

Dispute over Committee Leadership

Dhruba Simkhada

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The schedule of the CA had to be amended three times to give completion to the thematic committees. It was only on 13 January 2009 when all the committees got their chairpersons that the constitution-drafting process came back on “track”. This process was made easier after the then ruling coalition of UCPN (M) and UML agreed to nominate Madhav Kumar Nepal to the CA and made him the chairperson of the Constitutional Committee. These disputes in the leadership of the committee had already given signs that the constitution-drafting process would be affected.

The CA schedule published on 14 November 2008 had set the deadline of end of the second week of December to finalise the committees; however, since the committees could not be formed, it was extended to 30 December 2008 and 9 January 2009. Again, the committee chairpersons could not be selected, and another date of 13 January 2009 was fixed. At 10 p.m. on 10 January 2009, after form UML general secretary was sworn in to the CA, the parties agreed to select the committee chairpersons in consensus. Three meetings of the CA had been called on that day.

There was consensus after the coalition partners and the main opposition Nepali Congress agreed to support Madhav Kumar Nepal’s nomination. Nepali Congress chief whip Laxman Prasad Ghimire said, “We supported Madhav Kumar Nepal’s nomination as the chairperson of the Constitutional Committee after it was agreed that Nepali Congress would get the chairmanship of three thematic committees as well as Public Accounts Committee”.

However, the main disagreement was over the seat of the chairperson of the Constitutional Committee. Nepali Congress and UCPN (M) both had laid claims to the post. Prime Minister Pushpa Kamal Dahal, Nepali Congress president Girija Prasad Koirala, UML general secretary Jhala Nath Khanal, Madhes Janadhikar Forum chairperson Upendra Yadav and other senior leaders of the people’s movement are in the Committee.

The nepali Congress had proposed former Chief Justice Bishwanath Upadhyaya as the chairperson of the Constitutional Committee, but UCPN(M) and UML did not give their assent, following which he resigned from the CA before taking the oath of the CA. Nepali Congress sent its vice-president Ram Chandra Poudel to the Committee in place Upadhyaya and nominated Trade Union Congress leader Achyut Pandey to the CA. Upadhyaya was the chairperson of the committee that drafted the 1990 constitution while Madhav Nepal was one of the member of that committee. Upadhyaya is a non-political but an expert on constitutions; Madhav Nepal has been active in politics and has been a former general secretary of UML.

Along with the selection of the chairpersons of the committees, the leftist party got vice-chairpersons as well important position in parliamentary as well as constitutional committees. On

the agreement of UCPN (M) on UML nominating of Madhav Nepal to the chairperson of the Constitutional Committee, professor of political science Krishna Hachhethu says, "It could be understood as an attempt to give continuity to the 60% votes received by the leftist parties in the CA elections".

Until the selection of the chairperson, there was constant change in the membership of the Constitutional Committee. UML forced nominated CA member Sushil Chandra Amatya to resign to give way to Madhav Nepal in the CA, and to secure the chairperson of the Constitutional Committee, Radha Gyawali was shifted to another committee. Similarly, UCPN (M) also shifted Amrita Thapa and Dina Nath Sharma from the Constitutional Committee to the Committee on Natural Resources, Financial Rights, and Revenue Sharing and the Committee on Fundamental Rights and Directive Principles and replaced them with Dharmashila Chapagain and Dr. Baburam Bhattarai. After 13 CA members from the Muslim community objected to the non-inclusion of any Muslim members in the Constitutional Committee, two independent CA members Sadrul Miya Haq and Baban Singh were added on 29 December 2008. The Interim Constitution 2007 has a provision of inclusion representation in the committees. There are 13 women members in the committees and 16 members have legal background.

Inter-committee relations

The first task of the committee was to present the preliminary concept papers to the public by second week of April 2009, after which they were supposed to present a preliminary draft with the concept paper to the Constitutional Committee after a discussion. Then the Constitutional Committee prepares the first draft of the constitution. After this draft is submitted to the CA, it is published in the gazette and sent to the Public Opinion Collection and Coordination Committee to gather suggestions from the public. The Constitutional Committee had to compile and integrate the reports from the thematic committees and the suggestions gathered by the Public Opinion Collection and Coordination Committee.

The early meetings of the committees were affected because they took on works falling under other committees. For example, the issue of fiscal relations between different levels of the government was to be discussed in both the Committee on Natural Resources, Financial Rights, and Revenue Sharing and the Committee for Determining the Form of Government. Similarly, the issues of the rights of women, children, youth, labour, farmers, Madhesi, indigenous Janajati, Dalit, backward region, disabled, Muslims and other minorities were included in both the Committee on the Protection of the Rights of the Minorities and Marginalised Communities and the Committee on Fundamental Rights and Directive Principles. So initially issues were cross-listed and it affected the workings of the committees until it was sort out.

