

## Parts of the Interim Constitution most relevant to the Constituent Assembly

**Note:** we have extracted articles from the Interim Constitution that particularly mention the Constituent Assembly or are most relevant to it

### Extract from Preamble:

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To guarantee 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 keeping democracy, peace, prosperity, progressive economic-social changes and sovereignty, integrity, independence and dignity of the country at the centre of our concerns;

NOW THEREFORE hereby promulgate this INTERIM CONSTITUTION OF NEPAL, 2063 (2007), prepared through a political consensus and to be in force 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 4 RESPONSIBILITIES, DIRECTIVE PRINCIPLES AND POLICIES OF THE STATE

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

(a) Recognizing the need for the functional realisation of the sovereignty that is inherent in the Nepali people, it is the obligation of the state to focus the attention of the whole nation on the completion of the election for the members of the Constituent Assembly <sup>1</sup>by Mangsir 2064 [by 15 December 2007 – tr.] in a free and fair manner

### PART 6 LEGISLATURE-PARLIAMENT

**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 45 the power of the Legislature-Parliament under this Constitution shall be exercised by the Constituent Assembly.

### PART 7 CONSTITUENT ASSEMBLY

**63. Formation of the Constituent Assembly:**

(1) A Constituent Assembly shall be constituted to formulate a new Constitution by the Nepalese people themselves, subject to the provisions of this Constitution.

(2) The election of the Constituent Assembly shall be held on a date to be specified by the Government of Nepal after the commencement of this Constitution

<sup>2</sup>(3) In accordance with the law, there will be the following members of the CA, either elected according to the mixed electoral system, taking account of the equality of

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<sup>1</sup> Amended on 2064 Jestha 30 (June 13, 2007) by the Interim Constitution of Nepal (Second Amendment) Act, 2064.

<sup>2</sup> Revised on 2063 Chaitra 30 (April 13, 2007) by the Interim Constitution of Nepal (First Amendment), 2063. As originally passed it read:

(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.

population, geographical convenience and special characteristics, (and in the case of Madhesh on the basis of percentage of the population)<sup>3</sup> or, nominated:

(a) One member elected, under the first-past-the-post system, from each geographical constituency, the number of such constituencies being determined by the Constituency Delimitation Commission under Article 154(a), based on the national census preceding the Constituent Assembly elections, and as far as possible maintaining the same relationship between number of members and population for all the administrative districts, while retaining the same administrative districts as hitherto.<sup>4</sup>

(b) A number of members, equal to the number elected under sub-clause (a), elected according to the proportional representation system, voting being for political parties, and considering the whole country as a single constituency.

(c) Seventeen members nominated by the Council of Ministers on the basis of consensus from among distinguished personalities who have made significant contributions to national life.

<sup>5</sup>(3a). Notwithstanding anything contained in Sub-clause (a), while determining the number of constituencies according to this Clause, the number of constituencies in each administrative district prescribed by the laws prevailing during the elections for the then House of Representatives in 2056 (1999), shall not be reduced, but the number of constituencies in the hilly and mountainous areas shall be increased on the basis of percentage of population growth, and, then in determining the constituencies in Madhesh, the number of constituencies in the administrative districts in Madhesh shall be increased in order to ensure that those constituencies are in proportion to the percentage of population

(4) The principle of inclusiveness shall be taken into consideration by political parties while selecting candidates pursuant to sub-clause (a) of clause (3), and, while making the lists of the candidates pursuant to sub-clause (b), the political parties shall ensure the proportional representation of women, Dalits, oppressed community/indigenous groups, backward regions, Madhesi and other groups, in accordance with the law.

(5) Notwithstanding anything in clause 4, a minimum of one-third of the total number of candidates nominated shall be women, taking together the number of candidates on the basis of proportional representation pursuant to sub-clause (b) of clause (3) and the number of candidates pursuant to sub-clause (a) of the clause.

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

(7) For the purpose of election to 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.

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

#### **64. Term of the Constituent Assembly:**

Unless 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.

Provided that the term of the Constituent Assembly may be extended for up to six months by a resolution of the Constituent Assembly, in the event that the

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(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.

<sup>3</sup> The brackets are not in the original but make it clearer that the point about Madhesh is something additional to the rest that applies to the whole country

<sup>4</sup> This is not quite a literal translation, but we believe it reflects the meaning of the very complex Nepali original.

<sup>5</sup> Added on 2063 Chaitra 30 (April 13, 2007) by the Interim Constitution of Nepal (First Amendment), 2063.

