



## Constitution Building e-Bulletin

A quick and easy way to update yourself on the latest CCD news.

**Dear friends,**

Please find below the Constitution Building e-Bulletin, Volume 1, No. 3, May, 2010. It contains information and resources of interest and relevance to those working in the field of Constitution Building in Nepal, as well as other citizens who are interested in keeping up to date on the fast-moving events in Nepal's progress toward a new constitution. The update is developed in conjunction with partners, including the Constituent Assembly (CA), the UN, donors, media, CSOs, INGOs and others. This information will also be posted on the Centre for Constitutional Dialogue (CCD) web site for easy access. We encourage you to share any helpful resources and information with the CCD media team for inclusion in future updates and on the website. Please forward your information with necessary attachments and web links to [info@ccd.org.np](mailto:info@ccd.org.np)

We hope you will find issue No. 3 interesting and helpful!

Sincerely,

**Centre for Constitutional Dialogue (CCD)**

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## What's Happening at the Constituent Assembly (CA)

### Recent Developments

1. With only two weeks left before the 2-year mandate of the Constituent Assembly expires on 28 May, the CA Chair Subash Nembang has confirmed that there are no legal and constitutional barriers to extend the CA tenure if the political parties agree. Likewise, Chair of the Constitutional Committee Nilamber Acharya has also underlined the need of an amendment to the interim constitution to extend the CA tenure beyond 28 May. In a recent landmark decision, the Supreme Court has said that all provisions of the Interim Constitution, except those relating to a federal structure, republicanism, an independent judiciary and human rights, can be amended by a two thirds majority vote of the Legislature-Parliament.
2. The NC and CPN-UML have reportedly proposed a one-year extension of the CA mandate by amending the interim constitution. The government is preparing to table a Bill on the Eighth Amendment to the Interim Constitution, which requires a two thirds majority vote of the Legislature-Parliament, and procedural steps that take at least a week to complete.
3. Alternatives to an extension of the mandate by an amendment to the Interim Constitution like holding new elections to a fresh CA, did not enjoy broad political backing and would also run into a number of technical and logistical complications.
4. Pressure on the Prime Minister to step down, including from within his own party, the UML, has been increasing. The Maoists, who were earlier said to be preparing a no confidence motion, have distanced themselves from such an approach, stating that the new government should be backed by more than a slim majority of CA Members. After the suspension of the Maoists' nationwide strike, the UML and the NC leaders have continued insisting on the fulfillment of a number of preconditions such as dissolution of the Maoist' military and paramilitary structures and a release of all seized properties to pave the way for national consensus government. Ten political parties have issued a joint statement calling for the resignation of Prime Minister Madhav Kumar Nepal at the initiative of the UCPN-M.
5. On 9 May, the National Human Rights Commission (NHRC) has appealed to political parties to reconcile and bring peace to the nation by delivering the constitution on time. Reminding the parties that delivering the constitution and taking the peace process to a

logical conclusion are their major responsibilities, the constitutional rights body urged them to focus on the tasks at hand.

6. The formal drafting process has hardly progressed in recent weeks. The Committee Reports Study Committee (Gaps and Overlaps Committee) has studied all draft provisions prepared by the ten thematic Committees and the Constitutional Committee. After agreement among the major political parties, the CA Plenary has forwarded to the Constitutional Committee for final drafting 3 of 11 revised committee reports. Only after all 11 committee reports are revised and forwarded by the CA plenary to the Constitutional Committee will the latter be able to prepare a draft Constitution. Suggestions by the Maoists to speed up the process by forwarding the remaining Concept Papers through majority voting, rather than consensus, have so far not been taken up by the other major parties.
7. The initiative within the constitution building process appears to be almost entirely in the hands of the three largest parties (i.e. the UCPN/M, the NC and the UML), which together hold more than three quarters of the seats in the CA. However, the other parties, most importantly the three Madesh-based parties which hold more seats than all remaining smaller parties combined, have expressed increasing unease about the way the larger parties have dominated the process, epitomized in the three-party High Level Political Mechanism (HLPM). Discussions for a mechanism of these smaller parties (a 'caucus of 22 parties') to raise a collective voice are underway.
8. On 6 May, the Adivasi/Janajati Brihat Morcha led by Dr. Krishna Bhattachan, has come up with a press release with 7 points; focusing on the strict implementation of ILO Convention 169, UNDRIP and other international law and human rights law while forging consensus among three major political parties. It has also stated that their movement will continue until the rights of indigenous nationalities are ensured.
9. The UCPN/M, NC and UML had agreed in principle to form the High-Level State Restructuring Commission, to sort out the differences on the federal structure, mainly the number and names of federal units. However, the inability of the parties to agree on the leadership, membership and Terms of Reference for the commission has delayed the work of the commission.
10. Thirteen smaller political parties expressed disagreement with a proposed three percent threshold provision proposed by the CA Committee on Determining the Forms of

Governance. As per the proposal, only parties that garner more than three percent of the total votes cast in the national election would be represented in parliament.

