly is formed in a democratic way and not with a pre-constituted majority such as for example in republican China under Yuan Shikai. No party should be able to manipulate the electoral rules in a way to dominate the assembly with a majority and no party which declares to accept the new constitution should expect to be excluded from future governments of the country. Traditionally, the best system for the elections of the Constituent Assembly is therefore considered a system based on proportionality and without any formal *mandat impératif*.

Having the Maoist preferred proportional representation and the Nepali Congress majority, the political parties agreed on November 8, 2006 a mixed electoral system and

32 The Spanish Constitution of 1978 was adopted by a bicameral Cortes and the Polish Constitution of 1999 was adopted by a bicameral National Assembly.
UN-monitoring. 205 members will be elected through the First-Past-The-Post system and 204 member elected on the basis of a proportional representation system on the basis of votes. The proportionality criterion is not dominant, also because other 16 members will be nominated by the interim government “on the basis of consensus (…) from amongst the prominent persons of national life”, a typical element of second chambers. On the other hand, the electoral law has to guarantee that parties will “ensure proportional representation of women, Dalit, oppressed tribes/indigenous tribes, backwards, Madhesis and other groups” in both, majority and proportional list election (art. 63).³³

The royal family members are not automatically excluded, but the holding of military and civil offices seems to be a cause of incompatibility (art. 65). More problematic is the provision that members may lose the seat “if the party of which he/she was a member when elected provides notification (…) that he/she has abandoned the party, or (…) no longer holds the membership” (art. 67 (d)). The voting of disqualified persons has to be sanctioned by a fine (art. 76). These provisions could be construed in order to legitimate a practice of parties in order to restrict the freedom of expression and vote of the members of assembly.

Another provision establishes a term of two years for the assembly which can be extended for other six months only in case of proclamation of a State of Emergency (art. 64). This provision could stimulate practices of obstruction, specially if combined with the power of the Assembly to hold referendum. On the other hand, the Constitutional Assembly could have also the power (ex art. 83 and 148) to amend the relevant provisions of the interim constitution.

8. Transitional Justice and the need for Reconciliation

The transitional phase in Nepal should lead to a pacification of the country. This is largely a political issue but judiciary is also involved to the extent to which pacification is possible only through justice. In order to develop democracy and rule of law, a

system of effective protection of human rights has to be created, but at the same time the country needs a path to cope with past violations of human rights. The two questions are linked, because political or revolutionary grounds will no more be able to justify violations of human rights.

Insofar as human rights are protected under the Constitution of 1990 and the interim Constitution, the protection of human rights has to reactivate the existing ordinary procedures, assuring the continuity of the judiciary power and full access to justice. But also the human rights violations of the past have at least to be investigated. For this purpose, the Peace Agreement of November 21, 2006 provided a commitment to guarantee the “right to relief of the families of victims of conflict, torture and disappearance”. The prior agreement of November 8, 2006, ordered to “conduct investigation about those who were involved in gross violation of human rights at the time of the conflict and those who committed crime against humanity. Form a high level Truth and Reconciliation Commission in order to create an environment for social reconciliation.” The model of South Africa – developed from the first experience of Chile⁵⁻ has thus been taken into consideration.

Nevertheless, the interim constitution has not realized specific legal provisions for this purpose. It did not confer to the Parliament or Assembly the power to decide on a general amnesty, but reserved the power of Pardon to the Council of Ministers. On the other hand, the Supreme Court established a Detainees Investigation Task Force and ruled on a large number of enforced disappearance cases, including 80 habeas corpus writs, urging the government immediately to investigate all allegations of enforced disappearances, to take administrative action against members of the security forces under investigation and to enact legislation that would criminalise enforced disappearances. The Constituent Assembly might decide itself the creation of a “truth commission” within a reasonable time after the approval of the new Constitution.

9. The goal of inclusive democracy

³⁵ J. L. Cea Egaña, Giustizia e riconciliazione possono essere compatibili in Chile? Lecture, Turin 5. 6. 2007
As pointed out by Sangroula, “Constituent Assembly is (...) driven by the objectives behind it”. In other words, the constituent phase requires that new values to be introduced in the new Constitution should be cleared. These values are grounded on the aspirations of people’s movements in 2006, as the Constitution of 1990 was grounded on prior people’s movements. While the Constituent process of 1990 was successful to introduce the principles of people’s multi-party democracy and, in principle, the protection of human rights, the present constituent process is based on the necessity of redefining the role of the king, eliminating all sources of autocratic power, and on the necessity of addressing the issue of “inclusive democracy”.

If constitutional history could be seen as a process through different stages aiming to increasingly organize political and social complexity, the constitutional process is developed through points of crisis resulting in negotiations to reach a new, more inclusive, arrangement. The Constitution of 1990 has been criticized because of its being a “source of exclusion”. This character has been detected in both the institutional framework and the protection of fundamental rights. As a result, in Nepalese and international political discourses inclusive democracy has been identified from the outset as one of the prominent goals of the new Constitution and has been described in the House of Representatives’ Proclamation as a qualifying aspect of people’s mandate.

Art. 4 (1) of the interim constitution recognizes inclusiveness as a fundamental value and goal of the State: “Nepal is an independent, indivisible, sovereign, secular, inclusive and a fully democratic State”. The new goal of “inclusiveness” seems to be inspired more by some contemporary western social philosophy, but has a specific meaning in the Nepalese context. First of all inclusiveness can be read as strictly linked to secularism. In fact, the “Hinduness” of Nepal has been seen as a legitimation of exclusion rather than inclusion. Although a Hindu monarchy could allow sufficient

37 Y. Sangroula, Meaning, Implications and Scope of Constituent Assembly, cit. p. 6.
protection of minorities, Hinduness has been perceived, as a matter both of principle and of fact, as the cultural root of manifold manifestations of exclusion underlying the entire legal system. In this view, discrimination of non-Hindus, low-caste Hindus and women would follow from the cultural underpinnings of Hinduism, at least as crystallized in Nepalese laws. The Constitution of 1990 did not clearly protect equal freedom of religion and, therefore, the cultural values of the Hindu elite seem to be imposed to other groups.\textsuperscript{40} The Nepalese private law, particularly marriage and succession laws, and criminal laws are still based on Hindu norms and values, which are held to be inherently discriminatory for non-upper class Hindus, that is to say, for those who do not belong to the political and cultural elite who tailored the Constitution of 1990, without adequately considering the pluralism of Nepalese society.

Inclusiveness requires thus appropriate constitutional acknowledgement of rights and needs of minorities. While the Constitution of 1990 provided a limited and more generic recognition,\textsuperscript{41} the interim constitution acknowledges the rights of minorities in several parts. As for the right to equality, article 13, sub-section 3 is prospectively enhancing their protection: “The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these”. “Origin” and “language” were not included in the Constitution of 1990. This explicit acknowledgement, on the one hand, is conducive to further protection of non-national minorities and, on the other hand, identifies “linguistic minorities” in addition to ethnic minorities.\textsuperscript{42} The second part of sub-section 3 has further strengthened the constitutional basis for positive action. The new formulation explicitly mentions dalits, indigenous ethnic tribes and Madhesis and adds to “protection” and “advancement” the social goal of “empowerment”, which means an active role for minorities rather than

\textsuperscript{40} See Lawoti, \textit{Towards a Democratic Nepal}, cit. However, article 23 (Right to religion) of the interim constitution basically replicates the original article 19, with minor changes.


\textsuperscript{42} From a different perspective, inclusiveness is affected by the rules on citizenship. In fact, many communities having not a Nepalese origin but living in Nepal from generations have been not included in Nepalese citizenship. On the violation of the rights of linguistic minorities see Lawoti, \textit{Towards a Democratic Nepal}, cit.
merely the need and right to protection.\textsuperscript{43} As for the rights of women, a new article on
gender equality has been introduced (art. 20), including a sub-clause regarding equality
as concerns ancestral property.

However, the main change concerning the right to equality regards the approach to
untouchability. In fact, the interim constitution has devoted a new independent article to
the right against untouchability and racial discrimination, jointly, with a by far most
detailed and far-reaching provision (art. 14). Specific forms of discrimination such as
the selective purchasing and selling of goods and services and all kinds of speeches and
acts that “demonstrate superiority or inferiority” or encourage and justify untouchability
shall be punishable.\textsuperscript{44}

The provisions regarding fundamental rights have thus been significantly enlarged
through explicit recognition of dalits, other minorities and, generally, disadvantaged
groups. However, the formal declaration of these rights since 1960 did not change
society and even a strong criminal prosecution could not amount to the fulfillment of
the principles of inclusive democracy, because inclusiveness is theoretically construed
as complementary to liberal democracy.\textsuperscript{45} The question is how can people find a way to
inclusion if exclusion is driven by cultural norms and criminal sanctions alone should
challenge mass violations. Therefore democracy shall be considered itself as the first
instrument of inclusion and the above said groups “shall have the right to participate in
the state mechanism on the basis of proportional inclusive principles” (art. 21: right to
Social Justice).

Moreover, in order to implement fundamental rights, even the rule of law can be
construed as a more or less effective mechanism of inclusion. The right to a specific
“Constitutional Remedy” (art. 32) implies that “any Nepali citizen may file a petition in
the Supreme Court to have any law or any part thereof declared void on the ground of
inconsistency” with the Constitution, and that the Supreme Court has extraordinary

\textsuperscript{43} From a different point of view, it is also worth remarking that the language of the new Constitution
reflects some cultural factors seemingly provided by the Maoists and generally left parties. In fact,
peasant and labourers are included as new subjects of the Constitution. A minor change is the shift from
“educationally backward” to “culturally backward”.

\textsuperscript{44} Art. 11 (4) of the Constitution of 1990 stated: “No person shall, on the basis of caste, be discriminated
against as untouchable, be denied access to any public place, or be deprived of the use of public utilities.
Any contravention of this provision shall be punishable by law.”

\textsuperscript{45} See Y. Sangroula, “Inclusiveness” in Democracy: Concepts and Dimensions. An Approach for Conflict
Transformation, cit.
power to issue orders or settle the dispute, when fundamental rights are involved or when other rights cannot be adequately protected through other remedies, or when public interest is concerned (art. 107). In this regard, it is worth remarking that the equivalent article on the right to constitutional remedies in the Indian Constitution (article 32) has been interpreted by the Indian Supreme Court in such a way to further develop public interest litigation and to facilitate access to justice for backward classes. It may be asked whether the reception of these principles could be included in the new Nepalese Constitution or should depend on an autonomous intervention of the Nepalese Supreme Court.

Inclusive democracy is furthermore part of the “Responsibilities, Directive Principles and Policies of the State”, which, although not binding, provides relevant guidelines and constitutional orientation for any further policy and legislation. Particularly, “the State shall pursue a policy which will help to promote the interest of the marginalized communities and the peasants and labourers living below poverty line, including economically and socially backward indigenous tribes, Madhesis, Dalits, by making reservation for a certain period of time with regard to education, health, housing, food, sovereignty and employment” (art. 35 (10)). In addition, “the State shall pursue a policy of making special provision based on positive discrimination to the minorities, landless, squatters, bonded labourers, disabled, backward communities and section, and the victims of conflict, including women, Dalits, indigenous tribes, Madhesis and Muslims” (sub-clause 14). These policies of reservation and positive discrimination could be inspired by the Indian experience, but in India they are based on lists of scheduled castes, tribes and other backward classes.

10. Towards a future of federalism?

47 See also article 154: “The Government of Nepal may form necessary commissions to safeguard and promote the rights and interests of different sectors of the country including women, Dalits, indigenous ethnic groups, Madhesis, disabled, labourers or farmers. The provisions for the formation, functions, duties and powers of such commissions shall be as determined by the law”.
Another way to strengthen inclusive democracy is provided for by Article 138: “(1) Inclusive, democratic and progressive restructuring of the state shall be made to bring about an end of the discrimination based on class, caste, language, sex, culture, religion and region by eliminating the centralized and unitary form of the state”. A High Level Commission will work on this issue and the final decision is up to the Constituent Assembly.

This article has been amended by the First Amendment Bill, which has introduced “Federal Governmental System” as an objective of restructuring of the State. This choice may be seen as coherent with inclusive democracy, to the extent to which this requires effective participation to political life and promotes local governance.

Federalism was first demanded by the Communist Party draft of an Interim Constitution which prospected the creation of “nine autonomous republic states” and three “territorial regions” within “a federal system with Nepali specificities (…) on the basis of the rights to self-determination and autonomous rule of the oppressed nationalities and regions by bringing to an end the feudal autocratic system based on Arya-Khasa upper caste chauvinism”. On the other hand, the amendment has been adopted together with other provisions in order to reassure the inhabitants of the Terai border region close to India with a major growth of population.

However, the amendment on federalism has been criticized, not only for the way in which it has been approved. There is a risk of increasing local conflicts in Nepal. Even if the political ideas suggest federalism as a way to hold together the nation in the most symmetrical manner possible and promote the dream of a prospering Asiatic Switzerland, the practices could shift to much more asymmetrical power arrangements and secession risks. From a comparative point of view there is no doubt, that the model of Indian federalism with states even under communist government seems to be clearly

49 See also art. 33 (d)
preferred to Chinese experiences of Warlord-federalism in last century and one-country-two systems-regionalism today. But India could be suspected to be interested in federalism in order to strengthen its own influence over its neighbour. The Nepali colours and ethnicities are considered to be extremely differentiated and within a nation of minorities, much minorities could be protected better through more local forms of autonomy.

The way in which federalism will be articulated, defining the new states and their powers is presently uncertain. The Indian model could even suggest the reinvention of bicameralism. On the other hand, the promises of equality and the long list of “State policies” could hold on the central government a great number of competencies. Much depends on finding an organization able to effectively promote unity and diversity in an inclusive framework, avoiding the emerging of new forms of exclusion and preserving a non authoritarian “harmony” (art. 34 (5)) for Nepalese people. On the other hand, the interim constitution has been gradually amended in order to accommodate even before the election of the Constituent Assembly most of minority requests. This was largely due to the need of preserving a peaceful process and justified by the principle of “inclusiveness” of the interim constitution.

Appendix

NEPAL INTERIM CONSTITUTION 2063 (2006)52

Preamble
WE, THE PEOPLE OF NEPAL, IN EXERCISE THE SOVEREIGN POWERS AND STATE AUTHORITY INHERENT IN US;
WHEREAS, recognizing the mandate of the NEPALI PEOPLE expressed, from time to time, since prior to 1951 till now, through historical struggles and people’s movements for democracy, peace and progress;
WHEREAS, having determined for progressive restructure of the state in order to resolve the existing problems of the country based on class, caste, region and gender;
WHEREAS, expressing full commitments towards democratic norms and values including competitive multiparty democratic rule, system, civil liberty, fundamental

rights, human rights, adult franchise, periodic election, full freedom of press, independent of judiciary and concept of rule of law;
WHEREAS, guaranteeing the basic rights of the Nepali people to frame a Constitution for themselves and to participate in the free and impartial election of the Constituent Assembly in a fear-free environment;
AND WHEREAS, keeping democracy, peace, prosperity, progressive economic-social changes and sovereignty, integrity, independence and dignity of the country in the center;
NOW THEREFORE DO hereby promulgate this INTERIM CONSTITUTION OF NEPAL, 2063 (2007), prepared through a political consensus enforceable until a new Constitution is framed by the Constituent Assembly in order to institutionalize the achievements of the revolution and movements till this date.

