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The Constituent Assembly Process

Recommendations

1. All political parties should adhere to the promises of consensus and cooperation among all political parties as stipulated in all past agreements, especially in the CA.
2. Trust-building initiatives between all parties should be started to intervene in the cycle of mistrust and rebuild real consensus.
3. All political party leaders and all CA members should make public commitments to wide-spread and meaningful public consultations and debates. They should also commit to making public summaries of issues raised through the public consultations and the manner in which, and the reasons why, such concerns were or were not incorporated in the constitution.
4. An inclusive committee within the CA should be formed to address issues relating to smaller parties and marginalized groups.
5. CA committees and individual members should seek public input and expert and knowledgeable assistance. Meetings should be transparent.
6. Reviews of forms of resources and logistic support given to the CA and especially the committee on public opinion collection and coordination and the committee on citizens' relations, should be undertaken. Proper and detailed plans for the seeking of public opinions and the management of submissions, analysis and incorporation in the constitution drafting process should be made in advance.
7. For international and national groups working to facilitate an inclusive and effective process of public consultation, coordination of interventions should be prioritized to avoid duplication and maximize coverage. Oversight mechanisms to ensure neutrality, competence and professionalism should exist.
8. All effort should be made in meeting deadlines and the timetable. However this should not be done at the cost of meaningful debates and participation.



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Introduction

The constitution writing process in Nepal following the historic constituent assembly (CA) elections in April 2008, has been difficult from the start. The recent political crisis catalyzed by the Unified Communist Party of Nepal (Maoist) (UCPN-M)¹ government's dismissal of army Chief General Rookmangud Katwal, subsequent directives from President Ram Baran Yadav to annul the decision, and the resignation of Prime Minister Pushpa Kamal Dahal (Prachanda), has highlighted the crucial obstacles facing the constitution writing and the peace process as a whole. Despite the official stress on consensus, trust has been fragile and political confrontation the norm following the widely unforeseen CPN-M and Madhesi People's Rights Forum (MPRF) success in the CA election. This in turn has negatively impacted attempts at sustained engagement on such key issues as the integration of armies, disappearances, economic policies and the building of a just state.

In the months that have followed the elections, political parties have prioritized power distribution and consolidating power. This in turn has served to increase fear and insecurity, decrease trust and lead to attention to only the power politics mentioned above. With these dynamics feeding into each other, the writing of a constitution for a new Nepal has been neglected. That the CA was and is an historic opportunity for Nepali people themselves to lay down the foundations to transform old state and social structures into a new, just and inclusive Nepal, has been largely forgotten. Despite election results rejecting old-style Kathmandu politics, it is the latter that has dominated political space. Inter-party differences have been compounded by intra-party divisions, and overall disparate views on key issues.

Simultaneously sidelined by, and reflecting these dynamics, the constitution writing process has been dominated by the power politics of the dominant three parties – CPN-M, Nepali Congress (NC), the Communist Party of Nepal – Unified Marxist-Leninist (CPN-UML) and relative newcomer but increasingly important new party, the MPRF. In this context, the much heralded diverse and inclusive body of elected constituent assembly body has achieved little, with many deadlines passed and reformulated. Participation internally of smaller parties and excluded group has been limited, while opportunities for the active engagement of citizens in general have been few, and when tried, poorly planned and implemented.

CA background and delays

The on schedule declaration of the Republic of Nepal on 28 May was only made possible by pushing back more contentious issues. For while the leaders of the three main political parties had publicly declared before the elections that the government formed after the CA election would be a national government formed with consensus, the success of the CPN-M and MPRF in the CA election resulted in a turn to adversarial politics.

The immediate fallout of election results, based on fears of Maoist authoritarianism, was the proposal mainly by the NC, CPN-UML and later MPRF for the formation and ouster of government by simple majority, as opposed to the two-third majority stipulated in the interim constitution and the creation of a position of head of state at the very first meeting of the CA. The consequences of the conceptualization of this presidential post by the NC and the CPN-UML as not just ceremonial, but one that can balance the Maoists are reflected in current day politics. Initially opposed by the CPN-M on the grounds that two power centers would be created which would lead to instability and misunderstanding, by 27 May, 2008 the position of ceremonial president had been agreed to by all parties. By 9 June, consensus was achieved on the simple majority

¹ Following the merger with Communist Party of Nepal - Unity Centre (Masal) in early 2009, the name of the Communist Party of Nepal-Maoist (CPN-M) was changed to Unified CPN-M. For the purposes of ease of reference, in the rest of the paper the term CPN-M has been used.



