



## Ownership of Constituent Assembly- I

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A dispute arose between the governing coalition partners Nepali Congress and UML regarding the roles of the Constituent Assembly chairperson and the President while promulgating the new constitution. The dispute between main political parties led to the delay in finalisation of the Constituent Assembly Rules and Regulations. Yet, with the endorsement of the Constituent Assembly Rules, selection of leadership to the committees of the Constituent Assembly that are important for constitution-drafting, and the Constituent Assembly taking ownership of the works done by the Constituent Assembly- I, all this added to the optimism that constitution will be drafted. However, the parliament came under criticism for not meeting the quorum for a sitting. In addition, the government failed to nominate 26 members through a political consensus.

### **Taking ownership**

In the Constituent Assembly Rules 2008, it was stipulated that after being certified by the chairperson of the Constituent Assembly, a formal ceremony would be organised and the President would announce the promulgation of the new constitution. While drafting the Constituent Assembly Rules 2014, Congress proposed that the President should certify and promulgate the constitution. Congress argued that the previous provision of the Constituent Assembly chairperson certifying the constitution was inserted by mistake and it should be rectified now. UML asserted that Congress was picking unnecessary quarrels and it should be as per the previous Constituent Assembly Rules. As the dispute was going on, UML central committee stated that it was the responsibility of the Constituent Assembly to draft the constitution and thus the responsibility of certifying it remains with the Constituent Assembly chairperson and it is clearly specified in the Constituent Assembly Rules that the honourable President makes the constitution public. It further went on to say that there is no need, justification, and basis for changing the provision and unnecessary disputes should not be created and stressed on following as per the existing provisions.

Despite the agreements in many issues of the Rules, the Constituent Assembly Rules Drafting Committee could not finish its work on time. Then the deadline was extended for another week. UCPN (M) Pushpa Kamal Dahal accused the ruling Congress and UML of wasting four months on government formation and leaving the Constituent Assembly without an agenda by squabbling over certification of the constitution.

In the meantime, following a discussion, Congress and UML agreed on promulgating the constitution with the Constituent Assembly chairperson certifying and the President signing it. This created the ambience for finalisation of the Constituent Assembly Rules and was endorsed by the Constituent Assembly.

After the finalisation of the Constituent Assembly Rules, political parties engaged in leading the committees of the Constituent Assembly. In the discussion between Congress and UML, they agreed that the leadership of the Constitutional-Political Dialogue and Consensus Committee would be given to UCPN (M), Congress would lead the Constitutional Committee, UML would lead the Constitution Archives Study and Determination Committee, and the remaining two committees would be led by Tarai-centred and smaller political parties. In the beginning, UCPN (M) was preparing to send its leader Baburam Bhattarai to lead the Constitutional-Political Dialogue and Consensus Committee. However, Congress and UML wanted to bring in UCPN (M) chairperson Pushpa Kamal Dahal. But Dahal wanted to create a high-level political mechanism and lead it himself. While UCPN (M) was trying to arrange power-sharing within the party and still influence national politics, Congress and UML were convinced that by bringing in Dahal as Committee chairperson, the high-level political mechanism would not need to be formed and it would be easier to work on the constitution. But UCPN (M) forwarded Bhattarai's name to lead the Dialogue Committee. The political parties had given much importance to this Committee. Most senior leaders of the political parties were members of this Committee.

For the leadership of Constitutional Committee, Congress vice-president Ramchandra Poudel had shown an interest. However, due to internal party equation, the leadership went to general secretary Krishna Sitaula. UML secretary Bishnu Poudel became the chairperson of the Constitution Archives Study and Determination Committee; Laxmi Chaudhary of Madhesi Janadhikar Forum-Nepal became the chairperson of Capacity Development and Resource Management Committee, and Pramila Rana was elected the chairperson of the Committee on Citizens Relations and Public Opinion collection. The chairpersons of the committees were elected unanimously due to the agreement between the main political parties.

