



## 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. 7, 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 (<http://www.ccd.org.np/>). 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 that you will find this e-Bulletin interesting and helpful.

Sincerely,  
Centre for Constitutional Dialogue (CCD)

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

#### Recent Developments

1. The high-level task force of political party leaders, led by Maoist Chairman Pushpa Kamal Dahal, Prachanda, has held several sessions in which important aspects of the proposed draft Constitution have been agreed upon. These include issues related to the use of official languages at federal and provincial levels, citizenship and the judiciary. The decisions have not been formally announced or published in writing, but as per the declarations by task force members to the press following the

sessions, it can be concluded that significant progress has in fact been made on these issues. The precise content of the agreement on technical issues is however hard to pin down, as statements by different members of the task force and the assistance team are sometimes not entirely congruent to this end.

2. On 4 November, the 27-party meeting extended the term of the high-level taskforce until 11 December since it was not possible to meet its 4 November deadline. It has been reported that of the total 220 open questions identified by the Report Study and Analysis Committee (“Gaps and Overlaps Committee”), the high level task force has been able to come to an agreement on about 39. However, this figure might be misleading, as the number of open questions per Concept Paper is not equivalent to the degree of importance or distance between the positions of political parties.
3. The significance of the recent progress made lies in the fact that the highest level party leaders, for the first time, got personally and deeply involved in the actual drafting process and negotiations over contested issues, that they appear to have solved at least some of the very difficult questions, and that they enjoy, at least for the time being, the support of the CA members generally and the parties not themselves represented in the taskforce. This has led to increased optimism that a draft Constitution will actually be prepared within a reasonable timeframe. This would give time for at least some form of public consultation on the draft, and adoption and promulgation by the 28 May 2011 deadline.
4. Top leaders of the three major political parties held a two-day high level meeting on 5 and 6 November. Although “arriving at consensus on contentious issues in constitution drafting” was one of the agenda items to be discussed, the meeting was dominated by the parties’ persistently deep divisions over the formation of the new government and the conclusion of the peace process, and the relationship (sequencing) between the two. Meetings continue to be held with a sense of urgency and determination, and party leaders have been expressing increased optimism that agreement will be achieved shortly.

## **Towards a draft Constitution**

### 1. Judiciary

- a) The most significant progress in this regard has been that the Maoists have moved from their earlier position that the Chief Justice and Supreme Court judges be appointed by a parliamentary committee. The task force has agreed to form a form of Constitutional Council (the name of the body has yet to be determined) to be headed by the head of the government (either the president or the prime minister, depending on the agreement on the form of government). There is also an agreement that the Chief Justice, the Speaker of the federal parliament, the leader of the opposition party and the Minister for Law and Justice will be members of that council. The precise structure

and jurisdiction of that council has not yet been finalized, however. This council will appoint the Chief Justice and members of constitutional bodies including the heads of those bodies. It appears that parties have not yet agreed whether the responsibility for the appointment of Supreme Court judges should also be given to this council.

- b) NC and CPN-UML are in favor of forming another Council (a “Judicial Council”) to appoint the judges of Supreme Court, provincial courts and lower level courts. This council would be headed by the Chief Justice. Maoists have so far opposed the idea of forming such a council, but have stated that, if a Judicial Council is indeed necessary, it should be headed by the Speaker of parliament. There is also another agreement that, if such a judicial council will be formed, a senior judge of the Supreme Court, the Chair of Nepal Bar Association and the Minister for Law and Justice would be *ex officio* members of that council.
- c) The task force has also agreed that the judiciary will remain independent from the executive and the legislature and will interpret the constitution. However, the task force has not yet reached an understanding on whether the Supreme Court or a Constitutional Court will have the constitutional power to provide final and binding interpretation of the Constitution.

## 2. Protection of National Interests

- a) There has been some agreement among task force members related to the power to conclude international agreements at different levels of the federal system. It has been decided to include a provision requiring the federal government to seek the consent of the province(s) concerned before signing any treaty or agreement if it concerns any subject falling under the jurisdiction of the province or affects the province in any other way. The task force also decided to incorporate a provision requiring provinces to take the consent of the federal government before signing any agreement with foreign parties concerning financial and industrial matters.
- b) Finally, it has also been agreed to entrust the head of state with the authority to appoint and dismiss the Chief of Army Staff on the recommendation of the Council of Ministers. The task force also agreed to entrust the CA Constitutional Committee with the responsibility to make a final decision over imparting military training to civilians above the age of 18 and mentioning the words like people's war, cantonment and combatants in the new Constitution.

