

## Review of the Constituent Assembly Meetings

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The first meeting of the legislature-parliament on May 28, 2008, paved the way to the implementation of republic from the Constituent Assembly with the amendment of the Interim Constitution. The meeting started at 9:18 pm under the chairmanship of Mr. Kul Bahadur Gurung, a senior leader of Nepali Congress and the oldest member of the CA. Girija Prasad Koirala, who was the then Prime Minister and the head of the state, tabled the proposal to declare the country as Federal Democratic Republic which was supported by more than the two-third majority in the CA. Subsequently, the CA declared the abolition of the monarchy and the implementation of the Federal Democratic Republic Nepal at 11:15 pm. Out of 564 CA members in attendance, only four CA members from the Rastriya Prajatantra Party voted against the declaration of the republic. The CA Chairperson Gurung declared that the proposal had been passed and that meeting also passed the Interim Working Procedure of CA- 2008.

The second meeting was held on June 5, 2008, and formed a committee to draft the CA regulations with Narayan Man Bijukchhe, chairperson of Nepal Majdur Kisan Party, as the coordinator, that included other forty-four CA members. Similarly, the fifth meeting was held on July 15, 2008 and passed the presidential election working procedure for the election of the President and the Vice-president of the country. The election was held on July 19, 2008 but the presidential election had to be re-conducted after neither of the candidates, Dr. Ram Baran Yadav (283 votes) and Ram Raja Prasad Singh (270 votes), got the 50% of the total votes in the CA. And another presidential candidate from CPN (UML), Ram Preet Paswan, got no vote because his party had decided to vote for the Nepali Congress candidate Ram Baran Yadav after his nomination.

However, Parmanand Jha, the candidate of Vice-president from Madhesi Janadhikar Forum was elected after getting 305 votes as the first Vice-president of the republic Nepal. In the same competition, Santa Shrestha of then CPN (Maoist) got only 243 votes, Astha Laxmi Shakya of CPN (UML) got four votes and Man Bahadur, Bishwokarma of Nepali Congress got 2 votes and 24 votes were cancelled. Dr. Ram Baran Yadav was elected as the first President of the republic Nepal with 308 votes in the election held on July 21, 2008. Then, he immediately went to meet his senior

leader, Girija Prasad Koirala at the prime minister's residence, Baluwatar, Kathmandu, and attended the public felicitation ceremony at Basantapur after praying at the Pasupatinath temple.

### **Selection of the Chairperson and Vice-chairperson of Assembly**

The ninth meeting on July 24, 2008 elected CPN (UML) CA member Mr. Subash Chandra Nemwang as the Chairperson of the CA and the speaker of the legislature-parliament unanimously. Then onwards, the CA started to pick up its duties. The 13<sup>th</sup> meeting of the CA on November 14, 2008 passed the CA Regulations-2008. To ensure smooth running of the CA, two separate regulations for the legislature-parliament and the CA were drafted.

An ambitious timetable was passed by the CA to draft a new constitution within 82 weeks; however, that proposed timetable has been amended eighth times until December 16, 2009. Then the 15<sup>th</sup> meeting on November 28, 2008 elected the CPN (Maoist) CA member Purna Kumari Subedi as a deputy Chairperson of the Constituent Assembly. And the meeting on December 15, 2009 formed 10 thematic committees and 14 other committees including 3 procedural committees of the CA.

The timetable adopted by the CA had to be amended within a month. As per the timetable, the chairpersons of all the committees were to be selected by December 16, 2008, but it could not happen within the allocated time period. Then the meetings of all the committees were completed under the chairpersonship of the senior-most member in the committees. The committees remained chairperson-less until December 29, 2008. Therefore, the 19<sup>th</sup> meeting amended the Constituent Assembly timetable for the first time.

The 20<sup>th</sup> meeting of the CA on January 6, 2009 amended the timetable for the second time. The three meetings (21<sup>st</sup>, 22<sup>nd</sup>, and 23<sup>rd</sup>) were held dramatically one after another in the interval of half an hour on the night on January 10, 2009. The first meeting of the day accepted the resignation of UML CA member Sushil Chandra Amatya whereas the second meeting nominated Madhav Kumar Nepal as a CA member, then third meeting declared the nomination of Madhav Kumar Nepal, Baban Singh and Sadarul Miya Hak as members in the Constitutional Committee of the CA.

