



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 2, No. 8, 2011**. 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 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/new>).

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. We hope that you will find this e-Bulletin interesting and helpful.

Also we kindly ask you to take some time to fill out the attached CB e-bulletin survey and/or let us know if you have recommendations for its improvement or if you would like to stop receiving it all together!

Sincerely,

Centre for Constitutional Dialogue (CCD)

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

Summary

Nearly nine months have passed since the one-year extension of the CA tenure 29 May 2010. Major steps related to the constitution building process during this time have been (1) the three-point agreement signed by the top leaders of the three main political parties on 28 May; (2) the resignation of the Prime Minister Madhav Kumar Nepal on 30 June (who has remained in office as caretaker PM); (3) the 14 July Agreement to form a 7-member State Restructuring Commission; (4) the 11th amendment of the CA Calendar on 18 July; (5) the submission of reports on all eight remaining committee reports by the Report Study Committee ('Gaps and Overlaps Committee') to the CA Chairman on 30 September which identified some 220 open questions; (6) the formation of a High-Level Task Force and Assistance Team by an all-party meeting on 11 October; (7) the presentation of a report by the High Level Task Force on 11 December in which it submitted proposals for how to resolve 127 open issues that had been identified by the Reports Study Committee earlier; (8) the decision by the all-party meeting on 4 January to approve the High Level Task Force's report; (9) the decision of the CA on 26 January to pass on all Committee Reports to the Constitutional Committee (CC), with the exception of the report by the Committee on State Restructuring and the Distribution of Powers, with the apparent intention to have that one reviewed by the yet-to-be formed State Restructuring Commission and (10) CPN-UML Chairman Jhulanath Khanal being elected new PM of Nepal.

Formation of a new government

1. After the 17th attempt and seven months of stalemate, Nepal finally elected Jhulanath Khanal, chairman of CPN-UML, as new Prime Minister who comes from the second largest political party in the Constituent Assembly on Feb 3rd. The deadlock was finally resolved when UCPN (Maoist), withdrew its candidate and to support Khanal.
2. Even with the new government in place the delay in the expansion of the cabinet has posed a serious challenge for the constitution making process.

Towards a draft Constitution

3. The Constituent Assembly's Constitution Committee (CC), headed by CA member Nilambar Acharya, resumed its meetings from January 31 to sort out issues from the CA thematic committees. CC meetings have so far concluded that proposed provinces will adopt similar election system as that of the center. However, there has been no agreement on what will be the election system in the center.

4. For the past two weeks, the CC has been meeting regularly and the discussions on each thematic report which has been submitted to the CC are taking place. The CC has touched upon the thematic committee reports on preservation of the National interest, committee for determining the forms of the legislative body, committee on the judicial system and committee on fundamental rights and directive principles and other committee reports so far. The CC has yet to discuss on committee on determining the forms of governance of state even though the CA plenary has already forwarded the report to CC.
5. After the amendment in the Rules, on 18 January, the CA plenary sent all thematic committee reports to the CC, except the State Restructuring and Distribution of State Powers Committee report. This was not sent to the CC because the leaders of the major parties have agreed to form a State Restructuring Commission which is expected to be formed (as per Art. 138(2) of the IC) as soon as the new government is in place.
6. If the CC is unable to garner consensus on any contentious issues, it will adopt a decision through majority voting and prepare the first draft. Nilamber Acharya, the chairman of the committee, has made it clear that it will not waste time by trying to garner consensus for too long. The committee has emphasized its intention to prepare the first draft by starting with the issue related to the form of governance in its very first meeting. As per the CA Rules, the committee decided to have its meetings to prepare the first draft in confidence, i.e. without public access.
7. The High Level Task Force formed to forge consensus on different issues pertaining to peace process and constitution writing have become almost dysfunctional after the expiry of its mandate on 21 December. However, the task handed over to the leaders of the 28 parties in the CA approved all decisions of sorting out 127 questions of total 210 open questions taken by High Level Task Force in one of the major recent breakthroughs in constitution writing. The leaders also agreed to continue discussing the remaining 73 questions among themselves.
8. After the High Level Task Force, which had been led by Maoist Chairman Prachanda, was not extended, the 28 parties also agreed on not changing the national flag, but reinterpreting its symbols instead. They also agreed on giving 'national party' status to all parties taking part in general elections.