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:**

In order to be a member of Constituent Assembly a person must have the following qualifications:

- (a) be a Nepali citizen,
- (b) have attained at least twenty-five years of age,
- (c) not have been punished for any criminal offence involving moral turpitude,
- <sup>6</sup>(c1) not be ineligible under any law
- (d) not be 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 pursuant to 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 pursuant to Article 65,
- (c) If he/she, remains absent in ten consecutive meetings without notification to the constituent Assembly,
- (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 left 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) shall not be applicable to the Chairperson or Vice Chairperson of the Constituent Assembly.

**68. Oath of Members:**

Every member of the Constituent Assembly shall take the oath as provided for in the law before taking part for the first time in a meeting of that Assembly or any meeting of its committee

**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 after the final results of the election of members of the Constituent Assembly has been made public by the election commission, and the subsequent meetings shall be held on such a date and place as prescribed by the person presiding over the Constituent Assembly.

(2) Notwithstanding anything contained in clause (1), if one-fourth of the members of the Constituent Assembly make an application, with reasons, to the Chairperson of the Constituent Assembly stating that it is appropriate to convene 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, vote on the Preamble and each Article of such a Bill introduced before it.

(2) To vote according to clause (1), at least two-thirds of the total members of the Constituent Assembly must be present and must pass the motion unanimously.

<sup>6</sup> Added on 2064 Jestha 30 (June 13, 2007) in accordance with the Interim Constitution of Nepal (Second Amendment), 2064.

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

(4) The consultation to be carried out pursuant to clause (3), must be completed within a maximum of fifteen days from the date on which the unanimous decision could not be reached.

(5) If consultation is carried out pursuant to clause (4), fresh voting on the Preamble or any Article of such Bill shall be carried out within seven days from the date of the completion of such consultation.

(6) If a unanimous decision is not reached as provided in clause (2) even after carrying out the voting pursuant to clause (5), there shall be a further vote on such Preamble or Article on which a unanimous decision could not be reached, and if at least two-thirds of the total members of the Constituent Assembly for the time being were present in the meeting, and at least two-thirds of the members present voted in favour, such Preamble or Article shall be deemed to have been passed.

(7) For the purpose of this Article a decision made during voting on the Preamble or any Article of the Bill relating to the Constitution introduced in the Constituent Assembly shall be deemed to be unanimous if none of the members voted against the Preamble or Article that is the subject of the vote.

**71. Chairperson and Vice Chairperson of the Constituent Assembly:**

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

(2) In the elections pursuant to clause (1) the Chairperson and Vice Chairperson shall be from different political parties represented in the Constituent Assembly.

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

(4) The Chairperson and Vice Chairperson shall act as neutral persons and not favour any political party or parties while performing their duties in accordance with this Constitution.

**72. Vacation of the Office of Chairperson and Vice Chairperson:**

(1) The office of the Chairperson and Vice Chairperson shall become 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 with his/her position, and the Chairperson can take part and vote in the deliberations on such a resolution.

**73. Quorum:**

Except as otherwise provided in this Part, no quorum shall be deemed to be achieved and no question or 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 may conduct its proceedings notwithstanding any vacancies in its membership, and no proceedings shall become invalid even if it is subsequently found that a person not entitled to take part in the proceedings 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 in case of a tie, he/she may exercise a casting vote.
76. **Penalty for Unauthorized Presence or Voting:**  
 If a person is present or votes in the meetings of Constituent Assembly or any of its committees as a member without taking an oath pursuant to Article 67, or knowing that he/she is not qualified for membership of 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 meetings 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 such a meeting.  
 (2) The meeting of Constituent Assembly shall have full power to regulate its internal business, and it shall have the exclusive right to decide whether any proceeding of the Constituent Assembly is regular or not. No question shall be raised in any court in this regard.  
 (3) No comment shall be made about the good faith of any proceedings of the Legislature-Parliament, and no person shall, when broadcasting or publishing anything about comments or suggestions made by any member, deliberately wrongfully interpret or distort their meaning.  
 (4) No proceedings shall be initiated against any person in any court for publishing any document, report, vote or proceeding which is carried out under the authority given by the Constituent Assembly.  
**Explanation:** The words "Constituent Assembly" shall mean the meeting of the Constituent Assembly or any of its committees for the purposes of clauses (1), (2), (3) and (4).  
 (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 a person. If the fine is not paid by such a person, it shall be recovered as government dues.
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 relating to its committees. Until such time as rules are made, the Constituent Assembly shall establish its own rules of procedures.
79. **Committee:**  
 There shall be Committees and Sub-Committees in the Constituent Assembly as provided for in the law. Services of experts may be obtained as required.
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, 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:**

Notwithstanding anything contained elsewhere in this Part, the Constituent Assembly shall also act as Legislature-Parliament as long as the Constituent Assembly remains in existence, and the Constituent Assembly may constitute a separate committee to conduct necessary regular legislative functions.

