

Lost Nine Months

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There were only five sittings of the Constituent Assembly in nine months. Besides discussion on drafting the constitution, the meetings could not achieve anything else. Only three months remain of the extended deadline. However, the constitution-drafting exercise remains where it was a year ago. In the words of Nilambar Acharya, the chairperson of the Constitutional Committee, responsible for preparing the draft of the constitution, 'In terms of drafting the constitution, we are in the same position where we were one year ago.'

The meeting of the Constituent Assembly on May 28, 2010 had extended the deadline by one year. The commitment expressed in 'need to extend the deadline due to lack of sufficient time and will give priority to drafting the constitution now on' has not been fulfilled by the Constituent Assembly in the nine months since then. In the 102nd meeting of the Constituent Assembly on July 18, 2010, CA chairperson Subash Nemwang had read out the completed and unfinished business of the Assembly.

Chairperson Nemwang had listed the unfinished tasks as getting a consensus of the parties on disputed issues, submitting the reports of the thematic committees to the Constitutional Committee after resolving the disputes, publishing the first draft of the constitution in the Nepal Gazette after discussion in the Assembly, preparing the bill by the Constitutional Committee after integrating the suggestions of the public, and conducting a discussion in the Assembly on each article of the constitution. However, there has been no agreement on these issues even after nine months have passed since the chairperson's announcement, which has thrown into disarray the working procedures and calendar of events of the Assembly.

Calendar of Events in disarray

Despite the pronouncement of the chairperson of CA moving ahead satisfactorily by preparing its working procedures and calendar events, the outcome has been the opposite. The satisfactory working procedures and calendar events are in disarray due to non-implementation. It was amended for the last time on July 18, 2010 since it was no longer relevant if it could not be implemented. Then the responsibility of managing the timeframe was given to the CA advisory group of work management. Experts say that it is not appropriate to overstep legal provisions prepared by itself in the name of consensus.

The chairperson had also listed the achievements for preparing the timetable for electing the leader and formation of bodies, collection of public suggestions for a second time, discussion of committee reports by the full Assembly, identification of disputed issues and initiative for a consensus, preparation of draft constitution by the Constitutional Committee, and first collection of public

suggestions. However, though the preparations are finished, the process of drafting the constitution has not moved ahead. The main reason behind this is the failure to seek consensus on basic constitutional issues before the CA elections.

Lost time

Nine months of the one-year extension has been lost. There has been no consensus of the parties on disputed issues in this period. Even after eight months of work, the report studying and suggestions committee under Agni Prasad Kharel could not resolve the disputed issues. This committee only managed to resolve disputes of the three out of 10 thematic committees and sent to the Constitutional Committee.

Then chairperson Nemwang formed high-level taskforce on October 11, 2010 under Pushpa Kamal Dahal to resolve disputes on constitution-drafting, but this taskforce was not able to enter into basic issues related to the constitution-drafting. According to the taskforce member Ramesh Lekhak, after the taskforce tried to seek consensus in favour democratic practices, the undemocratic forces within UCPN (M) put pressure on Dahal and he did not want to the extend the mandate of the taskforce. On top of that, Constitutional Committee chairperson had protested the formation of the taskforce as being against the Regulations of the Constituent Assembly.

Nonetheless, the taskforce garnered consensus on 127 minor disputes out of 210 from the thematic committees. However, there was no consensus on the basic issues related to the constitution. Then, a mechanism of 28 parties represented in the CA tried to resolve the disputes. However, all it could do was endorsing the agreements reached by the taskforce. Another attempt by a core group of leaders from UCPN (M), Congress, and UML tried to resolve the disputes, but its effort went down the drain. Then the decision was made to forward the thematic committee reports to the Constitutional Committee with the unresolved disputes. Though there was a provision to revolve all outstanding issues by the Assembly and forward all the reports to the Constitutional Committee, the provision was amended to nine thematic committee reports with disputes was forwarded to the Committee. The report of the Committee on State Restructuring and Distribution of State Power has not been forwarded to the Committee. The Committee does not have the authority to resolve disputes, so these disputes will need to be resolved by the Assembly. Chairperson of the Constitutional Committee says, 'Unless all the disputes in the thematic committee reports are resolved and forwarded to the Committee, an integrated draft of the constitution cannot be prepared'.

The Constitutional Committee which is responsible for preparing the integrated draft of the constitution remained without 'business' for eight months and the reports from the committees it received were not without disputes, which left it with no work. Chairperson Acharya said, 'The Constitutional Committee does not have the authority to resolve the disputes seen in the reports of the thematic committees'. The act of forwarding the reports with the disputes to a body without the authority to resolve them has complicated the task of drafting the constitution.

The disputed 210 issues broadly fall into four/five categories. 1) form of government: the need to finalise the shape and form of the executive, parliament, and the judiciary; 2) Election system is a point of contention: mixed, first past the post, multimember, or another system has to be agreed upon beforehand; 3) basis of federal structure: this is another issue without resolving it the process of drafting the constitution cannot move ahead; 4) the independence of judiciary is another issue: separation and balance of powers between executive, judiciary, and parliament is the main issue right now. The chairperson of the Constitutional Committee Nilambar Acharya says that only after reaching a consensus on these basic issues can the draft bill of the constitution be prepared. He says, 'The constitution has not gotten a shape yet as there is no consensus on these basic issues'.

The rising political distrust and procedural shortcomings of the CA makes the task of drafting a constitution in the remaining three months a difficult one. Only after the Constitutional Committee has received all the thematic committee reports without disputes, an integrated draft of the constitution will be prepared and submitted to the CA. after discussions in and amendments from the CA, it has to be published in the Nepal Gazette. After the bill has been presented in the CA, seven days have been set aside for amendments. Only then article-wise discussion starts. There is provision of 15 days for disputes articles and sub-articles. Besides the lengthy process, the disagreements and failure to reach a political consensus on these has made the constitution-drafting uncertain. At the moment, the political parties are vying for the government and the CA meetings have been postponed for lack of work. Amidst the rising mistrust and suspicion has also negatively affected the consensus of the parties. The latest competition between UCPN (M) and UML for government has further complicated the task of constitution-drafting, adding to the uncertainty beyond May 28, 2011.

Five meetings in nine months

July 18, 2010: 11th amendment to the calendar of events.

CA advisory group on work management given responsibility to set the deadline.

January 11, 2011: Formation of CA Regulations 2007 amendment draft committee.

After the death of CA member Damber Bahadur Khadka from Sankhuwasabha-2, his seat declared vacant.

January 17, 2011: A bill for amending the A Regulations is registered in the CA.

January 18, 2011: The CA endorses the bill for amending the CA Regulations.

January 26, 2011: The report of the Committee for Determining the Base of Cultural and Social Solidarity is endorsed by the CA to be forwarded to the Constitutional Committee.