

[Unofficial translation from the original Nepali, by United Nations Mission in Nepal (UNMIN)]

Fifth Amendment to Interim Constitution of Nepal, 2006

**Secretariat of the Legislature-Parliament
Parliament House, Singha Durbar**

Objective and Rationale

Given that it has become necessary to amend the current form of the Interim Constitution of Nepal, 2006, I have presented the following amendment bill.

(Narendra Bikram Nembang)

Minister

Law, Justice and Parliamentary Affairs

Fifth Amendment to the Interim Constitution of Nepal, 2006 (BS 2063)

Preamble:

Because it has become necessary to amend the Interim Constitution of Nepal, 2006, the Constituent Assembly has issued this amendment, pursuant to Sub-article (1) of Article 83 of the Interim Constitution of Nepal, 2006.

1. Summarized Name and Commencement: (1) This amendment shall be called “Interim Constitution of Nepal (Fifth Amendment) 2008 (BS 2065)”.

(2) This amendment shall come into effect immediately.

2. Amendment of Article 33 of the Interim Constitution of Nepal, 2006: In Article 33 of the Interim Constitution of Nepal, 2006 (hereafter referred to as the “Constitution”), Clause (R1) has been added after Clause (R):

“(R1). In order to develop an environment conducive to solving the country’s central political problems through agreement, understanding and cooperation between the main political parties, who provided leadership during the historic *Jana Andolan*, and with whom an agreement was reached upon on 8 November 2006 (2063 Kattik 22), as well as with the other political parties represented in the Constituent Assembly”.

3. Amendment to Article 36B of the Constitution: Article 36B has been replaced by the following Article 36B:

“**36B. Election of the President:** (1) The Constituent Assembly shall elect a President on the basis of political consensus.

(2) Pursuant to Sub-article (1), if consensus cannot be reached, whoever receives the support of a majority of all current members of the Constituent Assembly shall be considered to have been elected President.

(3) Other procedures regarding the election of the President shall be in accordance with the decisions of the Constituent Assembly.

(4) If any individual is elected President while holding a political position that has been achieved through election, nomination or appointment, s/he shall automatically vacate this position.”

4. Amendment to Article 36G of the Constitution: In Article 36G, Sub-article (3) has been added after Sub-article (2):

“(3) If any individual is elected Vice-President while holding a political position that has been achieved through election, nomination or appointment, s/he shall automatically vacate this position.”

5. Amendment of Article 36I of the Constitution: In Article 36I, the words “eligibility and election process” have been replaced by the words “eligibility, election process and tenure”.

6. Amendment of Article 36K of the Constitution: Article 36K has been replaced by the following Article 36K:

“**36K. Office of the President and Vice-President:** (1) The work of the President and Vice-President shall be supported by separate offices.

(2) Pursuant to Sub-article (1), the Government of Nepal shall provide necessary staff and oversee management-related issues, in order to carry out the work of these offices.”

7. Amendment of Article 38 of the Constitution: In Article 38: (1) The explanation included in Sub-article (1) has been removed.

(2) The words “two-third of the members” have been replaced by the words “current number of total members”.

8. Amendment of Article 51 of the Constitution: In Sub-article (1) of Article 51: (1) The words “the Prime Minister shall first and from time to time” have been replaced by the words “the President shall upon recommendation of the Prime Minister”.

(2) The words “the Prime Minister shall, in consultation with the Speaker” have been replaced by the words “the President shall, upon recommendation of the Prime Minister”.

9. Amendment of Article 55A of the Constitution: In Sub-article (3) of Article 55A, the words “two-thirds majority” have been removed.

10. Amendment of Article 57A of the Constitution: Article 57A has been replaced by the following Article 57A:

“**57A. Opposition:** (1) An opposition and its leaders shall be included in the Legislature-Parliament.

(2) Remuneration and benefits for these individuals shall be decided as per the current law.”

11. Amendment of Article 63 of the Constitution: After Sub-article (7) of Article 63, the following Sub-article (7A) has been added:

“(7A). Pursuant to Sub-article (7), if a member’s seat, either elected or nominated, becomes vacant for any reason, this seat shall be filled through due process, as provided for by current law.”

12. Amendment of Article 71 of the Constitution: In Article 71: (1) The words “from among its members” in Sub-article (1) have been replaced by the words “on the basis of political consensus among its members”.

(2) The following Sub-article (1A) has been added to Sub-article (1):

“If, pursuant to Sub-article (1), there can be no consensus among the political parties, any member in the Constitution Assembly who receives a majority of votes from the current Constituent Assembly members shall be considered elected as Constituent Assembly Chairperson or Vice-chairperson.”

(3) In Sub-article (2), the words “pursuant to Sub-article (1)” have been replaced by the words “pursuant to Sub-article (1) or Sub-article (1A)”.