elections for president, vice president and Prime Minister (PM); the first two were to be removed with two thirds majority, but the PM by simple majority.²

Candidate issues concerning these posts followed, highlighting the fractious nature of post-election politics. While both the NC and CPN-M had initially claimed the presidential post, the Maoists later stressed the need to appoint a non-political figure, a position opposed by others on the grounds that this would be a lame “piggy-back president.” Power sharing and brokering coalition talks swung into action. Early stress on consensus dissolved into potential CPN-M and CPN-UML alliance on a president based on their common communist background. However CPN-M suddenly put forward the name of Ram Raja Prasad Singh on 27 June, much to the fury of the UML, purportedly because the UML refused to come up with an alternative to Madhav Kumar Nepal as requested. By 17 July, each party had forwarded their own candidates, with MPRF backing the CPN-M presidential candidate but insisting on its own leader Parmananda Jha for vice-president. The CPN-M meanwhile stressed the need for a woman or person from marginalized community for the same post. This led the MPRF away from the Maoists to the NC candidate Yadav, and caused a split among the three Madhesi parties who had initially agreed to support Ram Raja Prasad Singh; the other two Madhesi parties (Sadbhawana Party and the Tarai Madhesi Democratic Party [TMDP]) continued their backing of the Maoist candidate. While the 19 July vote led to the election of Parmananda Jha as the vice president, none of the presidential candidates achieved the necessary clear majority win, and a run-off poll became necessary. This resulted in the CPN-M nominee Ram Rajaprasad Singh losing against NC’s Ram Baran Yadav backed by a NC, CPN-UML and MPRF alliance.

On 29 July, 2008 the President had called on the CPN-M to forge a political consensus and form the next

government. Complications included the fact that the now angry Maoists had insisted first on the fulfillment of three demands including the dissolving of the above alliance which had resulted in the defeat of their candidate.³ Furthermore, while no-one challenged the Maoist claim to the leadership of the government, other parties were asking for major ministerial portfolios. However, by 14 August, the CPN-M, CPN-UML and MPRF had made public a deal, which ended the 4 months of political stalemate. CPN-M leader Pushpa Kamal Dahal was elected Prime Minister on 15 August, 2008 and according to previously made deals, Subhash Nembang of the CPN-UML became speaker with CPN-M’s Purna Kumari Subedi as deputy speaker.⁴

Following this, other delays resulted from debates over the size of the Constitutional Committee and the CA rules of procedures which were only decided in mid-November, seven months after the CA election. From a 15-member main constitution drafting committee initially proposed, the number of committee members was increased to 61 to include representatives of all parties, with subcommittees to prepare initial drafts.⁵ The prestige of chairing the most powerful Constitutional Committee

² The Katmandu Post. 2008. Prez, VP, PM Election by Simple Majority. 10 June, pp. 1, 3.

³ The other two demands included that the Common Minimum Program (CMP) of the 25 political parties must feature the majority agenda of the Maoists and that political parties must give their written commitment that the next government will function unhindered for at least two years. (Ojha, Ghanashyam. 2008. Maoists Set Conditions for Leading Govt. The Kathmandu Post, 25 July, p. 1)

⁴ Nembang and Subedi were elected in July and November 2008 respectively.

⁵ Each subject committee and procedural committee has 43 members, including representatives from excluded groups and remote regions. Members can only belong to one committee and parties with only one member are represented in only the constitutional committee and not sub-committees. These parties include: Chure Bhawar Rastriya Ekata Party, Nepal Democratic Socialist Party; Nepa: National Party, Pariwar Party, Dalit Janajati Party and Social Democratic Party. Five other parties have just two members so they will have representatives in two committees. Only five parties have representatives in all 14 committees – TMDP, MPRF, CPN-UML, NC and CPN-M. All others will be able to participate in debates when draft documents are presented in full CA session. (Simkhada, Dhruva. 2008. Who Will Lead the Committees? Nepali Times, 5 December, p. 9.)



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– with major leaders of the major parties in competition
– as well as the dividing of the chairs of the other committees led to further stoppages. Debates also took place during this period over retaining a vote of conscience or the use of party whips for the CA rules and procedures, essentially pitting large parties against smaller and regional parties. With an agreement to remain silent over the issue of vote of conscience and the use of whips, one main Constitutional Committee, 10 thematic committees and 3 procedural committees were eventually passed.⁶

Politics of exclusion: structuring large party domination

Importantly in this period, the bargaining between the large political powers had been interrupted by the picketing of the CA rostrum by Madhesi parties on June 27, 2008, demanding the incorporation of their agenda in the constitution amendment bill registered by the government. With CPN-M and CPN-UML rejection of the “One Madhes, One Prades” demand, further delays resulted in the tabling of the bill for the fifth amendment for the election of president and other posts in the CA, and thus the formation of the government. Negotiations had been held by 4 July to table a supplementary bill to ensure that the high-level restructuring commission would take account of the agreements signed by the government with various communities. However, debates continued over the terminology used, and while the CA passed the fifth amendment, thereby enabling the formation of government and the functioning of the CA, the Madhesi parties boycotted the entire process.