Part 1
Preliminary
1. **Constitution as the Fundamental Law:** (1) This Constitution is the fundamental law of Nepal. All laws inconsistent with this constitution shall, to the extent of such inconsistency, be void.
   (2) It shall be 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 Nepalese people.
3. **Nation:** Having common aspiration of multiethnic, multilingual, multi religious, multi cultural characteristics and having committed and united by a bond of allegiance to national independence, integrity, national interest and prosperity of Nepal, the Nepalese people collectively constitute the nation.
4. **State of Nepal:** (1) Nepal is an independent, indivisible, sovereign, secular, inclusive and a fully democratic State.
   (2) The territory of Nepal shall comprise:
      (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 the mother tongue in Nepal are the national languages of Nepal.
   (2) The Nepali Language in Devnagari script shall be the official language.
   (3) Notwithstanding anything contained in clause (2), it shall not be deemed to have hindered to use the mother language in local bodies and offices. State shall translate the languages so used to an official working language and maintain record thereon.
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.
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 shall be 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) Persons who have acquired citizenship at the commencement of this Constitution and the persons who are eligible to acquire citizenship by virtue of the provisions of this Part shall be the citizens of Nepal.
(2) At the commencement of this Constitution, the following persons who have their domicile in Nepal shall be deemed to be citizens of Nepal by descent:
(a) a person who has acquired citizenship by descent before the commencement of this Constitution,
(b) any person whose father or mother is a citizen of Nepal at the birth of such person.
(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 mother of the child is traced, be deemed to be a citizen of Nepal by descent.
(4) Whenever any territory is acquired by way of incorporation into Nepal, every person having his domicile within such territory shall become a citizen of Nepal, subject to the provisions of the laws in force.
(5) Any person born till the end of Chaitra, 2046 (mid April, 1990) and has been residing permanently in Nepal shall acquire the citizenship of Nepal by birth as per the laws in force.
Provided, that application to that effect shall be submitted within the timeframe prescribed for onetime as per the provision of the laws in force.
(6) A woman of foreign nationality who has a matrimonial relationship with a Nepalese citizen may acquire naturalized citizenship, if she desires to do so, pursuant to the laws in force.
(7) Notwithstanding anything contained elsewhere in this Article in the case of a person born to the women citizen of Nepal married to a foreigner, if such a person is born in Nepal and has been residing permanently in Nepal who has not acquired citizenship of the foreign country by virtue of the citizenship of his/her father he/she may acquire the naturalized citizenship of Nepal pursuant to the laws in force.
9. Naturalized or Honorary Citizenship: Except as provided for in Article 8, the Government of Nepal may grant naturalized or honorary Nepalese citizenship as per the provision of the law.
10. Acquisition and Termination of Citizenship: Other necessary provisions including the acquisition and termination of the citizenship shall be as provided for in the laws.
11. Citizenship Team to be Assigned: Government of Nepal shall assign Citizenship Distribution Team to provide citizenship to the persons eligible to acquire citizenship as provided for in the laws in force.

Part 3
Fundamental Rights
12. **Right to Freedom:**

(1) Every person shall have the right to live with dignity, and no law shall be made which provides for capital punishment.

(2) No person shall be deprived of his/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 party or organisations;
(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, or to carry on any occupation, industry, or 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, religion 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 decent public behaviour 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 law and order situation 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, which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes religion or communities, which may instigate violence, 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, religion or communities.

(5) nothing in sub-clause (f) shall be deemed to prevent the making of laws to impose restriction on any act which may be contrary to public health or morality, to confer on the State the exclusive right to undertake specific industries, businesses or services; or to impose any condition or qualification for carrying on any industry, trade, profession or occupation.

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, race, sex, caste, tribe, origin, language or ideological conviction or any of these.

(3) The State shall not discriminate 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 the interests of women, Dalit, indigenous ethnic tribes, Madeshi, or peasants, labourers or those who belong to a class.
which is economically, socially or culturally backward and children, the aged, disabled and those who are physically or mentally incapacitated.

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

14. Right against Untouchability and Racial Discrimination: (1) No person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and untouchability of any form. Such a discriminating act shall be liable to punishment and the victim shall be entitled to the compensation as provided by the law.

(2) No person shall, on the ground of caste or tribe, be deprived of the use of public services, conveniences or utilities, or be denied access to any public place, or public religious places, or be denied to perform any religious act.

(3) No person belonging to any particular caste or tribe shall, while producing or distributing any goods, services or conveniences, be prevented to purchase or acquire such goods, services or conveniences; or no such goods, services or conveniences shall be sold or distributed only to a person belonging to a particular caste or tribe.

(4) No one shall be allowed to demonstrate superiority or inferiority of any person or a group of persons belonging to any caste, tribe or origin; to justify social discrimination on the basis of cast and tribe, or to disseminate ideas based on caste superiority or hatred; or to encourage caste discrimination in any form.

(5) Any act contrary to the provisions of sub-clauses (2), (3) and (4) shall be punishable in accordance with law.

15. Right Regarding Publication, Broadcasting and Press: (1) No publication and broadcasting or printing of any news items, editorial, article, writings or other readings, audio-visual materials, by any means including electronic publication, broadcasting and press, 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 or integrity of Nepal, or which may jeopardise the harmonious relations subsisting among the peoples of various castes, tribes or communities; or on any act of sedition, defamation, contempt of court or incitement to an offence; or on any act which may be contrary to decent public behaviour or morality.

(2) No radio, television, online or any other types of digital or electronic means, press or any other communication media shall be closed, seized or be cancelled the registration because of publishing and broadcasting or printing any material by such means of audio, audio-visual or electronic equipments.

(3) No newspaper, periodical or press shall be closed, seized or be cancelled the registration for printing and publishing any news items, articles, editorial, writings or other reading materials.

(4) No communication means including press, electronic broadcasting and telephone shall be obstructed except in accordance with law.

16. Right Regarding Environment and Health: (1) Every person shall have the right to live in clean environment.

(2) Every citizen shall have the right to get basic health service free of cost from the State as provided for in the law.

17. Education and Cultural Right: (1) Each community shall have the right to get basic education in their mother tongue as provided for in the law.
(2) Every citizen shall have the right to free education from the State up to secondary level as provided for in the law.

(3) Each community residing in Nepal shall have the right to preserve and promote its language, script, culture, cultural civility and heritage.

18. Right regarding Employment and Social Security: (1) Every citizen shall have the right to employment as provided for in the law.
(2) Women, labourers, the aged, disabled as well as incapacitated and helpless citizens shall have the right to social security as provided for in the law.

(3) Every citizen shall have the right to food sovereignty as provided for in the law.

19. Right to Property: (1) Every citizen shall, subject to the laws in force, have the right to acquire, own, sell and otherwise dispose of the property.
(2) The State shall not, except in the public interest, requisition, acquire, or create any encumbrance on the property of any person.
Provided that this clause shall not be applicable on property acquired through illegal means.

(3) Compensation shall be provided for any property requisitioned, acquired or encumbered by the State in implementing scientific land reform programme or in public interest in accordance with law. The compensation and basis thereof and operation procedure shall be as prescribed by law.

20. Right of Woman: (1) No one shall be discriminated in any form merely for being a woman.
(2) Every woman shall have the right to reproductive health and other reproductive matters.

(3) No physical, mental or any other form of violence shall be inflicted to any woman, and such an act shall be punishable by law.

(4) Son and daughter shall have equal rights to their ancestral property.

21. Right to Social Justice: (1) Women, Dalit, indigenous tribes, Madheshi community, oppressed group, the poor peasant and labourers, who are economically, socially or educationally backward, shall have the right to participate in the state mechanism on the basis of proportional inclusive principles.

22. Right of Child: (1) Every child shall have the right to his/her own identity and name.
(2) Every child shall have the right to get nurtured, basic health and social security.

(3) Every child shall have the right against physical, mental or any other form of exploitation. Any such an act of exploitation shall be punishable by law and the child so treated shall be compensated in a manner as determined by law.

(4) Helpless, orphan, mentally retarded, conflict victims, displaced, vulnerable and street children shall have the right to get special privileges from the State to their secured future.

(5) No minor shall be employed in factories, mines or in any other such hazardous work or shall be used in army, police or in conflicts.

23. Right to Religion: (1) Every person shall have the right to profess, practise and preserve his/her own religion as handed down to him/her from ancient times having due regards to the social and cultural traditional practices.
Provided that no person shall be entitled to convert another person from one religion to another, and shall not act or behave in a manner which may jeopardize the religion of others.
(2) Every religious denomination shall have the right to maintain its independent existence, and for this purpose to manage and protect its religious places and religious trusts, in accordance with law.

24. **Rights Regarding to Justice**: (1) No person who is arrested shall be detained in custody without being informed of the ground for such arrest.

(2) The person who is arrested shall have the right to consult a legal practitioner of his/her choice at the time of the arrest. The consultation made by such a person with the legal practitioner and the advice given thereon shall remain confidential, and such a person shall not be denied the right to be defended through his/her legal practitioner. **Explanation**: For the purpose of this clause, the words “legal practitioner” means any person who is authorized by law to represent any person in any court.

(3) Every person who is arrested shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and no such a person shall be detained in custody beyond the said period except on the order of such authority. Provided that nothing in clauses (2) and (3) shall apply to preventive detention or 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) No person accused of any offence shall be assumed as an offender until proved guilty committed by him.

(6) No person shall be prosecuted or punished for the same offence in a court of law more than once.

(7) No person accused of any offence shall be compelled to be a witness against oneself.

(8) Every person shall have the right to be informed about the proceedings of the trial conducted against him/her.

(9) Every person shall be entitled to a fair trial by a competent court or judicial authority.

(10) The indigent person shall have the right to free legal aid in accordance with law.

25. **Right against Preventive Detention**: (1) No person shall be held under preventive detention unless there is a sufficient ground of existence of an immediate threat to the sovereignty and integrity or law and order situation of Nepal.

(2) Any person held under preventive detention shall, if his/her detention was contrary to the law or was in bad faith, have the right to be compensated in a manner as 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, nor shall be given any cruel, inhuman or degrading treatment.

(2) Any such an action pursuant to clause (1) shall be punishable by law, and any person so treated shall be compensated in a manner as determined by law.

27. **Right to Information**: (1) Every citizen shall have the right to demand or obtain information on any matters of his/her own or of public importance. Provided that nothing shall compel any person to provide information on any matter about which secrecy is to be maintained by law.
28. **Right to Privacy**: (1) Except on the circumstance as provided by law, the privacy of the person, residence, property, document, statistics, correspondence and character of anyone is inviolable.

29. **Right against Exploitation**: (1) Every person shall have the right against exploitation.
(2) Exploitation on the basis of custom, tradition and convention or in any manner is prohibited.
(3) Traffic in human beings, slavery or serfdom is prohibited.
(4) Force labour in any form is prohibited.
Provided that nothing in this clause shall prevent for enacting a law allowing the citizen to be engaged in compulsory service for public purposes.

30. **Right Regarding Labour**: (1) Every employee and worker shall have the right to proper work practice.
(2) Every employee and worker shall have the right to form trade unions, to organise themselves and to perform collective bargaining for the protection of their interest in accordance with law.

31. **Right against Exile**: (1) No citizen shall be exiled.

32. **Right to Constitutional Remedy**: The right to proceed in the manner set forth in Article 107 for the enforcement of the rights conferred in this part is guaranteed.

**Part 4**

**Responsibilities, Directive Principles and Policies of the State**

33. **Responsibilities of the State**: The State shall have the follows responsibilities:

(a) To focus all its attention to conduct a free and impartial election for the members of the Constituent Assembly within Manshir 2064 (by November 2007),

(b) To ensure progressive political, economical and social change in the Country.

(c) To adopt a political system which is fully abides by the universally accepted concept of fundamental human rights, multi-party competitive democratic system, sovereign authority inherent in the people and supremacy of the people, constitutional balance and check, rule of law, social justice and equality, independence of judiciary, periodical election, monitoring by the civil society, full independence of press, right to information of the people, transparency and accountability in the activities of political parties, people’s participation, neutral, competent and clean administration and to maintain good governance by eliminating corruption and impunity.

(d) To carry out an inclusive, democratic and progressive restructuring of the State by eliminating its existing form of centralized and unitary structure in order to address the problems related to women, Dalits, indigenous tribes, Madhesis, oppressed and minority community and other disadvantaged groups, by eliminating class, caste, language, sex, culture, religion and regional discriminations.

**Note**

(d 1) in all the state’s structure and its organs, participation of the people has to be guaranteed on the basis of the principle of ‘proportional inclusion’ of Madhesis (Terai People), Dalits (untouchables), indigenous tribes, women, labourers, farmers, disabled, backward peoples and regions.

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53 Original version: „within Jestha 2064 (by June, 2007)“.
(c) To formulate a minimum common program for socio-economic transformation to eliminate all forms of feudalism and implement it gradually.

(f) To pursue a policy of adopting scientific land reform programs by gradually ending feudalistic land ownership.

(g) To follow a policy of protecting and promoting national industries and resources.

(h) To pursue a policy of establishing the rights of all citizens to education, health, housing, employment and food sovereignty.

(i) To adopt a policy of providing economic and social security including lands to economically and socially backward classes including the landless, bonded labourers, tillers and shepherds.

(j) To adopt a policy of taking severe action and punish the individuals who earns unjust wealth through corruption by holding a office of profit.

(k) To formulate a common development concept for socio-economic transformation and justice, and for rapid economic progress and prosperity of the country.

(l) To follow a policy that increases investment for promoting industry, trade and export, and creates opportunity for employment and income generation, by ensuring the professional rights of labourers.

(m) To implement international treaties and agreements effectively, to which State is a party.

(n) To terminate all discriminatory laws.

(o) To use existing natural resources including water resources of the country for the interest of the nation.

(p) To make arrangements for appropriate relief, recognition and rehabilitation for the family of the deceased persons the disabled and helpless persons due to injury during the course of armed conflict.

(q) To provide relief to the families of the victims, on the basis of the report of the Investigation Commission constituted to investigate the cases of disappearances made during the course of the conflict.

(r) To conduct special programs to rehabilitate the displaced, to provide relief for damaged private and public property, and to rebuild infrastructures destroyed during the course of the conflict.

(s) To constitute a high-level Truth and Reconciliation Commission to investigate the facts regarding grave violation of human rights and crimes against humanity committed during the course of conflict, and create an atmosphere of reconciliation in the society.

34. Directive Principles of the State: (1) It shall be the chief objective of the State to promote conditions of welfare on the basis of the principles of an open society, by establishing a just system in all aspect of national life, including social, economic and political life, while at the same time protecting the lives, property, equality and liberty of the people.

(2) It shall be the objective of the State to maintain conditions suitable to the enjoyment of the benefits of democracy through maximum participation of the people in the governance of the country by the means of self-governance tribal, linguistic cultural or regional and to promote general welfare by making provisions for the protection and promotion of human rights, by maintaining tranquility and order in the society.
(3) It shall be the political objective of the State to build a well-off and prosperous Nepal by institutionalizing democracy achieved as a result of the struggle of Nepali people and by creating an environment wherein its benefits could be enjoyed.

(4) The fundamental economic objective of the State shall be to transform the national economy into an independent and self-reliant system by preventing the available resources and means of the country from being concentrated within a limited section of society, by making arrangements for equitable distribution of economic gains based in social justice, by making such provisions as will prevent economic exploitation as well as economic disparity of any caste, sex, tribe, origin or individuals, and by giving preferential treatment and encouragement to national enterprises, both private and public.

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

(6) The state shall, in its international relations, shall be guided by the objective of enhancing the dignity of the nation in the international arena by maintaining the sovereignty, integrity and independence of the country.

35. State Policies: (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, transportation, housing, and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development of the country.

(2) The State shall pursue a policy of economic development through the means of governmental, cooperatives and private sectors.

(3) The State shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the national unity by promoting healthy and cordial social relations, based on equality and coexistence, amongst the various religions, cultures, castes, groups, communities, origins and linguistic groups, and by helping in the equal promotion of their languages, literatures, scripts, arts and cultures.

(4) The State shall, while mobilizing the natural resources and heritage of the country that might be useful and beneficial to the interest of the nation, pursue a policy of giving priority to the local people.

(5) The State shall make necessary arrangements to maintain clean environment. The State shall give priority to the protection of the environment, and also to the prevention to its further damage due to physical development activities by increasing the awareness of the general public about environmental cleanliness, and the State shall also make arrangements for the special protection of the environment and the rare wildlife. Provision shall be made for the protection of the forest, vegetation and biodiversity, its sustainable use and for equitable distribution of the benefit derived from it.

(6) The State shall, by encouraging peasants and by increasing productivity, create conditions for economic progress of the majority of the people who are dependent on agriculture, and by launching land reform program, develop the agricultural sector as an industry.