## What's Happening at the CCD

### A. Seminar Series

- ✚ Seminar on **Political Preferred Right and Right to Equality** was jointly presented by Dr. Om Gurung and Mr. Kashi Raj Dahal on 02 April 2010 at CCD. Dr. Gurung focussed his presentation on political preferred right that needs to ensure the participation of historically discriminated and excluded groups of people in the policy making stage. Whereas, Mr. Dahal said that positive discrimination and affirmative action are required for equity in Nepal. He also said that the term equality should be defined relatively.



- ✚ Seminar on **Police Reform in a Federal System: Experience from South Asia** was presented by Mr. Badar Farrukh on 05 April 2010 at Centre for Constitutional Dialogue (CCD). Mr. Farrukh shared his experience on federal police system in Pakistan. He also illustrated police organization in India which could be an example for Nepal. He said that police is very important key factor for the government and the constitution should clearly mention the duty and responsibility of police at different levels of government.



- ✚ Interaction program on **Constitutional Rights of Backward Class (OBC)** was organized on 16 April 2010. The participants agreed that Backward Class consists of 36 backward castes and occupies about 33% of the total population of Nepal though it is supposed to be only 20% according to National Census 2058 BS. Only the meaningful inclusion of each and every national community in the national mainstream can play vital role for true and reliable solution to the present state of affairs and can pave a way for the construction of New Nepal by resolving the year long confrontation and conflict.

- ✚ Seminar on **Elections After the New Constitution** was presented by Mr. Neel Kantha Uprety on 19 April 2010. Mr. Uprety talked about the CA election April 2008, ECN strategic plan 2009, electoral cycle, voter list with photograph, voter education, legal framework, external strategic issues and challenges. He emphasized the importance of a strategic plan for the Election Commission,



Nepal to enhance organizational effectiveness and management, voter identification with photograph, continuous voter registration and electoral framework and legal reform.

- ✦ Seminar on **Right to Information** was jointly presented by Mr. Santosh Sigdel and Ms. Sabita Bhandari Baral on 20 April 2010. Mr. Sigdel said that right to information should be incorporated as a fundamental right in the new constitution and also explained every individual should have an access to each and all public information.



Whereas, Ms. Bhandari Baral said that right to information clause 27 of Interim Constitution should be amended and people should not be deprived of getting any type of public information.

- ✦ Seminar on **Role of Non Resident Nepali in Economic Development** was presented by Dr. Hemant Dabadi on 27 April 2010. Dr. Dabadi said that Non Resident Nepali people like to come back and invest in Nepal because there are opportunities and possibilities, and more than that their prestige is related with the development of Nepal. But the Nepal government should create an investment environment for them. Dr. Dabadi also told that Non Resident Nepali people could play a role of agent in foreign land for promoting Nepali tourism, Nepali culture, and transferring knowledge and technology from abroad.

## **B. English Language Training**

CCD continues to conduct English Language training for Constituent Assembly members. Currently, Beginner's level and Pre-Intermediate Level training is going on with 10 CA members in each group. Each level of language training is run for 60 hours.

## **C. Other Meetings & Workshops (Programs Not Sponsored But Conducted at CCD)**

- DDC Association Nepal organized Functional Debate on Constitution Building, State Restructure and Local Self Government on 2<sup>nd</sup> April 2010.
- Society for Inter Caste Marriage Protection Nepal organized an interaction programme on Inter Caste Marriages: Challenges and Opportunities on 4<sup>th</sup> April 2010.
- Muslim Leaders organized Interaction Programme on Muslim Personal Law on 4<sup>th</sup> April 2010.
- Women CA Members organized Meeting on Constitutional Issues on 7<sup>th</sup> April 2010.