Constitutional aspects of the budget preparation

9. On February 14, at the legislature-parliament meeting, newly appointed Deputy Prime Minister and Finance Minister Bharat Mohan Adhikary tabled four bills related to the annual budget. The meeting unanimously passed the Appropriation Bill 2011, Finance Bill 2011, Bill to Raise National Debt 2011 and Loan and Mortgage (18th amendment) Bill

He also asserted Non-Territorial Federalism can ensure personal and community related rights including education, health, language, religion and culture. He said there are three types of federalism, namely: 1) Territorial, 2) Non-Territorial (also called Personal) and 3) Ethnic. He emphasized that Non-Territorial Federalism, though comparatively weak, would be good for smaller communities because it would allow people to follow their cultures and customs anywhere in the country. Muslim CA Members, representatives of religious organizations and the public of the community shared the views on the issue at the end of the programme.

Training on a “Conceptual understanding of Women Rights and Social and Gender Inclusion”

A workshop entitled a “Conceptual Understanding of Women Rights and Social and Gender Inclusion” on the 11 CA Thematic Committee Reports” for Madhesi Women CA members was held from 7 to 10 February 2011. Analyzing the report of the CAs Fundamental Rights and Directive Principles Committee, speaker Nirupama Yadav said that although fundamental rights are a law which the state cannot breach, the state may not have the compulsion to fulfill their directive principles – this will depend on the capacity of the state and available resources. Furthermore, she said that provinces should have the right to distribute citizenship. Participants had mixed opinions on the proposed CA procedure for obtaining naturalized citizenship. Amit Sen and Luma Singh Bishwokarma, of UNHCR, together presented their views on statelessness and citizenship. They noted provisions for issuing citizenship varies in different countries. However, in most countries a child gets citizenship by descent if one parent is a citizen of that country. The current proposed CA provision on citizenship, if there is no amendment, will create social difficulties and statelessness for many children they said. Surendra Mahto commented on the draft report of State Restructuring and Distribution of State Power Committee. He said that state restructuring is the most debated issue in the Constituent Assembly. In the beginning all parties agreed to use identity and historical background criteria for restructuring the state, but later this was not implemented. Only four provinces have been named on the basis of caste, he said.



Workshop on "Tharu Issues in the New Constitution"

A one day Workshop on "Tharu Issues in the New Constitution" was conducted at the CCD on February 4, 2011. The programme was a follow-up of a workshop held on 28-30 December 2010. The programme was attended by 84 participants including CA members representing different political parties, leaders, students and lawyers from Tharu communities. The main objective of the workshop was to finalize the *Dhulikhel Declaration* that highlighted the Tharu

agenda and discuss constitutional issues – especially the Preamble and Judicial System and Rights of Minorities and Marginalized Communities.

A paper on Preamble and Judicial System was presented by Madhusudan Chaudhary and a paper on Rights of Minorities and Marginalized Communities was presented by Min Raj Chaudhary and Sogat Bir Chaudhary. The draft *Dhulikhel Declaration* was presented by Gopal Dahit. After the presentation and discussion on each of the papers,



intense discussion took place and the workshop ended with the finalization of the *Kathmandu Declaration* which highlighted for the CA suggestions to change the constitution's preamble, to ensure fundamental rights are guarantee for all, ensure recognition of indigenous courts and ensure Tharu rights are enshrined in state restructuring.

Debate Programme on Constitutional Bodies in the new Constitution

A debate programme was conducted on January 28, 2011. Hon. Agni Kharel (Member, CA Constitutional Committee and CA Study Committee), Hon. Ram Nagina Prasad Singh (Member, National Human Rights Commission) and Hon. Mohana Ansari (Member, National Women Commission) presented their views to 55 participants. Hon. Kharel talked of the work of the CA Study Committee, the proposed Commissions to be created by the Committee on Constitutional Bodies, as well as overall discussions held within the CA. He said in addition to the Commissions being proposed by the CA Study Committee he saw the possibility of additional Commissions, such as a Fiscal Commission and a Language Commission, being established. Hon. Singh said that we have to see the reasons behind why different communities are demanding separate Commissions in order to protect their rights. Whatever Commissions are proposed, he said, they should have enough power to implement decisions and recommendations. Hon Ansari said the appointment of Commissioners should be made by an independent body. She emphasized the need to make the Women's Commission an autonomous and constitutional body.