## **PART 10 JUDICIARY**

**118. Constituent Assembly Court:**

(1) A Constituent Assembly Court shall be constituted to resolve complaints regarding election to the Constituent Assembly.

(2) The constitution, jurisdiction and other matters relating to the Constituent Assembly Court established pursuant to clause (1), shall be as determined by law.

(3) Notwithstanding anything contained elsewhere in this Constitution, unless a petition is filed in the court constituted pursuant to clause (1), in the manner prescribed by law, no question shall be raised in any court regarding the election of a member to the Constituent Assembly.

(4) Notwithstanding anything contained elsewhere in this Constitution, once the process of election to the Constituent Assembly has commenced, no question shall be raised in any court in such a way as to hinder the election.

## **PART 17 FORM OF STATE AND LOCAL SELF GOVERNANCE**

**138. Progressive Restructuring of the State:**

(1) To bring an end to discrimination based on class, caste, language, sex, culture, religion and region by eliminating the centralized and unitary form of the state, the state shall be made inclusive and restructured into a progressive,<sup>7</sup> Democratic Federal System.

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

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<sup>7</sup> Amended on 2063 Chaitra 30 (April 13, 2007) by the Interim Constitution of Nepal (First Amendment), 2063.

(3) The final decision on<sup>8</sup>the subjects relating to the structure of State and federal system shall made by the Constituent Assembly.

## PART 18 POLITICAL PARTIES<sup>9</sup>

### 141. **Prohibition on the Imposition of Restrictions on Political Parties:**

(1) Persons who are committed to a 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 programme in the elections, political system of the country or conduct of state affairs shall be inconsistent with this Constitution and shall *ipso-facto* be void.

(3) Political Parties with objectives contrary to the spirit and norms of the preamble of this constitution shall not be considered qualified for 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 in accordance with the procedure determined by the Commission. Political parties that fail 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 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 details of the sources of funds of the political party.

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

- (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 at all levels at least once in every five years,
- (c) There should be a provision for the inclusiveness of members from neglected and oppressed groups including women and Dalits in the executive committees at various levels,
- (d) There should be an effective provision in the constitution of a party to discipline its members.

(4) The Election Commission shall not register any political party if any Nepali citizen is discriminated against in becoming a member of the political party on the basis of religion, caste, tribe, language or sex or if the name, objectives, symbol or flag of such political party is of a character that may disturb the country's religious or communal unity or is divisive in character , or if the constitution or rules of such party

<sup>8</sup> Amended on 2063 Chaitra 30 (April 13, 2007) by the Interim Constitution of Nepal (First Amendment), 2063. ???

<sup>9</sup> Although this does not mention the Constituent Assembly, this Constitution will only exist during one election – that for the Constituent Assembly.

have the objective of protecting and promoting a partyless or single party system of government.

(5) For the purpose of the registration of a party for election, an application with the support and signature of at least ten thousand voters shall be 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 23 TRANSITIONAL PROVISIONS**

### **157. Decision Could be Made Through Referendum:**

(1) Except as provided elsewhere in the Constitution, if the Constituent Assembly decides, by a two-thirds majority of the total number of existing members that it is necessary to make a decision on any matters of national importance, a 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 require endorsement by the Legislature-Parliament or the Constituent Assembly within a month.

### **159. Provisions Regarding the King:**

(3) Notwithstanding anything contained elsewhere in this Constitution, the Constituent Assembly shall decide by a simple majority at its first meeting about whether or not to continue the monarchy in existence.

<sup>10</sup>(3.a) Notwithstanding Clause (3), a majority of at least two-thirds of the total number of the existing members of the Legislature-Parliament may pass a resolution abolishing the monarchy if it concludes that the king poses serious obstacles to the elections to the Constituent Assembly.

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<sup>10</sup> Added on 2064 Jestha 30 (June 13, 2007) in accordance with the Interim Constitution of Nepal (Second Amendment), 2064.