The 24<sup>th</sup> meeting on January 13, 2009 elected the committee chairpersons unanimously except the Constitutional Committee and the Committee on Public Opinion Collection and Coordination. The election held between UML member Madhav Kumar Nepal and Dalit Janajati Party leader Bishwendra Paswan for the Constitutional Committee chairperson in which Madhav Kumar Nepal

was elected. For the chairperson of the Committee on Public Opinion Collection and Coordination, Madhesi Janadhikar Forum member Pramod Kumar Gupta was elected defeating the CPN (Marxist-Leninist) member Janaki Kumari Chalise. Likewise, the same meeting nominated Achyut Raj Pandey, a leader from Nepali Congress, as a member of the Assembly instead of Bishwa Nath Upadhyaya who had not taken oath as CA member. The committee chairs were dominantly by the leftists in the Assembly. Out of 14 committee chairs, seven committee chairs are leftists and rest chairs are headed by Nepali Congress, RPP, Forum and Tarai Madhes Loktantrik Party (TMDP). After selecting the chairperson of the committees, 601 members were divided into 40 different groups to collect public polls/suggestions, and the groups were sent to districts for the purpose with 60-page long 3.4 million questionnaires. The suggestions should have been collected within March 28, 2009, but that could not be done. So the timetable was amended for the third time by the 26<sup>th</sup> meeting of the CA, which extended the opinion collection until April 13, 2009. The committees were unable to submit the concept papers and the preliminary drafts within the allocated time. Then the 27<sup>th</sup> meeting of the CA again amended the timetable on April 28, 2009, and a new date of May 24, 2009 was set to submit the concept papers and the preliminary drafts. When the National Interest Preservation Committee submitted its concept paper and preliminary draft, only then did the CA get its first business.

### **The Relationship between Committees and the Assembly**

Unless the thematic committees submit the concept papers and the preliminary drafts to the CA, the Assembly does not get its business. The full meeting of the CA discusses on the drafts prepared by each committee. Thus, the committees are the source of the constitution-drafting process.

The various thematic committees were formed to draft the constitution successfully in South Africa. Nepal seems to have been influenced by this success when the Constituent Assembly of Nepal formed the constitutional, thematic and procedural committees. But Nepal did not keep in mind that South Africa had made 34-point basic guidelines prior to starting its business of writing the constitution. Thus the constitution-drafting process in Nepal has become a journey through a dark tunnel. Nepal is not yet clear on form of government and kind of constitution needed to support that system.

All the political parties are pushing their agendas in the new constitution. Amidst this kind of dilemma and suspicion, the committees are attempting to draft preliminary reports. The Assembly has held discussions on eight thematic committee drafts until now. And the three other committees

are working to prepare their drafts. Each committee had made their own internal timetable where numbers of activities had to be repeated, and there were disputes over allegation of overstepping the jurisdiction. The misunderstanding on the jurisdiction was somehow solved by the CA chair in the presence of the chief whips and the committee chairs.

## **Discussion on the Committee Reports**

- **National Interest Preservation Committee**

The CA got its first business on May 25, 2009 after the National Interest Preservation Committee submitted its draft. The Committee chair Amik Sherchan of CPN (Maoist) submitted the draft to the CA chair Subash Chandra Nemwang, then a date was set for full meeting of the CA for discussion on the report. The 29<sup>th</sup> meeting on May 27, 2009 passed Proposal of Concept Papers and Preliminary Draft Report Study Committee, headed by Laxman Lal Karna, a leader from Sadbhawana Party. Then the report of the National Interest Preservation Committee was discussed in the Assembly from May 31 to June 5, 2009.

In the report of Committee on Preservation of the National Interest, the Committee members were divided into two fractions when the UCPN (Maoist) members proposed “the compulsory army training to every Nepali citizen over the age of 18”. The Nepali Congress and CPN (UML) members presented a different opinion on that provision, so as happened in the full meeting of the CA meeting as well. The UCPN (Maoist) members argued in favour of compulsory military training to everyone above age 18 to preserve national sovereignty whereas other parties argued against possible dangerous militarisation of society. Similarly, there were heated arguments over choice of words; the UCPN (Maoist) advocated for writing the phrase “people's war”, “people's army” in the new constitution whereas other parties only wanted to mention only “armed conflict”.

In this way, the discussion on the preliminary draft by the Committee displayed a clear influence of the party lines. Though the CA regulations is silent on whether the members have to follow the whip or not, there was clear indication of party influence and a sort of whip during the members discussions.

- **Committee on Protection of the Rights of Minorities and Marginalised Communities**

Along with the discussion on the report of the National Interest Preservation Committee, the Committee on Protection of the Right of Minorities and Marginalised Communities Chair Lalbabu

Pandit of CPN (UML) also submitted the Committee's report on May 31, 2009. The Committee on Protection of the Rights of Minorities and Marginalised Communities had completed its concept paper and preliminary draft report by May 22, 2009, but UCPN (Maoist) members had delayed the report signing for a few days on one pretext or another. It later transpired that the UCPN (M) members wanted a committee headed by the Maoist should submit the report first. A UML member said, "The UCPN (M) leadership wanted to give a message that the committee had done an exemplary work to the public. One of the Maoist members said to the Committee chair informally the Maoist members had not signed the report to simply allow the National Interest Preservation Committee to submit the report first to send a message to the public. The signing on next day without any hesitation also proved the Maoists' intention.

The CA members expressed their opinions on the report in the full meeting of the CA from June 7 to 11, 2009. The meetings dwelt on the definition of the minorities and marginalised communities and their basis of identification and whether reservation quotas should be allocated and to implement a policy of positive discrimination. The Committee had submitted the report without defining the minorities and marginalised communities. The Committee was criticised for not completing its mandate properly. Of all the reports submitted until now, this is the only one that appears incomplete. Thus, the Committee for Studying Draft Reports and Concept Papers, headed by Agni Prasad Kharel of CPN (UML) is discussing with the experts on the definition of minorities.

- **Committee for Determining the Base of Cultural and Social Solidarity**

The **chair of the** Committee for Determining the Base of Cultural and Social Solidarity Nabodita Chaudhary of Rastriya Prajatantra Party submitted the committee report to the CA chair on June 22, 2009. The members in the 42<sup>nd</sup> meeting expressed their opinion on the draft report for 5 days from June 26, 2009. The debate on language policy was concluded through voting after a heated debate.

After the Madhesi political parties strongly demanded to recognise Hindi language as one of the official languages in the new constitution, several meetings were disrupted. One meeting had to be cancelled due to "Madhesi" not being properly. In the full meeting, the same demand was again repeated by the Madhesi parties. They argued, "Hindi is a lingua franca of the Madhesi peoples; therefore, it should be recognised as an official language in the constitution.

The NC, UML and other smaller party members said that making Hindi an official language might hurt the sovereignty of the country and argued for Nepali in Devanagari script to be the official

language. The UCPN (M) remained a mute spectator on this issue, but its members form the hills were against granting Hindi an official status. Some were for multilingual policy of making any language with over 1% speakers as one of the official languages.

- **Committee for Determining the Structure of Constitutional Bodies**

In the 47<sup>th</sup> meeting held on July 17, 2010, the report of the Committee for Determining the Structure of Constitutional Bodies prepared by the its chair Gobinda Chaudhary of Terai Madhes Loktantrik Party was presented for discussion in the CA. Some members argued for the development of the constitution bodies in order to address the issues related to the structure of constitutional bodies, their formation and existing challenges. The members argued for and against the Committee proposal to form 11 constitutional bodies. There was disagreement whether the Commission for the Investigation of the Abuse of Authority should remain as a constitutional body or to make it a powerful body under the executive. The members reminded the Assembly that the forming more constitutional bodies will also increase the expenditure and their importance will decrease once state power is distributed to the provinces.

The chair of the Committee for the Determining the Form of the Government Ramesh Rijal presented its draft for discussion on August 7, 2009. The Committee has proposed the bicameral (House of Representation and the National Assembly) system based on the Westminster Model. But the UCPN (Maoist) voiced strong difference of opinion, advocating for a unicameral system deviating from its earlier stance. Similarly, other political parties also raised their different voices on the form of government.

- **Judicial System Committee**

After submitting the preliminary draft report of the Judicial System Committee by its chairperson Prabhu Shah Teli of UCPN (Maoist), the 59<sup>th</sup> meeting of CA started to discuss it in the full meeting on September 13, 2009. The Committee Chairperson had passed the report in the absence of members from other parties. Then other political parties except UCPN (Maoist) registered different opinions. The Committee report was fully influenced by the Maoist ideology of appointing the chief justice and other justices from outside the judiciary through a special parliamentary committee. According to them, the constitution will be interpreted by the parliament if necessary.

The justices and the lawyers did not agree with the Committee report. Nepal Bar Association openly criticised the Committee report claiming that the provision will undermine the independence of the

judiciary. Several debates and discussions were held regarding the future structure of the judiciary outside the CA, while the CA members were debating on the judicial supremacy and the supremacy of the parliament. The differences prevailed on the structure of the provincial judiciary as well.

All the political parties except UCPN (Maoist) stood against the provision of appointing the chief justice and other justice through a special committee of the parliament. The members of the Nepali Congress emphasised on the judicial council or any independent body for recommending the names for appointments to the post of the chief justice and justice. The discussion on the report was completed on September 17, 2010.

- **Committee on Fundamental Rights and Directive Principles**

The Assembly started to discuss on the report tabled by the Chairperson Binda Pandey of CPN (UML) of the Committee on Fundamental Rights and Directive Principles on November 15, 2009. After the 7th amendment in the CA Timetable-2008 on November 19, 2009, the discussion on the report continued for five days. the members expressed different opinions regarding what should be included under the fundamental rights. The citizenship issue created a tense environment in the house after some Madhesi members warned of a Jihad inside the CA. While the discussion on the report was going inside the house on November 23, 2010, a group led by CA member and the chairperson of Nepal Federation of Indigenous Nationalities (NEFIN) Pashang Sherpa burnt the draft report outside the CA alleging non-incorporation of their agendas in the report, but the fact is that the Committee Chairperson Binda Pandey and Sherpa are both CA members from CPN (UML). This has created confusion and suspicion before the new constitution is ready and there is no telling how many groups will burn the constitution on the day it is promulgated.

- **Committee on Natural Resources, Financial Rights and Revenue Sharing**

After submission of the preliminary draft of the Committee on Natural Resources, Financial Rights and Revenue Sharing by the chairperson Amrita Thapa Magar to the CA Chairperson on November 20, 2009, the full meeting of the house discussed the report for five days. The members were divided into two groups on the issue of land reform: revolutionary land reform or scientific land reform. The Maoist members stood in favour of nationalizing the land without providing any compensation to the land owner if it crosses the land ceiling whereas other political parties were against this proposal. Nepali Congress leader Pradip Giri opined in favour of scientific land reform,

and CPN (UML) Chief Whip Bhim Prasad Acharya also supported Giri's argument. The UCPN (Maoist) member Hari Roka said food security should be given priority in the new constitution.

## **Conclusion**

The time allocation is determined as per the seat won by the political parties in the CA. Though the attendance of the members in the CA meetings was enthusiastic during the initial discussion secessions on the concept papers and the preliminary drafts, later on hardly 60-70 members were found to be present in the meetings. hardly 70 members out of 601 in the CA attended the full meeting while discussing on the report of the Committee for Determining the Structure of the Legislative Bodies on August 11, 2009, which is a reflection that the constitution-drafting process is not a priority for the CA members.

Initially the CA members had given importance to the CA meetings, but gradually decreasing attendance of the members during thematic report discussions led to whip being issued for their presence during the discussion sessions on the reports. The top-level leaders rarely attended the full meeting sessions of thematic committee reports. The political parties attempted to endorse own party agendas in the constitution for which the Concept Papers and Preliminary Draft Report Study Committee was formed to reduce the differences in the concept papers and the preliminary drafts. The committee was led by Sadbhawana leader Laxman Lal Karna. When Karna was nominated as a minister, his duty was handed over to UML leader Agni Prasad Kharel and the Committee has completed worked to minimise the differences of six different committees and is working on two committee reports.

The major political parties UCPN (Maoist), Nepali Congress and UML have formed an informal mechanism to settle the differences. The 9-member committee comprises the top level leaders of the parties, chief whips and other members Radheshyam Adhikari, Agni Prasad Kharel and Ekraj Bhandari. But unless there is common consensus on the basis of the constitution among the political parties, forming this kind of mechanism cannot be meaningful at all.

The structural weaknesses of the CA, the declaration of the ethnic autonomous provinces by the UCPN (Maoist) after quitting the government has further added complexity to the constitution-drafting process. The UCPN (Maoist), which started the insurgency against the governance system then 14 years ago from the western Nepal of Rolpa and Rukum, is pushing the



current peace process and the constitution-drafting process into the whirlpool of confusion by declaring the Kochila and Limbuan ethnic autonomous provinces from east Nepal. They started to declare autonomous provinces as part of their third phase of movement against the “illegal move” of the President from December 11, 2009 in the name of civilian supremacy. The Maoist called strike due to the Kailali incident on December 6, 2009, which caused cancellation of the CA meeting by posting a notice, the first time in the 14-month history the CA. in addition, the CA chair, vice-chair and members have to play the dual roles of CA members and the member of parliament. the structural weakness and Maoist behaviour in the parliament has also affected the Assembly as well. How can a person who is sloganeering against the government go on to the serious issue of constitution drafting the next moment? This fact has made the CA meetings unproductive.

***(The article is based on the activities from May 28, 2008 to December 15, 2009 in the CA).***