Then the reports and committees from the Constituent Assembly- I was presented in the sitting of the Constituent Assembly to take ownership of the same, which was endorsed by the Constituent Assembly. This eased the suspicion of whether the political parties would move forward by taking ownership of the works of the Constituent Assembly- I. with the endorsement of the Constituent Assembly Rules, election of the chairpersons of the Constituent Assembly committees, and the decision to take ownership of the Constituent Assembly- I opened the doors to drafting the constitution quickly.

### **Failure to nominate**

The Article 63, clause 3(c) makes a provision to nominate 26 persons from prominent persons who have rendered outstanding contributions to national life, and the indigenous peoples which have not been represented through the direct and proportional elections. However, these nominations did not take place on time. The political parties discussed this issue and also had discussion on distributing the seats to the parties, but the government did not show due diligence on this issue. Despite the discussion on the nomination of the 26 members among the political party leaders, this issue did not get primacy. As this discussion was going on among the political parties, the leader of the Nepal Workers Peasants Party Narayan Man Bijukchhe asserted that there should not be

sharing among political parties in the nomination of the 26 members. Constituent Assembly chairperson Subash Chandra Nemwang stressed on giving final shape to the Constituent Assembly by immediately nominating the 26 members by the government.

It was the government's weakness in the failure to nominate the 26 members. The problem also lay with the political parties. Many were interested in becoming a Constituent Assembly member in the main political parties; those who had lost in the direct elections or those who had failed to become a Constituent Assembly member despite being nominated under proportional representation, and those who had helped the political parties and leaders wanted to become Constituent Assembly members. They were putting pressure on the leadership for it. Therefore, the parties did not give priority to this issue to avoid disputes within the parties. And the government also seemed to take it easy as the Constituent Assembly was in session and some progress was being made, due to which the government did not nominate the 26 members, and the Constituent Assembly did not take a final shape. The government was criticised for its failure to nominate the 26 members.

### **Absence of a quorum**

For the parliament sitting to be in session, at least one-fourth of the members have to be present. For present membership of 571, at least 143 members have to be present. However, on March 6, 2014, only 127 members were present in the parliament, and the chairperson had to stop the sitting.

Despite the chairperson drawing members' attention to this fact, the problem persisted. There were two reasons for absence of the members. First, the government did not table any important motions. Second, the members were unaccountable to the parliament. The absence of the members from the Constituent Assembly hurt the sanctity of the institution. However, the members were of a different opinion. They asserted that they could not sit throughout the meetings as they had to rush to the ministers, prime minister, and the National Planning Commission with the demands of the people. The parliament endorsed the ordinances but could not generate new business, which lowered the effectiveness of the parliament.

### **Obstruction of the parliament**

UCPN (M), the main opposition, it could not present itself strongly in the parliament. Though it raised very issues, it had no intention of reaching a conclusion. The government raised the price of milk. Except for the CPN (M)-led 33-party front, most of the parties did not oppose it. The government raised the price of petroleum products immediately. Then the main opposition UCPN (M) and Rastriya Prajatantra Party (Nepal) objected strongly and obstructed the parliament. UCPN (M) stated, "Ignoring the irregularities in the (Dairy) Corporation, leakages and corruption, the Congress-UML government has instead added burden on the Nepali people and we oppose such anti-people move." CPN (M)-led 33-party front announced a protest programme against the price increases.

The different student unions protested in the roads against the price increases. After the intense pressure from the opposition parties and protests from the roads, the government lowered the price of petroleum products slightly. Congress, UML, and UCPN (M) reached a 5-point agreement to form a high-level political committee, formation of a parliamentary committee to study the hike in price of petroleum products, among others.

### **Government criticised from within**

Not only from the opposition, but the government came under criticism from within the ruling Congress and UML parties. They accused the government of not working for the people and the prime minister of moving alone on his own without consulting others. Another accusation was his lack of decision-making abilities.

