

Suggestions to the Constitutional Committee: From Hermits to Experts

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The importance and effectiveness of the constitution grows with the public's ownership towards it. Therefore, after the establishment or restoration of democracy, through large scale changes and revolution, special attention has been given to the constitution-drafting process. The main agenda of the 2006/07 Jana Andolan II was to establish peace through holding constituent assembly election and the declaration of the new constitution. After the constituent assembly election was held on April 10, 2008, the public representatives have done a lot in collecting the views and suggestions of the general public, various institutions and organisations, and experts.

The Thematic and Procedural committees constituted to make the constitution-drafting process extensive, effective and fluent were given a special right to collect expert opinions, hold public debates, gather suggestions from Nepalis living both inside and outside the country, and hold seminars, conferences and field visits, if necessary. Based on this right as guaranteed by the Constituent Assembly Regulations 2008, the committees figured out the experts, held discussions and talks, administered questionnaires to the public, called for opinions through the public media, and gathered suggestions in persons. Although there were some weaknesses while preparing, administering and analysing the questionnaires with proper methodology, thousands of suggestions were gathered by the Prime Minister, top leaders of the political parties, ministers, parliamentarians, and civil servants through personal visits, memorandums, e-mails and telephones, among others.

The Constitutional Committee received three hundred direct suggestions and seventy-six through the Committee on Citizen. Dhan Ghale of Barpak, Gorkha, suggested 'Ghale language and Gurung language are two separate entities'. For correcting the false practice of including Ghailes within the Gurung community and assuring rights of the Ghale community, Dhan wrote, 'There is a clear distinction between Ghailes and Tamus (Gurungs); however, Ghailes have been merged in the larger Gurung ethnic group. The Ghale community should be given recognition in the new constitution'. Similarly, Dayaram Chapagain emailed to suggest that the federal divisions should be carefully accomplished. 'The federal states should not be on ethnic grounds, and the Tarai should not be declared autonomous state as it increases the chances of detaching itself from mainland Nepal', he added. Whereas, Bibidh and Billap Chapagain of Chitawan suggested the Committee that 'the state should make provisions for free education till class 12 and assure quality education without any discrimination in exercising opportunities and facilities'.

Santosh Dahal, who originally is from Jhapa and now living in Qatar, recommended to make strict laws to control kidnappers and robbers. His suggestion to the Committee read, 'The kidnappers and robbers should be hanged-to-death if proven guilty because there are not such criminals in the countries where capital punishment is awarded'. Likewise, Niraj Khatiwada pointed out the dispute

that Nepal and India continually have about their national territories. He suggested managing the dispute properly; and army camps would best do the job, according to him. 'First shut the open Nepal-India border and establish army camps in the border region', Khatiwada opined. Meanwhile, S. L. Ojha had to say something on a different topic. Expecting the constitution to have provision inclined towards the poor and the oppressed rather than the rich and the privileged ones, Ojha mentioned, 'The poor should be able to have their own house to live on in their motherland'.

Mahendra Magar, a permanent resident of Khotang, living temporarily in Dhapakhel, Lalitpur, suggests that the existing practice of doing active politics till old age and letting corruption prevail should be abolished. In the letter drafted to the Committee, Magar recommended, 'The maximum age for politicians and high-ranking officials should be seventy years; transparency should be maintained by evaluating the property of parliamentarians before and after becoming ministers; and if proven guilty of corruption, anyone, irrespective of his/her position, should be deposed and given capital punishment or lifetime sentence after seizing the property'. Similarly, Sukham Thapa from Saudi Arabia suggested having a prime ministerial system of governance and electing the president from the public poll rather than from the parliament.