### 3. Citizenship

- a) The task force agreed that no Nepali citizens shall be denied of the right to citizenship, and that there should be a provision of single federal citizenship, with the possibility of also stating a provincial identity, which could also include caste/ethnicity, community and geographical origin. Citizenship should be issued and managed as provided for in the law according to the responsibilities stated in the list relating to the distribution of powers.
- b) The task force agreed that both the father and mother of a person must be Nepali citizens to obtain Nepali citizenship on the basis of descent. This is in contrast with earlier proposals, including by the Maoists, that citizenship on only one parent, mother or father, would be sufficient. A provision should be made to give naturalized citizenship to a person who was born to a Nepali mother (citizen) and has lived in Nepal but the identity of the father is not known.
- c) With regard to naturalized citizenship, the task force also agreed on what will be seen as rather restrictive provisions. They will distinguish between men and women of foreign origin, and will include long residence requirements for men to be eligible. A male foreign national, married to a Nepali citizen, must be living in the country continuously for 15 years, if he wishes to obtain naturalized Nepali citizenship. A woman of foreign origin who is married to a Nepali national may apply for Nepali citizenship upon renouncing the citizenship of her country or origin.
- d) The task force also agreed that a person has to be a Nepali national with Nepali citizenship (i.e. not a naturalized citizen) in order to be able to be eligible for the positions of Head of the State of Nepal, Deputy Head of State of Nepal, the Prime Minister, the Head of the Federal Legislature and Federal Judiciary, Head of the Security Agencies, and the Head and Deputy Head of Province.
- e) The task force agreed on a status of “non-resident citizenship” for persons of Nepali origin who have renounced Nepali citizenship and have acquired foreign citizenship and have lived outside the SAARC region, which would give access to economic, social and cultural rights.
- f) As with regard to the concept paper and Committee Report prepared by the CA Committee on Fundamental Rights, which includes the section on citizenship, a number of UN agencies and human rights groups, as well as a number of CA Members, have expressed initial concerns on these issues and are planning to seek further dialogue with the CA. The concerns relate to the apparent gender discrimination, the overly restrictive provisions for obtaining citizenship, which may become the cause of a significant further increase of statelessness in Nepal, the far-reaching distinction between citizenship by birth and naturalized citizenship, and the linkage of many civil and political rights with citizenship, apparently in violation of binding international human rights law.

#### 4. Determining the Base of Cultural and Social Solidarity (official language)

- a) The task force agreed to declare the Nepali language in Devanagari script as the official language to be used in the official works of the federal government in the new statute. But the language policy will be a multi-lingual one and the provinces would have a right to choose their official language through the decision of their legislature. However, Nepali will be the official language at the centre, as well as in provinces until the new body recognizes other languages. A language commission will be formed to recommend languages to be used as national languages in the provinces.
- b) There are small parties that feel excluded from this high level exercise and are not fully on-board with the decisions that have been made. In addition, the major caucuses, i.e. Madhesi caucus and Indigenous Peoples' caucus, have reservations/disagreements on some of the decisions, e.g. citizenship rights.
- c) The process agreed on through the all-party meeting on 11 October is that the high-level task force would report back to the all-party meeting once it has either reached agreement on contentious issues or identified issues that cannot be solved at that stage. The all-party meeting would then revert back to the Constituent Assembly's plenary session, which would endorse the full package of the remaining eight Committee reports with recommendations, and put them before the Constitutional Committee. Three of the 11 Committee reports have already been forwarded to the Constitutional Committee.

In partnership with International IDEA, the Nepal Law Society (NLS) has prepared a document "The Constitution of the Federal Republic of Nepal (Based on the CA Concept Papers and Preliminary Drafts)". The draft is based on the reports by the 11 thematic committees and is aimed at supporting the CA in its draft constitution preparation. About 30 different experts including constitution experts, drafting experts, legal experts and political leaders were involved, on behalf of NLS/International IDEA, to prepare this draft. The stated purpose of the draft is to support the CA and the Constitutional Committee when they start preparing the integrated draft constitution. This first draft has now been submitted for comments to national and international constitutional experts. Discussions with political leaders will also be held before a final draft will be prepared by the same group.