- IP Caucus organized experience sharing of CA Members' Visit to Bolivia-Guatemala on 8<sup>th</sup> April 2010.
- DRC Follow-Up Committee organized Universal Periodic Review Orientation for Human Rights Activists on 8<sup>th</sup> April 2010.
- Co-Action Nepal organized an interaction programme on CA Member Sensitization on Disaster Risk Reduction and Disaster Management Act on 9<sup>th</sup> April 2010.
- Inter Party Women's Network organized a meeting on the Murder and Rape of Women in Bardiya and Dhanusa Districts on 11<sup>th</sup> April 2010.
- Min Basnet organized an interaction on Federal Issues on 11<sup>th</sup> April 2010.
- NEFIN organized an interaction Programme on Timely Building of Constitution on 15<sup>th</sup> April 2010.
- RAD organized an interaction on the Role of Remote Area and Intellectuals in the Constitution Making Process on 21<sup>st</sup> April 2010.
- Group of Young Journalists organized an interaction programme on Role of Young Journalists for Building Pressure on CA on 22<sup>nd</sup> April 2010.
- Forum of Federation organized an interaction programme on Finance and Governance of Capital Cities in Federal System on 22<sup>nd</sup> April 2010.
- Nepal Dalit Sahitya Pratisthan organized an interaction and book release programme on 25<sup>th</sup> April 2010.

## Interview with Indra Maya Gurung, Woman CA Member

### Indra Maya: Disabled But Not Broken!

She is immovable without wheelchair but she has the power to move things for the welfare of the people. When she was struggling to reach her school, travelling six kilometers one way everyday, 33 year old Indra Maya never thought that she would become a Unified Communist Party of Nepal (Maoist) (UCPN-M) CA member contributing to the historic task of writing the constitution. Today she is not only contributing to writing the constitution but is also pursuing her Master's Degree. She became disabled due to polio, which many villagers in Gorkha perceived was the result of a "sin" committed by her parents in their past life. She says she



used to feel embarrassed when people watched her walk, but would not let people see her disability as an inability.

As time passed by, she continued her studies and eventually became a teacher in a local school which also served as a good platform for starting her political career. She is also an active member of the All Nepal Revolutionary Disabled Persons' Organization affiliated to the UCPN-M. She was nominated as the CA member by the Government of Nepal. While teaching in the school, she used to dream of starting an organization of disabled persons so that they could network and collectively raise their voices. That said she feels that non-government organizations (NGOs) alone will not be enough to raise the voices of disabled persons because many of their issues need to be addressed by the government. Gurung is of the view that for any society to develop fully, people with disabilities cannot be left out. She says more consideration, for example, needs to be put into designing facilities like buildings and elevators.

**Question:** How did you feel to know that you were nominated by the Government Nepal as a CA member?

**Answer:** Though I was happy to be nominated, I also felt my responsibility towards the 7% to 10% of people who are disabled in this country, quite apart from being a member of the UCPN-M.

**Question:** How do you feel now?

**Answer:** Going through the thematic committee reports, I am happy that many of our issues have been addressed, despite there are few disabled people (only two) among the 601 members in the CA.

**Question:** Please tell some of the obstacles you face in the CA as a disabled person?

**Answer:** The CA building itself is not disabled friendly. I always use the back door to enter the

CA in the absence of proper ramp. Sometimes it makes us feel that our struggle for rights begins with climbing the steps in front of the CA building. The CA Secretariat is also not disabled friendly although some buildings inside Singhadurbar do have ramps now. But people have different forms of disabilities. For example, Braille is needed for the visually impaired and sign language for the hearing impaired. I feel a separate bill is required to overcome such obstacles. I made all



efforts to include disabled people's rights in the thematic committee reports. Though we are only two in the CA, other CA members have also been paying due attention to disabled persons' rights. Despite the fact that we had submitted memorandum for inclusion of disabled persons



in the CA, only two parties included disabled persons. If other major parties would have also nominated disabled persons; our voices would have been heard effectively. Nonetheless, the participatory constitution building process has allowed us to raise our voices at different occasions both within and outside the CA. Another obstacle is the psychological. Sometimes our colleagues use words that are not only disabled friendly but are also discriminatory and humiliating. This needs to be corrected. I will be satisfied with the new constitution if it becomes disabled friendly from all perspectives

**Question:** Please tell us about your married life?

**Answer:** My husband works abroad. When he saw me teaching in the villages he was attracted to me and proposed marriage. But, my family was against it because they were worried he might not be loyal to me as I am a disabled person. I revolted against my family and got married with him. Since there was no objection from his family we have lived happily after marriage.

**Question:** Lastly, what do you think about current delay in constitution writing process?

**Answer:** Though the time is running out for the timely promulgation of the new constitution, I strongly believe that consensus among all parties is possible which will give us a new constitution, which has been aspiration of many Nepali people over the years.