There have also been opinions to have a different system to the existing one. Basanta Thapa recommended to have a unified democratic republican state and decentralised system of governance rather than having a federal system. Kapildev Thapa of Dhapasi, Kathmandu, favours scientific land reform. Prakash Poudel of Swayambhu, Kathmandu, demanded the establishment of training centres and employment opportunities targeting the unemployed youths. Blackbuck should be declared the national animal, said Bhim Bahadur Shahi of Gaimadi, Dailekh. Meanwhile, Rang Bahadur Shahi of Dandafayak, Humla, believed that the employment of one person from a household should be mandatory and that no more than one person should be allowed to get employed in civil service. Sabin Yadav has suggested on a different topic. He said, 'Right to live in clean and tranquil environment should be guaranteed'. A Jana Aandolan victim Bhuwan Bahadur KC requested to give a 45 per cent discount to the Jana Aandolan victims in buses, minibuses and airplanes. Maniram Chaudhari of Kailali said that the upcoming constitution should not be centre-oriented; it should rather be people-oriented.

In his bunch of suggestions, Nepali Congress central committee member Govinda Raj Joshi has recommended that there should be no more than 15 members in the Council of Ministers. In condition of consensus government, the Council of Ministers could have members based on the proportion in the parliament, suggests Joshi. Joshi, a former Home Minister and joint general secretary of Nepali Congress, suggested this through a letter. Joshi has extended his thoughts on constitution-making despite his defeat in the constituent assembly elections and the subsequent inability to contribute directly to the constitution-drafting process.

Not only have various individuals shared their thoughts with the Committee, various institutions have also done so. Nepal Shivasena Sub-Central Committee Kathmandu has demanded that the notion of secular state be removed and Nepal be re-established as a Hindu state. Similarly, the National Federation of the Disabled-Nepal has recommended that the preamble of the constitution should include the phrase: 'Considering that people with disability are denied opportunities...'. Social Inclusion Research Fund has demanded that the third gender should be given citizenship

recognising their identity. The Fund said, 'On the subject of citizenship, the third gender individuals should be given rights to citizenship based on their identity'.

The Jamaat Ulama Association recommended that the Muslim community be given recognition of religious minorities in the constitution. The Badi Concern Society, Tulsipur, Dang, has advised to ascertain provisions to rehabilitate and give employment to the Badi women who have been involved in commercial sex work. The National Network of Indigenous and Ethnic Group Nepal opined, 'The preamble of the constitution itself should mention that the rights of the marginalised, minority and endangered indigenous and ethnic groups are secured'. Nepal Muslim Association has recommended the new constitution should accredit the Urdu language. Similarly, Nepal Dhobi Welfare Committee suggested that the Muslim laundrymen should be given recognition of Dalits as that of the Hindu laundrymen and be given all privileges offered to Dalits.

The National Women Commission has recommended having provisions that the Electoral Commission would not recognise any political party in which there is no 50 per cent women representation from the local to the central level. The Himalaya Old-Aged Association Nepal has advised to arrange for the welfare and rights of the old-aged people. The National Brahman Association has opined that Brahmans should be enlisted in the ethnic group category; that their rights be assured; and that affirmative action should not be based on ethnic grounds, but on class basis.

The Constituent Assembly members' group, which had reached Mugu, was suggested to form an Education Commission like commissions in other sectors; to make the Public Service Commission transparent; and not to discriminate in the name of human rights. Meanwhile, the group which had reached Jhapa and Ilam was advised to devise a constitution that captures the sentiments of everyone, that makes everyone feel an ownership towards, and that addresses the issues of the victims and fighters of the Jana Aandolan (people's movement) and the People's War. The Committee for Determining the Structure of the Constitutional Bodies received 39,698 suggestions. Of these, the highest number-33,702 suggestions-were collected from the Public Opinion Collection and Coordination Committee, 5894 from the Committee on Citizen, and 72 from various governmental and non-governmental organisations from both inside and outside the country. The Committee had consulted 50 experts and concerned stakeholders.