## What's Happening at the Centre for Constitutional Dialogue (CCD)

### CCD Dialogue and Seminar Series



#### CCD Dialogue and Seminar Series: Federalism in Nepal: How will it work?

These dialogues, seminars and presentations by Nepali and international experts are designed to inform interested CA members, their staff, and the

general Nepali public on issues that must be addressed in the new Constitution and beyond for Nepal to transition to a successful federal state. As you read about these interesting programs, you may wish to know more. To obtain full presentations or PowerPoint slides for any of these programs please send an email request to: [info@ccd.org.np](mailto:info@ccd.org.np).

### **Interaction Programme on Land Reform Issues in the New Constitution - 11 November**

An interaction programme on Land Reform Issues in the New Constitution was organized by the CCD on November 11, 2010. Mr. Purna Bahadur Nepali, a PhD Research Fellow, presented his views on the subject to a total of 39 participants, out of which 11 were CA members. Thereafter, Mr. Keshav Prasad Badal, Chairman of National Co-operative Federation of Nepal Ltd., shared his comments and remarks with the participants. Mr. Nepali dealt with the background to the issues, principles, best practices, CA committee reports and alternatives. He expressed his view that land is a source of economic and political rights and reflects the socio-economic status of individuals in an agrarian society. Mr. Badal suggested the issue of land reform should be looked at in a holistic view and economic productivity and social justice should be counter balanced.



### **The role of constitutional law in a federal structure - experience from Austria - 8 November**



A half-day Special Seminar was organized by the CCD on 8 November 8, 2010 on the role of constitutional law in a federal structure - an experience from Austria. Two Assistant Professors from the University of Vienna, Dr. Konrad Lachmayer and Dr. Joachim Stern, shared their professional knowledge and expertise on administrative and constitutional law in a federal setting. The seminar focused on issues and challenges of administering Austria's complex federal system and the lessons that Nepal can draw from its experiences in designing a legal and administrative framework for sustaining a federal republic.

### **Khaptad: The Proposed Province - 2 November**

A Panel Discussion on “Khaptad: The Proposed Province” was held on 2 November. Dr. Bhola Chalise, a retired Civil Servant, Mr. Tej Sunar, a Dalit Activist and Prof. Krishna Khanal, the CCD Director, presented their views in the programme. It was agreed that agriculture production is not enough for the current population. There was also a presentation of the geography of the proposed province, which covers an area of 13,500 sq km, encompassing about 9% of the country. While six districts - Achham, Baitadi, Bajhang, Dadeldhura, Darchula and Doti - fall completely within the territory of the proposed Khaptad province, its territory would also include parts of Bajura district and some VDCs of Dailekh. Dipayal Silgadhi, the headquarters of the Far-Western Development Region, and the district headquarters of Doti have both been proposed as the provincial capital. The question of compensation for the dalit community and right to social justice



and right to equity was also raised. Prof. Khanal highlighted practical questions related to the formation of the proposed province with some background information and facts related to the province. CA members, government officials, CSOs and other interested individuals participated in the event.

## Interview with Ramrati Ram: A Tireless Campaigner, CA Member

### Despite the Odds, Ramrati Ram has achieved her goal

Hon. Ramrati Ram is a Constituent Assembly (CA) Member representing the CPN-UML party. She is from Siraha District and, as a Dalit, has made her community proud by being a woman representative in the CA. Indeed, as a Dalit woman she has had firsthand experience in facing discrimination due to her caste, even after becoming elected as a Village Development Committee Chairperson. Through it all she says the humiliation she has had to endure as a Dalit and as a woman has only encouraged her to stand firm on her beliefs and to fight for the rights of all Dalit women. The CCD talked to Ramrati Ram to find out more about her struggles and dreams for the future.