13. Amendment of Article 74 of the Constitution: Article 74 has been replaced by the following Article 74.

“74. Conduct of the Constituent Assembly in the Absence of Constituent Assembly Members: (1) The Constituent Assembly can continue operating even in the absence of Constituent Assembly members; and, if any member found to be ineligible for any reason is found to be taking part in the Constituent Assembly, the tasks performed shall not be considered invalid.

(2) A Minister, State Minister or Assistant Minister can each attend the meetings of the various committees, even if they are not members of the Constituent Assembly. However, s/he shall not be allowed the right to vote.”

14. The addition of Article 96A to the Constitution: Article 96A has been added following Article 96.

“96A. Special provision regarding revenue and expenditure: (1) Regardless of anything written elsewhere in this section, if a situation arises such that revenue and estimated expenditure for the current fiscal year cannot be tabled before the Legislature-Parliament, revenue shall be collected according to the financial act for the current fiscal year.

(2) In the event of a situation in accordance with Sub-article (1), the Finance Minister may table before the Legislature-Parliament a bill authorizing the right to spend for the coming year, by stating the reason for such a need. Any authorized expenditure shall not exceed one-third of the total expenditure for the current fiscal year.

(3) The amount of expenditure according to Sub-article (2) shall be included in the Appropriations Bill.

(4) Regardless of anything written elsewhere in this Constitution, the bill tabled before the Legislature-Parliament according Sub-article (2) shall be ratified following discussion on the day it is tabled.”

15. Amendment of Article 113 of the Constitution: Clause (D) of Sub-article (1) of Article 113 has been replaced by the following Clause (D):

“(D). One legal expert – a member nominated by the President on the recommendation of the Prime Minister.”

16. Amendment to Article 138 of the Constitution: In Article 138: (1) After Sub-article (1), the following Sub-article (1A) has been added:

“(1A). Accepting the aspirations of the Madhesis, indigenous nationalities, the marginalized and peoples from other areas for autonomous provinces, Nepal shall be a Federal Democratic Republic. While safeguarding the sovereignty, unity and integrity of Nepal, the Constituent Assembly shall decide on the borders, number, names, structures and headquarters, as well as a detailed list of these provinces, their resources and the sharing of rights.”

(2) The words “according to Sub-article (1)” in Sub-article (2) have been replaced by the words “according to Sub-article (1) and (1A)”.

17. Amendment to Article 139 of the Constitution: In Article 139: (1) The words “there shall be provision for an agency” in Sub-article (1) have been replaced by the words “agencies shall be elected”.

(2) Sub-article (2) has been replaced the following Sub-article (2):

“(2). Until local elections are able to be held, the Government of Nepal shall formulate an interim body at the district, municipality and village levels, with the participation and consensus of those political parties active at the local level.”

Explanation: In this Sub-article, “political parties active at the local level” shall refer to those parties represented in the Constituent Assembly, and to those parties that filed for candidacy in the relevant districts under the first-past-the-post system.”

18. Amendment to Article 144 of the Constitution: After Sub-article (4) of Article 144, the following Sub-article (4A) has been added:

“(4A). In order to make the Nepal Army national in character, the entry of citizens, including Madhesis, indigenous nationalities, Dalits, women and those from marginalized areas, shall be ensured through legal provisions on the principles of equality and inclusiveness.”

19. Amendment of Article 145 of the Constitution: In Article 145: (1) Clause (D) of Sub-article (1) has been replaced by the following Clause (D):

“(D). From among the political parties in the Council of Ministers, the Prime Minister shall assign three Minister-Members representing three different parties.

However, if a condition arises in which the Council of Ministers is represented by less than three political parties, this shall not be considered a restriction.”

20. Amendment of Article 146 of the Constitution: In Article 146, the words “a special committee by the Council of Ministers representing all the major political parties in the Constituent Assembly” have been added after the words “a special committee by the Council of Ministers”.

21. Amendment of Article 149 of the Constitution: In Sub-article (1) of Article 149: (1) Clause (D) has been replaced by the following Clause (D):

“(D). From among the political parties in the Council of Ministers, the Prime Minister shall assign three Minister-Members representing three different parties.

However, if a condition arises in which the Council of Ministers is represented by less than three political parties, this shall not be considered a restriction.”

2) The following Clause (E) has been added after Clause (D):

“(E). Leader of the opposition party in the Legislature-Parliament - Member”

22. Amendment of Article 158 of the Constitution: In Article 158, the words “if any difficulty arises in implementing the Constitution, the Council of Ministers” have been replaced by the words “if any difficulty arises in implementing the Constitution, the President on the recommendation of the Council of Ministers”. In addition, the words “or from the Constituent Assembly”, have been removed.

23. Amendment of Schedule (1A) of the Constitution: The words “shall honestly maintain official confidentiality” have been replaced by the words “shall honestly carry out; and any information that I receive, while incumbent or otherwise, during the course of performing my duties, I shall neither divulge nor hint at, under any circumstances, except when abiding by the law.”

21. Abrogated: Articles 45, 46, 47, 48, 49, 50 and Schedule (2) of the Constitution have been abrogated.

Verification Date: 13 July 2008 (2065 Asar 29)