The Constitution Socialist Group Nepal has recommended transforming Commission for Minorities, Language and Culture Commission, Commission for the Disabled, Indigenous Peoples' Commission, Madhesi Commission, Youth Commission, National Information Commission, Natural Resources Commission, Dalit Commission, Women's Commission, Land Reform Commission and National Planning Commission to constitutional bodies. The Forum for Women, Law and Development had advised to modify the Women's Commission into a constitutional body that is independent and empowered. The Kirant Rai Yayokkha Nepal Central Working Committee has proposed that the authorities of the constitutional bodies should be appointed based on the ethnic proportion and that males and females be elected alternately to the post of the president of the nation.

Dharma Majhi of Nepal Tarai Mool-Majhi Welfare Committee demanded that the constitution should assure the mandatory representation of Tarai Mool-Majhis in all of the existing and

prospective constitutional commissions for their rights and welfare. The public had recommended the constituent assembly groups to form women, Dalit, Janajati, Labourer, Muslim, and other commissions. Similarly, they had demanded proportional representation of women, Dalits, Janajatis and indigenous people in all of the state structures.

Constitutional lawyer Purna Man Shakya suggested the Committee that the Commission for the Investigation of Abuse of Authority, Election Commission and Public Service Commission are required both at the central and the federal state level. Constitution expert Kashi Raj Dahal recommended having independent police commission, separate commission for local bodies; gender equality commissions in areas with gender problems for equal rights and empowerment; commission for religious, linguistic and cultural development; information commission, among others.

Suggestions received by the Committee (through questionnaires and suggestions only)

- Committee for Determining the Structure of the Constitutional Body: 39,698
- National Interest Preservation Committee: 56,779
- Judicial System Committee: 38,539
- Committee for Determining the Structure of the Legislative Body: 41,910
- Committee for Determining the form of the Government: 57,200
- Constitutional Committee: 410

(Source: Committee reports)

The National Interest Preservation Committee received 48,985 suggestions from the CA members' group and 7500 from the public and Committee on Citizen. The Committee received 294 suggestions from citizens residing inside and outside the nation via the media, telephone, email, internet, fax, and post. The Committee had consulted 26 subject experts and 46 government authorities. In the question 'what do you understand by preserving the national interest?', 20.89 per cent replied protecting sovereignty and national integrity, 5.28 per cent said achieving economic growth, 8.58 per cent mentioned preserving national unity, 9.13 per cent replied maintaining the identity of independence and dignity in the international arena, 55.54 per cent nodded to all of the options mentioned above, while 0.59 per cent left the question unanswered.

In a question asking about the appropriate process while ratifying, assimilation, sanctioning or supporting treaties and agreements, 11.21 per cent said that all the treaties should be passed with a simple majority by the legislature; 62.94 per cent replied that important treaties should be passed by two-third majority of the parliament and simple ones could be passed by a majority; 14.74 per cent said that the parliament should decide on it; 10.45 per cent suggested that the head of the state could do that; and 0.64 per cent said some other method be used. Border expert Buddhi Narayan Shrestha advised to have provision to ratify treaties relating border management and border demarcation only after it gets sanctioned by 90 per cent majority of the parliament. He further added to his list of suggestions that provisions be made for immediately detaining or life imprisonment for anyone working for the fragmentation of Nepal. Security expert Dhruba Kumar believed that Nepal's biggest challenge is terrorism and to counter that, he suggested transforming

the Nepal Army as Defence Army. Former Army officer and military expert Karna Bahadur Thapa claimed that national security could only be maintained by the Nepali citizens. He suggested following the Israeli model in Nepal. Everyone over a specified age in Israel undergoes military training.

The Committee had also received suggestions from various organisations. The Dalit NGO Federation had suggested a system where the central government has the complete authority to ratify international treaties and conventions, and the national army and border army be provided by the central government for national security. The Tajpuria Social Welfare Council suggested a system where the head of the state deploys the Nepal Army only after getting approval from the parliament, and the Army should bear responsibility of border security and national unity. Similarly, Sherpa Rastriya Mukti Morcha opined establishing border security force; and the Women Concern Forum recommended the Nepal Army to safeguard the international borders of Nepal and to give the security personnel authority to arrest anyone entering the Nepali territory without permission.