### CCD: Tell us about your election as CA Member?

**Ramrati:** It has been more than a decade that I have been actively involved in politics and I learned how to climb the ropes the hard way. Indeed, I learned everything the hard way. Because no one listens to women from a Dalit community in a male dominated hill Brahmin's political circle, I did the unexpected and came out a winner. So, my party must have seen my dedication and the hard-work I put in for the rights of the Dalit community and felt that my nomination would justify their cause.

### CCD: Would you like to share any bitter experiences from your social life?

**Ramrati:** Sometimes I feel that to be born into a poor Dalit community is to live a life of struggle. Even though we were poor as children I got the shock of my life after my marriage when I had to go to work with my husband to work in the feudal lord's house for just 3 kg rice per day. By selling the rice for Rs 10 per kg we hardly got enough money to feed our family. Life was really difficult! The discrimination by the rich landlord and his family cannot be explained in words. I felt that this had to end and I heard from other people that only politics can solve this type of problem so I decided to join politics. My husband always accepted being poor and born into the Dalit community. He felt it was his fate which gave the right to rich people to torture us. I would not be part of this and convinced him to support me which he finally did. Today he is proud of me. I did what I did not just for myself but for the next generation so that they will not have to face what my generation went through.



**CCD: Have you experienced any difference in behavior towards you after becoming a CA Member?**

**Ramrati:** No, because I have been actively involved in party politics for the last 12 years and had already made my presence felt by getting elected as the first Dalit women as VDC Chairperson of Jatiyahi VDC-9. So, people had faith that I would do justice to our community and raise their concerns in the new Constitution. I am trying my best to live up to their expectations.

**CCD: You are currently involved in the historic task of constitution writing. How have you been raising the issue of Dalit women with reference to the new Constitution?**

**Ramrati:** Being a part of the CA, I feel that I have a major responsibility for addressing the problems of all the people of my community. I have insisted that the new constitution should have a provision to end discrimination against any caste and ethnicity. I have advocated that Dalits' should get compensation for what they have historically gone through. I have also supported the demand for 13% reservation quotas in all state mechanisms. Landless squatters who have been toiling in the field should have the right to the land. There should be an end to domestic violence against women, Dalits' should get a free education and women's employment should be included as fundamental rights. My main concern is that Dalits, especially Dalit women, have long been deprived of education and their financial condition continues to be very dire. The government should guarantee free education and employment facilities for the Dalit community.

**CCD: Like the CA Women's and Indigenous Caucuses, do you also feel that there should a Dalit Women's caucus as well?**

**Ramrati:** Yes, I feel that is very important to have a separate Dalit women CA caucus but I realize the representation of Dalit women in the CA is small. That said we have been trying to raise our concerns in all CA Committees where we are represented in order to make sure that our voices are heard.

**CCD: Lastly, how hopeful are you about the promulgation of the constitution within the extended time frame?**

**Ramrati:** Even though it has been delayed, I am very much confident that the constitution will be written on time. Indeed, it has to be written at any cost as there is currently no rule of law in this country and impunity has increased. In order to put an end to the chaos and the insecurity of the country, the constitution has to be written.

## **Civil Society Outreach Project Activities**

### **Findings of Madhesi issues shared with CA members**

With the objective of sharing the findings of Madhesi issues and recommendations with the CA, a two day workshop was organized to this end in Godavari, Lalitpur on 1-2 November 2010. Altogether 45 participants including 24 CA members from various Committees took part the workshop. The program was led by the Madhesi NGO Federation (MNF), the Tharu Indigenous NGO Federation (TINF), the Social Development Path (SODEP) and the Backward Society Education Nepal (Base) who presented on issues related to Madhesi and Tharu community collected from VDC level democracy dialogues. In the



program, Chandra Kishor Jha, a Madhesi activist, also presented options for possible solutions on contentious issues related to the Madhesi community.

### **Sharing of Federalism Dialogue with CA members and political party leaders**

UNDP's Support to Participatory Constitution Building in Nepal (SPCBN) project shared key findings from its provincial-level Federalism Dialogues with senior political party leaders and influential Constituent Assembly (CA) members in Sauraha, Chitwan from 1-3 October. The main objective of the programme



was to contribute to the process and content of revising the CA's State Restructuring and Division of Powers Committee (SRDC) draft report. 15 leaders representing three major parties, UCPN Maoist, Nepali Congress and CPN-UML, four Madhesh based parties and 2 small parties, as well as members of the Constitutional, Gaps and Overlap and SRDC committees attended the three day programme. The Dialogue review was organized into four sessions: name and boundary of provinces, division of power, minority rights and special structures.