(7) The State shall pursue a policy of increasing the participation of the labour force, the major socio-economic force in the country, in the management of enterprises by
providing employment to it, ensuring their right to work, and thus protecting its rights and interests.

(8) The State shall pursue a policy of encouraging maximum participation of women in national development by making special provisions for their education, health and employment.

(9) The state shall pursue a policy of making special provisions of social security for the protection and welfare of single women, orphans, children, helpless, the aged, disabled, incapacitated persons and the disguising tribes.

(10) The State shall pursue a policy which will help to promote the interest of the marginalized communities and the peasants and labourers living below poverty line, including economically and socially backward indigenous tribes, Madhesis, Dalits, by making reservation for a certain period of time with regard to education, health, housing, food sovereignty and employment.

(11) The State shall, with a view to bringing about prosperity in the country, pursue a policy of giving priority to the development of science and technology, and shall also give due consideration to the development of local technology.

(12) The State shall, for the purpose of national development, pursue a policy of attracting foreign capital and technology, giving priority to the national investment.

(13) The State shall pursue the policy of creating conditions for the acceleration of the speed of rural development, keeping in view the welfare of the majority of the rural population.

(14) The State shall pursue a policy of making special provision based on positive discrimination to the minorities, landless, squatters, bonded labourers, disabled, backward communities and sections, and the victims of conflict, including women, Dalits, indigenous tribes, Madhesis and Muslims.

(15) The State shall pursue a policy of making provision of providing basic land to the liberated bonded labourers for settlement having determined their exact numbers.

(16) The State shall pursue a policy of making basic infrastructure to impart technical education, training and orientation for the development of a class of people dependent on labour including peasants and labourers, to seek their participation in the development process of the country.

(17) The State shall pursue a policy to make legal provision to provide allowance to the aged, incapacitated women and the unemployed.

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

(19) The State shall pursue a special policy to regulate the operation and management of public and non-governmental organizations established in the country.

(20) The State shall pursue a special policy to mobilize youth human resources for the development of the country.

(21) The state shall adopt the foreign policy of Nepal guided by the principles of the United Nations Charter, nonalignment, the Panchsheel, international laws and the norms of world peace.

(22) The State shall pursue a policy of making continuous efforts to institutionalize peace for Nepal through international recognition, by promoting cooperative and good
relations in the economic, social and other spheres on the basis of equality with neighbouring and all other countries of the world.

36. **Questions not to be Raised in Courts**: (1) No questions shall be raised in any court as to whether provisions contained in this Part are implemented or not.
(2) The State shall mobilize or cause to be mobilized the required resources for the implementation of the principles and policies contained in this Part.

### 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 of 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 taken in the name of the Government of Nepal.
(4) Any decision, order or implementation warrant to be issued in the name of the Government of Nepal, pursuant to clause (3) above, shall be authenticated as prescribed by law.

38. **Constitution of Council of Ministers**: (1) The Prime Minister and the Council of Ministers under the chairpersonship of the Prime Minister shall be constituted by political consensus.

**Explanation**: For the purpose of this Constitution “political consensus” means the political consensus reached between the seven parties- Nepali Congress, NCPN(UML), Nepali Congress (Democratic), Janamorcha Nepal, Nepal Sadbhawana Party (Anandidevi), Nepal Majdur Kisan Party, Samyukta Bam Morcha Nepal and NCP(Maoist) on 22 Kartik 2063 (November 8, 2006).
(2) If consensus cannot be reached pursuant to clause (1), the Prime Minister shall be elected by a majority of two-thirds of the members of the Legislature –Parliament.
(3) The structure and the allocation of business of the Interim Council of Ministers shall be determined by mutual understanding.
(4) The Council of Ministers shall consist of Deputy Prime Minister and other Ministers as may be required.

**Explanation**: For the purpose of this Article the word ‘Minister’ shall also mean the Minister of State who takes independent responsibility of a Ministry.
(5) While appointing Ministers, the Prime Minister shall appoint them, on the recommendation of the concerned political party, 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 to the work of their respective Ministries to the Prime Minister and the Legislature-Parliament.
(7) The Prime Minister shall be relieved from his/her office in the following circumstances:
   a) If a written resignation is submitted to the Speaker of the Legislature Parliament, according to Article 55a, the Prime Minister shall be relieved if the vote of no confidence motion has been passed against him/her;
   b) If he/she ceases to be a member of the Legislature-Parliament; or
c) If he/she dies.

(8) The Deputy Prime Minister, Minister, State Minister and Assistant Minister shall be relieved from their respective offices in the following circumstances:

(a) If a written resignation is submitted to the Prime Minister,
(b) If the Prime Minister is relieved from his/her office pursuant to clause (7) above,
(c) If he/she is relieved of his/her office by the Prime Minister upon the recommendation of or consultation with the concerned party, or
(d) If he/she dies.

(9) If the Prime Minister is relieved from his/her office pursuant to clause (7) above, the existing Council of Ministers shall continue to function until a new Council of Ministers is constituted.

(10) In the case of the death of the Prime Minister, Deputy Prime Minister or the senior-most Minister shall act as the Prime Minister until a new Prime Minister is selected.

39. State Ministers and Assistant Ministers: (1) The Prime Minister may, on the recommendation of the concerned political party, appoint the Minister of State from amongst the members of Legislature-Parliament.

(2) The Prime Minister may, on the recommendation of the concerned political party, appoint Assistant Ministers from amongst the members of Legislature-Parliament to assist any Minister in carrying out his/her responsibility.

40. Appointment of Non-Member of Legislature-Parliament as Minister: Notwithstanding anything contained in Articles 37 and 38, the Prime Minister may appoint on the basis of political consensus any person, who is not a member of Legislature-Parliament, as Deputy Prime Minister, Minister, State Minister or Assistant-Minister.

41. Remuneration and Other Privileges: The remuneration and other privileges of the Prime Minister, Deputy Prime Minister, Ministers, State Ministers and Assistant Ministers shall be as determined by an Act. Until so determined, it shall be as specified by the Government of Nepal.

42. Oath: The Prime Minister shall take his/her oath of office and secrecy before the Legislature-Parliament, and the Deputy Prime Minister, Ministers, State Ministers and Assistant Ministers shall take their oath of office and secrecy before the Prime Minister.

43. Conduct of the Business of the Government of Nepal: (1) The conduct of business of the Government of Nepal shall be carried out inconsistence to the aspiration of the united people’s movement, political consensus and culture of collation.

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

(3) No question shall be raised in any court as to whether or not rules pursuant to clause (2) above have been observed.

44. The Council of Ministers after the Constitution of Constituent Assembly: After the constitution of the Constituent Assembly, exercise of the Executive Power, constitution of the Council of Ministers and other matters related thereto shall, mutatis mutandis, be under the provisions referred to in this Part.

Part 6
Legislature-Parliament
45. Constitution of Legislature-Parliament: (1) There shall be a unicameral Legislature-Parliament in Nepal which shall consist of the following 330 members:
(a) 209 members of the seven political parties and other parties who are elected members of the House of Representatives and National Assembly existing immediate before the commencement of this Constitution,
Explanation: The phrase “Seven Political Parties” means Nepali Congress, NCP(UML), Nepali Congress (Democratic), Janamorcha Nepal, Nepal Sadbhawana (Anadidevi), Nepal Majdur Kisan Party and Samyukta Bam Morcha (United Left Front), which maintained political understanding on Kartik 22, 2063 (November 8, 2006),
(b) 73 members from and on behalf of NCP(Maoist),
(c) 48 members from among the Samyukta Bam Morcha, people based and professional organizations, class organizations and professional bodies, oppressed tribe, backward region, indigenous tribe, women and various political personalities nominated through understanding.
(2) Notwithstanding anything contained in clause (1) above, persons who were against the people’s movement shall not be in the Legislature-Parliament.
(3) Legislature-Parliament shall be conducted on the basis of the political understanding.
(4) The term of the Legislature-Parliament shall be expired after the first meeting of the Constituent Assembly is held.
(5) If any seat of a member of the Legislature-Parliament falls vacant, by any reasons, the vacancy shall be filled up by nomination from the same political party or group through which the member was representing, for the remaining period.
46. Qualifications for Membership: In order to become a member of the Legislature-Parliament, any person:
a) must be a citizen of Nepal,
b) must have attained at least twenty five years of age,
c) Should be committed towards the spirit of the peoples’ movement,
d) Should not hold an office of profit.
Explanation: For the purpose of this sub-clause (d), “office of profit” means any position, other than a political position, to be filled up by election or nomination for which a remuneration or economic benefit is paid out of a Government Fund.
47. Decision as to Disqualifications of Members: If a question arises as to whether a member of Legislature-Parliament is disqualified or has ceased to possess any of the qualifications set forth in Article 46, the final decision shall be made by the Legislature-Parliament.
48. Vacation of seat: The seat of a member of the Legislature-Parliament shall become vacant in the following circumstances:
a) If he/she resigns in writing,
b) If he/she does not possess the qualifications referred to in Article 46,
c) If the party concerned of which he/she was represented provides notification that he/she is no more in the party,
d) If the tenure of the Legislature-Parliament expires, or
e) If he/she dies.
49. Oath: Each members of Legislature-Parliament shall, before taking part for the first time in the Legislature-Parliament meeting, take an oath in the specified form.
50. **Speaker and Deputy Speaker of the Legislature-Parliament:** (1) The Legislature-Parliament shall elect a Speaker and a Deputy Speaker from among its members on political consensus. If an consensus cannot be reached, a majority of two-thirds of its total members shall elect them. If the office of the Speaker and Deputy Speaker falls vacant, the Legislature-Parliament shall fill up the vacancy through election from among its members.

(2) The Speaker and Deputy Speaker of the Legislature-Parliament shall not be the members of the same political party.

(3) In the absence of the Speaker of the Legislature-Parliament, the Deputy Speaker shall chair the meeting of the Legislature-Parliament.

(4) If the election of the Speaker and Deputy Speaker has not taken place, or if both the positions become vacant, the member who is the senior most by age amongst the members presented, shall preside over the meeting of the Legislature-Parliament.

(5) The office of the Speaker and Deputy Speaker shall become vacant in the following circumstances:

   a. if he or she ceases to be a member of the Legislature-Parliament,
   b. if he or she submits a written resignation,
   c. if a resolution is adopted, by a majority of two thirds of the total number of members existing for the time being in the Legislature-Parliament, to the effect that his or her conduct is not compatible with his or her position,

(6) The Deputy Speaker shall preside over the meeting at which deliberations are to be held on a resolution that the conduct of the Speaker is not compatible with his or her position. The Speaker shall be entitled to take part and vote in the deliberations on such a resolution.

51. **Summoning and Prorogation of Session:**

1) The Prime Minister shall for the first time, and thereafter the Legislature-Parliament shall summon the session of the Legislature-Parliament from time to time.

2) The Prime Minister shall, in consultation with the Speaker, prorogue the session of the Legislature-Parliament.

3) During the prorogation or recess of the Legislature-Parliament, if one fourth of the members make a representation that it is appropriate to convene a session or meeting, the Prime-Minister shall specify the date and time for such session or meeting within 15 days and the Legislature-Parliament shall meet or commence its session on the date and time thus fixed.

52. **Address by the Prime Minister:** The Prime Minister shall address the session of the Legislature-Parliament presenting the annual policy and programmes of the Government.

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

54. **Transaction of Business of the Meeting in case of vacancy of Members:** (1) The Legislature-Parliament shall have the power to act notwithstanding any vacancies in the seats of its members, and no proceedings shall become invalid even if it is subsequently discovered that a person not entitled to take part in the proceedings of the Legislature-Parliament had participated therein.
(2) A Minister, Minister of State or Assistant Minister who is not the member of Legislature-Parliament shall be entitled to attend the meeting of Legislature-Parliament or any of its Committee. Provided that they shall not have the voting power.

55. **Voting:** Except as otherwise provided for in this Constitution, all questions submitted for decision in the Legislature-Parliament shall be decided by a majority vote of the members present and voting. Normally, the presiding member shall not have the right to vote. Provided that he or she may exercise the casting vote in case of tie.

55 (a). **Vote of confidence:** (1) The Prime Minister, while he holds office, may, whenever he is of the opinion that it may be necessary or appropriate to obtain a vote of confidence from the members of the Legislature-Parliament, table a resolution to that effect in the Legislature-Parliament. (2) One-fourth of the total number of members of the Legislature-Parliament may table a written no-confidence motion against the Prime Minister. However provided that within six months no more than one no-confidence motion shall be presented upon the same Prime Minister. (3) The decision approving a resolution tabled pursuant to clause (1) and (2) shall be made by a majority of the total number of members of the Legislature-Parliament.

56. **Privileges:** (1) There shall be full freedom of speech in the meeting of the Legislature-Parliament and no member shall be arrested, detained or prosecuted in any court for anything expressed or for any vote cast in that meeting.

(2) The Legislature-Parliament shall have full power to regulate its business, and it shall be the exclusive right to decide whether or not any proceeding of the Legislature-Parliament is regular. No question shall be raised in any court in this regard.

(3) No comment shall be made about the good faith regarding any proceedings of the Legislature-Parliament and no publication and broadcasting of any kind shall be made about anything said 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 for publication of any document, report, vote or proceeding which is made under authority given by the Legislature-Parliament.

**Explanation:** For the purposes of clauses (1), (2), (3) and (4), the word “Legislature-Parliament” shall mean the Legislature-Parliament and any of its committee.

(5) No member of Legislature-Parliament shall 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 inform the person chairing the Legislature-Parliament.

(6) Any breach of privilege provided for in this Article shall be deemed to constitute contempt of the Legislature-Parliament and the Legislature-Parliament shall have the exclusive right to decide whether or not any breach of privilege of legislature has taken place.

(7) If a person is in contempt of the Legislature-Parliament, the person who is chairing the meeting to that effect may, after a decision by the meeting, admonish, warn or impose a sentence of imprisonment not exceeding three months or impose a fine of up to ten thousand rupees on such a person. If the fine is not paid by such a person, it shall be recovered as government dues.
Provided that if such a person submits an apology to the satisfaction of the Legislature-Parliament, it may either pardon him/her or remit or commute the sentence imposed on him/her.

(8) Other matters relating to privileges not mentioned in this Constitution shall be as determined by law.

57. Procedure Relating to the Conduct of Business: The Legislature-Parliament shall, subject to provisions of this Constitution, conduct its business on the basis of political consensus, and shall frame rules for maintaining order during its meetings and regulating the constitution, functions and procedures and for any other matters of the committees of the Legislature-Parliament. Until such time as rules are framed, the Legislature-Parliament shall establish its own rules of procedures.

57 a. Opposition Party: The status of Opposition Party and Opposition Leader of the Legislature-Parliament shall be provided according to law.

58. Committee: There shall be required numbers of committees and sub-committees in the Legislature-Parliament as provided for in its rules.

59. Constituent Assembly to Exercise the Power of the Legislature-Parliament: After the termination of tenure of the Legislature-Parliament pursuant to clause (4) of Article 44 the power of the Legislature-Parliament under this Constitution shall be exercised by the Constituent Assembly.

60. Restriction on discussion: (1) No discussion shall be held in the Legislature-Parliament on a matter which is under consideration in any court of Nepal, and about anything done by a Judge in course of performance of his or her judicial duties. Provided that nothing in this Article shall be deemed to hinder the expression of opinion about the conduct of a Judge during deliberations on an impeachment motion. (2) The provision made pursuant to clause (1) above, shall also be applicable to the Constituent Assembly.

61. Secretariat of Legislature-Parliament: (1) There shall be a secretariat to conduct and manage the business of the Legislature-Parliament. The establishment of such a Secretariat and other matters related thereto shall be as determined by law. The Government of Nepal shall make available the necessary personnel required to conduct and manage the business of the Legislature-Parliament.

62. Remuneration: The remuneration and facilities of the Speaker, Deputy Speaker, Member and Chairpersons of the Committees of the Legislature-Parliament shall be as provided for in law, and until so determined, it shall be as determined by the Government of Nepal.