⁶ In all, the thematic committees are as follows: 1) state restructuring and resource allocation 2) fundamental right and directive principle 3) minorities and marginalized communities rights protection 4) legislative organs delineation 5) state rules delineation 6) judiciary 7) constitutional body delineation 8) natural resource, economic rights and revenue allocation 9) cultural and social solidarity delineation 10) national interests protection. The procedural committees are 1) civil relationship 2) public opinion collection and coordination 3) capacity enhancement and resource management.

Practicing patronage

Legal experts had already criticized the practice of constantly amending the constitution in so far as it was argued that it thwarted the process of writing the constitution and allowing the people to contour the shape of the land. Constitutional specialist Yash Ghai has written that one important function of the interim constitution was to fix decisions on the road map and give a sense of security to people and predictability to the process, which would not be felt with constant amendments. Furthermore, and importantly, while it is clear that the demands for change reflect the fact that various groups are unhappy with the original provisions, in the form of the bi-lateral type of bargaining that has predominated – ie between main parties and the “agitating” community – the “authority and grace” of the dominant parties is reinforced as they make concessions to the marginalized communities. This method of negotiation ends up “reinforcing forms of relations that are to be eliminated.”⁷ Thus instead of a CA in which all interest groups get together to examine all claims and settle differences, political elites have “bestowed” upon the smaller parties and the marginalized, certain rights.

The patronage tendencies were evident in the decision taken by the NC, CPN-UML and the CPN-M to share the 26 CA nominees among the nine political parties which have secured at least seven seats in the CA.⁸ As in the distribution of the 46 seats in the interim parliament, the seats were not given based on skills and expertise. Similar criticisms have been launched concerning the allocation

⁷ Background paper prepared by Yash Ghai for the conference The Interim Constitution on the Constitution Making Process, p. 54. <http://www.undp.org.np/constitutionbuilding/elibrary/constitutionnepal/First%20Report%20Full%20English.pdf>

⁸ The divisions were made in the following manner: 9 for CPN-M, 5 each for NC and CPN-UML, 2 for MPRF and 1 each for TMDP, People’s Front Nepal (PFN), CPN – Marxist Leninists (ML), Nepal Workers and Peasants Party (NWPP) and Nepal Sadbhawana Party – Anandi Devi (NSP –A) . (The Kathmandu Post. 2008. Parties Agree to Criteria for 26 Members. 26 May, pp. 1, 3 ; The Kathmandu Post. 2008. Parties Name 26 CA Members. 27 June, p. 1.)



of the committee chairpersons; these chairs were seen by the parties as means to reward party members and thus knowledge, leadership skills etc, were not factored in.⁹ The outcome of the 26 seat allocations brought further criticisms – beyond that of being dictatorial and ignoring smaller parties¹⁰ – with indigenous nationalities (Janajatis) criticizing the contravention of the December 2007 agreement with the Nepal Federation of Indigenous Nationalities (NEFIN) to use the 26 nominees to bring ethnic groups under-represented in the CA.¹¹

Controlling consensus

The CA has functioned overall so far to reinforce the power and dominance of larger parties and the dynamics of political party politics. For example, following the competition over the chairs over prestigious committees and the reaching of a consensus between the large parties, the larger parties attempted to persuade smaller groups not to contest their candidates in two key committees in the CA.¹² This included Madhav Kumar Nepal, the consensus candidate from CPN-Maoist, NC, CPN-UML and MPRF for the Constitutional Committee. Of the election of Nepal, a newspaper editorial stated:

The method of Nepal's selection followed an unhealthy trend where major decisions of the peace process have been undertaken by a handful of powerful leaders of the major political parties. This has in the past infuriated leaders of smaller political parties and mid-ranking leaders of the major ones. The CA was supposed to be a deliberative body like no other in Nepal's history, and it was hoped that it would lead to a change in the political culture. But this has not come to pass, and Nepal's

selection revived feelings of infuriation among the smaller parties. Not only was his selection undemocratic, they felt, but completely lacking in legitimacy. After all, he is not even an elected member of the CA.¹³