CA members and leaders said attention will need to be paid to boundaries, names and powers in order to make all provinces balanced and equally capable of raising taxes and delivering essential government services. The leaders also suggested holding dialogues in the future between neighbouring federal provinces to resolve any territorial disputes emerging from competing claims, as well as to promote provincial economic interdependence.

### **Other CSO team events**

**Federalism Dialogues:** The CSO team undertook two Federalism Dialogues in the proposed 'Jadan' province on 12-14 November at Simikot, Humla and in 'Sherpa' province on 18-20 November at Salleri, Solukhumbu.

**Dialogue with Magarat activist and CA members:** A dialogue with Magarat activist and CA members is planned to be organized on 2-3 December 2010 in Kathmandu.

**240 constituency Report Launching program:** The CSO teams, after having conducted extensive constituency level democracy dialogues across the country, have now prepared 240 constituency dialogue reports. These reports will be formally launched and handed over to CA speaker during the first week of December 2010 at the CCD.

## BBC World Service Trust Activities

Since the last e-bulletin, Sajha Sawal has covered the following subjects:-

- Constituent Assembly members meet their voters
- What kind of Welfare State will there be in the new Constitution?
- To what extent has development failed in Nepal?
- What will happen to Nepal's peace process when UNMIN leaves?
- Is Nepal on target to meet the MDG goals?
- 'Stalemate of current politics and Constitution Writing.'
- The Nepali Congress- has it changed?
- Brain drain from Nepal- A report from the US
- The future of the Agriculture Industry and development in Nepal

### **What will happen to Nepal's peace process when UNMIN leaves?**

Panelists:

- Krishna Prasad Sitaula (Nepali Congress Leader- Former Home Minister)
- Janardhan Sharma 'Prabhakar' (UCPN Maoist- Former Peace Minister)

*The term of the United Nations Mission in Nepal (UNMIN) is expiring in January 2011. This programme explored the pros and cons of UNMIN's mission to date.*

### **Programme quotes:-**

Krishna Prasad Sitaula: He said UNMIN has not been able to work impartially on Maoist army integration and the peace process and UNMIN was in fact soft on the Maoists. He alleged that UNMIN failed to perform its mandated task of supervising the PLA, as it let combatants go out of the cantonments and get involved in criminal activities. He also stated the mandate of UNMIN should have been revised and the monitoring of Nepal Army by UNMIN should have been removed from its mandate.

Janardhan Sharma 'Prabhakar': He claimed that the views of the Nepali Congress and CPN-UML showed they were not serious about seeing the peace process to its logical end. He said it is a common complaint around the world that UN bodies become sympathetic to rebel forces. He argued UNMIN is doing its job on the basis of its mandate. He said the absence of UNMIN will leave the country deep in crisis. He also asserted Nepal's peace process had been hampered not because of UNMIN but because of differences between the political parties.

The audience was comprised of teachers, students, social workers, party members from Nepali Congress, UCPN Maoist and CPNUML organizations who are involved in peace building activities.



## **Stalemate of current politics and Constitution Writing**

*After May 28, 2010 the Constitutional Assembly extended its period for one year. This Sajha Sawal discussion asks what the CA has been doing since then.*

The panelists of the program were:

- Post Bahadur Bogati (Chief Whip, CPN Maoist)
- Laxman Ghimire (Chief Whip, Nepali Congress)
- Bhim Acharya (Chief Whip, CPN UML)



Post Bahadur Bogati (CPN Maoist)

- Peace and the Constitution are the main agenda for the Maoist party.
- CA members are not working to make the Constitution happen.
- We want a people's republic but other parties don't agree with us. We believe in multi-party democracy but not on plurality.
- The Parliamentary system has failed because this system can't elect a PM.