Tej Bahadur Khatri of Dolpa believed that national sovereignty should be at the hands of the Nepali people, that the number of the military personnel should be decreased, and that every Nepali over the age of 18 should mandatorily receive military training. While Nainshigh BK reckoned that the two armies be integrated to form a National Army, Deepak Shahi opined the army to be involved in developmental works. The CA members' group was advised by the public to address the problem of border encroachment, to bring the army under the jurisdiction of the centre, to devise national policies to solve the issue of border encroachment and border security, and to hold referendum in issues that are of national significance, among others.

The Committee on Natural Resources, Financial Rights and Revenue Sharing, based on the information published in the media, had received 90 suggestions. In addition, 40 working papers were presented by various ministries of the Nepal government, National Planning Commission Secretariat, Local Body Fiscal Commission, various non-governmental organisations, institutions, and individuals. Moreover, the CA members' group had also collected the vox populi. Similarly, to make the work effective, experts like Dr. Shankar Sharma, Dr. Rabi Sharma Aryal, Santosh Mani Nepal, Kala Nidhi Poudyal, Yam Nath Sharma and Din Mani Pokharel were selected.

Various institutions, organisations, political parties and individuals had suggested the Committee to keep the jurisdiction of limited areas such as currency, security, international relations and mobilisation of chief resources under the central government and all of the rest be decentralised. The aforementioned stakeholders had given altogether 92 suggestions to the Committee, of which some are: to assure equal access of all citizens to natural resources such as water, forests, land, herbs and minerals; to mention about managed taxation procedure in the constitution itself; and to give the marginalised areas effective protection from the state level.

The Ministry of Land Reform and Management recommended putting an end to the dual ownership of land; effectively carrying out the planned settlement process; and distributing revenue collected through house and land registration fees and from the Land Revenue Office amongst the central, federal and local bodies by devising a system. Similarly, recognising water resources as important

national assets, the Ministry of Water Resources suggested that the constitution should define distinctive boundaries between the central and federal governments about the possession and use. The Ministry further said, 'There are instances of conflict caused for water-related rights in various countries', pointing out the likely challenges that could come in the future if necessary precaution is not taken.

The Ministry of Tourism and Civil Aviation has advised to devise a federal fiscal commission for inter-government revenue distribution; to list out the jurisdiction of various levels of government concerning property and responsibility, duty and obligation, and revenue distribution; and to develop an organ the works for resolving disputes. The Judicial Committee had received 38,256 suggestions from CA members' group. The Committee Secretariat received 283 suggestions from various other mediums.

Saroj Dilu Bishwakarma proposed punishing the culprit of serious crimes by seizing property and with capital punishment. He also suggested fixing a time limitation for completing a case. Nepal Bar Association recommended to institute an independent, neutral, resolute, capable and accountable judiciary; to have a system of reappointing judges; to have 50 per cent law practitioners in all levels of the court while appointing Justices; to establish three-tier court; and to have local courts and reconciliation centres as per the necessity.

Biju Subedi of Taumadi, Bhaktapur, requested giving free services to those who have not received judicial dispensation for ten years, recognising regional court as an archival court, and making the decisions of the court democratic. Man Raj Thakur of Simraungarh, Bara, suggested electing the Chief Justice with the majority in the parliament, and appointing judges as recommended by the Constitutional Council. Aarohan Gurukul recommended establishing a separate court dealing with violence against women and crimes. Gurukul opined giving death sentence for serious crimes and severe punishment to be devised against the culprits of dowry system, polygamy, corruption and others.