Part 7
Constituent Assembly

63. Formation of the Constituent Assembly: (1) There shall be a Constituent Assembly constituted to formulate a new Constitution by the Nepalese people themselves, subject to the provisions of this Constitution. (2) After the commencement of this Constitution, the Election of the Constituent Assembly shall be held on the date as specified by the Government of Nepal. (3) The Constituent Assembly will take place equally based on the ratio of the population, geographical structures, specialization, and in Terai, on the basis of the percentage of population, and in accordance with the prevailing law, there will be elected through Mixed Electoral System and nominated members as follows:-
(a) Administrative districts shall be used for election district, equally based on the ratio of the population of the district and on the national population as determined by the last census. As provided by Article 154 of this Constitution, the Election Constituency Delimitation Commission determines the electoral constituencies and each election constituency shall elect one member according to prior determined rules of electoral procedure.

(b) Considering the whole country as one electoral constituency, a number of members equal to those elected under sub-clause (a) shall be elected through proportional electoral system on the basis of the votes to be given to the political parties.

(c) Seventeen members to be nominated by the interim Council of Minister, on the basis of consensus, from amongst the prominent persons of national life.

(3a) whatever provided in sub-clause (a) of clause (3) above, while determining electoral constituencies under that clause, the already existing electoral constituencies under the laws applied to the election of House of Parliament on 1999 (Last Parliamentary Election) in relation to the administrative districts shall remain as they are. However, electoral constituencies in Hills and Himalayan regions shall be increased on the basis of population growth. Similarly, the electoral constituencies in Madhesh (Low land) shall be increased tanking into consideration the administrative districts on the basis of the percentages of population.

(4) The principle of inclusiveness shall be taken into consideration while selecting the candidates by the political parties pursuant to sub-clause (a) of clause (3) above, and while making the list of the candidates pursuant to sub-clause (b) above, the political parties shall have to ensure proportional representation of women, Dalit, oppressed tribes/indigenous tribes, backwards, Madhesi and other groups, in accordance as provided for in the law.

Notwithstanding anything contained in this clause, in case of women there should be at least one third of total representation obtained by adding the number of candidature pursuant to sub-clause (a) of clause (3) to the proportional representation pursuant to sub-clause (b) of clause (3).

(5) The election of the members of the Constituent Assembly shall be held through secret ballots, as provided for in the law.

(6) For the purpose of election of the Constituent Assembly, every Nepali citizen who has attained the age of eighteen years by the end of Mangsir, 2063 (15th December 2006) shall be entitled to vote, as provided for in the law.

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

64. Term of the Constituent Assembly: Except otherwise dissolved earlier by a resolution passed by the Constituent Assembly, the term of the Constituent Assembly shall be two years from the date of its first meeting.

54 Original version: “(3) The Constituent Assembly shall consist of the following four hundred twenty five members, out of which four hundred and nine members shall be elected through Mixed Electoral System and sixteen members shall be nominated, as provided for in the law:— (a) two hundred and five members shall be elected from among the candidates elected on the basis of First-Past-the-Post system from each of the Election Constituencies existed in accordance with the prevailing law before the commencement of this Constitution, (b) two hundred and four members shall be elected under the proportional electoral system on the basis of the votes to be given to the political parties, considering the whole country as one election constituency. (c) sixteen members to be nominated by the interim Council of Ministers, on the basis of consensus, from amongst the prominent persons of national life.”
Provided that the term of the Constituent Assembly may be extended having passed a resolution by the Constituent Assembly, up to an additional six months period in case the task of drafting the Constitution is not completed due to the proclamation of a State of Emergency in the Country.

65. Qualifications of the Members: Any person should possess the following qualifications in order to become a member of the Constituent Assembly:
   (a) Nepali citizen,
   (b) attained at least twenty-five years of age,
   (c) not have been punished on any criminal charge of moral turpitude,
   (d) should not be disqualified under any other law,
   (d) not holding an office of profit.

Explanation: For the purpose of sub-clause (d), “office of profit” means any position, other than a political position, to be filled by election or nomination for which remuneration or economic benefit is paid out of a Government Fund.

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

67. Vacation of Seat of the Member: The seat of a member of the Constituent Assembly shall be deemed to be vacant in the following circumstances:
   (a) If he/she resigns in writing,
   (b) If he/she does not, or has ceased to, possess the qualifications referred to in Article 65,
   (c) If he/she, without notification to the constituent Assembly, remains absent for ten consecutive meetings of it,
   (d) If the party of which he/she was a member when elected provides notification in the manner set forth by law that he/she has abandoned the party, or notifies that he/she no longer holds the membership of the party,
   (e) If he/she dies.

Explanation: The provision contained in sub-clause (d) above shall not be applicable to the Chairperson or Vice Chairperson of the Constituent Assembly.

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

69. Meeting of the Constituent Assembly: (1) The first meeting of the Constituent Assembly shall be held, as summoned by the Prime Minister, within twenty-one days of the final results of the election of members of the Constituent Assembly having been made public by the election commission, and the subsequent meetings shall be held on such a date and place as prescribing by the person presided over the Constituent Assembly.
   (2) Notwithstanding anything contained in clause (1) above, if one-fourth of the members of the Constituent Assembly make an application, with reason, before the Chairperson of the Constituent Assembly stating that it is appropriate to convey a meeting of the Constituent Assembly, the Chairperson shall convene such meeting within fifteen days.

70. Procedure for Passing of Bill Relating to the Constitution: (1) The Constituent Assembly shall, in order to pass a Bill relating to the Constitution, carry out voting in the Preamble and each Article of such a Bill introduced before it.
(2) In order to carrying out the voting pursuant to clause (1) above, at least two-thirds of the total members of the Constituent Assembly existing for the time being should be present and the Bill should be passed unanimously.

(3) If unanimous decision pursuant to clause (2) above, regarding the Preamble or any Article of the Bill relating to the Constitution is not attained, the leader of the Parliamentary Party of the political parties representing the Constituent Assembly shall consult each other to achieve consensus in such matters.

(4) The consultation to be held pursuant to clause (3) above, should be completed within a maximum of fifteen days from such date wherein the unanimous decision could not be reached.

(5) If consultation is carried out pursuant to clause (4) above, re-voting for the Preamble or any Article of such a Bill shall be done within seven days from the date of the completion of such consultation.

(6) Even after carrying out the voting pursuant to clause (5) above, an unanimous decision is not reached as provided in clause (2) above, there shall be re-voting for such Preamble or Article for which an unanimous decision could not be reached, and in such voting, if at least two-thirds of the total membership of the Constituent Assembly existing for the time being were presented in the meeting, and out of them if at least two-third majority of the members voted in favour, it shall be deemed to have passed such Preamble or Article.

(7) For the purpose of this Article, during the voting regarding the Preamble and any Articles of the Bill relating to Constitution, introduced in the Constituent Assembly, if none of the members voted against the Preamble and any of its Articles, it shall be deemed to have reached in a unanimous decision.

71. Chairperson and Vice Chairperson of the Constituent Assembly: (1) The Constituent Assembly shall, before commencement of its work of formulating the Constitution, elect a Chairperson and a Vice Chairperson from among its members.

(2) In the election to be carried out pursuant to clause (1) above, the Chairperson and Vice Chairperson shall be elected from different political parties representing in the Constituent Assembly.

(3) If the election of the Chairperson and Vice Chairperson has not taken place pursuant to clause (1) above, the member of the Constituent Assembly who is by age the seniormost shall preside over the meeting of the Constituent Assembly.

(4) The Chairperson and Vice Chairperson shall, while performing their duty in accordance with this Constitution, act as a neutral person without being involved in favour or against any political parties.

72. Vacation of the Office of Chairperson and Vice Chairperson: (1) The office of the Chairperson and Vice Chairperson shall be vacant in the following circumstances:

a) if he/she submits a written resignation,

b) if he/she ceases to be a member of the Constituent Assembly,

c) if a resolution is passed by a majority of at least two-thirds of the total number of the members in the Constituent Assembly to the effect that his or her conduct is not compatible with his or her position., or

d) if he/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 to his/her position, and the Chairperson shall be entitled to take part and vote in the deliberations on such resolution.
73. **Quorum:** Except as otherwise provided in this Part, no quorum shall deemed to be achieved or no resolution shall be presented for decision unless at least one-fourth of the total number of members are present.
74. **Transaction of Business of the Constituent Assembly in the case of vacancy of Members:** The Constituent Assembly shall have the power to carryout its business notwithstanding any vacancies in the seat of its members, and no proceedings shall become invalid even if it is subsequently found that a person not entitled to take part in the proceedings had participated.
75. **Voting:** Except as otherwise provided in this Part, all questions submitted for decision in the Constituent Assembly shall be decided by a majority vote of the members present and voting. Normally the member presiding shall not have the right to vote. Provided that he/she shall exercise the casting vote in case of tie.
76. **Penalty for Unauthorized Presence or Voting:** If a person presents or votes in the meetings of Constituent Assembly or any of its committee as a member without taking an oath pursuant to Article 67, or knowing that he/she is not qualified for membership in the Constituent Assembly, he/she shall, on the ruling of the person chairing the meeting, be liable to a fine of five thousand rupees for every such presence or voting. The fine shall be recovered as government dues.
77. **Privileges:**

1. There shall be full freedom of speech in the meeting of the Constituent Assembly and no member shall be arrested, detained or prosecuted in any court for anything expressed or for any vote cast in that meeting.
2. The meeting of Constituent Assembly shall have full power to regulate its internal business, and it shall be the exclusive right to decide whether or not any proceeding of the Constituent Assembly is regular. No question shall be raised in any court in this behalf.
3. No comment shall be made about the good faith regarding any proceedings of the Constituent Assembly and no publication of any kind shall be made about anything expressed by any member which intentionally distorts or misinterprets the meaning of the expression.
4. No proceedings shall be initiated in any court against any person for publication of any document, report, vote or proceeding which is made under authority delegated by the Constituent Assembly.

**Explanation:** For the purposes of clauses (1), (2), (3) and (4) above, the words “meeting of the Constituent Assembly” shall mean the meeting of the Constituent Assembly and any of its committee.

5. No member of the Constituent Assembly shall be arrested during the session 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 official making such arrest shall immediately inform the person chairing the Constituent Assembly.
6. Any breach of privilege stated in this Article shall be deemed to constitute contempt of the Constituent Assembly and the breach of privilege of Constituent Assembly shall be considered as the contempt of the Constituent Assembly. The
Constituent Assembly shall have the exclusive right to decide whether or not any breach of privilege has taken place.

(7) If a person is in contempt of the Constituent Assembly, the person who is chairing the meeting to that effect may, after a decision by the meeting, admonish, warn or impose a sentence of imprisonment not exceeding three months or impose a fine of up to ten thousand rupees on such person. If the fine is not paid by such person, it shall be recovered as government dues.

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

(8) Other matters relating to privileges not mentioned in this Constitution shall be as determined by law.

78. Procedure Relating to the Conduct of Business: The Constituent Assembly shall, subject to the provisions of this Constitution, frame rules for conducting its business, maintaining order during its meetings and regulating the constitution, functions, procedures and any other matters of the committees. Until such time as rules are made, the Constituent Assembly shall establish its own rules of procedures.

79. Committee: There shall be required numbers of Committees and Sub-Committees in the Constituent Assembly as provided for in the law. Services of the experts may be obtained as per requirement.

80. Secretariat of the Constituent Assembly: (1) There shall be a secretariat to conduct 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 make available the necessary personnel required to conduct and manage the business of the Constituent Assembly.

81. Remuneration: The remuneration and privileges of the Chairperson, Vice Chairperson, Members and the Chairperson of the Committees of the Constituent Assembly shall be as provided for in the law, and until so provided, it shall be as determined by the Government of Nepal.

82. Dissolution of the Constituent Assembly: On the day of the commencement of the Constitution promulgated by the Constituent Assembly, the task given to the Constituent Assembly shall come to an end. Provided that until the election of the Legislature-Parliament held in accordance with the Constitution promulgated by the Constituent Assembly, the proceedings of the Legislature-Parliament shall be conducted as specified in the Constitution promulgated by the Constituent Assembly.

83. Act in the Capacity of the Legislature-Parliament: (1) Notwithstanding anything contained elsewhere in this Part, the Constituent Assembly shall also act as Legislature-Parliament until the Constituent Assembly remains in force, and the Constituent Assembly may constitute a separate committee to conduct necessary regular legislative functions.

(2) The Chairperson and Vice Chairperson of the Constituent Assembly shall be the Speaker and Deputy Speaker of the Legislature-Parliament respectively.

(3) The Secretariat of the Constituent Assembly and the personnel therein shall also be the Secretariat and personnel of the Legislature-Parliament.
(4) When acting in the capacity of the Legislature-Parliament by the Constituent Assembly, the provisions contained in Part 9 shall be applicable to the Assembly with necessary modifications.

PART 8
Legislative Procedure

84. Power to Introduce a Bill: (1) A Bill may be introduced in the House by any member of the Legislature-Parliament.

Explanation: For the purpose of this Part “House” means House of Legislature-Parliament and “member” means member of the Legislature-Parliament.

(2) A Finance Bill and a Bill concerning the security agencies, including Nepal Army, the Armed Police Force, Nepal Police, shall be introduced only as a Government Bill.

(3) “Finance Bill” means a Bill concerning any or all of the following subjects:

(a) the imposition, collection, abolition, remission, alteration or regulation of the 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 raising of loans or the giving of guarantees by the Government of Nepal or any matter pertaining to the amendment of the laws concerning the financial liabilities 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 the grant amount, or audit of the accounts of the Government of Nepal; or

(e) matters directly related to sub-clauses (a) to (d),

Provided that a Bill shall not be deemed to be Finance Bill by reason only that it provides for the payment of any fees such as license fee, application fee, renewal fee, or it provides the provision for imposition of any penalty or imprisonment, or by reason that it provides for the imposition of any tax, duties or fees by a local authority.

(4) If any question arises whether a Bill is a Finance Bill or not, the decision of the Speaker of the Legislature-Parliament shall be final.

85. Procedure for Passage of Bills: (1) Any member, who wants to introduce a Bill in the House, a prior notice of one week shall have to give to the Secretary General or Secretary of the Legislature-Parliament to that effect.

Provided that a prior notice of five day shall be sufficient for the Government Bill.

(2) The copies of the Bill shall be made available to every Member two days before the introduction of the Bill.

(3) The member, who has introduced the Bill, may present a proposal for the consideration of the Bill in the House.

(4) If the proposal prescribed in clause (3) above is accepted, the clause-wise discussion of the Bill shall be held in the House or in the concerned Committee.

(5) The member introducing the Bill shall, after the completion of the clause-wise discussion on the Bill, if it has been discussed in the House, and after the completion of the discussion on the report of the Committee, if the clause-wise discussion has been held in the Committee, present a proposal to be passed by the Legislature-Parliament.
6. If the proposal presented pursuant to clause (5) above is passed by the simple majority of the total number of the members of the House, the Bill shall deemed to have passed.

86. Withdrawal of Bills: A Bill may be withdrawn by the member introducing it with the approval of the House.

87. Certification of the Bill: A Bill passed by the House shall become an Act after certification by the Speaker of the Legislature-Parliament.

88. Ordinance: (1) If at any time, except when the Legislative-Parliament is in session, the Government of Nepal is satisfied that circumstances exist which render it necessary to take immediate action, without prejudicing the provisions set forth in this Constitution, the government of Nepal may promulgate any Ordinance as deemed necessary.

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

Provided that every such Ordinance:
(a) shall be tabled at the next session of Legislature-Parliament, and if not passed by the session, it shall ipso facto cease to be effective;
(b) may be repealed at any time by the Government of Nepal; and
(c) Shall, unless rendered ineffective or repealed under sub-clause (a) or (b), ipso facto, cease to have effect at the expiration of sixty days from the commencement of a session of 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 or guarantee be given by the Government of Nepal except in accordance with law.

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

Provided that except in the case of private religious endowments, the moneys of other religious endowments, shall be regulated by laws to be enacted.

91. Expenditures From the Consolidated Fund or a Government 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 Act,
(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 expenditure.