The expansion of the constitution writing committee from the originally proposed 15, to the eventual 61 members had come as a result of lobbying by the smaller parties and groups. As noted by an official at the parliamentary secretariat, experts had advised keeping the committee number small, so that it could expedite work, “[b]ut small political parties and other interest groups disagreed on the ground that the committee had to be inclusive and it should adopt a participatory approach.”¹⁴ The simultaneous debate over the issue of a vote of conscience and the use of whip, was less of a direct victory for smaller parties and interest groups. The draft presented to the CA had had provisions for conscience voting, which according to the one of the three drafters of the rules and regulations Purna Man Shakya was to involve real deliberation; the voice of conscience was one way to ensure that the process will not be hijacked by the few leaders of the major political leaders. The vote of conscience (the ability to vote as one wanted) was directly opposed by the larger parties who wanted the use of the whip; whips in party politics are usually used to ensure control of the formal decision-making process in parliamentary legislature so that votes occur according to party lines.¹⁵

Of the issues of the use of whip and the size of the constitution drafting committee, Shakya stated that

There are two reasons behind these problem areas. One is that the small parties are very suspicious of the bigger parties. They fear that if they do not have a berth

⁹ MC interviews; 30 March, 2009.

¹⁰ The Kathmandu Post. 2008. Madhesi, Small Parties Criticize SPA. 6 June, p. 2.

¹¹ The parties had not ensured the representation of at least 20 marginalized group: Kusunda, Bankariya, Raute, Surel, Hayu, Raji, Kusbadiya, Singsha, Thudam, Bote, Bhote, Darai, Tajpuriya, Chhantyal, Free, Larke, Lhopa, Chhairrotan, Tingaunle Thakali and Kisan. (Budhathoki, Bishnu. 2008. 20 Ethnic Groups Left out from CA. The Kathmandu Post, 2 May, p. 1).

¹² The other 12 of the 14 CA committees had consensus candidates.

¹³ The Kathmandu Post. 2009. Inching Forward. 16 January, p. 6.

¹⁴ The Kathmandu Post. 2008. RRDC Faces Problems Finalizing Draft. 18 September, p. 1.

¹⁵ For example, a senior CPN-Maoist leader on this issue stated that “[a] party wouldn't be a party anymore if its members did not follow its rules.” (Rai, Dewan. 2008. Seesaw Politics. Nepali Times. 7 November, p. 1.)



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in the drafting committee, the big parties will bulldoze it to accept their decisions and that they will have no say in the constitution-making process. Secondly, concerning the conscience vote issue, the big parties are not sure of other CA members; so they would like to have all the major decisions of the constitution-making process under their control. Basically, it is lack of confidence and suspicion among the CA members that is hindering the approval of the rules of procedure.¹⁶

Shakya had also noted that “[a]s long as the whip is limited to those political issues upon which the parties have already expressed their commitments, conscience vote can be relaxed. But there are many other issues concerning women, Janajatis, Dalits, human rights and so forth where there could be a conscience vote.”¹⁷

The Rules and Regulations Drafting Committee (RRDC) coordinator Narayan Man Bijukchhe had made it clear that these are the very areas which are of concern for political parties. He questioned

But what will be the role of political parties in the constitution making process if we have a provision for conscience votes as a large number of CA members are influenced by their associations with caste, ethnicity, gender, region, and NGOs more than by political affiliation?¹⁸

In the end, it had been agreed that 61 members would be in the main Constitutional Committee, and the rules and regulations would remain silent on vote of conscience. The exact impact of the latter has yet to be seen, but it has been interpreted differently by different people; for example CPN-UML CA member Agni Kharel states the concerned political party will be able to maintain party discipline while NC’s Narhari Acharya states that its non-inclusion means that no whip exists.¹⁹

Importantly, Yash Ghai has stressed that the CA should be viewed differently than a parliament;

...the CA is more than a law making body or a body that represents geographical constituencies or forms and dismisses government. It is a gathering of a nation, designed to develop a national consensus on critical social, economic and political issues, and to reaffirm (and where necessary redefine) national identities and unity (*and for which the conscience of a member should be given higher value than the discipline of the party*) (emphasis added).²⁰

Functioning of the CA

A significant portion of the two-year time period in which the constitution has to be completed has already been consumed – there are only 12 months left until the 28 May, 2010 deadline. As the CA also has to function as a legislative-parliament, a time-table has been scheduled. Except in extraordinary circumstances, from 7am to 2:45pm, the CA is in process with the legislative parliament set to take place from 3pm onwards. Consequently, of the remaining period in which the constitution is to be written, this leaves the CA with only a small part of allotted time.

Managing opinion collection

Since the structuring of rules and regulations, the largest work yet undertaken by the CA as a whole was the public opinion collection drive that started from 27 February, 2009 and lasted a month. The CA had mobilized 575 CA members, divided into 40 separate teams with 15-18 CA members and 4-5 officials of the CA each. 3.5 million copies of questionnaires, each with around 300 questions were to be distributed. CA members were originally to give their reports to the CA secretariat by 28 March, and the committees were to prepare preliminary concept

¹⁶ The Kathmandu Post. 2008. Previous Constitutions failed as the People Never Owned them. 3 November, p. 5.

¹⁷ The Kathmandu Post. 2008. Previous Constitutions failed as the People Never Owned them. 3 November, p. 5.

¹⁸ The Kathmandu Post. 2008. RRDC Faces Problems Finalizing Draft. 18 September, p. 1.

¹⁹ The Kathmandu Post. 2008. CA Regulation Draft Finalized. 10 November, p. 1. ; MC interview; 31 March, 2009.

²⁰ Background paper prepared by Yash Ghai for the conference ‘The Interim Constitution on the Constitution Making Process’, p. 48. <http://www.undp.org.np/constitutionbuilding/elibrary/constitutionnepal/First%20Report%20Full%20English.pdf>



papers by 22 April, taking into account the input from the public opinion drive. The timetable was amended on 29 April and the deadline moved to 22 May, a date unlikely to be met by all committees given the political situation.

A great deal of excitement had been generated by this exercise in opinion collection. Many CA members reported positive experiences of getting feedback directly from citizens,²¹ and there was much emphasis on the fact that citizens of Nepal were finally allowed to give their direct input to the making of their own constitution. However, overall there was much criticism over expense and effectiveness of the public opinion drive especially given the complicated and confusing nature of the questionnaire.²² Critics pointed out that the questionnaires were prepared without taking into account Nepal's ethnic and linguistic differences and level of literacy, with some comparing it to the civil service exams. Many even highly educated Nepalis were confused about certain questions.²³ The technical nature of questions and the high level of Nepali used resulted in many citizens unable to understand questions let alone fill in the forms. Other criticisms included: not enough questionnaires and time allocated in the villages; some CA members refusing to go to more rural areas; little advance notice; poor turnouts; preference for oral feedbacks and a larger lack of information on the aim of the public opinion collection exercise resulting in many individual requests for development, employment etc.²⁴ Furthermore, Tharu activists were enforcing strikes in various parts of the Tarai at this time,

which severely hampered the ability of CA members to collect public opinions in that area.²⁵

Importantly, CA officials in September 2008 had stated that plans had been to ask for public opinion only after the first draft had been completed.²⁶ MC interviews confirmed that the move to sending out CA members to collect opinions from the public at this stage had not been previously planned.²⁷ The sudden turn to the distribution of the questionnaires, which CA secretariat officials have claimed were decisions made completely by the political parties,²⁸ was directly linked to the fact that so few had responded to the public notice issued by the CA secretariat in the second week of January 2009 to give opinions by telephone, letter or email by 26 February, 2009.²⁹

The questionnaires, heavily criticized for being hard to understand, were the result of the compilation of questionnaires prepared by the committees as background papers. Not only were they not meant for such an external public opinion collection exercise, CA members interviewed noted that all these questionnaires were just put together, with no editing or testing of questions.³⁰

Newspaper reports before CA members left for the field quoted CA secretariat officials stating that they had neither the expertise nor technology to complete the "ambitious plan" and that "[o]rganizing such huge data in a few weeks is next to impossible.....the CA has moved ahead without preparations."³¹ Even when the

²¹ See for example Roka, Hari. 2065 vs. Sujhab Sankalanka Kramama je Bhogiyo. Kantipur, 11 Chaitra, p. 6 and Malla, Sapana Pradhan. 2065 vs. Sujhab Sankalanka Anubhutiharu. Kantipur, 23 Chaitra, p. 7.

²² Sharma, Sudhindra tatha Pawan Kumar Sen. 2065 v.s. Baigyanik Soc, Abaigyanik Vidhi. Kantipur, 28 Chaitra, p. 7.

²³ Onta, Pratyoush. 2009. CA Questionnaires: Survey Method Gone Amok. The Kathmandu Post, 12 April, p. 6.

²⁴ One CA member noted that much time had to be spent explaining the questionnaire and objectives of the exercise, before the questionnaires could be distributed. MC interviews; 30 March, 2009.

²⁵ For example, according to one CA secretariat official, Tharu activists obstructed CA members in seven places in Sunsari and seized questionnaires. MC interview; 29 March, 2009.

²⁶ Budhakhthoki, Bishnu. 2008. 14 Statute Drafting Panels Proposed. The Kathmandu Post, 2 September, p. 2.

²⁷ MC interviews; 30 March, 2009.

²⁸ MC interview; 10 May, 2009.

²⁹ Up until 15 April, 2009, the CA had received a total of 459 responses from emails, the toll free phone lines and the suggestion boxes. MC interview with CA official May 15, 2009. Apart from the elitist nature of such requests, the fact that different committees issued their advertisements for inputs, were thought by some CA members to have confused citizens.

³⁰ MC interviews; 10 April, 2009.

³¹ Basnet, Post B. 2009. Will Public Opinion Count? The Kathmandu Post, 24 February, p. 1.



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teams had finished the field trip, CA secretariat had not yet decided how to incorporate public opinion. According to a political analyst, Nembang was not aware of how big an exercise analyzing the data would be and he and his colleagues were unclear about what to do with the accumulated data. Upon consulting the Central Bureau of Statistics, the latter asked for a period of more than 8 months for processing. It was at this stage that they turned to the committees.³² On 16 April, 2009, Chairman of the Constitutional Committee Madhav Kumar Nepal issued a directive to give the suggestions to all CA members to read and send reports according to a format distributed.³³

There has overall been a lack of planning in making sure a system is in place to analyze the public's submission. Furthermore, the need for technical and methodological expertise in evaluating suggestions has been pushed aside. CA members interviewed had already stressed that neither CA members nor officials had received any training in terms of these questionnaires.³⁴ Beyond the fact that the majority of the CA members elected under the proportional system of the CA elections³⁵ have not completed high school and the majority of the CA members do not have college degrees³⁶ and there are technical and political questions to be deciphered, each CA member has 500-1200 forms to analyze.³⁷

Importantly, oversight mechanisms to the whole process do not exist. For example, it is not surprising that given the number of forms distributed that CA members took initiatives to lighten their burdens. A report notes that one CA member gave 1000 feedback forms to friends who had time to help. Another gave 500 forms

to an NGO to analyze.³⁸ Issues of confidentiality, neutrality and ethics are also to be raised in that CA members interviewed stated that before undertaking the public opinion gathering exercise, parties gave out their concept papers or sent around circulars, while others instructed CA members to talk according to party lines.³⁹ The attempts by political parties to influence the public opinion process and the general need for monitoring was further indicated by a report which ascribed a CA member stating that the collected suggestions show a rising number of people who said that a federal structure was not necessary. As the report pointed out, the CA member is a member of the only party against the federal system.⁴⁰ Apart from distorting the whole aim of the public opinion drive, such activities only decrease trust and faith in the CA and the constitution making process among citizens, especially those who have been traditionally marginalized.

Continuing obstacles

The dominance of political power hierarchies in the functioning of the CA has been made evident during and in the aftermath of the public opinion drive. Newspapers reported that 24 CA members had not taken part in the public opinion drives,⁴¹ and that 39 CA members did not look at the public opinions collected.⁴² Unsurprisingly, the lists included leaders from major political parties. That the structuring and the functioning of the CA thus far has encouraged this is evident from the fact that while most CA members were loaded with public opinions to be analyzed, lawmakers had insisted that busy and key players like Pushpa Kamal Dahal,

³² MC interview with political analyst; 20 March, 2009.

³³ Kshetry, Renu. 2009. Will Politicos Pore over 400-sheet Input? The Kathmandu Post. 18 April, p. 4

³⁴ MC interviews; 29 March, 2009.

³⁵ Of the 601 members of the CA, 240 were elected under the First Past The Post (FPTP) system and 335 under the Proportional Representation (PR) system with an additional 26 nominated.

³⁶ Nepali Times. 2008. CA PAs. 29 August, p. 10.

³⁷ Simkhada, Dhruva. 2066 vs. Masyaudako Tayari. Himal Khabarpatrika, 16 Baisakh, p. 25.

³⁸ Simkhada, Dhruva. 2066 vs. Masyaudako Tayari. Himal Khabarpatrika, 16 Baisakh, p. 26.

³⁹ MC interview; 30 March, 2009.

⁴⁰ Simkhada, Dhruva. 2066 vs. Masyaudako Tayari. Himal Khabarpatrika, 16 Baisakh, p. 26.

⁴¹ Humagain, Mukul and Rambahadur Rawal. 2066 vs. Sambidhan Banla Samayamai? Nepal, 6 Baisakh, p. 29.

⁴² Pant, Khagendra. 2066 vs. 39 Sabhasadle Janataka Sujhava Herdai Herenan. Naya Patrika, 17 Baisakh, pp. 1, 2.



G.P. Koirala and Jhalanath Khanal only be given 12 copies to read.⁴³ The issue of low attendance at the CA of such leaders has also been noted from the outset;⁴⁴ the Rules and Regulations Drafting Committee (RRDC) Coordinator Narayan Man Bijukchhe had criticized the major political parties within the CA for not sending senior party leaders to his committee meetings.⁴⁵ Such practices do little to make political party leaders accountable to citizens, and reveal their unwillingness to fulfill their duties as CA members, including listening to the voices of sovereign citizens.

Overall, attendance in the CA has been cited as low with discussions minimal. One recent article (April 2009) states that in the past 11 months, in the 25 meetings of the CA, 513 CA members have not taken part in discussions.⁴⁶ Reports and CA members have made clear that very few of the top leaders have contributed to discussions even when in attendance with mainly leaders of the smaller parties being active.⁴⁷ CA members have blamed the patronage practices in choosing committee chairs for the low quality of discussions and the general ineffectiveness of committees.⁴⁸

The lack of discussions also points to the important issue of exclusion within the CA. Early in the process, one CA member had pointed out that within the CA, apart from structured exclusion – large parties occupied the front rows with microphones, while smaller parties are pushed to the back – modes of interactions seem designed to exclude the expression of varied opinions.⁴⁹

Other CA members have stated that only the “crafty and smart” get to speak.⁵⁰ This reveals little has changed since early reports that the physical diversity of the CA had not been matched with a wider range of voices and opinions.⁵¹ Apart from education level, the general lack of experience in political party dynamics and lack of confidence to speak on political matters, language and structured inequalities are clearly at play.

Attempts have been made by excluded groups to break through such obstacles with the formation of unofficial caucuses. While no official caucuses have been allowed,⁵² unofficial dalit, janajati and women caucuses have been formed. Members of the caucuses admit that they have so far achieved fairly little. The most advanced appear to be the women. They have prepared and distributed a concept paper on women’s issues to all committees. They also lobbied hard for 33% of head of committees to be women, although in the end only around 30% of the chairs ended up being women and the more powerful committees have lower percentages of women as a whole. However the problems of unifying women are clear; while the CPN-M head of the caucus stated that the issue of differences within women was a non-issue, another member from a marginalized community admitted it was a difficult topic that they had put aside for the time being.⁵³ The unofficial janajati caucus has

⁴³ Kshetry, Renu. 2009. Will Politicos Pore over 400-sheet Input? The Kathmandu Post. 18 April, p. 4

⁴⁴ Humagain, Mukul and Rambahadur Rawal. 2066 vs. Sambidhan Banla Samayamai? Nepal, 6 Baisakh, p. 26.

⁴⁵ The Kathmandu Post. 2008. RRDC Faces Problems Finalizing Draft. 18 September, p. 1.

⁴⁶ Humagain, Mukul and Rambahadur Rawal. 2066 vs. Sambidhan Banla Samayamai? Nepal, 6 Baishakh, p. 26.

⁴⁷ MC interviews; 1 April, 2009; Humagain, Mukul and Rambahadur Rawal. 2066 vs. Sambidhan Banla Samayamai? Nepal, 6 Baisakh, p. 26, 27.

⁴⁸ Humagain, Mukul and Rambahadur Rawal. 2066 vs. Samvidhan Banla Samayamai? Nepal, 6 Baisakh, p. 28.

⁴⁹ Pant, Sunil Babu. 2008. Constituent Assembly: Keeping the House in Order. The Himalayan Times, 17 June, p. 6.

⁵⁰ MC interviews; 7 May, 2009.

⁵¹ Rai, Dewan. 2008. Holding up One-third of the Sky. Nepali Times, 29 August, p. 10-11.

⁵² A member of the women’s caucus stated that with 11-12 women in the RRDC, they had attempted to push through a women’s caucus. However, they were told officially that time management would be difficult and that it would have been too heavy a load for the CA secretariat to handle. They were also told that with 197 members, they could raise issues in their committees. In the words of the RRDC coordinator “But if we agree to the provision for women’s caucus, it will also invite further complications within the CA and parliament due to the presence of different groups like Madhesis, Janajatis, Dalits and people of marginalized and backward regions, who will be encouraged to demand their own separate caucuses.” (The Kathmandu Post. 2008. RRDC Faces Problems Finalizing Draft. 18 September, p. 1.)

⁵³ MC interviews; 4 April, 2009.



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structured a rotating leadership with a male and female head from different party each month: presently CPN-M has the lead, to be rotated next to the Nepali Congress and so on. So far out of 218 janajatis in the CA, only around 36 have signed a “commitment” paper in terms of the goals, and agendas for a janajati caucus.⁵⁴ A planned larger meeting for 15 April was postponed and has yet to meet.⁵⁵ The dalit caucus appears to be in the most formative stage of the three, with “limited achievements” to date – they have not yet been able to get all 50 dalit CA members in one meeting. Obstacles include that parties continue not to be serious about dalit issues and that dalits in party politics have tended to carry the agendas of political leaders.⁵⁶

Conclusion

Government formation and the prioritization of party politics has marginalized the importance of the CA and the seriousness of the tasks at hand till date.⁵⁷ However with the committee drafts to be discussed, it is anticipated that more debates will take place, although political complications of a new government without the CPN-M will clearly affect processes. Furthermore, contentious issues have yet to be discussed in any length, and contemporary political events may impact crucial debates.⁵⁸

However, while power sharing is necessary during a peace process, especially between those individuals and entities with the power to cease hostilities, there is a need

to ensure that those external to negotiating parties do not get excluded. This would only lead to undermining the legitimacy of the post-conflict state. CA functioning has strengthened the power of larger political parties and reinforced political party hegemony. Post-1990 political dynamics of political parties being unaccountable following elections and the equation of democracy as only elections, remains unchanged.

In the remaining months, a focus on increasing opportunities and modes of discussion and debate both inside the CA and with the general population is key. Reclaiming the CA as place where participants seek to engage as equals with the right and duty to participate fully in the discussion and debates concerning the structuring of the new Nepal should be prioritized. Here inclusion needs to go beyond physical presence. The emphasis here has to be one of political equals involved in processes of democratic deliberations. An enabling participatory environment where all individuals are endowed with the ability and duty to listen, think through issues and engage with others on ideas (not pre-prepared speech) should be stressed. Continued engagement of CA members with experts, civil society, NGO workers of specific fields and the general public is important not only for expanding participation, but also for building the knowledge and expertise of CA members. Participation outside of the CA in terms of citizens need to be premised on ensuring that civic education and the goals of the CA and the draft constitution is understood so citizens are prepared to give inputs. Important to note is that with all the delays and redrawing of deadlines, in order to meet the overall 28 May, 2010 target, the time put aside for consultations on the draft constitution has been decreased from 12 to 8 weeks. This is the last structured opportunity for citizens to give inputs and it should be maximized. For this, advance and professional planning on public participation and consultation and feedback mechanisms into the constitution writing process must be structured.

⁵⁴ MC interview; 3 April, 2009.

⁵⁵ MC interview; 14 May, 2009.

⁵⁶ MC interview; 10 April, 2009.

⁵⁷ One clear indication of the above was the manner in which CPN-UML party members left the CA process to attend the CPN-UML convention from 16-22 February, 2009. As one CA member commented, instead of shifting the CPN-UML meeting, the CA timetable was shifted; the CA opinion collection drive should in fact have started from 21 February, not 27 February. MC interview; 30 March, 2009.

⁵⁸ That current events will impact the debates on the CPN-M proposal for a presidential system is one clear example.



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Martin Chautari (MC) began as an informal discussion group in Kathmandu in 1991, allowing development professionals and academics to meet every two weeks to share insights and experiences. In 1995, the name 'Martin Chautari' was adopted after the late Martin Hoftun, one of the founders of the original discussion group. After being managed by the Centre for Social Research and Development for six years, in 2002 MC became registered as a separate non-government organization in Kathmandu.

Since its inception, MC's core objective has been to enhance the quality of public dialogue and the public sphere in Nepal. Started at a time in which Nepal had little, if any, culture of informed public discussion, MC is now nationally known for its discussions which are held three times a week. Chautari also conducts research focused on governance and democracy, education, health and livelihoods with cross-cutting themes of gender and social inclusion. A rigorous mentoring program of young researchers is in-built into MC's work.

Till date MC has published fifty three books including an annual journal *Media Adhyayan* [Media Studies, established 2006]. MC is also the editorial home of the journal *Studies in Nepali History and Society* (SINHAS), published by Mandala Book Point since 1996. Since 2006, MC has opened its research library and media documentation centre to the public. The library's holdings total more than 15,000 books, a quarter of which focuses on the media.

All five components – the discussions, research, mentoring, publications and library – feed into each other and form an intrinsic part of MC's primary objective: strengthening the social contract between the state and citizens and expanding and making inclusive the public sphere by promoting informed dialogues and analytically rigorous research.

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