

Participatory Constitution Making Process

Participatory Constitution Building in Nepal
Booklet Series
NO. 10



PUBLISHED BY

Centre for Constitutional Dialogue (CCD) - 2009

Copyright © Centre for Constitutional Dialogue (CCD) - 2009. All rights reserved. Portions of this booklet may be reproduced and/or translated for non-commercial purpose, provided that CCD is acknowledged as the source of the material and is sent copies of such documents.

DESIGNED AND PRINTED BY

Print Point Publishing, Tripureswor, Kathmandu.

Tel: 4249674, 4249675



FOR MORE INFORMATION OR COPIES OF THIS BOOKLET, PLEASE CONTACT

Centre for Constitutional Dialogue (CCD)

3rd & 4th floor, Alfa Beta Complex, Buddhanagar, Kathmandu.

Telephone 977-1- 4785466 / 4785486 / 4785998

E-mail: info@ccd.org.np

Website: www.ccd.org.np

Participatory Constitution Making Process

No. 10



Participatory Constitution Making Process	1
What is a constituent assembly?	1
What is a participatory constitution building process?	2
What are the Constituent Assembly's procedures for drafting the constitution?	2
How will citizens' views be brought into making the constitution?	4
How will the constitution be finalized?	5
What methods can be utilized to increase public participation in the drafting process?	5
How can the CA recognize the contributions of the citizens?	6
What is Nepal's history with constitution drafting?	6
What are the important dates during the constitution making process?	8

Participatory Constitution Making Process

A Participatory Constitution Making Process brings together citizens to draft a constitution that addresses critical issues facing their nation. If successful, the result will be a constitution that is owned by the people, enhances unity among citizens and deepens the relationship between the government and the people.

A constituent assembly is an elected body used by states to ensure popular support of a new constitution. Nepal has elected to use a constituent assembly to draft its new constitution. Part of this process includes public participation campaigns to increase citizen understanding of, and participation in, the drafting process.

To ensure an inclusive constitution making process, the Constituent Assembly (CA) will have to consider several issues:

1. What is a constituent assembly?
2. What is a participatory constitution making process?
3. What are the CA's procedures for drafting the constitution?
4. How will citizens' views be brought into the constitution?
5. How will the constitution be finalized?
6. How can the CA recognize the contributions of the citizens?
7. What methods can be utilized to increase public participation in making the constitution?
8. What is Nepal's history with constitution drafting?
9. What are the important dates during the constitution making process?

I. What is a constituent assembly?

A constituent assembly is used to ensure citizen ownership over the constitution and to establish a strong relationship between the citizens and the state.

An elected constituent assembly like Nepal's is participatory because it is a body of representatives chosen by the people to manage the transition process, including constitution drafting. A constituent assembly may also be tasked with amending legislation, governing the state, and appointing leaders. This is true in Nepal, where the CA has been tasked with drafting the constitution and acting as a legislative body.

On April 10, 2008, Nepalis elected their CA members, therefore providing the citizens with ownership over the constitution making process. The CA consists of 601 members. Based on the backgrounds of the members, the CA is truly an inclusive body with women, ethnic, indigenous, and religious groups, Dalits, and the poor represented.

2. What is a participatory constitution building process?

A constitution is the primary law of a state. All laws are based on it. It establishes the structure, functions, procedures, powers, and duties of a government. A constitution also identifies the rights held by citizens.

A participatory constitution making process enables citizens to have ownership over the constitution while feeling part of a building a nation. The process must educate the public about the role of the constitution and the sometimes complex choices that must be made.

The CA has taken several steps to make the constitution making process open to all Nepalis. In November 2008, the CA finalized the Constituent Assembly Rules of Procedure, 2065 (2008) which established committees that will draft the constitution, defined the CA's legislative role, and set a timeline. In March 2009, Nepali CA members visited every constituency in Nepal to obtain citizens' views on important issues. CA members had citizens fill out questionnaires and held informal discussions on constitutional issues. The CA will incorporate recommendations made throughout the public consultations into the draft constitution. This final draft will then be circulated nationwide to obtain feedback on the entire constitution. Finally, the CA, as the peoples' representatives, will vote on whether to accept the constitution.