Laxman Ghimire (Chief Whip, Nepali Congress)

- CA members are not solely responsible for the political deadlock. Senior leaders are also creating chaos so that they can exert power.
- Whatever the Maoists say, we can't turn our back on democracy, plurality, rule of law, independent judiciary etc. This is the soul of the NC.
- The UML is responsible for this deadlock. They should give their vote to either the Maoists or the NC in order to end the deadlock.

Bhim Acharya (Chief Whip, CPN UML)

- It is absolutely wrong to say that it is UML who is responsible for delaying the constitution making process. We are neutral and want both a consensus government and peace. To that end both the NC and Maoists should pull out of the PM race. It is more important to have a constitution than hold the position of PM.
- The ongoing political struggle is the main obstacle to finalizing the Constitution.

The programme audience included students, teachers and Lecturers, NGO/INGO representatives, people from the business community and lawyers.

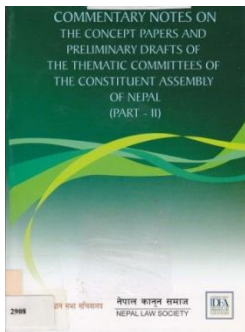
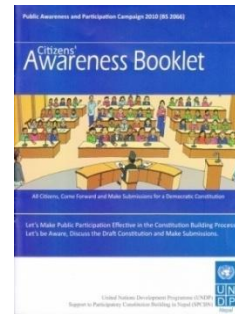
## **Constituent Assembly members meet their voters**

The Sajha Sawal team took three Constituent Assembly members to their districts outside Kathmandu and Kavre. The aim of the programme was to see whether or not the CA members had delivered on their promises. The CA members included: - Jhaku Prasad Subedi (UCPN Maoist), Nabindra Raj Joshi (Nepali Congress) and Krishna Prasad Sapkota (CPN UML). The CA member met with local farmers, activists and shopkeepers from their communities. The programme received very positive feedback from listeners and viewers.

## CB Resources and Recent Publications

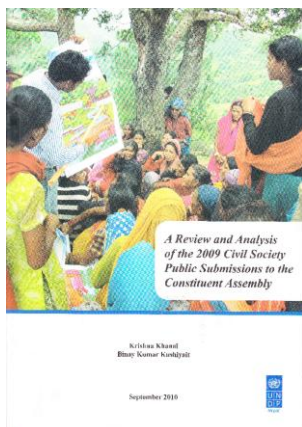
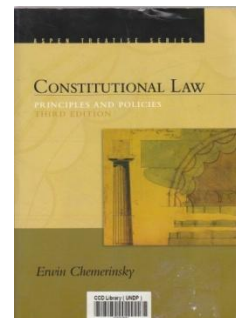
### Resources updated November 2010

**Citizen's awareness booklet** written and edited by Mukti Rijal and Mahendra Lamsal and Published by UNDP Support to Participatory Constitution Building in Nepal (SPCBN). The document is an easy to read analysis of the eleven Constituent Assembly Thematic Committee reports. Meant for the general public the original Nepali version was published in March 2010.



**Commentary Notes on the Concept Papers and Preliminary Drafts of the Thematic Committees of the Constituent Assembly of Nepal (Part II)** jointly published by Nepal Law Society, Idea International and Constituent Assembly of Nepal. In this book five concept papers and preliminary drafts prepared by CA thematic committees have been reviewed by experts who have analyzed their perceived strengths and weaknesses according to legal and constitutional norms.

**Constitutional law: principles and policies** by Erwin Chemerinsky and published by Aspen Publishers continues to serve as a clear introduction to the subject. The book addresses all areas of constitutional law covered in both beginning and advanced courses and takes a neutral approach that examines all sides of constitutional law debates and presents both the doctrines and underlying policy issues related to constitutional law.



### **A Review and Analysis of the 2009 Civil Society Public Submissions to the Constituent Assembly**

The report prepared jointly by Professor Krishna Khanal and Binay Kumar Kushiya reviewed and analysed the public submissions through various Non Governmental Organisations during the first phase of CA Public Outreach programme. The writers have minutely analysed various proposals of CA committees such as citizenship, fundamental rights and directive principles of State, rights and interests related to women, child rights, dalit rights etc. The report states that many indigenous communities, Dalits, Madhesi and others have called for some sort of phrase related to regretting past discrimination be included in the Preamble. Also Available in Nepali.

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