The government was heavily criticised in the parliamentary party meetings of Congress and UML. Congress Constituent Assembly members accused the government of not moving ahead procedurally and institutionally while nominating ministers, increasing the price of petroleum products, bringing the minimum common programmes of the government. UML Constituent Assembly members also criticised the government for bypassing the parliament while bringing the government's policy and programmes. The situation was not good. It had been a month since the government had promoted six joint-secretaries. Six ministries are without ministers and eight are without secretaries including four ministries. In the absence of the ministers and secretaries, those ministries are at standstill in terms of new decisions and functioning. The Constituent Assembly is not complete since the Council of Ministers has not nominated the 26 members. The government seems in no hurry either to nominate the Constituent Assembly members or appoint secretaries. The government is moving slowly as it has not started the process to nominate ministers, ambassadors, and other political appointees.

### **Two Maoist parties together**

The ministers in the government had been talking about holding elections to the local bodies. Congress declared Mechi-Mahakali campaign with the local elections in mind. UML central committee meeting also drew the attention of the government to announce the local elections immediately.

After the government made preparations to arrest active and former Maoist leaders and activists accusing them of involvement in human rights violations during the armed conflict and also preparing for the local elections, UCPN (M) and CPN (M) leaders got a shock. Despite sharp differences in other issues, the two parties were united in their view from early on that only after formation of the Truth and Reconciliation Commission and its investigations, should the culprits be punished. Amidst the delay in formation of the Truth and Reconciliation Commission and the government becoming active in pursuing incidents from the armed conflict, UCPN (M) chairperson Pushpa Kamal Dahal and CPN (M) chairperson Mohan Vaidya held a meeting. Their joint statement stated, "Instead of taking steps to solving the issues by forming the Truth and Reconciliation Commission and Commission for the Disappeared as the Comprehensive Peace Accord, we strongly object and condemn the government moves to revive the conflict-era cases and we demand the

government to immediately stop such activities and release the arrested individuals. We request the concerned party to follow the spirit and letter of the Comprehensive Peace Accord by forming the Truth and Reconciliation Commission and seeking solutions through it."

On March 20, the government had arrested Chhabilal Poudel of Manamaiju, Kathmandu, and Bhimsen Poudel, a resident of Ratnanagar Municipality, Chitawan. CPN (M) had strongly opposed this and demanded their immediate release. As the Maoists were putting pressure, the government committed in the parliament to form the Commission within 15 days.

As the distance between the government and both Maoist parties was increasing, the government formed an 11-member working committee under coordination of Joint-Secretary Sadhuram Sapkota of the Peace and Reconstruction Ministry to prepare a bill on Truth and Reconciliation Commission and Commission on the Disappeared within 10 days. It stated its work two days later.

Reacting to the pronouncements of the Congress and UML leaders and minister regarding the local elections, UCPN (M) chairperson Dahal and CPN (M) chairperson Vaidya expressed outrage and stated, "It appears that regarding the local bodies, provisions should be made only after restructuring of the state as per Article 138 of the Interim Constitution. Also, trying to hold elections to transitional bodies raises the serious doubt on whether a new federal constitution is not going to be drafted and it will also be against the Article 138 of the Interim Constitution; therefore, we request all concerned to give priority to drafting the constitution and no election to the local bodies be held until it is promulgated."

Despite the opposition from both Maoist parties, Ministry of Federal Affairs and Local Development sent amendment bill to the Local Self-Governance Act (2055) to the Ministry of Law, Justice, Constituent Assembly & Parliamentary Affairs for consultation, with aims to holding elections to the local bodies. While the leaders of the political leaders had declared that elections to the local bodies would be held within six months of election to the Constituent Assembly, the Election Commission clarified that if the election date is not announced by mid-March, it would not be possible to hold it.

### **Miscellaneous**

This month, UML central committee decided to hold the ninth general convention in Kathmandu around mid-June. After voices were raised in the parliament alleging the Prime Minister Sushil Koirala stating that Tanakpur belongs to India, chairperson Subash Chandra Nemwang directed the government to clarify it. Coalition partner UML also objected to it. UML central committee, alleging that the prime minister's comments have raised controversy on the Nepal border areas and border river issues, urged the government to clarify its position. As the government was raising the issues of appointment to the constitutional bodies, justices to the Supreme Court, and ambassadors, the Nepal Bar Association met the Constituent Assembly chairperson and urged him to hold parliamentary hearings for all appointments based on the provision of removing obstacles in the Interim Constitution.