Interaction programme on Nepal State Building, Economic Growth and Development Strategy

An Interaction program on Nepal State Building, Economic Growth and Development Strategy was conducted jointly by JICA and the CCD on January 26, 2011. Prof. Shinji Asanuma of Japan's Hitotsubashi University and Prof. Hiroshi Matsuo of Japan's Keio University presented their views. Prof. Asanuma opened saying Nepal is at a historic crossroad in creating a new federal

republic. Defusing power away from the Kathmandu valley elite, maintaining equality, inclusion and rights and ending discrimination is the need of the moment. Prof. Matsuo concentrated his presentation on the interrelations between economics, politics and the legal system. He said the law is not an independent variable but rather its effectiveness is contingent on other factors. A starting point of legal development in Nepal would be the rearrangement of the *Muluki Ain* into Civil, Civil Procedure, Criminal, Criminal Procedure Codes as a core of one integrated national economy. Discussions followed and Federalism was a key topic. The discussion focused primarily on addressing identity issues and achieving socio economic transformation through the new constitution.



Panel: Constitution making in Nepal - Achievements, Roadblocks and the Way forward

A special panel discussion was held on 19 January to celebrate the CCD's second anniversary. During the discussion CA members stressed that the Constitution could still be completed on time provided the constitution making process was concentrated more inside the CA and provided that senior leaders of the major political parties take up the task seriously. The main objective of the program was to bring political party leaders from different parties together to present their party perspectives on the achievements of the CA so far. CA members from five political parties were represented including Hari Roka from UCPN (M), Gagan Thapa from Nepali Congress), Pradip Gyanwali from CPN-UML, JP Gupta from Madhesi Jandhikar Forum and Navodita Chaudhary from Rastriya Prajatantra Party.



Interaction programme with Nordic MPs

An Interaction programme with Nordic MPs was held on 17 Jan 2011. Honorable Radheshyam Adhikari made a brief presentation on the progress of Constitution Making Process in Nepal. Answering a question asked by Honorable Peter N. Myhre, a Norwegian MP, on language policy, Honorable Radheshyam Adhikari said that the constitution will be written in Nepali and in the future a language commission will be formed and its recommendations will be implemented. Making a briefing, Honorable Ellen Trane Nyrby, a Danish MP, and Honorable Eva Kristin Hansen, a Norwegian MP, described their countries constitutions. A question and



answer sessions followed. In summing up Honorable Khim Lal Devkota said hoped that Nepal will have a very scientific and representative constitution. While writing the new constitution CA members are trying to maintain a balance among the spirit of the people, spirit of the conflict and social contradiction and international obligations, international experiences and constitutional development, he said.

UNDP/SPCBN helps establish three new Constitution Information Centres

UNDP/SPCBN has now joined as a full partner with the Nepal Law Society and International IDEA, in conjunction with the CA Secretariat, to establish three new Constitution Information Centres (CICs) in Ilam, Janakpur and Jumla. These new centres were established in January and February 2011. They will compliment five other centres established in 2010 in Chitwan, Pokhara, Biratnagar, Nepalgunj, and Dhangadi. If funding is secured an additional 6 more centres will be established in 2011. SPCBN/UNDP is supporting this initiative as its mandate is to facilitate dialogue between the CA and the public so that the concerns of all stakeholders can be understood and constructively considered in the constitution making process. The effective and proper dissemination of information with the public at large about the achievements in constitution writing process and the calendar is crucial. The second round of public consultation and outreach process will require dedicated planning and seriousness to address the negative perception among the public regarding the delay in the constitution making process. The resource centres have acted as platforms for dialogue organised by partners in the regions. The main target audiences for the centres include the general public, members of political parties, professionals active in different civil society organisations, as well as government officials and local media.



Vox Pop from Humla, Mugu and Dolpa districts

Uma Kala Raut: , 52, Paubad-2, (housewife, works in the field) of Simikot said that the land that was left after the government captured it for making the airport is not enough to feed the whole family of six members so the new constitution should at least make a law which enable the government officials and the government itself to act upon the commitment of providing the compensation for the land the government capture. “We could at least feed the family with the potatoes and barley we used to grow in those fields,”



Pausara Rokaya: 30, Simikot -2,; Even though I have heard that the new constitution will change the lives of poor and that is very hard to believe. “But if it happens then it would be quite something.”



Hansa Raut, 25: Simikot-2, I don't know much about new constitution but I wish we have regular job.

Kali Rokaya: 28 years, (daily wage earner) - we want that the new constitution should at least take our fruits such as apple which is perishable goods should at least get a good market so that we don't have to starve ourselves. The new constitution should be able to address the problems of the poor people with all the facilities and the government should provide job to all of us.



Man Lal Shahi:19 years, grade 8 student in Bal Mandir Ma Vi, Bargaun VDC : I only know that the Constitution is the only law of the country.

Dhan Lal Kami, 38 years, daily wage laborer (but mostly unemployed) of Simikot said that even though I don't have much faith from the political parties as it failed to elect the Prime Minister for such a long time, but still I want the new constitution should at least provide us employment. “It is not fair that all the members of the family have employment but for people like us, not a single family member has a job. This disparity should be ended.”



Kalu Kami, 58, Simikot-2: “It is quite evident that we ‘Dalits’ will always remain “Dalits” but at least our children and grandchildren should get an opportunity to get free education.”

Sonam Tsering Lama, 42, member of Forest Consumers Group, Mugu district said, “The new constitution should try to include the issues and concerns of the indigenous and nationalities group and people living in the remote areas. The new constitution should respect the spirit of ILO 169 and give the rights to the locals to the natural resources.”





Tula Chandra Buda, 53, Tripurakot VDC, Dolpa district, member of CPN-UML district committee said, “ the constitution do not hold significance if it fails to incorporate the voices of people. It has to be participatory. The first phase of public consultation was just a formality and if the CA members repeat the same mistake of reaching out of only a small group of people in the district headquarters or with small section of people in a hotel or seminar.”

Civil Society Outreach Project Activities

National Level workshop on sharing findings and suggestions from Democratic Dialogues

In January UNDP/SPCBN, in coordination with its 18 CSO partners, undertook a National Level workshop at the CCD. The main objective of the workshop was to share the suggestions and finding of the project’s democratic dialogues on CA thematic committee reports conducted in all 3,915 VDCs, 58 Municipalities and 240 Constituencies of the country. Altogether there were 178 participants, with 100 CA members attending. CA members included Hon. Hishila Yami, Hon. Ramesh Lekhak, Hon. Anil Jha and Hon. Devi Lal Thapa who shared their view on participatory constitution making. They highlighted the importance of the democratic dialogues to this end. Hon. Nilamber Acharya, the Chair of the CA’s Constitutional Committee, and Mr. Robert Piper, Nepal’s UN Resident and Humanitarian Coordinator, also expressed their views at the programme. Participants included Ms. Bishnu Sherchan and Ms. Chisa Bataha Magar, conflict victims from Rolpa, who came to Kathmandu for the first time to share their experiences. They demanded wider public consultation on the draft constitution. At the end of the meeting a comprehensive report of the project’s democratic dialogues was handed over to the Chair of Constitutional committee, Hon. Nilambar Acharaya.

Interaction Program with UN RC/HC and democratic dialogue participants in Janakpur

With the coordination of UNDP/SPCBN, CSO partners Social Development Path and Janaki Women Awareness Society organized an interaction program with participants and facilitators of local democratic dialogues with Mr. Robert Piper, UN Resident and Humanitarian Coordinator, on February 1, 2011 at Kurtha VDC, Janakpur, Dhanusha. 150 participants and facilitators shared their experiences and requested Mr. Piper to ensure UNDP continues to support such dialogues on the draft constitution in the future.

Dialogue with youth leaders on state restructuring and federalism

A dialogue with youth leaders on state restructuring and federalism was held on 11-12 February in Kurintar, Chitwan with the aim to sensitize youth leaders on federalism and the state

restructuring process. Prof. Krishna Khanal and Prof. Krishna Hachhethu presented on the report of the CA Committee on State Restructuring and Distribution of State Power (SRDSP) highlighting the proposed formation of federal units and criteria that the CA committee has adapted. They also highlighted proposed structure of governments, powers of central and provincial governments and rights of minorities in the proposed provinces. The programme was jointly organized by CCD/SPCBN and the Association of Youth Organization in Nepal (AYON). 40 youth leaders from the student wings of UCPNM, UML, NC, and Madhes based political parties took part in the program.

BBC World Service Trust Activities

Some of the subjects Saja Sawal covered during this period:

- 'To revolt or not to revolt'
- 'Tourism 2011'
- 'Disability in Nepal'
- 'Political deadlock'
- 'Nepal post UNMIN'



Summary 'To revolt or not to revolt'

The central committee of the Maoist party has declared that it will resume its armed struggle if the constitution is not drafted on time. They have even made public that they are making preparations for a new round of hostilities. So why are the Maoists threatening a return to violence? Is the new constitution and peace process doomed? Is the Maoist's decision irrevocable? What do the other political parties and the public think? Saja Sawal invited HariBol Gajurel (Maoist leader) and Ramesh Lekhak, a Nepali Congress leader, to take part in this discussion.

Summary 'Nepal Tourism 2011'

Nepal is getting ready to welcome more than a million tourists this year – this is the target set by the Government to mark 'Nepal Tourism 2011' feasible? The objectives set out by NTY2011 is to establish Nepal as a 'premier holiday destination' with a definite brand image and to improve tourism related infrastructure in existing and new tourism sites. Is this just dream talk or can the Government deliver on its promises?

Audience:

Govinda Singh Dangol - " I think the Government isn't very organised. I was in Germany and Switzerland last year and hardly anyone knew about Nepal Tourism 2011. In fact they don't really know much about Nepal. So I am wondering where has all the money the Government spent on publicity gone?"

Pasang Sherpa from Sankhuwasabha - ' Tourists dream of coming to Nepal and to the top of the world. But from the minute they arrive they face hassles at every level. They are first greeted at the airport with corrupt taxi drivers and the pollution of Kathmandu. Then there are the bumpy roads and the street vendors who pester the tourists. It doesn't end there though, when you go for trekking and mountaineering there are not many places to sleep and there isn't proper food available. The information and money exchange centers and other facilities are also limited. So I am wondering what message tourists would take back to their homelands and will this encourage others to visit Nepal?"

Summary 'Nepal post UNMIN'



Now that UNMIN has left Nepal, the political parties are responsible for ensuring the peace process is concluded successfully. So what's their plan for managing the Maoist PLA? And what plans does the Maoist PLA have for themselves? In this episode Sajha Sawal brought together Nanda Kishor Puna 'Pasang', the PLA Chief, and Dr. Minendra Rijal, NC member of the special committee that is overseeing the PLA integration.

Dr. Minendra Rijal

“According to the peace agreement the Maoist PLA have had many choices. What I request to the PLA is to be careful with what choices you make. Do you want to be a politician or be re-established into society? Do you want vocational training and skills? It all really depends on what you want to do next. If the issue of integration is not finalized, then the constitution writing process will become increasingly more difficult.”

Nanda Kishor Puna "Pasang"

“Political parties should concentrate on the constitution writing process. In my opinion it should be completed by the set dateline. I also want to know why the integration process has been delayed. We stand by our rights and we will stand up and revolt for our rights, although revolution is not what we want - we too want peace for this nation. The PLA is not a Maoist army. In my opinion it is a national army.’

Audience

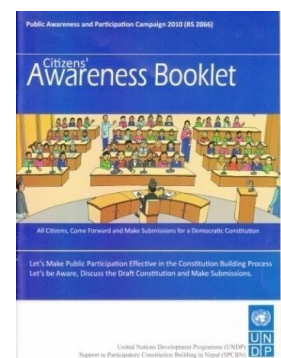
Smita Nepali (Student) “According to the agreement between the parties the integration process should have finished two years ago but it hasn’t moved forward. So how you are going to integrate them in the next four months? You have to convince us that it will be done. ”

Prayash Subedi “In the case of PLA integration, why does the Nepali Congress party always bring obstacles? What are standard norms for the integration of a former armed force into a national army? Can we move away from the traditional norms? If the peace process doesn’t move forward smoothly, we will be ready to revolt for our rights. The revolution is not our desire but the scenario and situation are making us think it might be.”

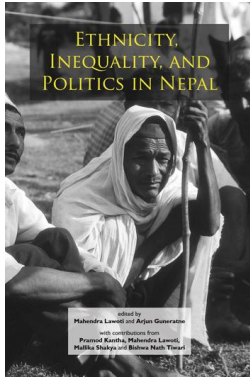
Shyam Tamangy “Being a Janajti I want to request the political parties select the PM. When will citizens feel peace in this country? When will the parties form a consensus? And when will the Maoist party be responsible for the people and citizens? ”

CB Resources and Recent Publications

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) in the year 2010. The document deals with summaries of the eleven Constituent Assembly Thematic Committee reports. The booklet has now been translated into Maithili,

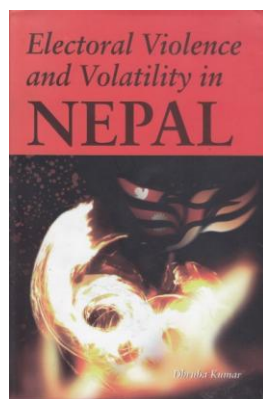
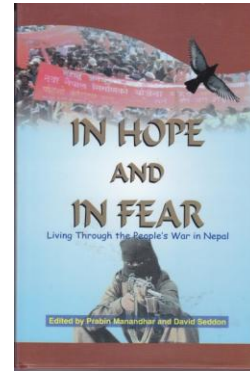


Bhojpuri, Urdu, Bhote and English for an even wider distribution among the Nepali people.



Ethnicity, Inequality and Politics in Nepal, edited by Mahendra Lawoti and Arjun Guneratne and published by Himal Books. The ‘surprising’ rise of identity politics after the restoration of democracy in 1990 led to increasing academic and political attention on political exclusion and ethnic politics. However, many aspects of exclusion are yet to be analyzed. The articles in this volume illuminate additional dimensions of exclusion and inequality. The authors examine interactions between formal and informal institutions and political exclusion, inter-group inequality, ethnicization of the business sector and the country’s protracted democratization.

In Hope and in Fear: Living through the people's war in Nepal edited by Prabin Manandhar and David Seddon and published by Adroit Publishers. This book provides a unique insight into how ordinary Nepalese experienced and lived through the Maoist insurgency. Their hopes and their fears and the way in which they responded to and coped with the anxieties, tensions and pressures generated by the conflict, are the central concern of this collection. Providing a historical background to the launching of the Maoist insurgency in February 1996, the first part of the book also gives perspectives on developments from 1996 up to the turning point of late 2001, when the conflict intensified.



Electoral violence and volatility in Nepal written by Dhruba Kumar and published by Bajra Publications. This book is about electoral violence and volatility in Nepal. Electoral Politics is understandably a sign of modernity in statecraft. Election is also a bridge between the state and society in forging a relationship through the choice of a representative by the people for governance. Election, as the formal procedure for voting, is at the heart of representative democracy. Elections are the principal means through which the ordinary people decide their destiny by participating and legitimating the governance. In democracy in particular, election draws the ordinary people into the political process.

Constitution Building Update Survey

- Do you currently use information from the Constitution Building Update (CBU) for your work? If not why not? If so how is it useful? Do you think it should be stopped?

- Do you currently receive similar kinds of update of the constitution building process?
 - *Yes/ No*
 - *If yes, please provide the name of updates and/or disseminating organizations*

- Please suggest types of information you would like to have in the CBU.

- Please suggest the frequency of the CBU you would like to receive.

Weekly Bi- Weekly Monthly It should be discontinued Other ()

- Would you like to contribute information of your activities for the CBU?
 - *Yes/ No (If yes, what kinds of information you would like to contribute)*

- Do you have any suggestions to improve the Constitution Building Update?

- Content_____

- Dissemination_____

Thank you.

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