The Committee for Determining the Structure of the Legislative Bodies received 41,900 suggestions via questionnaire and 10 via telephone. Likewise, the Committee also received written suggestions from various organisations and institutions. The suggestions included that the central legislative body should be a bicameral legislature, the age of the voters should be above 18 years, the period of the legislative should be of 5 years, and a representative of the upper house should be above 30 years of age and that of a lower house should be at least 25 years of age. Similarly, suggestions were also received to make the upper house proportional and inclusive, to use mixed electoral system in the lower house, and to make the federal legislature unicameral.

The advices received through the telephone were equally valuable. The opinions thus received mentioned ending the practice of declaring candidacy from more than one place; and having parliamentarians at least with a minimum educational qualification of bachelor's degree and setting minimum qualifications for important posts such as Presidents, Prime Ministers, Finance Ministers and Education Ministers, at least Master's degree. The Committee on the Protection of the Rights of Minorities and Marginalised Communities received 96 suggestions from various institutions. Of these, the Blue Diamond Society demanded including the third gender in the definition of

minorities; the Constituent Assembly Support Network recommended granting the marginalised communities reservations for foreign employment; and the Mali Community Utthan Forum suggested declaring the Mali community as minorities, marginalised, and oppressed communities, and arranging measure of affirmative action and reservation to the individuals of Mali community.

Likewise, the Marginalised Adivasi Janajati National Forum demanded declaring free education, free health facilities and employment as the basic rights of the marginalised, minority and endangered communities and including those rights in the fundamental rights. The Vedic Sanatan Hindu Religion Service Committee, Central Office, Chitawan, suggested conserving and maintaining temples that are functioning as a form of religious culture. Nepal Sanyasi Society requested listing Dashnami Sanyasis in the list of minorities and marginalised communities, ensuring equal proportional rights and representation in education and employment, and conserving cultures and preserving traditions.

The Committee for Determining the Base of Cultural and Social Solidarity received suggestions from various organisations, institutions and individuals. Similarly, the Committee also received suggestions from the CA Members' group and 18 experts. The Federation of Nepalese Chambers of Commerce and Industry Kathmandu suggested assuring the constitutional sense of rights by acknowledging the interrelations amongst industrialists, investors, employers, workers and labourers. The National Dalit Commission suggested the constitution to say that no individual should be discriminated against, abandoned, rejected, banned, sanctioned, or forced untouchability based on one's case, ethnicity, birth, heredity, occupation, community or ethnic origin.

Khas Chhetri Joint National Forum and Samajik Janatrantrik Society believed every mother-tongue spoken in Nepal to be the national language; and that Nepali language written in Devanagari font should be the official language used in government offices and also the lingua franca. However, the Nepal Federation of Indigenous Nationalities suggested that all mother-tongues should be the official language used in government offices. Nepal Disabled Human Rights Centre suggested to mention in the constitution that the tools used by people with disability, such as the Braille system, touch reading, lip reading, and sign language, should be regarded as a part of life. Nepal Gangai Welfare Council opined that the official language in the federal level should be Nepali written in Devanagari script, English, and other government-approved mother tongues.

The Jogi Community Empowerment Forum Nepal, Terhathum, suggested that archives of unrecognised ethnicities and communities of Nepal, including the Jogis, should be created after proper research, and the state should take complete responsibility of preserving the languages, culture, tradition and history of the marginalised communities. The Committee for Determining the Form of the Government received suggestions from 57,200 individuals. The Committee had received such proposals through email, telephone, letters, and request letters. Similarly, the Committee not only got advices from various organs of the Nepal Government, but also consulted 21 experts on various issues.

The Committee on State Restructuring and Distribution of State Power received suggestions from 40 groups of CA members, in the form of written documents from various institutions, and through seminars conducted with subject experts and others within its jurisdiction. In the written

suggestions, the Committee was suggested to convert the existing zones into federal units; to decide their names through zonal council or referendum; and to form central, state, sub-state, and municipal or VDC governments. The Committee focused more on the qualitative part rather than the quantitative one while collecting the suggestion from the public. Consequently, only up to 22 suggestions have been received for a question.