Provided that matters relating to the Contingency Fund shall be governed in accordance with the provision of Article 97.
92. **Expenditure Chargeable on the Consolidated Fund**: The expenditures relating to the following matters shall be charged on the Consolidated Fund:

(a) the amount required as remuneration and privileges and pension payable to the Chief Justice of Nepal and other Judges of the Supreme Court,

(b) the amount required as remuneration and privileges payable to the following officials: (1) the Speaker and Deputy Speaker of the Legislature-Parliament,

(2) the Chairperson and Vice chairperson of the Constituent Assembly,

(3) the Chief Commissioner and other Commissioners of the Commission for the Investigation of Abuse of Authority,

(4) the Auditor General,

(5) the Chairperson and members of the Public Service Commission,

(6) the Chief Election Commissioner and other Election Commissioners, and

(7) Chairperson and members of the National Human Rights Commission.

d) all charges relating to debts for which the Government of Nepal is liable,

e) any sum required to be paid for any judgment or decree of 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 Finance Minister shall, with respect to every fiscal year, present before the Legislature-Parliament an annual estimates including 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 presented pursuant to clause (1) above shall also accompany by a statement of the expenses allocated to each 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 by an Appropriation Act shall be specified under appropriate heads in an Appropriation Bill.

95. **Supplementary Estimates**: (1) The Finance Minister shall, in respect of any financial year, present supplementary estimate, if it is found:

(a) that the sum authorized to be spent for a particular service by the Appropriation Act for the current fiscal year is insufficient, or that a need has arisen for expenditure upon new services not provided for by the Appropriation Act for that year, or

(b) that the expenditures made during that fiscal year are in excess of the amount authorized by the Appropriation Act.

(2) The sums included in the supplementary estimates shall be specified under separate 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 submitted until the estimates of revenues and expenditures have been presented in accordance with the provisions of Article 92 and the sums involved in the Vote on Account shall not exceed one-third of the estimate of expenditure for the financial year.

(3) The expenditure incurred in accordance with the Vote on Account Act shall be included in the Appropriation Bill.

97. Votes of Credit: Notwithstanding anything contained elsewhere in this Part, if owing to a local or national emergency due to either natural causes, a threat of external aggression or internal disturbances or other reasons, and that it is impractical or inexpedient in view of the security or interest of the State to specify the details required under Article 92, the Finance Minister may present a Vote of Credit Bill before the Legislature-Parliament giving only a description of the proposed expenditures.

98. Contingency Fund: An Act may create a Contingency Fund into which shall be paid from time to time such moneys as may be determined by law. Such Fund shall be under the control of the Government of Nepal. Any unforeseen expenditures shall 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 Procedure: Matters relating to the transfer of moneys appropriated from one head to another and other financial procedures shall be regulated by an Act.

PART 10
Judiciary

100. Courts to Exercise Powers Related to Justice: (1) Powers relating to justice in Nepal shall be exercised by courts and other judicial institutions in accordance with the provisions of this Constitution, the laws and the recognized principles of justice.

(2) Following the concept, norms and values of the independent judiciary, and bearing in mind the aspiration of the people’s movement and democracy, the judiciary of Nepal shall be committed to this Constitution.

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) above, the law may also constitute and establish special types of courts, judicial institutions or tribunals for the purpose of proceeding and hearing special types of cases.

Provided that no court, judicial institution or tribunal shall be constituted for the purpose of hearing a particular case.

102. Supreme Court: (1) The Supreme Court shall be the highest court in the judicial hierarchy.

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

(3) The Supreme Court shall be a Court of Record. It may initiate proceedings and impose penalties in accordance with law for contempt of itself and of its subordinate courts or judicial institutions.
Except on the matters which fall under the jurisdiction of the Constituent Assembly Court, the Supreme Court shall have the final power to interpret this Constitution and other prevailing laws.

The Supreme Court shall, in addition to the Chief Justice of Nepal, consist of up to a maximum of fourteen other Judges. If at any time, the number of existing Judges becomes insufficient due to an increase in the number of cases in the Supreme Court, ad hoc Judges may be appointed for a fixed term.

103. Appointment and Qualifications of Judges of the Supreme Court: (1) The Prime Minister shall appoint the Chief Justice of the Supreme Court on the recommendation of the Constitutional Council, and the Chief Justice shall appoint other Judges of the Supreme Court on the recommendation of the Judicial Council. The tenure of office of the Chief Justice shall be six years from the date of appointment, pursuant to sub-clause (b) of clause (1) of Article 105.

(2) Any person who has worked as a Judge of the Supreme Court for at least three years is eligible for appointment as Chief Justice.

(3) Any person who has worked as a Judge of an Appellate Court or in any equivalent post of the judicial service for at least seven years, or has worked as a gazetted first class or above of the judicial service for at least twelve years, or has practised law for at least fifteen years as a law graduate advocate or senior advocate, or a distinguished jurist who has worked for at least fifteen years in the judicial or legal field is 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/her office due to illness or any other reason, or he/she cannot be present in office due to a leave of absence or his/her being outside of Nepal, the senior-most Judge shall act as the Acting Chief Justice.

(5) The Chief Justice and other Judges of the Supreme Court shall hold offices until they attained the age of sixty five years.

104. Conditions of Service and Privileges of the Chief Justice and Judges: (1) The Chief Justice of the Supreme Court and the permanent Judges of the Supreme Court who have worked minimum for five years are entitled to pension after retirement from their service as provided in law.

(2) Except as otherwise provided in this Constitution, the remuneration, leave, allowances, pension and other conditions of service of the Chief Justice and other Judges of the Supreme Court shall be regulated for in the law.

(3) Notwithstanding anything contained in clauses (1) and (2) above, the Chief justice or Judges of the Supreme Court who has been removed from his/her office through impeachment, shall not be entitled to any gratuities and pensions.

(4) The remuneration, privileges and other conditions of service of the Chief Justice and other Judges of the Supreme Court, shall not be altered to their disadvantage.

105. Removal of the Chief Justice and Judges of the Supreme Court: (1) The Chief Justice or other Judges of the Supreme Court shall be deemed to have been relieved from their office in the following conditions:

a) if the Chief Justice submits his/her resignation before the Council of Ministers and a Judge submits his/her resignation before the Chief Justice,

b) if he/she attains the age of sixty five years.

c) if an impeachment resolution is passed by the Legislature-Parliament,

d) if he/she dies.
(2) A proposal of impeachment may be presented before the Legislature-Parliament against the Chief Justice or any other Judges on the ground that they are unable to perform their duties for the reasons of incompetence, misbehaviour, failure to discharge the duties of his/her office in good faith, physical or mental condition, and if by a two-thirds majority of the total number of its members existing for the time being passes the resolution, he/she shall ipso facto be relieved from his/her office.

(3) The Chief Justice or the Judge, against whom impeachment proceedings are being initiated pursuant to clause (2) above, shall not perform the duties of his/her office until the proceedings are final.

106. Chief Justice or Judges not to be Engaged in any other Assignment: (1) The Chief Justice or Judges of the Supreme Court shall not be engaged in or deputed to any assignment except that in the post of a Judge.

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

(2) Any person who has once held the office of Chief Justice or Judges of the Supreme Court shall not be eligible for appointment in any Government Service, except for the post as provided by Sub-clause (a) of clause (1) of Article 131, nor shall he/she be entitled to practice law before any office or court.

107. Jurisdiction of the Supreme Court: (1) Any Nepali citizen 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 extra-ordinary power shall rest with the Supreme Court to declare that law as void either ab initio or from the date of its decision if it appears that the law in question is inconsistent with the Constitution.

(2) The Supreme Court shall, for the enforcement of the fundamental rights conferred by this Constitution, 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 rights or settle the 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 interfere, under this clause with the proceedings of the Legislature-Parliament concerning the violation of privileges and penalties imposed there to.

(3) The Supreme Court shall have original and appellate jurisdiction, confirmation of verdicts (sadhak), review of the cases or hearing of petitions as defined by law.

(4) The Supreme Court may review its own judgments or final orders subject to the conditions and in the circumstances prescribed by law. In such review, it shall be done by the judges who were not engaged earlier in making the said judgment.
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 institutions subordinate to the Supreme Court shall be determined by law subject to this Constitution.


(2) Any Nepali citizen, who has a Bachelor Degree in law and has worked as a District Judge or worked in any post of gazetted first class of the Judicial Service for a period of at least seven years; or has practised law having graduate degree in law as a senior advocate or advocate for at least ten years; or has taught law or conducted research thereon, or has worked in any other field of law or justice for at least ten years, is eligible for appointment as Chief Judge or other Judge of an Appellate Court.

(3) Any Nepali citizen, who has a Bachelor’s Degree in law and has worked for at least three years as a gazetted second class officer in the Judicial Service, or has practiced law for at least eight years as a law graduate advocate, is eligible for appointment as a District Judge.

(4) In appointing a law graduate advocate for the post of District Judge in accordance with clause (3) above, only the person, who has passed the written and oral examination conducted by the Judicial Council, shall be appointed. Such examination system and other procedures shall be as prescribed by law.

(5) The Judicial Council shall consider, inter alia, qualification, capacity, experience, dedication and contribution to justice, reputation in public life, high moral character of a person and make recommendations accordingly for appointment to the post of judge of the Appellate Court and the District Court.

(6) Unless the subject or context otherwise requires, the word “Judge” as mentioned in this Article and ensuing Articles shall mean and include an Additional Judge.

(7) The remuneration, allowances, pension, leave, gratuity, privileges and other conditions of service of the Chief Judge and other Judges of an Appellate Court and the judges of District Court shall be as determined by law.

(8) The remuneration, privileges and conditions of service of the Chief Judge, other Judges of Appellate Court and the Judges of the District Court shall not be altered to their disadvantage.

(9) Notwithstanding anything contained in clause (7) above, a Judge of the Appellate Court and the District Court, who is removed from his/her office in accordance with Sub-clause © of clause (10), shall not be entitled to any gratuities and pension.

(10) The Judges of Appellate Court or District Court shall be removed from their office in the following circumstances:

a) if he/she submits written resignation before the Chief Justice,

b) if he/she attains the age of sixty three years,

c) if he/she is removed by the Chief Justice in accordance with a decision of the Judicial Council for his/her removal for reasons of incompetence, misbehavior or failure
to discharge the duties of his/her office in good faith, incapable to discharge the duties due to physical or mental condition, or deviation to justice. The Judge of the Appellate Court and District Court who is facing charge pursuant to this sub-clause shall be given a reasonable opportunity to defend himself/herself; and for this purpose, the Judicial Council may constitute a “Committee of Inquiry” for the purposes of recording the statement of the Judge, collecting evidence and submitting its findings thereof. The working procedure of the Committee shall be as regulated by law.

d) if he/she dies.

(11) The Judge of the Appellate Court or District Court, against whom such proceedings are being initiated pursuant to sub-clause © of clause (10) above, shall not perform the duties of his/her office until the proceedings are final.

110. Judges of the Appellate Court and District Court not to be Transferred to, or Engaged in any other Assignment: (1) A judge shall not be transferred to, engaged in or deputed to any assignment except that of a Judge. Provided that the Government of Nepal may, in consultation with the Judicial Council, depute for a specified period a Judge of the Appellate Court and the District Court to work concerning judicial inquiry, or to any legal or judicial investigation or research, or to any other work of national concern. With regard to the Judges of the Appellate Court or District Court, the Chief Justice, in consultation with the Judicial Council, may depute them to the above mentioned assignments, including election works.

(2) The Chief Justice, on the recommendation of the Judicial Council, may transfer the Judges of the Appellate Court or District Court from one court to another.

(3) The Chief Justice may send a judge of any Court on a deputation for a specified period to work as judge of another court of similar level taking into consideration the number of cases and subject matter of the cases to be resolved.

(4) The Supreme Court may authorize a judge, who is designated in one region, to issue preliminary or interim orders through electronic media or other mediums, in the course of dealing with cases, to another nearest court of similar level taking into consideration the geographical situation, as provided for in the law.

111. Transfer of Cases: If the Supreme Court is satisfied that the dispensation of justice on a case registered in a court may be affected if heard by that court, the Supreme Court may order another court of similar level to hear such case.

112. Responsibility of the Chief Justice: The Chief Justice shall have the ultimate responsibility to make the administration of justice effective, and for this purpose he/she may, subject to this Constitution and other laws, give necessary instructions to the Supreme Court and other subordinate courts.

113. Judicial Council: (1) There shall be a Judicial Council to make recommendations and give advice in accordance with this Constitution concerning the appointment of, transfer of, disciplinary action against, and dismissal of Judges, and other matters relating to judicial administration, which shall consist of the followings as its Chairperson and members:-

(a) the Chief Justice, Chairperson
(b) the Minister of Justice, member
(c) a senior advocate, or an advocate who has at least twenty years of experience, to be appointed by the Chief Justice on the recommendation of the Nepal Bar Association, member
(d) a person to be nominated by the Prime Minister from amongst the jurists, member
(c) the senior-most Judge of the Supreme Court, member

Explanation: For the purpose of this Part, the word “Minister” shall mean and include a
Minister of State who takes separate responsibility of the Ministry.

(2) The term of office of the member referred to in sub-clauses © and (d) of clause
(1) above, shall be four years and their remuneration and privileges shall be equal to that
of the Judge of the Supreme Court.

(3) The member referred to in sub-clause © and (d) of clause (1) above, may be
removed from his/her office on the same grounds and in the same manner as has been
set forth for the removal of a Judge of the Supreme Court.

(4) The Chairperson and members of the Judicial Council may obtain and study the
documents and files of the case related to the complaint lodged against a judge, and may
furnish information thereof to the Judicial Council.

(5) The Judicial Council may, while carrying out preliminary investigation on a
complaint received against a judge constitute a Committee of Inquiry, if it has found
that a detailed investigation by the expert is required.

(6) The 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 the
Gazetted Officers of the Judicial Service or in 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, for the purpose of permanent recruitment to gazetted posts of the Judicial
Service from persons who are not already in the Government Service or from persons
being promoted from non-gazetted to gazetted posts within the Judicial Service, the
Government of Nepal shall act on the recommendation of the Public Service
Commission.

(2) The Judicial Service Commission shall consist of the following as its Chairperson
and members:-

a) the Chief Justice, Chairperson
b) the Minister of Justice, member
c) the Senior-most Judge of the Supreme Court, member
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: It shall be the duty of the Government of Nepal
and the offices and officials subordinate to the Government of Nepal to act in aid of the
Supreme Court and other courts in carrying out the functions of dispensation of justice.

116. Orders and Decisions of Courts to be Binding: (1) All shall abide by the orders
and decisions made in the course of the hearing of a suit by courts.

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

117. Annual Report: (1) Each year, the Supreme Court shall submit its annual report
to the Prime Minister, and the Prime Minister shall make arrangement to submit such
reports before Legislature-Parliament.
(2) The annual report to be submitted in accordance with clause (1) above shall contain inter alia the following particulars:

(a) the quantitative descriptions of the cases registered in the Supreme Court and other subordinate courts,
(b) the number of disposed and pending cases, out of the of cases registered as stated in sub-clause (a) above, and the reason for pending thereon,
(c) details of new precedents propounded by the Supreme Court,
(d) number of cases reviewed by the Supreme Court,
(e) description of the judicial comment made by the Supreme Court, if any, on the matters of competency regarding the conduct of judicial duty of judge of a court subordinate to it,
(f) amount of fines and penalties reimbursed,
(g) description on the implementation of a decision,
(h) the budget appropriated to the Supreme Court and subordinate courts, and statement of expenditures.

(3) While submitting the annual report pursuant to clause (1) above, the Supreme Court shall also include the details of the works performed by the Judicial Council and the Judicial Service Commission.