At the same time, it was accepted that of the 14 thematic committees, the Constitutional Committee was special and "superior". Its members took oath of office and secrecy on 16 December 2008 but other committee member have not been sworn in, which has raised questions among the CA members and secretariat staffs. Until this time, journalists had access to all the committees. The CA Chairperson Subash Chandra Nemwang himself had emphasised the transparency of the constitution-drafting process, "journalists are ex-officio members". However, the Constitutional

Committee made new regulations to “constitution-drafting process will be secret” and restricted access to the journalists.

Before then, the State Affairs Committee and Public Accounts Committee were held in importance in the legislature-parliament. There used to be competition among the parties and members to chair and be a member of these two committees. In the previous parliamentary sessions, a precedent was set where the Public Accounts Committee would be chaired by the opposition and other committees would be chaired by the governing parties, and following on this tradition, UCPN (M) chief whip Dina Nath Sharma said, “It will be easier to draft the new constitution if our party chairs the Constitutional Committee”.

There are 43 members in each thematic and procedural committee. The chairperson of the CA selects the members in agreement with the CA based on party structure and by including women, Madhesi, indigenous Janajati, Dalit, backward region, minority community, but no member can be in two committees. Chure Bhawar Rastriya Ekata Party, Nepal Loktantrik Samajbadi Party, Nepa: Rastriya Party, Pariwar Dal, Dalit Janajati Party, and Samajbadi Prajatantrik Janata Party have one member each in the CA who is members to the thematic committees only. Only Tarai Madhes Loktantrik Party, Madhesi Janadhikar Forum, UML, nepali Congress, and UCPN (M) have members in all the 14 thematic committees while other 20 parties do not because none of them have 14 members in the CA. however, since the preliminary draft papers and concept papers are presented to the full sitting of the Assembly, all members presented their suggestions.

The CA regulations states that the people and CA members have to work together for constitution drafting through a bottom-up process where the members reach out to the people and collection suggestion and people’s wishes.

According to the CA Regulations, the committees have to schedule their timeline with that of the main timeline and go to the people to solicit suggestions. Then every committee prepares its concept and preliminary draft papers and present them to the chairperson of the CA. after discussions, revised reports are sent to the Constitutional Committee for preparing the draft of the constitution, which has to be presented to the CA by its chairperson. However, the committee reports had dissenting opinions and to resolve them a sub-committee to study the reports and make suggestions was formed with Laxman Lal Karna as coordinator and after he became a minister, Agni Prasad Kharel took his position. It has been able to resolve the disagreements of three committees only so far.

Public Opinion Collection and Coordination Committee submits its report with the suggestions of the people to the CA, which debates on the report and sends to the Constitutional Committee. Only then the draft of the constitutional takes the form of a formal bill which has to be presented to the CA by its chairperson and it signals the end of the all the committee-related works. The full sitting of the CA will undertake theoretical and article/clause-wise discussion and the preamble, articles, and clauses have to be approved separately one by one, as per the Regulations. If there is no unanimity, another 15 days has to be given to try to seek a consensus on those issues. If there is not consensus even after then, it has to be approved by two-thirds (265) of the members in attendance not less than two-thirds (401) of the existing members (601).

Every CA member has to sign on the pages of the preamble and articles and clauses of the constitution approved by the full sitting of the CA. then the Regulations states that the chairperson of the CA certifies the document and presents it to the President in a national ceremony and the President will declare the promulgation of the new constitution in the country.

Chairpersons of the 14 thematic committees

1. Constitutional Committee: Nilambar Acharya became the chairperson after Madhav Kumar Nepal became the prime minister.
2. Committee on Fundamental Rights and Directive Principles: Binda Pande (UML)
3. Committee on the Protection of the Rights of the Marginalised and Marginalised Communities: Lalbabu Pandit (UML)
4. Committee on State Restructuring and Distribution of State Power: Lokendra Bista Magar (UCPN-M)
5. Committee for Determining the Structure of the Legislative Body: Ramesh Rijal (Nepali Congress)
6. Committee for Determining the Form of Government: Shambhu Hajara Dusadh (Nepali Congress)
7. Judicial System Committee: Prabhu Sah Teli (UCPN-M)
8. Committee for Determining the Structure of Constitutional Bodies: Gobinda Chaudhari (TMLP)
9. Committee on Natural Resources, Financial Rights and Revenue Sharing: Amrita Thapa Magar (UCPN-M)
10. Committee for Determining the Base of the Cultural and Social Solidarity: Nabodita Chaudhari (RPP)
11. National Interest Preservation Committee: Amik Sherchan (UCPN-M)
12. Committee on Citizen: Mina Pandey (Nepali Congress)
13. Public Opinion Collection and Coordination Committee: Pramod Prasad Gupta (MJF)
14. Capacity Building and Source Management Committee: Mrigendra Singh Yadav (MJF)