

## Constitution Committee: Voting on 98 Issues

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Published date: 19 May 2010

<http://asd.org.np/en/transition/constitution/committee/56-constitution-committee>

During its tenure, the Constitutional Committee got two chairpersons. In the beginning, former UML general secretary was the chairperson of the Committee but after being appointed the Prime Minister of the country on June 2, 2009, the committee went without a chairperson for three months. On August 28, 2009, Nilambar Acharya from Nepali Congress was elected the chairperson of the Committee. Only then the Committee could expedite its work of having the concept papers and preliminary draft reports prepared. When the Committee members differed on the preliminary draft report, voting was held on 19 subjects on December 25, 2009. And then the Committee had submitted its report to the Chairman Subash Nemwang. The CA had discussed on that draft report on January 12-16.

The Constitutional Committee bears greater responsibility than the thematic and other committees. It also has to play the role of thematic committee. It has to compile the preliminary draft reports of other committees and prepare preliminary bills for the constitution. But the Constitutional Committee was not entitled to submit its report to the Constituent Assembly until the Committee for Determining the Form of the Government and the Committee on State Restructuring and Distribution of State Power submitted their reports to the Constitutional Committee. But the Constitutional Committee violated this provision. Nepali Congress CA member Usha Gurung says, "If the Committee for Determining the Form of the Government and the Committee on State Restructuring and Distribution of State Power have left any issues to be incorporated in the constitution, they will be left out forever".

The preliminary draft report has proposed to open political parties in the provincial levels. This has given rise to the possibility of regional political culture. What will be the international relation of those regional parties? And what if these parties stood against the federal system? The proposal has not given any consideration on these issues. This is likely to cost the nation in the long run.

### **Different Opinions in the Constitutional Committee**

Like UCPN(M), the Tarai Madhes Loktantrik Party (TMLP), Madhesi Janadhikar Forum MJF--Democratic) and Laxman Lal Karna of Sadbhawana Party had argued in favour of changing the national flag and absurdity of including *Bikram Sambat* in the constitution title. Thus they put different opinions. Pari Thapa CPN (United) has also stood in favour of changing the national flag. Nepali Congress, CPN(UML), CPN(ML) Chure Bhawar Rastriya Ekata Party and Nepal Workers and Peasants Party (NWPP) have argued that "multi-national state" be substituted with only "state". They have suggested deleting "Madhes Movement". There is also the demand to remove "right to self-rule" the preamble. From the statement "Nepali foreign ambassadors shall be appointed through proportional and inclusive system" they have asked to remove "proportional". They have all been united in this regard.

The parliamentary party leader of Rastriya Prajatantra Party-Nepal Chandra Bahadur Gurung has put a different view arguing in favour of resolving the issue of the Hindu nation, monarchy and federalism through a referendum instead of through the Constituent Assembly. Former Prime

Minister Lokendra Bahadur Chand, Dr. Prakash Chandra Lohani and Chure Bhawar Rastriya Ekata Party member Keshav Prasad Mainali have also stood in favour of a referendum for deciding on secularism. Nepa Rastriya Party CA member Buddha Ratna Manandhar has insisted on writing "Constitution of Nepal 1130" instead of "Constitution of Nepal 2067". Sunil Prajapati of Nepal Workers and Peasants Party (NWPP), has argued that political parties should not be formed on the basis of religion, caste and region. On the contrary, Bishwendra Paswan of Dalit Janajati Party, Rukmini Chaudhary from Federal Democratic National Forum, Buddha Ratna Manandhar of Nepa Rastriya Party, Malwar Singh Thapa of Rastriya Janamukti Party, Dr. Laxmilal Chaudhary from Samajbadi Prajatantrik Janata Party and Sadarul Miya Hak (an independent CA member) have demanded that the political parties should be allowed to form on the basis of religion, caste, language and region.

They have demanded separate constitutions for separate provinces and change of the national flag and the national symbol. They also have demanded that prior rights of the indigenous people and secularism should be included as non-amendable subjects in the constitution. They have asked for the state fund for political parties formed by such communities for at least 30- 40 years. If these things are subsumed in the constitution, there will be nothing left of constitutionalism.

There is something ridiculous in the different opinions of Nepal Pariwar Dal member Eknath Dhakal. He has contended that the country's sovereignty should not only rest on people but also on God. Anti-federalism leader Chitra Bahadur KC of Rastriya Jan Morcha has recommended deleting "federal" and "people's right to self-rule" and retaining "democratic decentralisation and local autonomous rule". Sadbhawana (Anandadevi) member Sarita Giri has insisted that restructuring of federal unit and remapping the border should be made non-amendable. She registered this different opinion because, she says, border remapping cannot be the subject of only one federal unit.

### **Promises Changed**

All political parties had promised to the people that they will retain the democratic system through their manifestos on the eve of the CA Election 2008. In its commitment letter, UCPN(M) had written that "constitutional supremacy, rule of law, multiparty politics, adult franchise, free and fair periodical election, full press freedom and fully democratic norm shall be followed". But these promises have been broken in their reports.