118. Constituent Assembly Court: (1) A Constituent Assembly Court shall be constituted to resolve the complaints regarding election.
(2) The constitution, jurisdiction and other matters of the Constituent Assembly Court pursuant to clause (1) above, shall be as determined by law.
(3) Notwithstanding anything contained elsewhere in this Constitution, unless a petition is filed in the manner prescribed by law in the court prescribed under clause (1) above, no question shall be raised in any court regarding any election to the member of Constituent Assembly.
(4) Notwithstanding anything contained elsewhere in this Constitution, once the process of election for the Constituent Assembly has commenced, no question shall be raised in any court that hinders the 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 to be called the Commission for the Investigation of Abuse of Authority of Nepal consisting of a Chief Commissioner and a number of other Commissioners as may be required. If apart from the Chief Commissioner other Commissioners are appointed, the Chief Commissioner shall act as Chairperson of the Commission for the Investigation of Abuse of Authority.
(2) The Prime Minister shall, on the recommendation of the Constitutional Council, appoint the Chief Commissioner and other Commissioners.
(3) Subject to the proviso under sub-clause (a) of clause (7), the term of office of the Chief Commissioner and other Commissioners shall be six years from the date of appointment.
Provided that:
(a) if before the expiry of his/her term, the Chief Commissioner or a Commissioner attains the age of sixty five, he/she shall be retired.
(b) the Chief Commissioner or a Commissioner may be removed from his/her office
on the same grounds 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 Commissioner or a Commissioner shall be deemed vacant under the following circumstances:—
   (a) if he/she submits a written resignation to the Prime Minister,
   (b) if pursuant to clause (3), his/her term expires or he/she is removed from his/her office,
   c) if he/she dies.

5) No person shall be eligible to be appointed as the Chief Commissioner or a Commissioner unless he/she possesses the following qualifications:—
   (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 experience in the field of accounting, revenue, engineering, law, development or research, and a distinguished person,
   (d) has attained of forty five years of age, and
   (e) has possessed a 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 other Government Service.
   Provided that:
   a) nothing in this Clause shall be deemed to be a bar to 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/her term of office shall be computed as to include his/her tenure as Commissioner as well,
   b) nothing in this clause shall be deemed to be a bar to appointment to any position of a political nature, 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 recommendations after carrying out studies 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, improper conduct or corruption by a person holding any public office.
   Provided that this Clause shall not be applicable to any official in relation to whom this Constitution itself separately provides for such action, and to any officials to whom other law has separately made special provision.
   (2) An inquiry and investigation may be conducted or cause to be conducted against any officials of the Constitutional Bodies removed from their office upon passing an impeachment resolution on the ground of misbehaviour, any Judges removed by the Judicial Council on similar charges, and the person, to be prosecuted under the Army Act, after they are removed from offices, in accordance with the law.
(3) If the Commission for the Investigation of Abuse of Authority finds, upon inquiry or investigation carried out pursuant to clause (1) above, that any person holding any public office has misused his authority by committing an act which is defined by law as improper conduct, it may admonish such person, or forward a recommendation to the concerned authority in writing for taking departmental action or any other necessary action as prescribed by law.

(4) If the Commission for the Investigation of Abuse of Authority finds, upon inquiry or investigation carried out pursuant to clause (1) above, that a person holding any public office has committed an act which is defined by law as corrupt, it may lodge or caused to be lodged a case against such person or any other person involved therein in a court with jurisdiction in accordance with law.

(5) If the Commission for the Investigation of Abuse of Authority finds, upon inquiry or investigation carried out pursuant to clause (1) above, that the nature of the work to be carried out by the person holding any public office falls under the jurisdiction of another authority or bodies, it may forward a recommendation to the concerned authority or body in writing for necessary action.

(6) Subject to this Constitution, other functions, duties, powers and procedures of the Commission for the Investigation of Abuse of Authority shall be as determined by law.

(7) The Commission for the Investigation of Abuse of Authority may delegate any of its powers, functions and duties relating to the inquiry, investigation or lodging cases, to the Chief Commissioner, Commissioner or any employee of the Government of Nepal to be exercised and complied with the condition as to specified.

121. **Annual Report:**

1) The Commission for the Investigation of Abuse of Authority shall submit an annual report to the Prime Minister on the works it has performed in accordance with this Constitution, and the Prime Minister shall make arrangement to submit such reports before Legislature-Parliament.

2) The annual report to be submitted in accordance with clause (1) above shall contain inter alia the total number of complaints lodged during the year at the Commission for the Investigation of Abuse of Authority; the number of cases, after completing the investigation, cases filed at the court with jurisdiction in accordance with law, and closed thereby; the number of cases, relating to improper conduct, forwarded to admonish the person, or making recommendations in writing for taking departmental or any other necessary action; the achievement obtained in preventing corruption and the prescription for the improvement to be carried out in the future.

Part 12

**Auditor General**

122. **Auditor General:**

1) There shall be an Auditor General of Nepal.

2) The Auditor General shall be appointed by the Prime Minister on the recommendation of the Constitutional Council.

3) Subject to the proviso under sub-clause (a) of clause (7), the term of office of the Auditor General shall be six years from the date of appointment.

Provided that:

a) if before the expiry of his/her term, the Auditor General attains the age of sixty five, he/she shall be retired.
(b) the Auditor General may be removed from his/her office on the same grounds 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 Auditor General shall be deemed vacant in the following circumstances:
(a) if he/she submits a written resignation to the Prime Minister,
(b) if pursuant to clause (3) his/her term expires or he/she is removed from his/her office,
(c) if he/she dies.

(5) No person shall be eligible to be appointed as the Auditor General unless he/she possesses the following qualifications:
(a) holds a Bachelor’s Degree in Management, Commerce or Accounts from a university recognized by the Government of Nepal, or has worked as a Special Class Officer of the Government of Nepal after successfully completing the Chartered Accountants examination, or has experience in the field of auditing of not less than twenty years;
(b) is not a member of any political party immediately before the appointment;
(c) has attained forty five years of age, and
(d) has possessed 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/she holds office, be altered to his/her disadvantage.

(7) A person once appointed as the Auditor General shall not be eligible for appointment in other Government services. Provided that nothing in this clause shall be a bar to appointment to any position of a political nature, 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 recommendations after carrying out studies or research on any subject.

123. Functions, Duties and Powers of the Auditor General: (1) The accounts of the Supreme Court, Legislature-Parliament, Constituent Assembly, Commission for the Investigation of Abuse of Authority, Auditor General, Public Service Commission, Election Commission, National Human Rights Commission, Office of Attorney General and other offices of Constitutional Bodies, the Nepal Army and Armed Police or the Nepal Police as well as of all other government offices and courts shall be audited by the Auditor General in the manner determined by law, with due considerations given to the regularity, economy, efficiency, effectiveness and the propriety thereof.

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

(3) The Auditor General shall, at all times, have access to documents concerning the accounts for the purpose of carrying out the functions stipulated in clause (1) above. It shall be the duty of the head of the concerned office to provide all such documents or information which may be demanded by the Auditor General or his/her employees.
(4) The accounts to be audited pursuant to clause (1) above shall, subject to the relevant law, be maintained in such form as prescribed by the Auditor General.

(5) In addition to the accounts of the offices referred to in clause (1) above, 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 Prime Minister an annual report on the works it has performed, and the Prime Minister shall make arrangement to submit such reports before Legislature-Parliament.

(2) The annual report to be submitted in accordance with clause (1) above shall contain, inter alia, the offices wherein the Auditor General has carried out audits in that year, the situation of irregularities find out by the audit; the efforts made to settle irregularities and the achievements obtained therein; details of the cases seemed as corrupt in nature and required to be further investigation, forwarded to the Commission for Investigation of Abuse of Authority in writing; and the reforms to be carried out in future regarding the audit.

Part 13
Public Service Commission

125. Public Service Commission: (1) There shall be a Public Service Commission of Nepal consisting of a Chairperson and a number of other members as may be required.

(2) The Prime Minister on the recommendation of the Constitutional Council shall appoint the Chairperson and other members of the Public Service Commission.

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

(4) Subject to the proviso under sub-clause (a) of clause (8), the term of office of the Chairperson and other members of the Public Service Commission shall be six years from the date of appointment.

Provided that:

(a) if before the expiry of his/her term, the Chairperson and other members of the Public Service Commission attains the age of sixty five, he/she shall be retired.

(b) the Chairperson and other members of the Public Service Commission may be removed from his/her office on the same grounds 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 other members of the Public Service Commission shall be deemed vacant in the following circumstances:

(a) if he/she submits a written resignation to the Prime Minister,

(b) if pursuant to clause (4) his/her term expires or he/she is removed from his/her office,

(c) if he/she dies.

(6) No person shall be eligible to be appointed as Chairperson or member of the Public Service Commission unless he/she:

a) holds a Post Graduate 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) has possessed high moral character.

(7) The remuneration and other conditions of service of the Chairperson and the 
member 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 to the office of the Chairperson and the member of the 
Public Service Commission shall not be eligible for appointment in other Government 
services.

Provided that:

(a) nothing in this Clause shall be deemed to be a bar to appointment of a member 
of the Public Service Commission as Chairperson thereof, and when a member is so 
appointed as the Chairperson, his/her term of office shall be computed as to include 
his/her tenure as member as well, and

(b) nothing in this clause shall be deemed to be a bar to appointment to any position 
of a political nature, 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 recommendations after carrying out 
studies or research on any subject.

126. Functions, Duties and Powers of the 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 Civil Service posts.

Explanation: For the purposes of this Article, all services and positions in the 
Government of Nepal shall be deemed included within the Civil Service, except Army 
Officers or Soldiers and the service and positions of Armed Police or Police personnel, 
and such other services and positions as are excluded from the Civil Service or positions 
by any law.

(2) Permanent appointment to any position in the Civil Service which carries the 
benefit of pension shall not be made except in consultation with the Public Service 
Commission.

(3) The Public Service Commission shall be consulted on the following subjects:

a) matters concerning the law relating to the conditions of service of the Civil 

Service,
b) the general principles to be followed in the course of appointment to, promotion 
to, and departmental action of the Civil Service or positions,
c) matters concerning the suitability of any candidate for appointment to a Civil 

Service position for a period of more than six months,
d) matters concerning the suitability of any candidate for transfer or promotion 

from one service to another within the Civil Service or from any other Government 

service to the Civil Service,
e) matters concerning the permanent transfer or promotion of any employee, 
working in any position of an organization which is not required to consult with the 
Public Service Commission on matters of appointment, to any position for which 
consultation with the Public Service Commission is required, and

f) Matters relating to departmental actions proposed against any Civil servant.
(4) Notwithstanding anything contained in clause (3) above, matters falling within
the purview of the Judicial Service Commission pursuant to Article 144 shall be
governed by that Article.

(5) The Public Service Commission shall be consulted for the general principles to
be followed in the course of appointment and promotion of the Military Service,
Armed Police Service or Police Service.

(6) The Public Service Commission may provide an advice, if requested by any
Public Enterprises, with regard to the prevailing regulations relating to the terms and
conditions of service of their employee, and with regard to the general principles to be
followed in the course of appointment to, promotion to, and departmental action of such
Services.

Explanation: For the purpose of this Article the word “Public Enterprises” means any
corporate body in which the Government of Nepal owns and control more than fifty
percent of the shares or the 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, to be exercised and complied with the conditions as specified.

(8) Subject to this Constitution, other functions, duties and working procedures of
the Public Service Commission shall be as determined by law.

127. Annual Report: (1) Each year, the Public Service Commission shall submit to
the Prime Minister an annual report on the works it has performed, and the Prime
Minister shall make arrangement to submit such reports before Legislature-Parliament.

(2) The annual report to be submitted in accordance with clause (1) above, shall
contain, inter alia, the description on the examinations conducted by the Public Service
Commission throughout the year for selecting candidates, candidates succeeded in such
examinations, advice provided to various agencies, consultation rendered with regard to
departmental action and punishment to Civil Servant and the follow-up thereto,
consultation provided, if any, for the application of the general principles to be followed
in the course of appointment to, promotion to, and departmental action concerning the
Government Service, and the matters relating to the reforms of the Civil Service in the
future.

PART 14
Election Commission

128. Election Commission: (1) There shall be an Election Commission in Nepal
consisting of a Chief Election Commissioner and up to four other Commissioners. If
apart from the Chief Election Commissioner other Election Commissioners are
appointed, the Chief Election Commissioner shall act as the Chairperson of the Election
Commission.

(2) The Prime Minister shall, on the recommendation of the Constitutional Council,
appoint the Chief Election Commissioner and the Election Commissioners.

(3) Subject to the proviso under sub-clause (a) of clause (7), the term of office of the
Chief Election Commissioner and the Election Commissioners shall be six years from
the date of appointment.

Provided that:

(a) If before the expiry of his/her term, the Chief Election Commissioner and the
Election Commissioner attains the age of sixty five, he/she shall be retired.
(b) the Chief Election Commissioner and the Election Commissioner may be removed from his/her office on the same grounds 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 an Election Commissioner shall be deemed vacant in the following circumstances:
(a) if he/she submits a written resignation to the Prime Minister,
(b) if pursuant to clause (3) his/her term expires or he/she is removed from his/her office,
(c) if he/she dies.

(5) No person shall be eligible to be appointed as the Chief Election Commissioner or an Election Commissioner unless he/she:
(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) has possessed high 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 to the office of the Chief Election Commissioner or an Election Commissioner shall not be eligible for appointment in other Government Services.
Provided that:
(a) nothing in this clause shall be deemed to be a bar to the appointment of an Election Commissioner as Chief Commissioner, and when a Commissioner is so appointed as the Chief Commissioner, his/her term of office shall be computed as to include his/her term as Commissioner as well;
(b) nothing in this clause shall be deemed to a bar to appointment to any position of a political nature, 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 recommendations after carrying out studies or research on any subject.

129. Functions, Duties and Powers of the Election Commission: (1) The Election Commission shall, subject to the provisions of this Constitution and other laws, conduct, supervise, direct and control the elections to Constituent Assembly, Referendum to be held pursuant to Article 157 of this Constitution, and the Local Authorities. For these purposes, the Election Commission shall prepare the electoral rolls of voters.
(2) If, after nominations for election to Constituent Assembly have been filed but before the election is completed, a question arises as to whether a candidate is disqualified or has ceased to possess the qualifications set forth in Article 65, final decision thereon shall be made by the Election Commission.
(3) The Election Commission may delegate any of its functions, duties and powers to the Chief Election Commissioner, a Commissioner or any employee of the Government of Nepal to be exercised and complied with subject to the conditions as specified.
Subject to this Constitution, other functions, duties and working procedures of the Election Commission shall be as regulated by law.

130. The Government of Nepal to Provide Necessary Employees to the Election Commission: The Government of Nepal shall provide necessary employees and other things as may be required to perform the functions of the Election Commission 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 in Nepal consisting of the following Chairperson and the members:
(a) One person from amongst the retired Chief Justices or Judges of the Supreme Court who have made an outstanding contribution for the protection and promotion of human rights, or a person who hold a high reputation and has rendered outstanding contribution being actively involved in the field of protection and promotion of human rights or social work. - Chairperson
(b) Four persons from amongst the persons who have provided outstanding contribution, being actively involved in the field of protection and promotion of human rights or social work - Members

(2) In the appointment of Chairperson and the members in the National Human Rights Commission shall maintain representation from all fields including the woman.
(3) The Prime Minister shall, on the recommendation of the Constitutional Council, appoint the Chairperson and the Members of the National Human Rights Commission.
(4) The term of the office of the Chairperson and the members of the National Human Rights Commission shall be six years from the date of appointment. Provided that the Chairperson and the members of the National Human Rights Commission may be removed from his/her offices on the same ground and in the same manner as has been set forth for removal of a Judge of the Supreme Court.

(5) The office of the Chairperson and the members of the National Human Rights Commission shall be deemed vacant in the following circumstances:
(a) if he/she submits a written resignation to the Prime Minister,
(b) if pursuant to clause (4) his/her term expires or he/she is removed from his/her office,
(c) if he/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/she possess the following qualifications:
(a) a Bachelor’s Degree from a university recognized by the Government of Nepal,
(b) maintains 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 Commission shall not, so long as they hold office, be altered to their disadvantage.

(8) A person once appointed as the Chairperson or the Members of 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 appointment to any position of a political nature, 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 recommendations after carrying out studies or research on any subject.

132. Functions, Duties and Power of the National Human Rights Commission: (1) It shall be the duty of the National Human Rights Commission to ensure the respect, protection and promotion of the human rights and its effective implementation.

