

Summary Report

Workshop on “Transition and Implementation: Setting the Agenda - The Challenges to Roll Out the Constitution after May 2010”

This half-day workshop was conducted at the Center for Constitutional Dialogue on 10 February, 2010. The workshop was held to initiate dialogues and deliberations among the key institutions and concerned authorities on the preparation for implementing the new constitution and to make clear and planned approaches for a smoother transition into a new federal structure. The workshop engaged representatives from Ministries, National Commissions, donor agencies, diplomatic missions, research institutions, academia, CSO's, local government associations and individuals of prominence and expertise involved in policy advocacy.

The workshop was organized into two panel discussions:

“The emerging Draft Constitution and what it says about transition and implementation” included panelists from the Constituent Assembly (CA) and was chaired by Dr. Larry Taman, International Project Manager, *UNDP/Support to Participatory Constitution Building in Nepal*.

The discussions in the first sessions focused on the transitional provisions, where the CA members presented their understanding about the transition measures and highlighted the key provisions enlisted in the draft concept papers.

The participants were of the view that the draft concepts notes need to be looked at minutely and with utmost vigilance to redress the transitional provisions. They expressed that the drafts pay very little attention to the implementation measures and concentrate more on the *Continuity Provisions* related to the roles/responsibilities of decision makers and the existing government institutions and structures and other issues. They were of the opinion that the process and the duration of the transition should be determined constitutionally along with the delegation of power, deployment of roles and responsibilities to various tiers of government and decision makers at all levels.

The repercussion of incorporating such pragmatic and early planned strategies to roll-out the new constitution will increase the acceptance of the new constitution. It will also decrease the likelihood of raising disputes if the expectations from the new constitution are not met immediately.

Though the new constitution will come on time, there are challenges on how the new constitution will be implemented once it is promulgated. The participants raised their doubts on whether there will be a balance between a new mechanism and the old system in place and if the new system will support the old institutions when the country moves into a federal system.

The CA members in the panel were confident that the new federal structure will be in line with the systems that are functioning relatively well in the unitary Nepal and will adopt new systems, create new structures and additional institutions needed and prescribed by the new constitution.

They agreed that a new federal structure should bring people closer to the government and will address their needs. While doing so, they assured that the latent issues, local concerns, issues of the marginalized, the inclusion agendas (of Dalits, Women, Indigenous/Ethnic groups, Minorities, Madhesi, etc.), representation and development and capacity building of the local government will receive significant importance.

“How the Constitution will be implemented and how transition will be organized: the electoral cycle, state restructuring, local government reform, sectoral aspects, and inclusion agenda” included panelists from the CA and was chaired by Dr. Hiramani Ghimire of the *World Bank*.

The second session focused on identifying and sharing of all the possible high level understanding of implementation challenges. Both the sessions discussed on the alternatives for coordinated action for entering the transitional phase after May 28th.

The panelists in the second session expressed the need to uphold accountability, transparency and responsiveness by the political leaders and the duty bearers. They shared that federalism is adopted for power sharing and in the name of inclusion tokenism should not be promoted in the new structure. The new constitution should enshrine the democratic values and principles of equality and equity in creating a just society.

Among the many issues raised, issues pertaining to the elections and the strengthening of the local government were given more emphasis from the participants and from ministry of Local Development (MLD) and National Association of VDCs in Nepal (NAVIN) and the panelists. The fact that there has been no local election for eight years, is one of the major reasons for poor local service delivery/monitoring. They raised doubts on how the service delivery can be made effective during transition when there is still no hope for immediate local elections in the draft report of the CA thematic committees.

The participants agreed that service delivery at the local level seems very challenging and the CA members along with the current government need to be cautious that whatever services will be provided within five to six months of the roll-out of the new constitution, will raise hope in federalism and create acceptance of the new constitution by the people. The panelists also expressed their views that the agenda of inclusion should be incorporated right from the local government and through the selection of appropriate electoral systems. They reflected their unanimous understanding on the need of creating some independent body/commission to facilitate the implementation of the new constitution until new structures have evolved.

The programme concluded by highlighting five key points to be considered while moving to a new federal structure and in managing the change process:

1. Though skeptical about the timely formulation of the new constitution, people have tremendous aspirations for it. Given the situation, the CA members need to be cautious that the new constitution is inclusive, respects/fulfills/protects the rights of its people and

reflects voices of Dalits, ethnic and indigenous nationalities, excluded women, minorities and the marginalized communities.

2. This is not the first time that Nepal will experience transition. It has gone through several transitional phases in the past. And, the lessons learned from those periods should be incorporated and replicated for effective implementation of the new constitution. Models from other countries should also be studied to manage the transition phase.
3. The transition period can get stretched to years following the promulgation of the new constitution. In order to manage the service delivery, people's aspirations, administrative tasks and other related operations, there needs to be a formation of some independent body, mechanism or commission guaranteed by the constitution to facilitate the managerial tasks. Similarly, an independent high level mechanism is crucial in monitoring and supervising the transition period.
4. There is a need for greater political will and commitment from the leaders of the political parties for stability and sustainability of the peace process. The political leadership should be strong, accountable and people centered.
5. The international communities are ready to support the change process, provide technical assistance and expertise for a smooth transition, though the process will be locally driven. However, they require a good strategic plan for this and the political leaders should be able to offer them such plans and vision to manage the transition process.