In the Judicial System Committee, the party has gone against the constitutional supremacy and in the Committee for Determining the Structure of the Legislative Body, they have introduced a unicameral house like that of China in the name of parliamentary supremacy. The Party has proposed a special committee of the unicameral parliament to monitor all other organs of the government. This goes against the promise the Party made before the CA election. This proposal looks like Directive Principle Committee of National Panchayat and Panchayat Policy and Investigation Committee.

The UCPN(M) is not only trying to change its commitment of mixed election system in the name of multiple member election system. As to the executive, it has stuck to its stance for an executive president. In matters relating to the state restructuring, it seems to have changed its former commitment. During the election, it had proposed two regional states; Seti-Mahakali and Bheri and nine other caste states: Magarat, Tharuwan, Tamuwan, Newa, Tamsaling, Kirant, Limbuwan, Kochila, and Madhes. Mithila, Bhojpura and Awadh were declared as sub-provinces. But in the Committee on State Restructuring and Distribution of State Power, it has proposed 14 states of different names. This indicates that the UCPN(M) is not yet clear about the government system and federalism.

Unlike UCPN (M), the Nepali Congress (NC) has not changed its former commitment in the issues regarding parliamentary rule, constitutional supremacy, mixed election system, and mixed bases for state restructuring. The CPN(UML) has not changed from its promise made before the CA election. But after its rise to the government, in the Constitutional Committee and Assembly meetings, it has started to behave like a wayward child. This is due to the internal problem of the party. It still sticks to parliamentary system and constitutional supremacy with which it had campaigned during the CA election.

Madhesi Janadhikar Forum (MJF) had stated in its election manifesto that Westminster model of parliamentary system had become dysfunctional in the last 15-20 years in the context of Nepal. So this system would not be appropriate for the nation. It, therefore, had proposed the system of an executive president directly elected by the people and parliamentary system with constitutional supremacy. This party has not changed from these norms in the constitutional committees.

Thus, it is necessary to analyze the changes these parties have allowed despite the promises and the commitments with which they had gone to the people before the CA election. Comparing the promises it made before the CA election and the stand it has taken in the different committees, there is hardly any difference in Nepali Congress. But there is big change in UCPN(M). The CPN(UML) is creating a lot of controversies and contradictions because of its internal disputes. They repeated in the Assembly what they said in the committees.

In the discussion sessions of the Constituent Assembly, the CA members acted the same way they had done in the Committee meetings. They hardly ever raised themselves above the party interest. Though the Constituent Assembly Regulations 2009 is mute about party whip for the members, almost all the CA members presented their opinion in conformity with their party line. Dev Prasad Gurung of UCPN(M) had demanded that their different opinion had to be included in the preliminary draft report. The UCPN(M) members repeated their stand for writing “court answerable to the people”, “people's war” in the preamble of the constitution. The party had taken the same stand in the Constitutional Committee meetings. Besides, these agendas had been nullified by voting in the Committee.

The UCPN(M) opined that pluralism was not necessary to be retained because they had already assimilated competitive multiparty system. They insisted in the Assembly that the national flag had to be changed to symbolise republicanism, federalism and inclusive norms. Likewise, they have demanded change in the interim position of the President and Cabinet in the transitional period. They have sought to change the status of the cabinet system and the President. Speaking on the Assembly meeting of Jan 17, Chitra Bahadur KC of Rastriya Jana Morcha said, “We have proposed to excise the word “federal” from all the preliminary drafts prepared by the committees. If this is not taken seriously and federalism is embraced, the nation will have to face terrible consequences”. In the same meeting Dr. Narayan Khadka of Nepali Congress (NC) demanded to remove the clause “people's rights to self-rule” previously endorsed by the Constitutional Committee. Other CA members expressed their opinions on the basis of what they had earlier said in the Committee meetings.

Speaking in the CA Meeting on Jan 18, senior vice-chairperson of UCPN(M) Dr. Baburam Bhattarai insisted on not writing pluralism in the constitution. He recommend writing diversity and multiparty competition and said consensus can be gained in this option. He said, “Nothing of pluralism, unitarianism and dualism should be written in the constitution”. He said that if “people's war” and “multinational” were deleted from the constitution, the constitution cannot be made. In the same meeting, Congress CA member Dr Ram Sharan Mahat demanded writing the end of not only the remains of feudalism but also all forms of violence in the preamble of the constitution.

Binda Pandey, UML CA member and also the chairperson of the Committee on Fundamental Rights and Directive Principles, said no movements based on political party should be mentioned in the constitution. She said that only United Peoples Movement could be mentioned.

In the drafts prepared by the Constitutional Committee, it has been recommended to include all the differences in all the executive committees of the political parties. This is a challenge for those of the parties who have not been able to make themselves inclusive. This has asked the parties to go according to the changing time. Also there is the talk about appointing ambassadors on proportional and inclusive system. This is the most complicated thing because ambassadorships are a limited seat provision. How can it be made proportional in the land with more than 100 castes? This is impossible.