(2) In order to perform the duty referred to in clause (1) above, the Commission may carry out the following functions:

(a) to conduct inquiries into, investigations of, and recommendation for action against the perpetrator, on the matters of violation or abetment of human rights of a person or a group of persons, upon a petition or complaint presented to the Commission by the victim himself or herself or any person on his/her behalf or upon information received from any source, or on its own initiative,

(b) to forward a recommendation to the concerned authority for taking departmental action against the authority, who has the duty or responsibility to prevent the violations of the human rights, failed to perform such duty or responsibility or show recklessness or negligence in performing his/her duty,

(c) to make recommendation to lodge a petition in the court, if necessary, in accordance with the law against the person who has violated human rights,

(d) to work jointly and in a coordinated manner with the civil society to enhance awareness on human rights,

(e) to forward a recommendation to the concerned authority for taking departmental action or imposing punishment against the violators of human rights, mentioning clear reason and basis thereof.

(f) to review prevailing laws relating to human rights in a periodic basis and to recommend the Government of Nepal for necessary reforms and amendment thereto,

(g) to recommend with reasons to the Government of Nepal to become a party to any international treaties and instruments on human rights, if it is required to do so, and to monitor the implementation of the international treaties and instruments of human rights to which Nepal is a Party and if found not being implemented, forward recommendations to the Government of Nepal for effective implementation of such instruments,

(h) to publicize the names of the official, person or bodies not following or implementing the recommendations and directions furnished by the National Human Rights Commission regarding the violations of human rights in accordance with law, and to record them as human right violators.

(3) The National Human Rights Commission in performing its functions and duties may use the following power:-

(i) exercise the same powers as the court has in requiring any person to appear before the Commission for recording his/her statement and information or examining them, receiving and examining evidence, ordering for the production of any physical proof,

(j) enter, without prior notice, in case the Commission has received the information by any source that the incidents of the violation of human rights is occurred or going to
be occurred, into any person or their residence or office, conduct search and seize any documents and evidences relating to human rights violations thereon,
(k) enter any government premises or other places, without prior notice, in case the Commission has received information that violation of human rights of a person is happening thereon and immediate action is required, to provide rescue,
(l) order for the compensation, in accordance with law, to the victims of human rights violations,
(m) exercise or cause to be exercised other power and abide its duties as prescribed by law.
(4) Notwithstanding anything contained in this Article, the National Human Rights Commission shall not have its jurisdiction on any matter which falls within the jurisdiction of the Army Act.
Provided that nothing shall be a bar to proceedings in respect to the cases of violation of human rights and humanitarian laws.
133. Annual Report: (1) The National Human Rights Commission shall submit to the Prime Minister an annual report on the works it has performed in accordance with this Constitution, and the Prime Minister shall make arrangement to submit such reports before Legislature-Parliament.
(2) The annual report to be submitted in accordance with clause (1) above, shall contain inter alia, the complaints received by the National Human Rights Commission throughout the year and the description of inquiries and investigations thereon, recommendations made to the Government of Nepal for various matters, numbers of cases lodged in the court, if any, against human rights violator, particulars for the improvement in future regarding the protection and promotion of human rights.

Part 16
Attorney General
134 Appointment of the Attorney General: (1) There shall be an Attorney General in Nepal who shall be appointed by the Prime Minister. The Attorney General shall hold office during the pleasure of the Prime Minister.
(2) No person without the qualifications of a Supreme Court Judge shall be eligible to be appointed as the Attorney General.
(3) The office of the Attorney General shall be deemed vacant under the following circumstances:
(a) if he/she submits a resignation in writing to the Prime Minister,
(b) if the Prime Minister releases him/her from the office.
(c) if he/she dies.
(4) The remuneration and other facilities of the Attorney General shall be at par with that of a judge of the Supreme Court. The other conditions of service of the Attorney General shall be as determined by law.

135. Functions, Duties and Rights of the 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 advice on constitutional and legal matters to the Government of Nepal and to such other authorities as the Government of Nepal may specify.
(2) The Attorney General or officers subordinate to him/her shall represent the Government of Nepal in suits wherein the rights, interests or concerns of the Government of Nepal are involved. Unless this Constitution otherwise requires, the Attorney General shall have the right to make final decision to initiate proceedings in any case on behalf of the Government of Nepal in any court or judicial authority.

(3) While discharging duties in accordance with clause (2) above, the Attorney General shall have the authority to work as follows:-

(a) to defend on behalf of the Government of Nepal either as plaintiff or defendant in litigation on field.
(b) to monitor or cause to monitor the interpretation of law or implementation of the legal principles propounded by the Supreme Court in the light of litigations.
(c) to investigate on the complaints or the information so received to him by any means that their was not humanlike treatment to any person in custody, under this constitution, or was not allowed such person to meet his/her relatives directly in person or through legal practitioners, and give necessary directions to the concerned authorities to prevent from such situation.

(4) In addition to the function, duties and rights as expressed in this Article, the other functions, duties and rights of the Attorney General shall be as determined by this constitution and other laws.

(5) In the course of discharging his/her official duties, the Attorney General shall have the right to appear in any court, office or authority of Nepal.

(6) The Attorney General may delegate his functions, duties and power under this Article to his/her subordinates, to be expressed and complied with, subject to the specified conditions.

136. Annual Report: (1) The Attorney General shall, every year, prepare an annual report on the works he/she has performed in accordance with this constitution and other laws, and submit it to the Prime Minister, and the Prime Minister make arrangements to present the same to the Legislature Parliament.

(2) The report as per clause (1) in addition to other subject matters shall include the number of constitutional and legal advises given in the year by the Attorney General, a summary of the litigations with the government as plaintiff, summary of the cases both with government as the plaintiff and the defendant, a summary of crime and improvements to be made in the future in cases where the government is the defendant.

137. Power to Appear in the legislature Parliament: The Attorney General shall have the power to appear and express his/her Constitutional Assembly opinion on any legal questions in the legislative Parliament, or any of their committees’ meetings. Provided that he/she shall not have the right to vote.

Part 17
Form of State and Local Self governance

138. Progressive Restructuring of the State: (1) Inclusive Democratic Federal Governmental System and progressive restructuring of the state shall be made to bring about an end of the discrimination based on class, caste, language, sex, culture, religion and region by eliminating the centralized and unitary form of the state.

(2) A High Level Commission shall be constituted to recommend for the restructuring of the State in accordance with clause (1) above. The composition,
function, duty, power and terms of service of such Commission shall be as determined by the Government of Nepal.

(3) Final decision on the nature of restructuring of the state and the Federal Governmental System shall be as determined by the Constituent Assembly.

139. Provision for Local Self Governance: (1) Arrangements shall be made to set up local self governance bodies to ensure the people’s exercise of their sovereignty by creating congenial atmosphere and thereby ensuring maximum peoples’ participation in the country’s governance, and also by providing services to the people at the local level and for the institutional development of democracy, based on the principle of decentralization and devolution of power.

(2) Interim local bodies at the District, Municipality and Village level shall be constituted through the understanding of all consenting parties to the agreement reached on the 22nd day of Kartik 2063 BS (November 7, 2006) between Nepali Congress, Nepal Communist Party (UML), Nepali Congress (Democratic), Jana Morcha Nepal, Nepal Sadhbhavana party (Anandidevi), Nepal Majdur Kishan party and United Left Front along with the Nepal Communist Party (Maoist).

(3) The organizational structure, its forms and geographical area as well as the formation process of the local self governance bodies shall be as provided for in the law.

140. Mobilization and Management of Revenue: (1) Responsibilities and distribution and mobilization of resources shall be shared between the government of Nepal and the local self governance bodies as provided for in the law to strengthen them for local development and to make responsible to the local bodies themselves on identification, formulation and execution of local level programmes, by maintaining equality with a balanced and judicious distribution of the outcomes form the mobilization of resources and means, and allotment as well as the development thereof.

(2) Mobilization and distribution of the revenue under clause (1) above should be aimed at overall development of the socially and economically backward classes and communities with the ambit of balanced and equitable development of the nation.

Part 18
Political Parties

141. Prohibition on the Imposition of Restrictions on Political Parties: (1) Persons who are committed to common political ideology, philosophy and programme shall, subject to the laws made under proviso (3) of clause (3) of Article 12 of this Constitution, be entitled to form and operate political parties of their choice and to generate or cause to be generated publicity in order to secure public support and cooperation from the general public for their ideology, philosophy and programmes, and to carry out any other activities for that purpose. Any law, arrangement or decision which restricts any such activities shall be considered 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 a single political ideology, philosophy or program in the elections, political system of the country or conduct of State Affairs shall be considered inconsistent with this Constitution and shall ipso facto be void.

(3) Political Parties with the objectives contrary to the spirit and norms of the preamble of this constitution shall not be considered qualified for the party registration.
142. **Registration Required for Securing Recognition for the Purpose of Contesting Elections as a Political Party**: (1) Any political party wishing to secure recognition from the Election Commission for the purposes of elections shall be required to register its name with the Election Commission as per the procedure determined by the Commission. The name of the political parties failing to register their names shall be removed from the list of the Election Commission.

(2) While applying for the registration pursuant to clause (1) above, a political party shall, along with its constitution, manifesto and the rules, have to clarify the following details, in addition to other matters:-

(a) the name of the political party and address of its central office,
(b) the names and addresses of the members of its Executive Committee or any such other similar committee,
(c) the income source of the proposed political party and the details of such sources.

(3) Political parties shall have to fulfill the following conditions while filing an application pursuant to clause (1) above: -

(a) the constitution and the rules of the political party must be democratic,
(b) the constitution or the rules of the political party must provide for election of office bearers of the party in all levels at least once in every five years,
(c) in the executive committee of all levels, there should be the provision for the inclusiveness of members from neglected and suppressed regions including the Women and Dalits,
(d) in the constitution of the party there should be an effective system of making the members of the party disciplined.

(4) The Election Commission shall not register any political party if any Nepali citizen is discriminated against becoming a member of the political party on the basis of religion, caste, tribe, language or sex or if the name, objectives, insignia or flag of such political parties is of a nature that it would disturb the religious or communal harmony or of the nature to divide the country, or such party constitution or rules are for purposes of protecting and promoting a party-less or single party system of governance.

(5) For the purpose of the registration of a party for election, an application with a signature of at least ten thousand voting supporters shall be deemed necessary. Provided that in the case of the parties representing in the Interim Legislature-Parliament, this provision shall not be applicable.

(6) The establishment, registration, recognition and other matters, except those stated in this Part, shall be as provided for in the law.

Part 19

**Emergency Power**

143. **Emergency Power**: (1) If a grave crisis arises in regard to the sovereignty or integrity of Nepal or the security of any part thereof, whether by war, external invasion, armed rebellion or extreme economic disarray, the Council of Minister of the Government of Nepal may, by Proclamation, declare or Order a state of emergency to be enforced in any specified part or the whole of Nepal.

(2) The Proclamation or the Order issued under clause (1) above shall be laid before the meeting of the Legislature-Parliament for approval within a month from the date of its issuance.
(3) If a Proclamation or Order laid for approval pursuant to clause (2) above is approved by a two-third majority of the Legislature-Parliament present at the meeting such proclamation or order shall continue in force for three months from the date of its issuance.

(4) If the Proclamation or the Order laid before the meeting of the Legislature-Parliament pursuant to clause (2) above is not approved pursuant to clause (3), the Proclamation or the Order shall be deemed, ipso-facto to cease to operate.

(5) Before the expiration of the period referred to in clause (3) above, if a meeting of the Legislature-Parliament, by a majority of two-thirds of the members present, passes a resolution to the effect that circumstances referred to in clause (1) above continue to exist, it may extend the period of the Proclamation or Order of State Emergency for another one period, not exceeding three months as specified in such resolution.

(6) After a state of Emergency has been declared pursuant to clause (1) above, the Council of Ministers of the Government of Nepal may issue necessary orders to meet the exigencies. The 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) During the time of the Proclamation or Order of the State of Emergency made by the Council of Ministers of the Government of Nepal, pursuant to clause (1), the fundamental rights provided in Part 3 may be suspended so long as the Proclamation or Order is in operation.

Provided that Articles 13, 14, 16, 17, 18, 20, 21, 22, 23, 26, 29, 30 and 31, and the rights to constitutional remedy and habeas corpus relating to such Articles shall not be suspended.

(8) In circumstances where any Article of this Constitution is suspended pursuant to clause (7) above, no petition may be made in any court of law, nor any question be raised for the enforcement of the fundamental rights conferred by such Article.

(9) If, during the continuance of a Proclamation or Order pursuant to clause (1), any damage is inflicted upon any person by an act of any official done 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 delivered.

(10) The Council of Ministers of the Government of Nepal may, at any time during its continuance, revoke the Proclamation or Order relating to the State of Emergency pursuant to clause (1) above.

Part 20
Provision Regarding the Army
144. Formation of Nepal Army: (1) There shall be a Nepal Army in Nepal as an institution.

(2) The Council of Ministers shall appoint the Commander-in-Chief of the Nepal Army.

(3) The Council of Ministers shall control, mobilize and manage the Nepal Army in accordance with the law. The Council of Ministers shall, with the consent of the political parties and by seeking the advice of the concerned committee of the
Legislature-Parliament, formulate an extensive work plan for the democratization of the Nepal Army and implement it.

(4) In the case of formulating and implementing the action plan pursuant to clause (3) above, determination of the appropriate number of Nepal Army, its democratic structure and national and inclusive character shall be developed, and training shall be imparted to the army in accordance with the norms and values of democracy and human rights.

(5) The other matters pertaining to the Nepal Army shall be as provided for in the law.

145. National Defense Council: (1) There shall be a National Defense Council in order to recommend the Council of Ministers for mobilization, operation and use of the Nepal Army consisting with the following chairman and members:-
(a) Prime Minister -Chairman
(b) Defense Minister -Member
(c) Home Minister -Member
(d) Three ministers nominated by the Prime Minister -Members

(2) In case the Prime Minister and the Defense Minister would be the same person, the senior most member of the Council of Ministers shall be the member of the National Defense Council.

(3) If the National Defense Council deems necessary, it may invite other persons at the meeting of the Council.

(4) The Secretary of the Ministry of Defense shall work as the Secretary of the National Defense Council, and, in his/her absence, the officer designated by the Prime Minister shall carry out such work.

(5) Except in the case of mobilization of Nepal Army for the reason of natural calamities, the decision made by the Council of Ministers of the Government of Nepal for the mobilization of the army shall have to be presented to the special committee prescribed by the Legislature-Parliament within a month of the decision, and be approved accordingly.

(6) The National Defense Council may regulate its working procedures on its own.

146. Interim Provision for the Combatants: The Council of Minister shall form a special committee to supervise, integrate and rehabilitate the combatants of the Maoist Army, and the functions, duties and powers of the committee shall be as determined by the Council of Ministers.

147. Management and Monitoring: The other arrangements pertaining to the management and monitoring of the army and its arsenal shall be done in accordance with the “Comprehensive Peace Accords” (Bishrit Shanti Samjhauta) concluded between the Government of Nepal and Nepal Communist Party (Maoist) on 5 Mangsir 2063 (November 21, 2006) and the agreement regarding the ‘Monitoring of Arms and Army Management’ reached on 22 Mangsir 2006 (December 8, 2006).

Part 21
Constitution Amendment

148. Amendment of the Constitution: (1) A Bill regarding the amendment or repeal of any Article of the Constitution may be presented at the Legislature-Parliament
(2) The Bill shall be deemed passed in the case the Bill so presented at the Legislature-Parliament is approved by at least two-thirds majority of the total number of members present therein for the time being.