For a copy of the CA's schedule, see http://www.ccd.org.np/pdf/NEW_CA_Timeline_en.PDF

3. What are the Constituent Assembly's procedures for drafting the constitution?

The Rules guide the CA through its dual mandate of drafting the constitution and acting as a legislative body. These Rules call for the creation of a Constitutional Committee, ten thematic committees to address substantive issues such as

individual rights, federalism, and an independent judiciary, and three procedural committees to draft a participatory constitution.

The Constitutional Committee is composed of 61 members; the thematic and procedural committees contain 43 members each. Members of the committees were chosen based on the representation of the political parties in the CA. Consideration was given to minority groups, women, indigenous nationalities, those from backward regions, and Muslims.

The Constitutional Committee is responsible for writing the constitution. Any substantive issue not tasked to a thematic committee is the responsibility of the Constitutional Committee. For example, the preamble, emergency powers, and amendment sections will be written by the Constitutional Committee.

The thematic committees are responsible for preparing preliminary drafts of certain sections of the constitution. These sections will be compiled into one complete text by the Constitutional Committee. These committees are:

1. Committee on Fundamental Rights and Directive Principles;
2. Committee on the Protection of the Rights of Minorities and Marginalized Communities;
3. Committee on the Restructuring of the Nation and the Distribution of National Power;
4. Committee to Decide on the Form of the Legislative Body;
5. Committee to Decide on the Administrative Form of the State;
6. Committee on the Judicial System;
7. Committee to Decide on the Structure of Constitutional Bodies;
8. Committee on the Division of Natural Resources, Financial Rights and Public Revenue;
9. Committee to Decide on the Basis for Cultural and Social Commitments; and,
10. Committee for the Preservation of the National Interest.

Thematic committees will submit a preliminary draft report along with a concept note to the CA on the subjects that fall under their responsibility. The suggestions and directions of the CA will be forwarded to the Constitutional Committee. It will be the primary duty of the Constitutional Committee to prepare a draft of the constitution based on the suggestions and directions.

For more information on the committees, see the CA Rules of Procedure, available at http://www.can.gov.np/doc_folder/20CA%20RULES%20OF%20PROCEDURE_FINAL.pdf.

4. How will citizens' views be brought into making the constitution?

An important aspect of making a constitution is the involvement of the public. A participatory process emphasizes the importance of citizen engagement, promotes legitimacy, encourages citizen engagement in government, and promotes the public's ownership over the constitution. If successful, this process will enable citizens to have ownership over the constitution, build a sense of community among the citizens, and strengthen the relationship between the government and the people.

The three procedural committees deal with the administrative aspects of the constitution making process, which includes bringing citizen feedback into the process. These committees are:

- » Committee on Citizens
- » Committee on the Collection and Coordination of Public Opinion
- » Committee on Capacity-building and Source Management

The Civic Relations Committee is responsible for identifying ways to increase citizens' participation in the constitution making process. It provides for an information campaign that disseminates information about the CA and the constitution to all Nepalis. To include citizens' views into the first phase of the drafting process, the Civic Relations Committee developed questionnaires. The questionnaires were used by CA members to obtain feedback on constitutional issues. Over a three week period in March 2009, thousands of questionnaires were filled out by citizens around Nepal. These completed questionnaires will be used by the committee members to draft the constitution.

The Public Opinion Collection and Coordination Committee is responsible for disseminating the draft constitution through the media. The Committee also organizes public hearings, seminars, and workshops on the draft Constitution. This committee must also prepare a report on the suggestions gathered from citizens and forward these suggestions to the CA.

The Capacity Building and Resources Management Committee organizes programs between citizens and CA members on the constitution making process. It is also the responsibility of this Committee to conduct research studies on constitutional issues, to provide resource materials to the CA and its committees, and to develop and manage a resource center.

5. How will the constitution be finalized?

Following the public consultation process, the Constitutional Committee will reconsider the draft constitution in light of citizens' suggestions. Once the draft constitution is finalized by the Constitutional Committee, it will be submitted for approval to the CA.