When the public was questioned about provisions about the President and the Prime Minister, suggestions such as dividing their work based on the nature of their posts, making presidential system is the best in Nepal, and Prime Minister for daily administration. Some also gave examples from the various other nations. They have said the presidential and prime ministerial system should be like that of India, both should be elected, and both should have equal rights. The Committee has documented every view that was received. While suggesting opinions on the election of the President, the report of the Committee mentions: 'The President should be directly elected from the people; or from the two-third majority of the parliament; or by through election by an electorate of federal parliamentarian members.

Creation of a federal unit by merging two zones, converting the existing five development regions into federal states, and outlining 11 federal states including mountain, hill and Tarai, were some of the suggestions. Similarly, opinions like having Tharuhat Autonomous State; creating federalism like that of Switzerland; and forming federal states on the basis of natural resources and means, geographical location, social and cultural importance, financial sustainability, were also received. Some other suggestion pieces said: the central state should be strong financially and legally; the central government should not interfere with the federal governments; finance, defence, internal affairs, water resources and land reform should fall under the centre's jurisdiction; and provision of constitutional court or federal legislature or federal court should be there to handle the disputes between the centre and the state or between states.

The Committee on Fundamental Rights and Directive Principles received written opinions from 334 organisations and institutions. Similarly, 268 suggestions were received through email, post, and telephone. The Committee also collected suggestions from CA members' groups. National Elderly Citizens Network Institution Nepal advised to ensure the elderly citizens' right to live, along with rights to health, residency, security and special care from the state. National Land Rights Forum Nepal, Rasuwa, recommended securing the rights and welfare of peasants, bringing scientific land reform into effect, and having provisions to grant land to the squatters through the constitution. Public Forum for Human Rights suggested ensuring respectful environment and private meeting with law professionals to the arrested and imprisoned individuals; and Nepal Library Organisation requested forming library information and information service system, public library at the state level, and international-level library in every state.

Mithila Natyakala Council demanded ending the dowry system; Nepal Gold & Silver Dealers' Association demanded ensuring the rights of the dealers of gold, silver and other valuable items and making the federal state responsible for their and their property's security and preservation; and KIRDARC-Nepal, Dolpa, opined making a constitution that helps individuals eat full and ensuring the right to food. Family Planning Association of Nepal ensuring reproductive rights; Children Service Society Nerpa, Khotang, demanded putting an end to child marriage and polygamy; and

International Union for Conservation of Nature suggested ensuring right to fresh environment, access and benefit to the natural resources, right to participation in environmental decision process, preservation of nature and organism through the constitution.

The suggestions received through email, post and toll-free telephone suggested the Committee to put an end to laws biased towards women, and to punish those who make liquor than those who consume it. Similarly, lifetime imprisonment to those who practice polygamy, ensuring security of pregnant women, establishment of separate juvenile court, and formulation of education system according to age, were some of the suggestions. Giving reward when a daughter is born, unemployment allowance, two years imprisonment to those who practice violence against their wives, equal wages to women and men, stopping having more than two children, fearless environment, and compulsory inter-caste marriages were some of the written suggestions that the Committee received. The CA members' group collected opinions such as ensuring employment, ending impunity, ending violence against women, ensuring an employment per house policy, and establishing right to health, education and employment as fundamental rights.

The people's participation while formulating the new constitution was overwhelming. Nepalis residing within and outside the nation showed their participation now only by meeting the CA members' groups, but also through public media, posts, email and internet. The suggestions thus received have made the Committee ensured that there is optimism in the public that the constitution would be formulated and their voices would be heard. Despite a number of weaknesses such as unmanaged public opinion collection, less representative opinion pieces, and analysis via not well structured questionnaire, there are a lot of positive aspects. Various groups that were not able to make their voices heard in the past have come up with suggestions in organised form. Not only are the major issues addressed by the public, but also minor agendas taken up as demands.