The issues of unification between UCPN (M) and CPN (M) also did the rounds. Basically while the discussions were going on between the chairpersons of both parties, UCPN (M) leader Baburam Bhattarai declared that there could be no unification. CPN (M) chairperson Mohan Vaidya stated that he had not even imagined unification with UCPN (M). CPN (M) general secretary Ram Bahadur Thapa also stated that unless UCPN (M) corrects itself, there would be no unification. As the Constitutional Council was facing criticism for its failure to appoint officials, its meeting recommended Acting Chief Justice Damodar Prasad Sharma to the post of Chief Justice. A committee composed of Congress and UML leaders was formed to help run the government. Political parties also agreed to revive the high-level political committee. Leaders expressed the opinion that the high-level committee would discuss beyond the constitution and bring those parties outside the Constituent Assembly into the fold.

As there was internal factionalism within UML leaders regarding the forthcoming general convention, internal conflict also escalated within Congress and UCPN (M). Congress vice-president Ramchandra Poudel became dissatisfied after party president Sushil Koirala refused to give him acting presidency. In the meantime, UCPN (M) vice-chairperson Baburam Bhattarai began a discourse on the need for a new power in the country. He had told the UCPN (M) chairperson after meeting him, "This style (of leadership) will not do good for the party, movement has reached a new phase; therefore, there is no alternative to changing the party to new thoughts, new power." UCPN (M) chairperson Dahal accused it as being against the party. As the May 11 national conference in Biratnagar was nearing, one after another disputes arose within UCPN (M).

Nepal police issued an arrest warrant for Constituent Assembly member from Dhanusha-4 and vice-chairperson of Sadbhawana Party on murder charges.

### **Conclusion**

A deficit of trust appeared among the ruling coalition. The deficit of trust and dispute of jurisdiction and authority and consequent failure to decisions wasted time and normal politics also got disrupted. This sent the message that the ruling coalition partners cannot work jointly to take immediate decisions to provide a way out to the nation. The decision to take ownership of the Constituent Assembly- I and unanimous election to the chairpersons of the committee shortened the process of drafting the constitution. This gives credence to the fact that if the leaders go beyond the party-interests and present themselves as per the Constituent Assembly elections the constitution can be drafted within one year.

The present government should have become active in making appointments to the constitutional bodies, the Supreme Court, and ambassador posts, which the previous non-political government had failed to do. Also, 26 Constituent Assembly members should have been nominated. However, it displayed its incompetence only. This further showed the lack of decision-making of the government. The government could not provide business to the parliament. Not only that, by not answering the important questions raised in the parliament, it tried to keep the parliament in the dark. The government was also not clear on the issues of human rights violations. While it arrested

those involved in human rights violation during the conflict under pressure from human rights activists and civil society leaders, it talked of forming the Truth and Reconciliation Commission and Commission on the Disappeared. This showed that the government is not clear on issues. The Maoists were very serious in this issue. They gave the message that despite the split they would work together to make the bills on Truth and Reconciliation Commission and Commission on the Disappeared in their favour. This was also a challenge to the government, Congress, and UML.

With the criticisms of the government from within the ruling parties and the ongoing disputes within the major parties, political issues of the country is not likely to move ahead smoothly, further face obstacles time and again.

## Major political developments

### March 1, 2014

- Constituent Assembly chairperson Subash Chandra Nemwang directs the government to clarify on the Prime Minister Sushil Koirala's statement regarding Tanakpur barrage.

### March 3, 2014

- Prime Minister Sushil Koirala leaves for Myanmar to participate in the third Summit Meeting of Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC).

### March 4, 2014

- Constituent Assembly extends the deadline for preparation of draft of the Constituent Assembly Rules Drafting Committee.

### March 5, 2014

- Rastriya Prajatantra Party (Nepal) stages protest programmes in front of all district administration offices of all the districts in Nepal demanding the announcement of the date for local elections.
- UML central committee decides to hold its ninth general assembly in Kathmandu around mid-June.