## **SPCBN Civil Society Project Activities**

### **Federalism Dialogues: A Bridge of Knowledge for the People at the Grassroots**

Janakpur: At a time when Constituent Assembly (CA) members are working hard to finalize the first draft of the new Constitution, the Center for Constitutional Dialogue (CCD), an initiative of Support to the Participatory Constitution Building Process –UNDP organized a three-day workshop on Federalism in Janakpur from April 24-26.

Two political analysts from the Tribhuvan University –Professor Krishna Khanal and Professor Krishna Hacchhetu reviewed the CA’s committee report on State Restructuring and Distribution of State Power.

Professor Hacchhetu of the Center for Political Science said that the people are directly involved in the constitution making process be it in different forms – either to press for the CA election by mass movement or in the form of representatives of the CA. So in order to have the voices of all the people in the new Constitution, the people should have the right to know how the Constitution is coming along.



The professors shared the fact-based information and recommendations with district representatives, local political party cadre, civil society leaders, marginalized representatives and local government representatives on key issues on federalisms.

Although the country was established as a “*Federal Democratic Republic State*”, through the Fourth Amendment to the Interim Constitution of Nepal, 2007, there has been limited dialogue or discussion of what exactly this new structure will mean for the country, in particular for the majority of people living outside of Kathmandu with limited access to modern media and communications.

Professor Krishna Khanal said that in a country like Nepal which has diversity in language and culture there is a need of federalism even for conflict management. He said that federalism also means ‘compromise’ as well and is a concept of ‘living together’.

Khanal said that there is a need of informed region based discussion so that the people in the region will be well informed about the provisions in the new Constitution.

The two professors provided information on the forms of government as they affect the provincial structure, distinctions between forms of federalism and decentralized government, an initial understanding of minority rights, fiscal federalism, natural resource management and citizenship rights will be among the topics reviewed and discussed by the participants.

Danusha Chief District Officer Hari Raj Pant said that there is a fear that the country might disintegrate if the country adopts federalism so the federal structure has to be made in such a way that it will not disintegrate the country.

Inaugurating the ‘Federalism Dialogue’, on behalf of the CCD, the team leader of Civil Society Outreach, SPCBN-UNDP Keith Leslie said that the CCD has been organizing many programmes on various constitutional issues since January, 2009, almost 1 1/2 years. As a service of the CCD, we are bringing the programmes out of the Kathmandu to the proposed 14 provinces. We are planning to organize such programmes in the provinces as identified by the CA.

“With the expertise and technical support from professor Khanal and Professor Hacchhetu, we will be reviewing the committee report submitted by the ‘state restructuring and distribution of state power’ and will be looking specifically into the devolution of authorities between the center and provinces and the needs and requirements of these provinces.

Leslie also said that the series of Federalism Dialogues will be held in all the proposed federal states of Nepal.

A total of 55 participants from different backgrounds and representing Mithila-Bhojpur-Koch-Madhes, took part in the workshop. All were excited about the workshop. Ranjana Sarkar, central member of CPN-UML's Youth Federation Nepal said, "There has never been this kind of dialogue on Federalism in this area before and this type of workshop should be held regularly. I had some understanding on the CA Thematic Committee reports, but not in-depth knowledge. This Federalism Dialogue has helped me clarify some misconceptions about federalism."

Another participant, Chunni Khatun of the Madheshi NGO Federation, said "the workshop has helped me understand that federalism is 'living together' and is also a concept of compromise".

## **BBC World Service Trust Activities**

### **Sajha Sawal Update for 12-23 April 2010**

#### **Philanthropy**

- Recorded on 7th March near the district headquarters of Jumla, one of the remote districts of Nepal, and was broadcast on 18th April.
- There were three panelists for the discussion on individual efforts of helping society for positive change: Uttam Sanjel who has pioneered quality education for poor people in different parts of the country; Dilshova Shrestha, who has been taking care of, and giving shelter to, three dozen elderly women and around fifty orphans; and Data Ram Khanal, Vice-president of Social Welfare Council.
- This debate was about philanthropy and helping society in situations where the state is not functioning properly.
- There were about 350 participants from different parts of the district and some of them were already helping the local society with their own effort.
- This programme has resulted in practical action being taken by Uttam Sanjel, who has started the process of building the 'Samata' school in Jumla; and Dil Shova Shrestha who has brought thirty- six children from Karnali.

#### **Quality of Education**

- This programme was aired on 25<sup>th</sup> April.
- This programme was aimed at discussing the disparities in the school education system, and included poor resources and disrepair of public schools. Expensive private education was also discussed in the programme.
- Minister for Education, Sarbendra Nath Sukla and Prof. Kedar Bhakta Mathema, education expert and analyst, were on the panel.
- The Minister admitted the poor quality of public schools and the failure of the government to regulate private schools regarding exorbitant fee hikes.
- Around a hundred of participants who have included parents, students and teachers mainly said there should be single school system, not the private and public.