Article 70 of the Interim Constitution details the process of passing the new constitution. According to Article 70, the CA must pass the draft preamble and every article of the new constitution. The Preamble and Articles shall be deemed passed if at least two-thirds of the total members of the CA are present and vote unanimously in favor of the Preamble and each Article.

If a unanimous decision cannot be reached, the leaders of the political parties will hold consultations to reach consensus on the draft. Following the consultations, a new vote on the Preamble and the Articles will be conducted. If at least two-thirds majority of the total members of the CA present at this meeting vote in favor, the Preamble and the Articles will be deemed to have been passed. If this cannot be achieved, the Preamble and Article that cannot be agreed upon will be redrafted.

Article 157 also provides for a national referendum. Through a referendum, the citizens of a nation get to vote on an important issue. If the CA determines that the passage of the constitution is a matter of national importance, a referendum can be held.

For more information on the ratification procedures, see the Interim Constitution, available at <http://www.supremecourt.gov.np/ic.pdf>.

6. What methods can be utilized to increase public participation in the drafting process?

A public education and consultation campaign is crucial to creating a participatory constitution making process. Methods that assist with increasing citizens' understanding of and participation in this process include:

- » Drafts of the constitution in different languages;
- » Public surveys and questionnaires;
- » Public hearings, town hall meetings, and roundtable discussions;
- » Television and radio programs and commercials;

- » Newspaper and magazine articles and advertisements;
- » Street theater and dance programs in rural areas; and,
- » Websites

Other states have also involved international actors such as the European Union, the United Nations, and nongovernmental organizations as partners to assist with educating the public on the constitution. Working with international and domestic partners can be a useful tool for promoting transparency and incorporating public input into the process.

7. How can the CA recognize the contributions of the citizens?

Citizen participation in the constitution making process is important. Participating in making a nation's constitution provides the people with a sense of ownership and helps to build the nation, a community of different ethnic, indigenous, and religious groups.

In order for people to see that their opinions are being considered, the CA must make public what it is doing with these opinions. The CA can take several steps to recognize citizen contributions:

- » Publish through newspapers, magazines, and websites the suggestions the CA are considering.
- » Acknowledge in the Preamble the processes used to gather suggestions, the number of suggestions received, and how these suggestions were used.
- » Invite the citizens with the best suggestions to the CA to discuss their suggestions with the committees.
- » Keep a “suggestions tracker” on the CA website that weekly updates the number of the suggestions the CA has received.
- » Send to each village development community the best suggestions from that district and how the CA plans to use these suggestions.
- » Broadcast a weekly television and radio show discussing the best suggestions and the plans to use them.

8. What is Nepal's history with constitution drafting?

This is Nepal's fifth time drafting a constitution. Previous attempts were written by experts. They did not utilize a constituent assembly and were not written in an inclusive manner. This may be why they did not last.

Government of Nepal Constitution Act 1948: In 1947, Prime Minister Padma Shamsher formed the Constitution Reform Committee and invited experts from India to draft the first constitution. The Government of Nepal Constitution Act of 1948 established a parliament with two houses. The prime minister was given considerable power: he was able to appoint the entire membership of one house and a majority of the other as well as to reject any legislation. Before the constitution could be promulgated, Padma Shamsher was ousted by Mohan Shamsher. Political unrest, however, forced Mohan Shamsher to promulgate the 1948 Constitution in 1950.

Interim Government of Nepal Act 1951: In 1951, King Tribhuvan worked with Indian experts to write the Interim Government of Nepal Act 1951, which was based on the Indian constitution. This interim constitution placed executive, legislative, and judicial powers in the hands of the monarchy. Although this constitution called for the election of a constituent assembly to hold state power, the election was never held. Instead, King Tribhuvan and his successor King Mahendra appointed successive governments until the creation of the Royal Constitution of 1959.

Royal Constitution of 1959: This constitution vested significant power in the King. The resulting government lasted until 1960 when King Mahendra sacked the prime minister, enacted emergency rule, and suspended the constitution. These steps ushered in the panchayat system where legislative power was consolidated in the King. Political parties were banned until 1975, when the King created a single-party state with quasi-political and judicial structures. This structure of governance lasted until the People's Movement of 1990.

The Constitution of the Kingdom of Nepal 1990: In 1990, following nationwide protests, King Birendra lifted the ban on political parties and permitted the formation of an interim government with executive and legislative powers. The Constitution Reform Committee, consisting of representatives from political parties and the monarchy, drafted the constitution which was promulgated by King Birendra in November 1990. This established Nepal's first multi-party democracy. In 1996, the Maoists launched the "People's War" to establish an inclusive state.

The Interim Constitution 2007: The most recent chapter of Nepal's experience with making a constitution began in 2006, when nationwide demonstrations against the King's rule resulted in the reinstatement of the dissolved parliament and an interim government. The interim government brokered a ceasefire agreement and the Comprehensive Peace Agreement with the Maoists. It also

formed the Interim Constitution Draft Committee, consisting of experts, which drafted the Interim Constitution of Nepal 2007. Since the Interim Constitution was passed, it has been amended six times. The Interim Constitution and its amendments abolished the monarchy, called for a federal state, and created the position of president. The Interim Constitution also created the CA to guide Nepal through the constitution making process. In May 2008, following the April 2008 elections, the CA's held its initial session, marking the first time that a constituent assembly is being used in Nepal to draft a constitution.

9. What are the important dates during the constitution making process?

As of September 2009, the important dates that citizens need to be aware of concerning the making of the constitution are:

February 26 to May 22, 2009	Thematic committees prepare the preliminary drafts to the constitution on the basis of their concept papers.
May 23 to November 15, 2009	Discussion on the preliminary drafts in the CA.
November 16 to December 15, 2009	Preparation of the first draft of the constitution by the constitutional committee.
December 16 to December 22, 2009	Discussions by the CA on the first draft of the constitution.
December 23 to December 30, 2009	Publication of the first draft in the Nepal Gazette.
December 31 to January 29, 2010	Second round of public consultation.
January 30 to March 6, 2010	Compilation and discussion of citizens' suggestions.
March 7 to March 16, 2010	Amendments made to the first draft based on suggestions.
March 17 to May 21, 2010	General discussion of first draft with amendments made by CA members.
May 22 to May 28, 2010	Preparation of final draft and ratification of constitution.

For the most up-to-date CA schedule, please visit http://www.ccd.org.np/pdf/NEW_CA_Timeline_en.PDF

About this booklet series

This series of papers is intended to provide a basic background for Constituent Assembly members and the interested public on issues related to the constitution building process. They are not position papers, proposals or intend to preempt any constitutional outcome in any other way. They are the result of a cooperative effort of Nepali and international constitutional experts, coordinated by UNDP's Support to Participatory Constitution Building in Nepal project.

These papers are living documents, and feedback and comments are strongly encouraged. The more they will lead to informed, engaged and constructive discussion and exchanges, the more will their objective be attained. As comments are received further versions of this document or additional issues may be prepared.

In translating them into some of Nepal's major national languages, all effort has been made to achieve a high level of quality standards and the correct terminology, which will be understood by a majority of the speakers of those languages. However, future debates within the various linguistic communities on the proper and correct use of terms can be expected. CCD did not want to preempt that discussion in any way, but rather sought to maximize the reach and inclusiveness of this effort by including those languages.

This booklet is part of a series of documents to be developed by the Centre for Constitutional Dialogue (CCD) on themes relevant to the constitution building process in Nepal.

The objective of this series is to engage Constituent Assembly members as well as the interested public with key constitutional concepts and issues. Each document is available in the major languages used in Nepal – Nepali, Maithili, Bhojpuri, Tharu, Magar, Tamang, Newar and English. Each document is also available in audio format as well as online.

In the first phase it is envisaged that the publication series will include the following themes: State and Religion, Federal System, Human Rights in the Constitution, Rights of Indigenous Peoples, Minority Rights, Systems of Government, Independent Judiciary, Local Self-Governance, Diversity and Social Inclusion, and Participatory Constitution Making Process.

Centre for Constitutional Dialogue (CCD)

3rd & 4th floor, Alfa Beta Complex, Buddhanagar, Kathmandu

Telephone 977-1- 4785466 / 4785486 / 4785998

E-mail: info@ccd.org.np

Website: www.ccd.org.np