### March 6, 2014

- The Constituent Assembly sitting is halted for lack of quorum.

### March 8, 2014

- Meeting between the officials of the Nepal Bar Association and Constituent Assembly chairperson. The Bar demands that after removing obstacles in the Constitution, there should be parliamentary hearing for appointment to the constitutional bodies, Supreme Court Justices, and ambassadors.

### March 10, 2014

- Meeting between Prime Minister Sushil Koirala and UCPN (M) chairperson Pushpa Kamal Dahal. Discussion on certifying the new constitution and nomination of 26 Constituent Assembly members by the Council of Ministers.

### March 11, 2014

- Meeting between leaders of Congress and UML. Agreement on Constituent Assembly chairperson certifying the new constitution and the president promulgating by signing it.

### March 13, 2014

- Constituent Assembly sitting. The Constituent Assembly Rules Drafting Committee tables the Constituent Assembly and Legislature-Parliament Rules and Regulations.

**March 15, 2014**

- UCPN (M) leader Baburam Bhattarai states that there will be no immediate unification with CPN (M).

**March 17, 2014**

- The Constituent Assembly Court suspends Kanta Bhattarai, Constituent Assembly member from Rastriya Prajatantra Party (Nepal) for filing candidacy while holding government position.

**March 18, 2014**

- Congress nominates Chinkaji Shrestha as the chief whip and Ishwori Neupane as whip.
- Major opposition parties obstruct the Constituent Assembly sitting in response to the increase in the price of petroleum products.
- The government unveils its Common Minimum Programme. Priority to promulgating the constitution within one year.

**March 19, 2014**

- A writ filed against Constituent Assembly member Bal Bahadur KC, Constituent Assembly member from Congress from Solukhumbu is dismissed by the Constitutional Court.

**March 20, 2014**

- CPN (M) general secretary Ram Bahadur Badal states that unification is not possible until UCPN (M) corrects itself.
- Sadbhawana Party chairperson Rajendra Mahato meets Prime Minister Sushil Koirala. Objects to the arrest warrant issued against vice-chairperson and Constituent Assembly member Sanjay Kumar Sah and demands an impartial commission for investigation.

**March 21, 2014**

- Meeting of legislature-parliament endorses the Constituent Assembly and Legislature-Parliament Rules and Regulations.

**March 22, 2014**

- Prime Minister Sushil Koirala and ministers to meet party cadres in the party office separately. Different times set for these meetings.

**March 23, 2014**

- Meeting Congress parliamentary party severely criticises Prime Minister Sushil Koirala for not running the government by consulting the party.

**March 24, 2014**

- A committee comprising of Congress and UML leaders formed to play a coordinating role in running the government.
- Meeting between senior leaders of Congress and UML. Discussion on the vacant seats in the constitutional bodies and nomination of 26 Constituent Assembly members.

**March 25, 2014**

- Meeting of senior leaders of Congress, UML, and UCPN (M) at prime minister's office in Baluwatar. Agreement to table a bill on Truth and Reconciliation Commission and Commission on the Disappeared soon.

**March 26, 2014**

- Postponement of the election of Congress parliamentary working committee.

**March 27, 2014**

- Meeting of senior Congress, UML, and UCPN (M) leaders. A 5-point agreement including on reviving the high-level political mechanism.
- Meeting of Constituent Assembly Business Advisory Committee. Decision on all Constituent Assembly members wearing the same uniform from April 14 onwards.

**March 28, 2014**

- Formation of five committee of Constituent Assembly.
- Tabling of records from Constituent Assembly I for taking ownership. Constituent Assembly meeting endorses it.

**March 30, 2014**

- The working group formed to draft the bill on Truth and Reconciliation Commission and Commission for the Disappeared starts its work.

**March 31, 2014**

- Meeting of Constitutional Council recommends Acting Chief Justice Damodar Prasad Sharma to the post of the Chief Justice.
- Human rights activist Krishna Pahadi starts a fast-unto-death demanding endorsement of the Rome Statute of the International Criminal Court.