Part 22
Miscellaneous
149. Constitutional Council: (1) There shall be a Constitutional Council for making recommendations in accordance with this Constitution for appointment of officials to Constitutional Bodies, which shall consist of the following chairman and members:
(a) Prime Minister -Chairman
(b) Chief Justice -Member
(c) Speaker of the legislature-Parliament -Member
(d) Three ministers designated by the Prime Minister -Members
(2) When the position of the Chief Justice falls vacant and a recommendation has to be made for the same, the Minister for Justice shall be in the Constitutional Council as a member.
(3) The procedures regarding the appointment of the officials of the Constitutional Bodies, and the functions, duties, powers and working procedures of the Constitutional Council shall be as determined by the law.
(4) The Chief Secretary of the Government of Nepal shall work as the Secretary of the Constitutional Council.
150. Nepalese Ambassador and Emissaries: The Council of Minister may appoint the Nepalese Ambassadors and other special emissaries for specified purposes.
151. Pardon: The Council of Ministers may grant pardons, and to suspend, commute or remit any sentence passed by any court, special court, military court or by any other judicial or quasi-judicial, or administrative authority or institution.
152. Titles, Honors, and Decorations: (1) The titles, honours or decorations to be conferred on behalf of the State shall be conferred by the Prime Minister.
(2) No citizen of Nepal shall, without the approval of the Government of Nepal, accept any title, honour or decoration from the government of any foreign country.
153. Constitution of the Government Service: The Government of Nepal may, in order to run the administration of the country, constitute civil services and other government services as required. The constitution, operation, and terms and conditions for such services shall be as determined by an Act.
154. Formation of Commissions: The Government of Nepal may form necessary commissions to safeguard and promote the rights and interests of different sectors of the country including women, Dalits, indigenous ethnic groups, Madhesi, disabled, labourers or farmers. The provisions for the formation, functions, duties and powers of such commissions shall be as determined by the law.
154a. Election Constituency Delimitation Commission: (1) For the purpose of election of Constitutional Assembly, Nepal Government shall form an Election Constituency Delimitation Commission. The Commission shall consist of Chair Person and Members as follow below:–
(a) Retired Judge of the Supreme Court -Chair-Person
(b) Expert in Geography - Member
(c) Sociologist or Expert in Demography – Member
(d) Expert in administration or management - Member
(e) First Class Nepal Government’s Officer – Secretary Member

(2) Nepal Government shall appoint the Chair-Person and the Members of the Election Constituency Delimitation Commission.

(3) Nepal Government shall determine the procedure while forming the Election Constituency Delimitation Commission and add rules as per necessary.

(4) Considering clause (1) of Article 154a, no person shall be eligible for Chair-Person and Members of the Election Constituency Delimitation Commission without holding required capacity as follows:-

(a) Hold a Bachelor’s Degree from a university recognized by Nepal’s Government.
(b) Have attained the age of forty-five.
(c) Have high moral conduct.

(5) The Chair-Person and Members of the Election Constituency Delimitation Commission shall be deemed vacant in the following circumstances:-

(a) If his resignation is submitted to Prime-Minister in writing.
(b) If he dies.

(6) While determining the number of electoral constituencies pursuant to sub-clause 3a of Article 63 of this Constitution, the Commission shall establish the number of members to be elected from the districts on the basis of the population, and shall make equal balance between the population of such electing districts and the number of the members of Constitutional Assembly; and the Commission shall decide with respect to equality the election constituency for the election of the members of the Constitutional Assembly.

(7) While determining the number of election constituencies pursuant to clause (6), the Commission shall give due consideration to the boundaries, the geographical conditions and equal population and borders of each administrative district, the density of population, the transportation facilities, and the common homogeneity and cultural aspects of the local residents in the administrative districts.

(8) Whatever provided in clause (7), electoral constituencies shall not be less than those existing before the commencement of this Constitution.

(9) No question shall be raised in any court on determinations reviewed pursuant to clause 10c in matters of delimitation of constituencies made by the Election Constituency Delimitation Commission.

(10) The Election Constitution Delimitation Commission shall submit report to Prime Minister on the works performed by it.

(10a) The Prime Minister shall submit the report provided in accordance with clause 10 to the Council of Ministers and the Council of Minister will submit the same to the Election Commission or to other appropriate commission for necessary implementation.

(10b) Notwithstanding anything contained in clause 10a, the Council of Minister shall not be hindered to decide for revision if considered necessary in order to eliminate technical imperfections in some part of the report submitted to Prime Minister under clause 10. In this case, the Council of Minister shall request necessary revision over the report in certain time framework to the Chair-Person and to the Members of the Commission formed under clause 1 above.

(10c) If the Council of Ministers requests to Chair-Person and Members of the Commission under clause 10b for necessary revision over the report, the Commission

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55 Eingefügt durch das zweite Amendment.
shall make revision in certain given time and shall submit revised report to Prime Minister.

(10d) In the case of a report submitted under clause 10c, the procedure under clause 10a shall be applied.

(10e) Notwithstanding anything contained in the other clauses, the Election Constituency Delimitation Commission is considered in prorogation under the given time framework of clause 10b while reviewing the report under clause 10c.  

(11) The Election Constituency Delimitation Commission shall determine its working procedural itself.

(12) The remuneration and other conditions of service of the Chair-Person and Members of the Election Constituency Delimitation Commission shall be equivalent to those of the Chief Election Commissioner and the Election Commissioners.

(13) Nepal Government shall provide such necessary employees and other things as may be required to carry out the functions of the Election Constituency Delimitation Commission.

155. Hearing for the Officials of Constitutional Bodies and Provisions Regarding Citizenship: (1) There shall be a parliamentary hearing prior to the appointment of Ambassadors and of members of Constitutional bodies, or of judges of the Supreme Court recommended by the Constitutional Council.

(2) In order to be eligible for appointment to constitutional positions under this Constitution, one must be a citizen of Nepal either by descent or birth or as a naturalized citizen and has lived in Nepal at least for ten years.

156. Ratification of, Accession to, Acceptance of or Approval of Treaty 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 the law.

(2) The laws to be made pursuant to clause (1) shall, inter alia, require that the ratification of, accession to, acceptance of or approval of treaty or agreements on the following subjects be done by a two-thirds majority of the total number of members of the Legislature-Parliament present in the House:

(a) peace and friendship;
(b) security and strategic alliance;
(c) the boundaries of Nepal; and
(d) natural resources and the distribution of their uses.

Provided that out of the treaties and agreements referred in the sub-clauses (a) and (d), if any treaty or agreement is of ordinary nature and 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 done at a meeting of the Legislature-Parliament by a simple majority of the members present in the House.

(3) After the commencement of the Constitution, unless a treaty or agreement is ratified, acceded, accepted or approved in accordance with this Article, it shall not be binding to the Government of Nepal or the State of Nepal.

(4) Notwithstanding anything written in clauses (1) and (2), no treaty or agreement shall be concluded that may have detrimental effect on the territorial integrity of Nepal.

56 Absätze 10a-10e durch das Zweite Amendment eingefügt.

57 Ursprünglich: “of officials to the Constitutional Bodies under this Constitution, in accordance with the provisions of law.”
157. **Decision Could be Made Through Referendum:** (1) Except as otherwise provided elsewhere in the Constitution, if the Constituent Assembly decides, by its two-thirds majority of the total number of members present therein, that it is necessary to make a decision on any matters of national importance, then decision may be reached on such matters through referendum.

(2) The procedures pertaining to making decision pursuant to clause (1) shall be as determined by the law.

158. **Power to Remove Difficulties:** If any difficulty arises in connection with the implementation of this Constitution, the Council of Ministers may issue necessary Orders to remove such difficulties, and such Orders shall have to be endorsed by the Legislature-Parliament or the Constituent Assembly within a month.

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**Part 23**

**Transitional Provisions**

159. **Provisions Regarding the King:** (1) No power regarding the governance of the country shall be vested in the king.

(2) The Prime Minister shall perform all works pertaining to the governance and operation of the country.

(3) Notwithstanding anything contained elsewhere in this Constitution, the simple majority in the first meeting of the Constitutional Assembly shall take decision about whether or not to give continuation to the monarchy.

(3a) *The provision of clause (3) shall not hinder to pass a proposal for abolition of the institution of Monarchy prior to the election of the Constitutional Assembly, if the existing Legislature-Parliament with a two third majority holds that the Monarchy is responsible for bringing serious obstacles in order to disrupt the election of the Constitutional Assembly.*

(3b) *The proposal for a deliberation under clause 3a shall be deliberated in the Council of Ministers and submitted to the Legislature-Parliament.*

(4) The property of late King Birendra, late Queen Aishwarya and other members of their family shall be brought under the control of the Government of Nepal, and a Trust shall be established to use the property for the benefit of the nation.

(5) All the property acquired by King Gyanendra in the capacity of the King (for instance: the palaces in different parts of the country, forests and national parks, heritage sites of historical and anthropological importance etc.) shall be nationalized.

160. **Provisions Regarding the Council of Ministers**

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

(2) The Council of Ministers constituted pursuant to clause (1) above, shall continue to work until the Council of Minister is constituted under Article 38.

161. **Provisions Regarding the Legislature-Parliament:** Immediate after the commencement of this Constitution, the Legislature-Parliament shall be constituted under this Constitution.

(2) After the commencement of this Constitution, the existing House of Representatives and the National Assembly shall automatically be dissolved, and the first meeting of the Legislature-Parliament under this Constitution shall convene on the same day.
(3) The Bills that were under consideration in the House of Representatives at the
time of the commencement of this Constitution shall be transferred to the Legislature-
Parliament under this Constitution.

(4) The Parliament Secretariat and officials and the staff working in the Secretariat
at the time of the commencement of this Constitution shall be deemed as the Secretariat
of the Legislature-Parliament and the officials and staff of the Secretariat shall be
deemed to have been maintained under this Constitution.

162. Provisions Regarding Judiciary: (1) The Supreme Court, Appellate Court and
District Courts subsisting at the time of the commencement of this Constitution shall be
deemed to have been constituted under this Constitution, and this Constitution shall not
be deemed to be hindering to make the decisions by the concerned courts on the cases
filed prior to the commencement of this Constitution.

(2) The Judges working in the Supreme Court, Appellate Courts and District Courts,
after the commencement of this Constitution, shall take an oath of commitment to this
Constitution as determined by the Government of Nepal. The Judges who decline to
take oath shall be considered automatically relieved from the position.

(3) Necessary legal arrangements shall be made on the basis of democratic norms
and values to bring about gradual reforms in the judicial sector to make it independent,
clean, impartial and competent.

163. Provisions Regarding the Constitutional Bodies and Officials Thereof: (1) The
Constitutional Bodies and officials thereof subsisting at the time of the commencement
of this Constitution, but which are not reestablished under this Constitution, shall cease
to exist after the commencement of this Constitution.

(2) The Constitutional Bodies subsisting at the time of the commencement of this
Constitution shall be deemed to have been constituted under this Constitution, and this
Constitution shall not be deemed to be hindering in the continuation to look after the
matters under consideration of such Bodies according to the laws in force. Necessary
legal arrangements shall be made to bring about gradual reform in the Constitutional
Bodies and the officials thereof, according to democratic norms and values.

(3) The subsisting National Human Rights Commission constituted according to
existing laws shall continue to exist until the constitution of a National Human Rights
Commission as provided for in this Constitution, and the pending petitions and
complaints shall be transferred to the National Human Rights Commission constituted
under this Constitution; and the Commission shall take up the matters of such petitions
and complaints in accordance with this Constitution and the laws made under it.

164. Existing laws to Remain in Operation: (1) The decisions made and works
performed by the reinstated House of Representatives that are not inconsistent with this
Constitution shall be deemed to have made and performed in accordance with this
Constitution.

(2) All the laws in force at the time of commencement of this Constitution shall remain
in operation until repealed or amended.

Provided that laws inconsistent with this Constitution shall, to the extent of
inconsistency, ipso-facto, cease to operate three months after the commencement of this
Constitution.

Part 24

Definition
165. **Definition:** (1) Unless the subject or context otherwise requires, in this Constitution:-
   a. “Article” means an Article of this Constitution;
   b. “Nepal” means the State of Nepal;
   c. “Citizen” means the citizen of Nepal;
   d. “Bill” means a draft of Constitution or an Act which has been introduced in Legislature-Parliament or the Constituent Assembly.
   e. “Remuneration” means and includes salary, allowances, pension and any other forms of emoluments.
   (2) Unless the subject or context otherwise requires, the prevailing laws of Nepal relating to interpretation 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 abrogation
166. **Short title and commencement:** (1) This Constitution shall be called “The Interim Constitution of Nepal, 2063 (2007).
   (2) This Constitution shall be promulgated by the House of Representatives and be approved by the interim Legislature-Parliament. The details regarding the implementation of this Constitution shall be as described in Schedule 2.
   (3) The “Comprehensive Peace Accord” concluded between the Government of Nepal and the Communist Party of Nepal (Maoist) on Mangsir 5, 2063 (November 21, 2006), and an agreement relating to “Monitoring of Arms and Army Management” reached on Mangsir 22, 2063 (December 8, 2006) are exhibited in Schedule 3.
   (4) This Constitution shall come into force from…………………

167. **Termination:** The Constitution of the Kingdom of Nepal, 2047 (1990) has hereby been terminated.

Schedule-1 (Relating to Article 6)
NATIONAL FLAG
(A) **Method of Making the Shape inside the Border**
   (1) On the lower portion of a crimson cloth draw a 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 BD.
   (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 CG.
   (B) **Method of Making the Moon**
   (6) 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.
   (7) Bisect CF at J and draw a line JK parallel to AB touching CG at point K.
   (8) Let L be the point where lines JK and HI cut one another.
   (9) Join JG.
   (10) Let M be the point where line JG and HI cut one another.
(11) With centre M and with a distance shortest from M to BD mark off N on the lower portion of line HI.
(12) Touching M and starting from O, a point on AC, draw a line from left to right parallel to AB.
(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.
(14) With centre M and radius MQ draw a semi-circle on the lower portion touching P and Q.
(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.
(16) With centre T and radius TS draw a semi-circle on the upper portion of PNQ touching it at two points.
(17) With centre T and radius TM draw an arc on the upper portion of PNQ touching at two points.
(18) Eight equal and similar triangles of the moon are to be made in the space lying inside the semi-circle of No. (16) and outside the arc of No. (17) of this Schedule.
(C) Method of Making the Sun
(19) Bisect line AF at U, and draw a line UV parallel to AB line touching line BE at V.
(20) With centre W, the point where HI and UV cut one another and radius MN draw a circle.
(21) With centre W and radius LN draw a circle.
(22) Twelve equal and similar triangles of the sun are to be made in the space enclosed by the circles of No. (20) and No. (21) with the two apexes of two triangles touching line HI.
(D) Method of Making the Border
(23) The width of the border will be equal to the width TN. This will be of deep blue colour and will be provided on all the sides of the flag. However, on the five angles of the flag the external angles will be equal to the internal angles.
(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.
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.

Schedule-2 Relating to clause (2) of Article 167
This Constitution shall be promulgated by the House of Representatives and be ratified by the Legislature-Parliament after the beginning of the monitoring of arms and army management in accordance with the “Comprehensive Peace Accord” concluded between the Government of Nepal and the Communist Party of Nepal (Maoist) on Mangsir 22, 2063 (November 21, 2006), and the Agreement on the “Monitoring of Arms and Army Management” reached on Mangsir 5, 2063 (8 November 2006).

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Prime minister and President, Nepali Congress
2. Prachanda  
Chairperson, CPN (Maoists)

3. Madhav Kumar Nepal  
General Secretary, CPN (UML)

4. Sher Bahadur Deuba  
President, Nepali Congress (Democratic)

5. Narayan Man Bijukchhe  
President, Nepal Majdoor Kishan Party

6. Bharat Bimal Yadav  
Vice president, Nepal Sadvhawana Party (Anandi Devi)

7. Amik Sherchan  
Deputy Prime Minister and Chairperson, Janamorcha Nepal

8. C. P. Mainali  
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Classify your article according to the Journal of Economic Literature classification system.

Keep footnotes to a minimum and number them consecutively throughout the manuscript with superscript Arabic numerals. Acknowledgements and information on grants received can be given in a first footnote (indicated by an asterisk, not included in the consecutive numbering).

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COASE (1992a; 1992b, ch. 4) has also criticized this bias....

and

“...the market has an even more shadowy role than the firm” (COASE 1988, 7).

List the complete references alphabetically as follows:

Periodicals:

Monographs:

Contributions to collective works:

Working papers: