

Policy Paper

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Attendance and Participation in the Constituent Assembly

Recommendations

1. Political party leaders and Constituent Assembly (CA) members should make firm political commitments against the practice of absenteeism.
2. CA members should prioritize attending the CA and its proceedings over all other commitments.
3. Mandatory attendance at all CA meetings should be enforced with CA members excused only upon good cause. The specific reasons given should be recorded and maintained as public record.
4. Attendance records should be maintained as public record.
5. The Conduct Monitoring Committee of the CA should be immediately appointed and should undertake investigations into absences and other violations of the CA Rules and Regulations. Strict penalties should be stipulated and enforced including fines and expulsion.
6. All meetings of the Conduct Monitoring Committee of the CA should be recorded and transcripts of said meetings should be available as public record.
7. The CA Rules and Regulations should be revised to allow for more equitable distribution of talk/discussion time among political parties during the CA plenary.
8. Political parties should make a commitment to allocate speaking periods in the CA plenary in an inclusive manner.



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Introduction

Since the last minute extension of the Constituent Assembly (CA) on 28 May, 2010 for an additional year, the CA has remained inactive. The extension followed intensive negotiations and an agreement between the three major parties of the Nepali Congress (NC), Unified Communist Party of Nepal – Maoist (UCPN-M) and the Communist Party of Nepal – Unified Marxist-Leninist (CPN-UML) on three issues, including the resignation of Prime Minister (PM) Madhav Kumar Nepal. While debates over the implementation of the agreement initially delayed progress, the abrupt resignation of PM Nepal on 30 June, 2010 has since led to a prolonged political deadlock over the selection of a new PM. The July 18, 2010 official announcement of the new CA schedule¹ (eleventh amendment) initially held promise that the CA would again become functional. However, as epitomized by the on-going political impasse, with little investment in trust-building mechanisms and a climate of confrontational politics, it is unclear how the remaining serious issues of contention within the draft concept papers produced by the CA will be resolved.²

With neither progress in the writing of the Constitution nor visible interest of the political leaders in the large and looming governing issues of the country – including increasing law and order problems, corruption and a lack of basic goods and services – issues of accountability have unsurprisingly come to the fore. The euphoria of the CA elections in 2008 and the promise of a new political beginning has given way to the return of political apathy and cynicism. Nepal's post-1990 history has amply demonstrated that political corruption and administrative inefficiency

fundamentally defeat the purpose of representative democracy. Furthermore as in other countries, it is clear that the focus on elections as *the* source of democratic accountability has served to both reduce the role of citizens to a series of discrete choice points and to encourage representatives to treat their offices as their “representational property” – seeing themselves not as temporary caretakers but as long-term title holders.³

While much has been made of the fact that the CA is the most representative elected body in the history of Nepal, little is known about the role of elected representatives within the institution. Contrary to the democratic practices of many other countries,⁴ and as in the Nepali parliaments of the past, the internal functioning of the CA in the present is opaque.⁵ This has meant that voters – that is Nepali citizens – do not possess the information that would enable them to hold their elected representatives accountable either for specific legislative outcomes or processes. The focus on process is important as this will allow voters to advocate systemic reform of rules that would improve the legislature's ability to represent voters' interest.

This Martin Chautari (MC) CA report focuses on the attendance records of CA members as a means to highlight issues of accountability and transparency. The report focuses on the role of CA solely as a constitution drafting body, and not in its parliamentary role. It also seeks to place the “most representative elected political body” in context by analysing participation – as reflected in speaking records – of CA members. Both attendance and

¹ The Kathmandu Post. 2010. CA okays new calendar of events. 19 July, p. 3.

² For more details, see the following Martin Chautari (MC) policy briefs: MC Policy Brief No. 1 “The Constituent Assembly Process” May 2009; MC Policy Brief No. 2 “Update on the Constituent Assembly” October 2009; and MC Policy Brief No. 3 “Constitutional Complexities and Transitional Planning” April 2010. All the briefs are available at www.martinchautari.org.np.

³ Guinier, Lani. 2008. Beyond electocracy: Rethinking the political representative as powerful stranger. *Modern Law Review* 71(1): 1-35.

⁴ The attendance records of members of the European Parliament is well maintained and is publicly available. Likewise, in the US, every activity of the peoples' representatives in the legislature is publicly available and carefully scrutinized.

⁵ Illustrative of the lack of transparency and barriers to accountability, access to attendance records was only granted with the invocation of the “right to information.” Limited and supervised access to data was then granted.



speaking records are analyzed according to gender, caste and ethnicity. The report begins with a short methodology section highlighting basic data issues. It is followed by analyses of attendance trends by political parties, political leaders, and social groups. A section on speaking trends according to gender, caste, ethnicity and elected method (directly elected or via proportional representation) follows. Rationales given for absences and speaking trends are covered in the last section before the concluding segment of the report.

Research methodology

In the original two year mandated period of the CA, the full CA met 101 times. The study analyzes the participation of CA members in the constitution making process based largely on their attendance record and frequency of speaking during the deliberations of the full CA meetings.

At the outset, some methodological issues need to be noted. As per the CA Rules and Regulations, 2008 (chapter 2, article 4), a CA member is required to sign in the attendance register maintained outside of the Chamber before taking a seat in the CA sitting. However, while the attendance record provides clues about a member's participation in the CA, it is necessarily limited. For example, there is no way to check whether a member skipped the session after signing in the attendance register, a reportedly common phenomenon.⁶ On the other side of the spectrum, reports state that while the late Girija Prasad Koirala attended CA sessions three times, he never signed the attendance records.⁷ Furthermore, signing in and attending CA sessions does not say anything about the degree of substantive involvement or contribution.

It is also important to note that not all the members were elected at the same time and that the composition of the CA has been changing. After the by-election

in six constituencies on 10 April, 2009,⁸ the configuration of the CA was slightly changed. In addition, in the past two years political parties represented in the CA have split and merged; some CA members have died while others have been expelled or have resigned from the CA after having left the parties from which they were elected.

Further complications to analyses have emerged from the identity categories utilized by the CA. CA members have been categorized into the following groups: Madhesis, Dalits, Janjatis and Others (Brahmin-Chhetri-Thakuri). Reflecting the larger debates on these identity categories in the general public sphere, there are overlaps and confusions. For example, Kumals have been put in the Madhesi category although they consider themselves Janajati and have raised this issue in the CA, the parliament and given an official note to the government.⁹ To give another example, Uma Gothe Kapali of UCPN-M party has been put in the Hill (Newar) Dalit category, whereas she considers herself a Janajati.¹⁰ The CA has included Newars and Tharus as Janajatis and Madhesi Dalits, Muslims, and Marwaris as Madhesi. However, for the purposes of this study, the latter group has been disaggregated.¹¹ Overall, analyses on the bases of last names were undertaken and concerned CA members consulted where confusions have arisen. It is for these various reasons that the data base used here may differ from those previously cited, especially those directly following the 10 April, 2008 CA elections.

As noted above, the attendance record of 101 sittings of the full house of the CA are covered. "Speaker-data" – that is data of those who spoke – is derived from the 55 meetings/discussions held on all

⁶ MC interview with a CA member; 21 February, 2010. See also, Rawal, Ram Bahadur. 2010. Ghumfirmal sabhasad. *Nepal* 10(36): 34-36.

⁷ Pant, Khagendra, 2009. Sabai neta gayal. *Naya Patrika*, 30 August, p. 2.

⁸ CA by-elections conducted in six constituencies. www.nepalnews.com/archive/2009/apr/apr10/news15.php (Accessed on 1 September, 2010).

⁹ MC interview; 17 May, 2010.

¹⁰ MC interview; 19 May, 2010.

¹¹ According to one Marwari CA member, the Nepal Marwari Parishad had protested the inclusion of Marwaris within the Madhesi category. MC interview; 19 May, 2010.



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eleven of the different draft concept papers.¹² The total time allocated for the discussion on any concept paper is 30 hours in five days (6 hours a day). Each speaker is allowed to speak for only three minutes. However, CA members can and do request to take the time of others within their own parties.¹³ Importantly, not all members can speak in the full house. Discussion time is allocated according to the member strength of the political parties in the CA. For example, the UCPN-M with 238 members gets 712 minutes in total whereas the NC with 114 members gets 341 minutes to speak on a concept paper. Citing three minutes as insufficient time in which to put across one's opinion on a report, smaller parties had requested the time allocated to them be extended to 20 minutes, but to no avail.¹⁴ Thus members of six parties and two independent candidates are only allocated three minutes in total to speak over the five days in which discussions of the concept paper are to be held. Exactly who gets to speak within the time allocated for parties is decided by the chief whip of the party at the CA.

Lastly, it is important to note that while analyzing the data, percentage figures and not absolute numbers have been used as not all the members were elected at the same time. CA members from different political parties and social groups have also been interviewed for their own views and analyses of attendance and speaking rates within the CA. The next section deals with various attendance issues.

¹² The full house of the CA holds discussions on draft concept papers prepared and submitted by each committee. The eleven committees are: Committee on Preservation of National Interest; Committee on Protection of Rights of Minorities and Marginalized Communities; Committee on Determination of Structure of Constitutional Bodies; Committee on Distribution of Natural Resources, Financial Rights and Public Revenue; Committee on Determination of Cultural and Social Solidarity; Committee on Determination of Nature of Legislative Bodies; Committee on Judicial System; Committee on Fundamental Rights and Directive Principles; the Constitutional Committee; Committee on Restructuring of the State and Distribution of Power; and the Committee on Determination of Forms of Governance of the State.

¹³ MC interview with CA secretariat official; 17 May, 2010. This has resulted in variations in the number of speakers on any one day.

¹⁴ MC interview; 17 May, 2010.

Attendance trends

On average, the CA members have an attendance rate of 63 percent. In other words, on average over a third of the CA members were always absent. For purposes of comparison, in the European Parliament attendance record was 84 percent or more for all parties from mid July 2009 to present,¹⁵ while in India for the Budget Session (22 February to 7 May, 2010), attendance for the lower house (Lok Sabha) was 82 percent and 78 percent for the upper house (Rajya Sabha).¹⁶ That is, attendance records of people elected to a body specifically to write a new Constitution of Nepal – arguably a historically more important body than parliament – is much lower than the parliamentary attendance records of other countries. Important to note is that from 14 May, 2008 to 13 April, 2010 (the period that covers the 101 full CA meetings), NRs. 1,39,25,32,896 from the State treasury was spent on CA members' salary and allowances, cost of conducting committee meetings, CA and parliament.¹⁷ This does not include the expenditure for a month and a half before the 28 May, 2010 deadline, or the money donors have spent separately. For all the money spent and the importance of writing a new Constitution after much struggle and bloodshed, 63 percent attendance is poor showing.

Political parties' participation in the CA

The CA currently has at least one representative from 24 political parties. The UCPN-M is the biggest party in the CA with a member strength a little less than 40

¹⁵ See, www.votewatch.eu/cx_epg_attendance.php (Accessed on 20 July, 2010).

¹⁶ These figures are higher than those for the Winter Session 2009 in which attendance figures for the lower and upper house were 66 percent and 68 percent respectively. PRS Legislative Research. Parliament in Budget Session 2010. www.prsindia.org/index.php?name=Sections&action=bill_details&id=5&bill_id=1152&category=60&parent_category=0 (Accessed on 31 August, 2010).

¹⁷ Dahal, Phanindra. 2010. Million dollar CA at death's door. *The Kathmandu Post*, 28 May, p. 3.

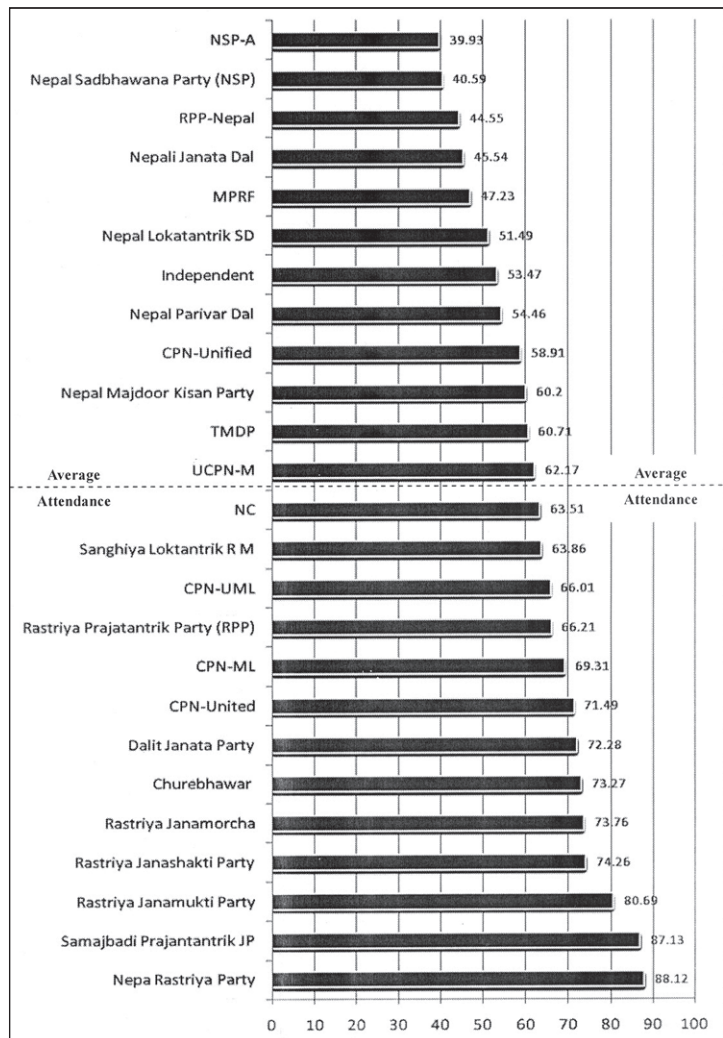


percent (39.6% or 238).¹⁸ NC comes second and CPN-UML comes third with member strengths of 18.97 percent (114) and 18.14 percent (109) respectively. The Madhesi Peoples' Rights Forum (MPRF) is the fourth biggest party with 8.82 percent (53) member strength.¹⁹ Another Madhes-centric party Tarai Madhes Democratic Party (TMDP) accounts for 3.66 percent (22) whereas the Communist Party of Nepal – Marxist-Leninist (CPN-ML) and Nepal Sadbhawana Party both have around 1.5 percent (9) of the representatives in the 601-member CA. The Rastriya Prajatantra Party (RPP) has a total of 8 members which accounts for 1.33 percent. The small 16 parties have less than one percent of the representatives in the CA. The attendance rates of the political parties are noted in Figure 1.

The attendance average of the three big parties – UCPN-M, NC, and CPN-UML – is near the overall average. More specifically, even though the UCPN-M has more than double the members of NC and CPN-UML each, the presence of the Maoist CA members in the CA proceedings is just below the average (62.17%). This is less than the average for NC members (63.51%) and CPN-UML members (66.01%).

Among the bigger parties, MPRF fares worst of all when it comes to presence in the CA sittings. More than half of the MPRF CA members are absent in the CA sittings at any given time – their average attendance rate is 47.23 percent. Two other Madhes based parties Nepal Sadbhawana Party and Nepal Sadbhawana Party-Anandi Devi also have poor attendance records (40.59% and 39.93% respectively). Nepa Rastriya Party – which has just a single representative in the CA via the Proportional

Figure 1: Average attendance rate of various parties



Representative (PR) system, and hails from Kathmandu valley – has the highest average attendance rate of all the political parties in the CA (88.12%). Samajbadi Prajantantrik Janta Party has the second highest attendance rate (87.13%).

Leading by example

If on average more than a third of the CA members were absent on any given business day, the attendance rate of the top leadership is even worse. Table 1 provides a glimpse of the attendance records of some of the top political and well-known figures of the CA.

¹⁸ Two parties Jana Morcha Nepal and CPN-Unified were merged into the CPN-M to form the UCPN-M.

¹⁹ MPRF is now split into two parties: the Upendra Yadav, Jaya Prakash Gupta led faction retains the old party name whereas the faction led by Bijaya Gachchedar is called MPRF (democratic). For the ease of analysis we have treated them as one single entity.



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Table 1. Attendance rate of some familiar and influential political figures in the CA

Name	Attendance rate (percentage)
Sher Bahadur Deuba (NC)	1.98
Pushpa Kamal Dahal 'Prachanda' (UCPN-M)	6.93
Bijaya Kumar Gachchedar (MPRF)	9.90
Rajendra Mahato (NSP)	11.88
Sharatsingh Bhandari (MPRF)	14.74
Krishna Bahadur Mahara (UCPN-M)	14.85
Upendra Yadav (MPRF)	19.80
Madhav Kumar Nepal (CPN-UML)	20.25
Ram Bahadur Thapa 'Badal' (UCPN-M)	20.79
Arju Rana Deuba (NC)	22.77
Renukumari Yadav (MPRF)	24.75
Baburam Bhattarai (UCPN-M), Jhalanath Khanal (CPN-UML), Pradeep Giri (NC)	27.72
Jaya Prakash Gupta (MPRF)	29.27
Diwakar Golchha (NC)	29.70
Narayanman Bijukchche (NWPP), Top Bahadur Rayamajhi (UCPN-M)	30.69
Binod Kumar Chaudhary (CPN-UML)	31.68
Amik Sherchan (UCPN-M)	33.66
Hitman Shakya (UCPN-M)	35.64
Prakash Sharan Mahat (NC)	36.63
Mahanth Thakur (TMDP)	38.14
Hisila Yami (UCPN-M)	39.60
Shankar Pokhrel (CPN-UML)	40.59
Lucky Sherpa (CPN-UML)	42.57
Gagan Thapa (NC)	44.55
Pasang Sherpa (CPN-UML)	46.39
Pampha Bhusal (UCPN-M)	47.52
Ram Sharan Mahat (NC), Pari Thapa (CPN-Unifed)	48.51
Ram Chandra Paudel (NC)	49.50
Jayapuri Gharti (UCPN-M)	52.48
Sapana Pradhan Malla (CPN-UML)	68.32
Rajendra Kumar Khetan (CPN-ML)	93.81

Across party lines, top leaders are not attending the CA in any meaningful sense. Senior NC leader Sher Bahadur Deuba has the worst record when it comes to attending the CA sittings.²⁰ According to the records maintained by the CA, Deuba attended the CA plenary only twice during the whole two years of the CA. Pushpa Kamal Dahal 'Prachanda,' leader of the largest party in the CA, UCPN-M, has

²⁰ The late Girija Prasad Koirala also rarely attended. However, apart from not signing in when he did attend as mentioned above, he was also of frail health. Signing in is, however, mandatory according to CA Rules and Regulations.

an attendance rate of just under seven percent (attendance of seven meetings in total), the second lowest, with Bijaya Gachchedar (MPRF) coming in third lowest with just under a ten percent attendance rate (ten meetings).

Maoist leaders Baburam Bhattarai, Ram Bahadur Thapa, Krishna Bahadur Mahara, NC leaders Mohammad Aftab Alam, Pradeep Giri, CPN-UML leaders Madhav Kumar Nepal, Jhalanath Khanal and MPRF leaders Upendra Yadav, Sharatsingh Bhandari and Jaya Prakash Gupta, all fare badly; their attendance rate is below 30 percent. NC's parliamentary party leader at the CA Ram Chandra Poudel's record is relatively better among the top leadership, with an attendance rate of just less than 50 percent.

Other influential and popular figures such as Bhim Rawal, Shalikram Jamakattel, Arju Rana Deuba, Amik Sherchan, Mahanth Thakur, Ram Sharan Mahat, Gagan Thapa, Lucky Sherpa, Pampha Bhusal, Hisila Yami, Prakash Sharan Mahat, Shankar Pokhrel, Shekhar Koirala etc. have been absent in the CA deliberations more than fifty percent of the time.

In terms of the other spectrum of attendance, Agni Kharel of CPN-UML with 97 percent has the highest attendance record. The following members hold the top five attendance rates: Agni Kharel, Man Bahadur Mahato (NC) and Lakshman Prasad Ghimire (NC) both 96 percent, Rajendra Kumar Khetan (CPN-ML) and Nilamber Acharya (NC) both 94 percent.

The absence of the top leaders from the CA is important beyond the obvious fact that they, along with the other CA members, were given the task of writing the Constitution by citizens. Contrary to CA Rules and Regulations, these leaders had been absent for more than ten consecutive meetings without prior notice. As per the Constituent Assembly Rules, 2008 (chapter 16, article 132), it is mandatory that:

- (1) Members shall give prior notice to the Chairperson if they are going to be absent for ten or more consecutive Sittings.
- (2) Members shall give prior notice to the Chairperson if they are to remain absent for less than ten consecutive Sittings. In case they are unable to inform the



Chairperson beforehand for any valid reason, members shall give notification of the same within three days of when they return to the Assembly. (3) In the notification pursuant to Sub-rule 1 or 2, the member shall clearly state the duration of the absence and the reason for being absent. In the case the notification is made according to Sub-rule 1, the Chairperson shall inform the Assembly and in the case of Sub-rule 2, the Chairperson shall approve him/herself.

The CA Rules and Regulations themselves are silent on what happens if the rule is violated by the members, but the above clearly puts the onus of action on the CA Chair.²¹ But, in terms of their participation in the Committee meetings, the rules are more specific: if a member fails to appear in four consecutive meetings, the Committee Chair may expel the member from the committee and inform the decision to CA (chapter 11, article 77).

However, according to the Interim Constitution 2007, Chapter 7, article 67(c), the seat of a member of a CA is said to be deemed vacant “if he/she remains absent from ten consecutive meetings without notification to the Assembly.” Again, none of the leaders had given in any such notifications before a Nepali national daily broke the story at the very end of August 2009.²²

The public revelation of the violation of these rules and their consequences in terms of leaders no longer legally being CA members was telling. While CA chairperson Subhash Nembang had continuously pointed out their absences meant that their CA memberships would be invalidated,²³ it was only after the news broke that political leaders took action.

According to consequent coverage, NC leader Girija Prasad Koirala had put in his leave request the day the news broke,²⁴ while others followed a few days later.²⁵ Citing CA Rules, article 132, the leaders had submitted the requests for leave reportedly on the advice of CA Chair Nembang.²⁶ However, the regulations state that if requests for leave cannot be made before leave is taken, the CA member must give a written notice to the CA secretariat as to the reasons for their absence (along with an explanation as to why advance notice could not be given) within three days of attending the CA. Apart from the fact that the requests have been couched in vague language – attendance was not possible “for various reasons”²⁷ – these requests have been accepted retroactively, even though there is no such provision mentioned in the rules. However, since the public revelation and the leaders’ pro-active leave requests in September of 2009, there has been no change in the behavior of the leaders. Absence of the leaders for consecutive days and without prior notice has continued.²⁸

The failure of leaders to attend and comply with the CA Rules and Regulations they themselves crafted is further examined by analyzing the attendance records according to social groups and election method.

Gender and caste/ethnicity

In the 601 member Constituent Assembly, there are 404 men (67.22%) and 197 women (32.78%). Disaggregated in terms of caste and ethnicity, there are 200 members (33.28%) from the Brahmin-Chhetri-

²¹ This was point made by the then Nepal Bar Association Chair Bishwa Kanta Mainali. See, Pant, Khagendra. 2009. ‘Yi gaye.’ *Naya Patrika*, 2 September, p. 2.

²² See, Pant, Khagendra. 2009. Sabai neta gayal. *Naya Patrika*, 30 August, pp. 1, 2; and Pant, Khagendra. 2009. Antaram samvidhan, 2063 anusar Madhav, Prachanda, Girija, Jhalanath, Upendra ra Baburamko savidhansabha sadasyata kharej hune. *Naya Patrika*, 1 September, pp. 1, 2. See also MC Policy Brief No. 2, October 2009, pp. 5-6; available at www.martinchautari.org.np

²³ Pant, Khagendra. 2009. Antaram samvidhan, 2063 anusar Madhav, Prachanda, Girija, Jhalanath, Upendra ra Baburamko savidhansabha sadasyata kharej hune. *Naya Patrika*, 1 September, p. 2.

²⁴ Pant, Khagendra. 2009. Jhalanathle jhela gare. *Naya Patrika*, 6 September, p. 2.

²⁵ See, Pant, Khagendra. 2009. Pad jogauna netaharule dina thale nivedan. *Naya Patrika*, 1 September, pp. 1, 3; and Pant, Khagendra. 2009. Prachandale balla mage aghillo ek varshako bida. *Naya Patrika*, 11 September, pp.1, 2.

²⁶ Pant, Khagendra. 2009. Pad jogauna netaharule dina thale nivedan. *Naya Patrika*, 1 September, pp. 1, 3.

²⁷ Pant, Khagendra. 2009. Pad jogauna netaharule dina thale nivedan. *Naya Patrika*, 1 September, p. 3.

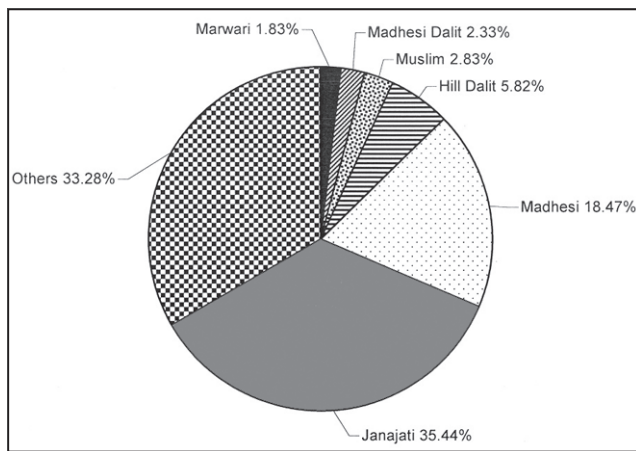
²⁸ Pant, Khagendra. 2010. Neta pheri gayal. *Naya Patrika*, 10 January, pp. 1, 2.



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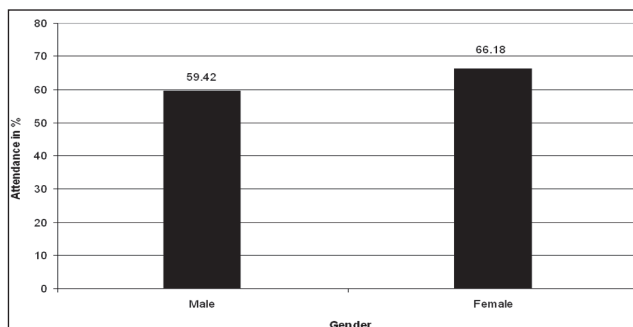
Thakuri (or ‘Other’) community; 213 (35.44%) Janajatis; 111 (18.47%) Madhesis; 49 (8.15%) Dalits (including Madhesi and Hill Dalits); 17 (2.83%) Muslims and 11 (1.83%) Marwaris in the CA (see, Figure 2). The CA, as is often noted, is the most representative elected body in Nepal’s history.

Figure 2: Composition of CA in terms of caste/ethnicity



Compared to their male counterparts, women CA members’ attendance in the CA sittings is encouraging (Figure 3). The average attendance rate of male CA members is 59.42 percent, whereas the same is 66.18 percent for female CA members.

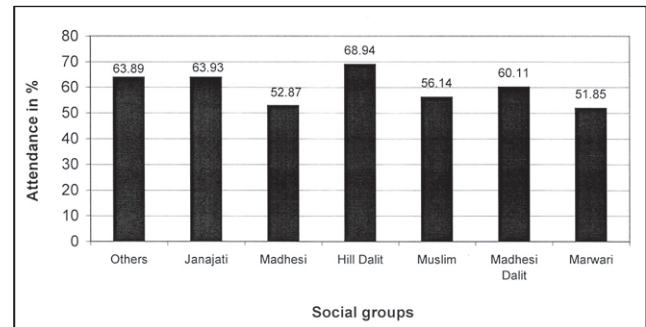
Figure 3: Attendance rate according to gender



In terms of attendance of different social groups, Figure 4 shows that the Hill Dalits have the highest attendance rate of 69 percent. Janajatis and ‘Others’ (Brahmin-Chhetri-Thakuri) follow with almost 64 percent. Marwaris have the lowest attendance rate

(52%) followed by Madhesis (53%) and Muslims (56%). Notable is that Madhesi Dalits have higher attendance rates (60%) than Muslims, Madhesis and Marwaris.

Figure 4: Attendance rate of different social groups



The next section examines trends in speaking during the full house of the CA.

CA plenary and discussions on draft concept papers

Overall 347 hours 39 minutes were spent in the 101 full CA sittings. On average a CA meeting lasted for 3 hours and 44 minutes; the shortest being five minutes and the longest 8 hours and 15 minutes. Out of the 330 hours (in 55 days) allocated for the discussion on eleven draft concept papers, the CA used up 323 hours 38 minutes – that is approximately 98 percent of the allocated time. On an average 5.8 hours were spent each day to discuss a concept paper.

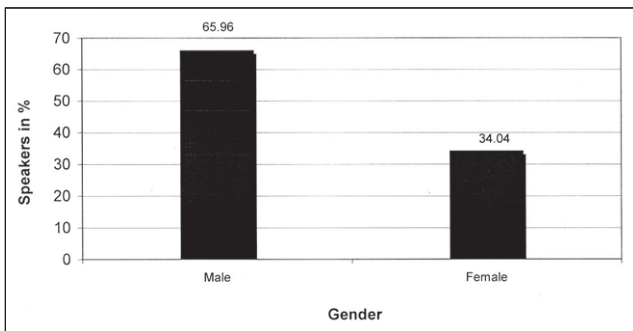
The discussions on the draft concept papers prepared by five committees – namely, Committee on Determination of Cultural and Social Solidarity; Fundamental Rights and Directive Principles Committee; Constitutional Committee; Committee on Determination of Forms of Governance of the State and Committee on Restructuring of the State and Distribution of Power – lasted for thirty or more hours. The total discussion time on the draft concept papers of the remaining six committees was less than the stipulated time. The discussion on the draft concept paper prepared by the Committee on Protection of Rights of Minorities and Marginalized Communities



took up the least of the allocated time: 25 hours and 25 minutes, i.e., 4 hours 35 minutes less than actual 30 hours set aside. The Committee on Restructuring of the State and Distribution of Power took up the most hours, exceeding the given time by nearly six hours.

As mentioned above in the methodology section, talk-time is distributed proportionately among the parties according to their member-strength. Speech frequency unsurprisingly follows similar pattern. However, disaggregating speaker-data in terms of social groups reveals certain trends (see Figure 5 and 6).

Figure 5: Percentage of speakers according to gender



The record maintained by the CA secretariat shows that among all the speakers that spoke during the discussions on draft concept paper, nearly two thirds (66%) are men, and one third (34%) are women. Thus while women have a higher attendance record than men (66% to 59%), they speak less in the plenary than men.

Figure 6: Percentage of speakers from different social group

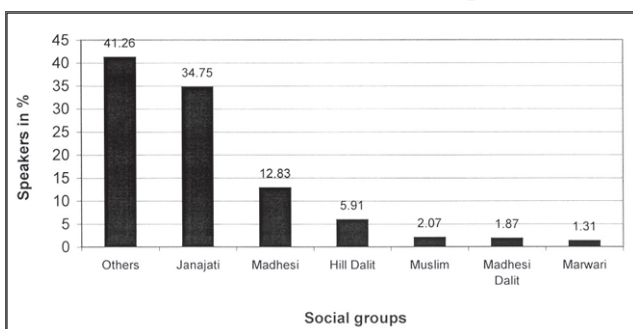
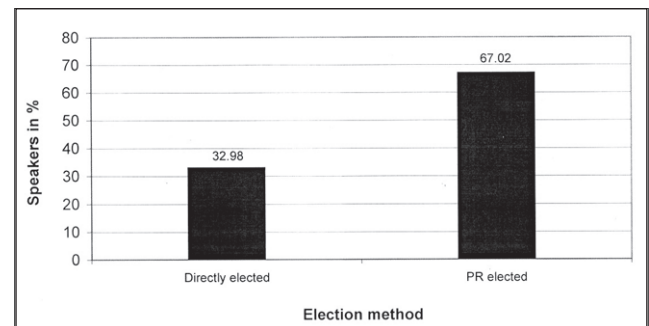


Figure 6 shows that those members falling under the ‘Other’ category (Brahmin, Chhetri and Thakuri) speak the most. Of all the speakers in the plenaries, 41.26 percent are from the ‘Other’ category, nearly eight percent more than their strength in the CA. Overall, excluded groups speak less than their member-strength. In the case of Madhesis, the disparity between their member-strength and speaking frequency is notable, nearly six percent less than their strength in the CA.

Figure 7: Percentage of speakers according to election method



The data also reveals that those elected via the proportional representation (PR) method appear to talk more in the CA than those directly elected by the people (see Figure 7). The ratio of members elected via PR and first-past-the-post (FPTP) method is 60:40, however when it comes to taking up time during the discussions on subject committee reports, the ratio becomes 67:33.

Variations and causes

Interviews with CA members and CA secretariat officials revealed various reasons and analyses for the low attendance of CA members. These included internal and external dynamics.

Externally, overall blame for low attendance was put on the larger parties (especially from representatives from the smaller parties) for their focus on government formation as opposed to the Constitution writing process. Other reasons included the need to be involved in party affairs as “responsible



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members” of their respective parties, and the need to visit constituencies to listen to grievances, development needs etc. The latter was especially claimed by those who were elected directly (as opposed to through proportional representation). According to a CA member, there is a great deal of pressure as a directly elected CA member to make such visits.²⁹ Another noted that he had visited his constituency 244 days in the last two years, not counting the 55 days or so spent in travel.³⁰

In terms of external factors, many also cited non-governmental organization (NGO) and international non-governmental organization (INGO) programs as contributing factors to low attendance within the CA.³¹ Indeed, CA secretariat officials were specific in stating that low attendance of CA members was due to their going to programs organized by NGOs and donors, even to the extent of signing in but leaving the CA afterwards – something the CA Chair Nembang had warned against.³² Similarly, foreign visits of the members, again managed/organized by INGOs and donors were also mentioned as another contributing factor for the absence of the members in the CA discussions.³³ The exact number of NGO/INGO programs attended are hard to gauge for the obvious reasons – at any one day, numerous programs related to the Constitution take place.³⁴ The number of foreign trips made by different CA members is also hard to track. The CA secretariat has a list of CA members who have gone through them in order

to obtain visas. However, not all who are on that list have actually gone and not all who have gone abroad have informed the secretariat as donors often arrange visas directly for them. There appears to be no central listing of such trips or donor coordination in the planning and execution of such initiatives.³⁵ However, according to a news report published in April 2010, more than 165 CA members have gone abroad at least once after their election to CA; some up to 10 times.³⁶ Most of these foreign trips have been arranged by INGOs and the donor communities (including foreign embassies) working in Nepal, although the CA itself also had sent some 10 groups (totaling 70 members) to various countries in the name of study visits, bearing all the costs incurred.³⁷ The CA members acknowledged that they attended the programs of I/NGOs initially in great numbers, but stressed that they had later made a point to attend such programs less, and be more selective.³⁸

In terms of internal dynamics within the CA contributing to low attendance, the actual processes of deliberation within the CA was highlighted by some CA members. They noted the manner in which discussions became boring once the leaders spoke as the junior members of the same parties then parroted what their leaders said.³⁹ More concretely, it was explained that the top leaders spoke on the first day of the five day deliberations – often taking up 20-25 minutes (by “borrowing” time from other party members) – as it was felt important to clearly establish the party line right at the beginning.⁴⁰ The following

²⁹ MC interview; 20 July, 2010.

³⁰ MC interview; 7 July, 2010.

³¹ MC interviews; 15, 19 and 21 February, 2010.

³² Rawal, Ram Bahadur. 2010. Ghumfirmi sabhasad. *Nepal* 10(36): 34.

³³ MC interviews; 15, 19 and 21 February, 2010.

³⁴ Interviewees made clear that “travel costs” and other payments by donors, INGOs and NGOs to attend such programs is an attractive incentive for CA members. This clearly draws CA members from their primary work in the CA. Furthermore, while this can be justified to some extent in terms of “learning” etc., questions have been raised over making such payments “the norm” for what should be taken as either learning exercises and/or part and parcel of fulfilling their duties. MC interviews with donors; 11 and 20 August, 2010.

³⁵ MC attempts to obtain names of CA members from donors have been of limited success. This raises larger issues of the transparency and accountability of donors themselves.

³⁶ As reported by Rawal, Ram Bahadur. 2010. Ghumfirmi sabhasad. *Nepal* 10(36): 34-36.

³⁷ According to the news report, the total cost incurred amounts to one million rupees. See, Rawal, Ram Bahadur. 2010. Ghumfirmi sabhasad. *Nepal* 10(36): 34-36. Relatedly, issues over the non-transparent manner in which CA members have been selected by the CA secretariat has been raised. MC interviews; 18 May and 16 July, 2010.

³⁸ MC interviews; 15 and 21 February, 2010.

³⁹ MC interviews; 21 February, 17 and 25 May, 2010.

⁴⁰ MC interview; 25 May, 2010.



days were then taken up by junior party leaders reiterating the same lines, with thus little incentive for others to then attend the plenary. For others, low attendance was ascribed to the feeling that little could be achieved given that the leaders (i.e. decision-makers) themselves did not attend.⁴¹ Overall, a clear hierarchical political culture in which the top political leaders are to take the lead in contouring the debates was evident.

Another excuse often furnished for low turnout was that there is very little time available for the members to comment on any given issue/paper.⁴² And since they could contribute very little, interest too had waned.⁴³ A few however challenged this proposition as merely an excuse; a member can always provide written comments if she or he so wishes. According to CA secretariat officials, not a single member has submitted a written comment (except for the note of dissents on the CA draft concept papers).⁴⁴ That CA members might have felt that they had fulfilled their responsibilities after completing their committee paper drafts was noted as another possibility for low turn-out.⁴⁵

Analyzing the differences in attendance data, both male and female CA members attributed women's higher attendance to their sincerity, discipline, and enthusiasm to learn. Men also added that they had to be more involved in party affairs than women. Further, it was said that because more women were elected via the PR method, they were less busy than the directly elected who had constituencies to tend to. It was also claimed that men were more occupied with obtaining ministerial posts or other lucrative deals – which is not the case for women members – and are thus more absent in the CA.⁴⁶ Interestingly, when asked about the low attendance of top female political leaders, one female CA member noted that their low attendance might extend from the fact that

they thought themselves senior leaders, and therefore too busy/important to attend the CA.⁴⁷

In terms of speaking within the CA, though women members' attendance rate is higher than their male counterparts, the speaker-data shows that their actual involvement (measured solely in terms of frequency of speech during the deliberation on draft concept papers) is less than that of men. Men may attend less, but they speak more. It was claimed that the main reason that women were unable to get time to speak was because party leaders and the party whip are all men.⁴⁸ Thus female CA members from large parties complained that despite requests, they were given little time to speak as the allocated time was taken up by the big leaders.⁴⁹

Overall, the lack of self confidence and the difference between local and national politics were cited as barriers to participation of members of excluded groups and of the newer political faces in the CA.⁵⁰ For Janajatis, the problem of not being able to speak "pure" Nepali and not being understood in one's own language was stressed, as was the lack of knowledge on issues raised.⁵¹

In comparative terms, Madhesi members clearly tended to attend less and speak less in the CA. Apart from issues of language and knowledge base,⁵² many of the interviewed Madhesi CA members blamed their poor record in the CA on the split that occurred in the MPRF on the issue of joining/supporting the Madhav Kumar Nepal led government.⁵³ After the vertical split in the party, some claimed that the overall morale of the members fell and this seriously impacted

⁴¹ MC interview; 17 May, 2010.

⁴² MC interview; 15 February, 2010.

⁴³ MC interviews; 15, 17, 23 and 25 February, 2010.

⁴⁴ MC interviews with CA secretariat officials; 18 February and 17 May, 2010.

⁴⁵ MC interview; 17 May, 2010.

⁴⁶ MC interviews; 17 and 18 February, 2010.

⁴⁷ MC interview; 25 May, 2010.

⁴⁸ MC interview; 25 May, 2010.

⁴⁹ MC interviews; 17 May, 2010.

⁵⁰ MC interview; 25 May, 2010.

⁵¹ MC interviews; 8 September, 2010.

⁵² MC interviews; 21 February and 17 May, 2010.

⁵³ MPRF was a major coalition partner in the UCPN-M led government, which fell apart when the Maoist tried to sack the then army chief Rookmangud Katwal. The MPRF split into two groups over the issue of joining the Madhav Kumar Nepal (of CPN-UML) led government. See, MC Policy Brief No. 1 "The Constituent Assembly Process" (May 2009) for further details; available at www.martinchautari.org.np



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Madhesi CA members' presence in the CA plenary.⁵⁴ Furthermore, those who became part of the faction led by Bijay Gachchedar joined the government and forgot the CA while those of Upendra Yadav's faction moved to the districts in order to consolidate the party at the local level. In addition, low Madhesi participation was claimed as resulting from a lack of confidence that Madhesi issues would be addressed by the CA.⁵⁵ However, more self-critical remarks were also voiced. Some Madhesi CA members attributed low attendance and low participation to the fact that they had done little serious work, had no clear vision, were out for individual interests and did not "understand their own responsibilities."⁵⁶

For Dalit CA members, low speaking rates were attributed to the lack of self-confidence, a result of historical factors and the fact that while there are Dalit CA members who have political experience, this has all been at the local level, far different from having to speak at the CA rostrum. In terms of Madhesi Dalits, low speaking rates were also attributed to the fact that there are more women than men in this category – the inference being that women speak less than men.⁵⁷

However, CA members also clearly stated that Madhesi and Dalit CA members were not able to freely speak because of the need to obey the party whip and to avoid being singled out by the top leaders of the parties.⁵⁸ A Madhesi CA member, complaining about the need to toe the line within such parties as the UCPN-M, CPN-UML and the NC and what he saw as the practice of having Madhesi CA members as mere tokens, asked "What kind of Constitution will be made if those who have come to make the main law are not able to freely speak their main community's case?"⁵⁹ While one Madhesi party

member blamed his party leaders for not paying attention to who is and who is not speaking, stating that there was no real discrimination in getting time to speak,⁶⁰ CA secretariat sources said that the discussions over the committee reports have also been completed in less than the stipulated amount of time as the Madhes based parties did not utilize their allocated periods.⁶¹

Lastly, and importantly, many interviewees made explicit the fact that it is the top political leaders who decide who gets to speak.⁶² According to one CA member the larger percentage of speakers from PR as opposed to the directly elected appears to hold similar logic: most leaders have come through the PR system and they are the ones who speak the most.⁶³

Conclusion

The analysis of the attendance and speaking records of the CA members reveals problems in the processes by which the Constitution is being written. The April 2006 and the Madhes 2007 peoples' movements promised a transformation in the workings of political parties and political processes. However, little appears to have changed.

To begin with, as noted before,⁶⁴ the CA Rules and Regulations are structured to maximize political party control over members. The Anti Defection Act 1997, amended in January of 2010 to include the CA within its mandate,⁶⁵ ensures votes of conscience are impermissible. The party hierarchy and the party whip enables party leaders to control CA proceedings and debates and ensure individual CA members remain within party control and lines. Despite the emphasis on "inclusion" and "the most inclusive elected body

⁵⁴ While average attendance prior to the split was higher (57.96% compared to 52.87% after the split), both numbers are below the average attendance rate of 63 percent.

⁵⁵ MC interview with senior Madhesi CA leader and CA member; 17 February, 2010.

⁵⁶ MC interviews; 17 and 26 May, 2010.

⁵⁷ MC interviews; 16, 17 and 25 May, 2010.

⁵⁸ MC interviews; 16, 17 and 26 May, 2010.

⁵⁹ MC interview; 26 May, 2010.

⁶⁰ MC interview; 17 May, 2010.

⁶¹ MC interview; 12 January, 2010.

⁶² MC interviews with CA members and CA secretariat official; 17 and 25 May, 2010.

⁶³ MC interview; 17 May 2010.

⁶⁴ See, MC Policy Brief No. 1 "The Constituent Assembly Process" (May 2009) for further details; available at www.martinchautari.org.np

⁶⁵ See, www.lawcommission.gov.np (Accessed on 12 September, 2010).



in Nepal's history," the actual internal functioning of the CA reveals the maintenance of structured hierarchies and the exclusion of the marginalized.

In this vein, the overall trends in speaking are more important for the power dynamics they reveal, than actual "participation" of CA members. More specifically, this policy paper does not cover the committees. Clearly in terms of participation, it can be argued that most of the hard work took place in the committees and that more CA members were present and were actively involved given the relatively more enabling, informal environment.⁶⁶ Regardless, theoretically the CA plenary debates should also allow CA members to voice their own views and opinions on consolidated drafts of the Constitution. Clearly this has not happened. CA Rules and Regulations and political party processes have reduced the value of this important forum.

Furthermore, the absence of senior leaders of political parties have been largely attributed to the politics of power distribution and consolidation – both in terms of the government and internal political party dynamics. Indeed, the focus on "consensus" for the peace-process has undermined the CA's importance and the consequent "deals" and agreements have only served to continue the pre-2006 political culture.

The rationale of the need to attend to "party work" or "the constituency" at the cost of attending the CA in general, speaks of the relatively low prioritization given to the Constitution writing process in the current political climate. It also importantly obscures the fact that CA members were elected specifically to write a new Constitution. They are being paid and receive entitlements such as housing allowances etc., for the specific task of attending the CA and

participating in activities that contribute to the making of the Constitution. Their constituency, in this vein, are all Nepali citizens who are best served by the fulfilling of their duties in terms of writing the new Constitution.

To end, if elusive outside the CA, internally consensus appears to have been reached among CA members in terms of breaching the CA Rules and Regulations they themselves scripted. Tellingly, the CA Conduct Monitoring Committee to be formed according to chapter 18, article 146 of the CA Rules and Regulations, does not exist. The Committee would have the mandate to undertake required investigations into "publicly raised questions or notices given to the committee by anyone regarding violations by any member of the Code of Conduct, as stated in Rule 145, Sub-rule (1)," which include, abiding by rules and regularly participating in committee and plenary meetings as well as voting. According to interviews, the committee has not been established as no-one has yet given any such notice.⁶⁷ It has thus been up to the individual discretion of the CA Chair to hold CA members accountable. Clearly, more institutionalized and transparent processes are necessary.

In Nepal, civil liberties, freedom of information, free plural and independent media, a robust civil society and associational life have been well recognized as important parts of the democratic public sphere. What is often missed is that access to official information and a public culture of transparency are also vital to this sphere. Nepali citizens should possess the information necessary to hold their elected representatives accountable for either specific policy/legislative/constitutional outcomes or processes. This requires understanding accountability and transparency as being in the national interest.



⁶⁶ Important to note is that past research has revealed the same constraining factors at work within committees as well. See, MC Policy Brief No. 1 "The Constituent Assembly Process" (May 2009) for further details; available at www.martinchautari.org.np

⁶⁷ MC interviews with CA member and CA secretariat official; 2 September, 2010.