### **Varieties of Recommendations and Advice**

The Constitutional Committee had received numerous suggestions and recommendations while it was preparing the preliminary draft reports. Some of such recommendations were directly referred to the Committee at the personal level while others were based on the field visits made by the CA members. Likewise, various organisations and political parties had also offered their suggestions. The recommendations came both within and beyond the country.

The Committee had received 304 recommendations from various organisations. From the Committee on Citizen, it had received 76 suggestions. Out of 24 parties in the Constituent Assembly, 23 parties offered suggestions but Sadbhawana (Anandadevi) remained mute in this regard. Among the 29 experts who came to the Committee meeting room of Singh Durbar to offer opinions and suggestions Chief Justice Anupraj Sharma was one. Likewise, eight organisations had registered their opinions in the Constitutional Committee office itself.

Out of the 40 teams which had been mobilised from March 8, 2009 in the different districts to collect public opinion about the issues to be included in the constitution, team number 5 mobilised in Sankhuwasabha and Tehrathum, team number 10 of Dolakha and Ramechhap, team number 14 of Chitawan and Makawanpur, team number 26 of Dang and Salyan, team number 28 of Rukum and Jajarkot, team number 31 of Jumla and team 40 of Bajura did not bring any recommendations. Likewise, the Committee has mentioned in its report that no opinions were offered from team 37.

Some interesting recommendations were also offered. Few of them need mentioning. Writing to the Constitutional Committee, Himalaya Budhapaka Samaj Nepal (Himalaya Elders Society Nepal) has demanded that the new constitution should mention about the rights and duties of the elderly people. National Brahmin Society has recommended listing Brahmins in the indigenous category besides granting rights to that caste. It has argued in favour of reservation system on the basis of class, not caste. Saptahik Bimarsa has recommend that general strike, transport strikes, arson, vandalism should be ended once and for all and they should be outlawed.

In case of disobedience, it recommends that the security forces should shoot the mob. World Hindu Federation Nepal has written to the Committee saying that secularism is a linguistically inappropriate term and is borrowed from other countries. It prescribes writing "religion-free Nepal without any religious discrimination" in the constitution. Nepal Bar Association has demanded that the preliminary draft passed by the Judicial System Committee should be corrected. It has cited that it is against constitutional supremacy.

### **Relation between Committees and the Constitutional Assembly**

In the initial days of the Assembly meetings, there was an enthusiastic presence of CA members to discuss on preliminary draft reports prepared by the various committees. But in the later days the

number came down to 60 or 70. On Aug 12, in a discussion on the draft report submitted by the Committee on Determining Structure of Legislative body, the present CA members in the Assembly were not more than 70 while the total number of the members is 601. This growing tendency of indifference indicates that the CA members have not prioritised constitution writing in their working list.

Though the CA members came to the Assembly meeting in the considerable number in the earlier days, in the latter times during the discussion session on the reports submitted by the thematic committees, the presence of the members began to wane. And to make the CA members attend the meetings the parties had to impose whips on their members. During the discussion session of the thematic committee top leaders of the main political parties hardly attended the meetings.

Because of the dogged stand of the political parties, the contradictory opinions seem to have been pouring. After the heaps of the different opinions began to pile up, the Constitutional Committee formed a sub-committee for studying the reports and the recommendation with Sadbhawana Party CA member Laxman Lal Karna as coordinator . After Karna was inducted as the minister in the cabinet CPN (UML) CA member Agni Prasad Kharel has been assigned the duty of coordination of that committee.

Recently, toward the end of December, UCPN(M), Nepali Congress (NC) and CPN(UML) have formed a 9-member Informal Mechanism Committee to address and to resolve the differing and opposite views. Top leaders of big three parties, chief think tanks from the three parties and CA members Radheshyam Adhikari, Agni Prasad Kharel and Ekraj Bhandari are the members in this committee.

Structural lapses during the Constituent Assembly formation, the UCPN(M)'s street protests after quitting the government and declaration of autonomous states have complicated the constitution-writing process. The Maoist party, now UCPN(M), which had launched its "people's war" from Rolpa and Rukum of the west, fourteen years ago, against the then state system, has now declared the Limbuwan and Kochila autonomous states from the east and has pushed the constitution-writing process further toward uncertainty. The Party began its third phase protest program against the "unconstitutional move" of the President and for civilian supremacy. Declaring autonomous states was part of this third-phase protest program. Because of the Kailali incident, the Maoists announced nationwide general strike on Dec 7, 2009, the CA members could not go to participate in the Assembly meeting. Subsequently, for the first time in the one-and-half-year history of the Constituent Assembly, the meeting was postponed by pasting a notice.

Chairperson and vice-chairperson of the Constituent Assembly are also the legislative members and therefore they have the responsibility of doing double duty. Because of this structural lapse, Constituent Assembly meetings were adversely affected by UCPN(M) House obstructions. The same member shouts slogan against the government in one meeting. How can the same person be serious in the constitution-writing process? Because of this flaw, Constituent Assembly meetings have not been able to bear any fruits.