- Just a few days after the programme was aired, private schools rolled back their earlier decision to increase fees.

### General Strike and Political Consequences

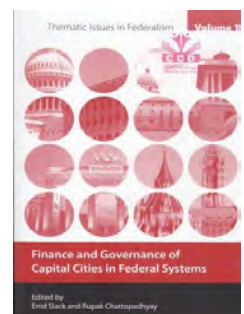
- This episode was about the Maoists' indefinite strike and its consequences on contemporary Nepali Politics. Dr Baburam Bhattarai, a senior Maoist leader, and Ramchandra Poudel, Parliament Leader from Nepali Congress were on the panel. This programme was recorded on 2<sup>nd</sup> May at Kantipur TV studios, and broadcast the same evening. There were 30 audience members, representing different sectors of society.
- During the discussion, Mr. Bhattarai argued that the strike was for peace and constitution. He said the protest will not be called off unless the Prime Minister resigns from the post. He denied the accusations from other parties of trying to capture the state. He was not clear about the goal of the Maoists and whether they wanted just to change the government or change the entire regime.

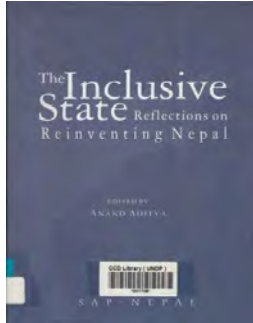
### Aftermath of the General Strike

- This episode was a special; we recorded the programme in the street talking to ordinary people and getting their views. Altogether we interviewed six people on the street. There were two strands of thought coming out from the street interviews; firstly, that people were fed up with the political leaders because they feel that these leaders are not looking after the interests of the people and country, but their own party interest; secondly, that Prime Minister MK Nepal should resign from the post if the political deadlock is to be resolved. In any case, he has been defeated in two constituencies.
- We also interviewed Barsa Man Pun at the Maoist Headquarters and Dr Ramsharan Mahat, Nepali Congress, at his home. Dr Mahat said unless the Maoists army integration issue is decided, nothing will move forward, but Mr. Pun took a stand on the resignation of the present government.

## CB Resources and Recent Publications

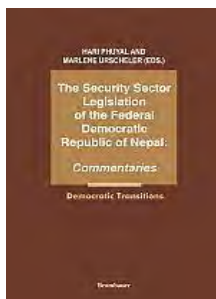
***Finance and Governance of Capital Cities in Federal Systems:*** edited by Enid Slack and Rupak Chattopadhyay, published for Forum of Federations by Mc-Gill-Queen's University Press in 2010. This work of capital on different countries discusses financial and governance structure in terms of the national and international functions of each capital city, responsibilities for the planning for the city and the region, the symbolic roles of cities, matters of equity and neutrality, and cost of each of these. It also deals to collect analyze lessons from different countries on sectoral issues in federal systems. (This book is available in CCD Library)





***The Inclusive State: Reflections on Reinventing Nepal:*** Edited by Anand Aditya and published by SAP – Publishing House in 2007. This publication is one of the series of the knowledge-building process of SAP-N aiming to enhance equitable development of the country through social inclusion. *The Inclusive State* is an effort of the organization to present the opinions and analyses of the individuals who have been deliberating on or acting on various dimensions of social exclusion. (This book is available in CCD Library)

***Sanghiya Shasan Pranali : rajyako Punarsamrachana:*** By Advocate Chandrakant Gyawali and published by Miss Amita Gyawali and Jansewa Printers in 2064 (2007). The book describes federal system of government, independent, competent and independent federal judicial system, contemporary system of government in global system, different electoral system in global perspective and its practice in Nepal, right to self determination and so on. (This book is available in CCD Library)



This set of commentaries by international and Nepalese legal experts on the laws and regulations of the security sector in Nepal intends to support and stimulate the emerging debate in this area. It is hoped that jointly with the collection of the **Security Sector Legislation of the Federal Democratic Republic of Nepal** this publication will turn out to be a useful tool for local stakeholders (Members of Parliament, civil society, political parties, security providers, etc.) to identify strengths and weaknesses of the current security sector legislation and to assess the need for review of the existing legislation, as well as the possible necessity for introducing new pieces of legislation. This analytical process of reviewing the security sector legislation constitutes an important aspect of the ongoing peace process in Nepal.