

## Amendment of Regulations for lack of Dispute Resolution

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There were clear policies in place to manage the constitution-drafting process. These processes had been the results of long discussions and consultations, which had laid the course for drafting the constitution. Following the laid-out processes would have guaranteed the new constitution on time. While drafting the Interim Constitution 2007, the CA Regulations, and CA calendar of events, timeline was also specified. However, when the parties could not reach consensus in their discussions, these regulations and calendar of events turned out to be impediments instead of guideposts. The political parties instead of following the regulations and the calendar of events amended these to suit their needs. The last example of this is the third (2011) amendment to the CA Regulations.

The Constituent Assembly had drafted its calendar of events on November 16, 2008. If everything had progressed according to the calendar, all the thematic committee concept papers and reports would have been discussed in the CA and forwarded to the Constitutional Committee by June 15, 2009. Then if the draft prepared by the Constitutional Committee was endorsed by the CA after discussion, then the new constitution would have been promulgated by May 28, 2010. However, due to disputes among the parties, the new constitution could not be promulgated. Instead, the CA term was extended until May 28, 2011 by amending the Interim Constitution 2007. Yet the calendar of events could not be followed.

According to the calendar of events amended by the CA on June 16, 2010, the CA was to forward all the reports with comments and directives after passing them to the Constitutional Committee and the Constitutional Committee had to prepare the first draft of the constitution by November 16, 2010. However, in the absence of consensus among the political parties, neither the CA was not able to forward the thematic committee reports with its comments and directives to the Constitutional Committee and consequently nor was the Committee able to prepare an integrated draft of the constitution. The CA was only able to forward the reports of the Committee on Natural Resources, Financial Rights, and Revenue Sharing; Committee on the Protection of the Rights of the Minorities and Marginalised Communities; and the Committee for Determining the Structure of Constitutional Bodies.

A high-level taskforce discussed the reports of seven thematic committees. The report of the Committee on State Restructuring and Distribution of State Power was not finalised and could not be discussed upon by this taskforce. As there was no progress according to the calendar of events and the possibility of the high-level taskforce reaching a consensus grew thin, the political parties decided to change the CA Regulations instead of the calendar of events.

In the CA Regulations 2008 article 82 (9) has a provision that the reports submitted by the Constitutional Committee and thematic committees have to be discussed and passed by the CA and

forwarded to the Constitutional Committee with its comments and directives. Due to the differences among the parties and the provision of this article, the CA could not send the reports of eight thematic committees to the Constitutional Committee. When going for majority votes to decide upon disputes would invite further complications and the prospect of consensus in all the issues was slim, the parties opted to amend the Regulations and insert new provisions.

The Constitutional Committee held a meeting on November 16, 2010, and it was also given the responsibility to resolve all the disputes in the thematic committee reports through discussions. To prepare the first draft of the constitution and forward the remaining thematic reports to the Constitutional Committee, Regulations Amendment Draft Committee was formed with CA members from UCPN (M) Ekraj Bhandari, Nepali Congress Pushpa Bhusal, CPN (UML) Dharendra Bahadur Shrestha, Tarai Madhes Loktantrik Party Brijesh Kumar Gupta, and Rastriya Janamorcha Santa Bahadur Nepali. After the proposal was endorsed by the meeting with support from Congress parliamentary chief whip Laxman Prasad Ghimire, CPN (UML) chief whip Bhim Acharya, and UCPN (M) chief whip Posta Bahadur Bogati, the process of amending the Regulations moved ahead.

The Regulations Amendment Draft Committee chaired by CA member Pushpa Bhusal submitted its draft report at the CA on January 18, 2011. The Committee proposed addition of Regulations article 65 (3a) to article 65(3). The new amendment reads, "If disputed issues are not resolved in the thematic committees formed under the article 66 and included in the report and/or difference of opinion is seen in the CA discussions and becomes disputed, and the CA forwards such reports by specifying the disputed issues with its comments and directives to the Constitutional Committee to resolve them through further discussions, the Constitutional Committee will have the authority to resolve such issues and will submit unresolved issues to the CA for decision'.

Similarly, additional articles 82(10) and 82 (11) was added to the Regulations article 82(9). The article 82(10) states, 'Notwithstanding the article 82(9), if disputed issues are not resolved in the thematic committees formed under the article 66 and included in the report and/or difference of opinion is seen in the CA discussions and becomes disputed, the CA will forward such reports by specifying the disputed issues with its comments and directives to the Constitutional Committee to resolve them through further discussions'.

The article 82(11) states, 'Pursuant to the article 82(1), if any thematic committee report is received, the Constitutional Committee will resolve any disputed issues through discussions, and the Constitutional Committee will submit any unresolved issues to the Constituent Assembly for decision and prepare a draft as per the Assembly decision and include in the first draft of the constitution'. The amendment of the Regulations paved the way for sending disputed issues to the Constitutional Committee with authority to resolve them and submit unresolved issues again to the Constituent Assembly and prepare a draft constitution as per the decision of the CA.

One week after amending the Regulations, the reports of the Committee for Fundamental Rights and Directive Principles, Committee for Determining the Structure of Legislative Body, Committee for Determining the Form of Government, Judicial System Committee, Committee for Determining the Base for Cultural and Social Solidarity, and National Interest Preservation Committee were forwarded to the Constitutional Committee on January 26, 2011. There were differences among the

parties on whether to form the state restructuring commission or not, so the report of the Committee on State Restructuring and Distribution of State Power was not forwarded to the Constitutional Committee.

The article 138(2) of the Interim Constitution has a provision to form a high-level commission to make recommendations for state restructuring. Following the same provisions, UCPN (M), Nepali Congress, and UML reached an understanding to form the commission on July 6, 2011. However, the Madhes-based parties were against forming a commission. There was a meeting with CA chairperson Subash Nemwang and three parties on this difference on August 5, 2011. The meeting decided to hold discussions on the reports of other thematic committees except the Committee on State Restructuring and Distribution of State Power. As the time passed, UML and UCPN (M) also did not give primacy to the formation of the commission. Nepali Congress insisted on formation of the commission. While the differences had not been resolved, the report of the Committee on State Restructuring and Distribution of State Power was forwarded to the Constitutional Committee.