

**Supplementary Report by the Study Committee on Concept Paper and
Preliminary Drafts**

2010

**Secretariat of the Study Committee on Concept Paper and Preliminary Drafts
Singhadurbar, Kathmandu**

Study Committee on Concept Paper and Preliminary Drafts

Constituent Assembly Secretariat,
Parliamentary Building
Singhadurbar, Kathmandu, Nepal

Ref. No. 066/067

Date: 2066.11.10

Right Honorable Chairperson,
Constituent Assembly.

Re: Submission of supplementary report.

In view of the responsibility entrusted to the Committee as per the resolution adopted by the 29th meeting of the esteemed Constituent Assembly, dated 2066.2.13(-----), the Committee had submitted its preliminary report to the Rt. Honorable Chairperson on 2066.10.20. For the time being, the supplementary report incorporating the suggestions and directives to be made by the Constituent Assembly on the report of the Committee on the Determination of Structure of Constitutional Bodies was today adopted with consensus by the meeting of the Committee dated 2066.11.18 and it was decided to submit this supplementary report to the Rt. Honorable Chairperson. We have, therefore, submitted this supplementary report of the Committee. We also make a submission that we will gradually submit reports on suggestions and directives on the other nine committees to be issued by the esteemed Constituent Assembly to the Constitutional Committee.

SN	Name	Signature
1.	Hon'ble Mr. Agni Prasad Kharel	Sd.

2.	Hon'ble Mr. Atma Ram Prasad Shah	Sd.
3.	Hon'ble Mr. Ek Raj Bhandari	Sd.
4.	Hon'ble Mr. Narayan Khadka	Sd.
5.	Hon'ble Mr. Prakash Chandra Lohani	Sd.
6.	Hon'ble Ms Prativa Rana	Sd.
7.	Hon'ble Mr. Prem Bahadur Singh	Sd.
8.	Hon'ble Mr. Barsha Man Pun Ananta	Sd.
9.	Hon'ble Mr. Yuba Raj Karki	Sd.
10.	Hon'ble Mr. Radheshyam Adhikari	Sd.
11.	Hon'ble Mr. Laxma Lal Karna	Sd.
12.	Hon'ble Mr. Bishwa Bhakta Dulal	Sd.
13.	Hon'ble Mr. Brijesh Kumar Gupta	Sd.
14.	Hon'ble Ms. Sarita Giri	Sd.

Secretary Mr. Tek Prasad Dhungana

Forewords

It is widely known that, in the course of discharging its responsibilities entrusted by a resolution adopted by the 29th meeting of the Constituent Assembly held on 2066.2.13, namely to study the concept papers and preliminary drafts submitted by all thematic committees and the Constitutional Committee; to note down the matters raised during deliberations on all reports at the Assembly; identify the matters and points which are incorporated in the reports of two or more committees and mutually contradictory; to identify any matter that is excluded in the reports of committees; to give suggestions to the Rt. Honorable Chairperson on such matters in the report of any committee as to be revised, based on the deliberations made at the Assembly and responses given by the honorable chairperson of the committee; to prepare a report on the matters, if any, to be taken into account by the Constitutional Committee, along with reasons therefor, in the course of compilation of the drafts of all committees, and submit the report to the Rt. Honorable Chairperson, a preliminary report accompanied by suggestions and directives required to be given in respect of the report of the Natural Resources, Economic Powers and Revenue Allocation Committee was presented to the esteemed Assembly through the Rt. Honorable Chairperson, pursuant to the decision of the 73rd meeting of this Committee held on 2066.10.20.

Time is ripe for all of us to think again seriously about the fact that the Nepalese people have entrusted the historical responsibility to this Constituent Assembly in order to realize their year-old desire to frame a constitution for themselves. The Committee is not ignorant of the fact that it is expedient that the plenary should finally settle those matters that remained as dissenting opinions due to not being settled by the concerned Committee and those matters on which consensus could not be forged in the course of deliberation at the Constituent Assembly on the concerned report and send them to the Constitutional Committee, out of the matters submitted to the plenary after being decided upon at the thematic committee level pursuant to the Constituent Assembly Regulation, 2065. Ample efforts were also made to this end. Despite this, at this

present juncture where a long period of 21 months after holding the first meeting of the Constituent Assembly has passed. However, we still have dissenting opinions on a number of contents to be incorporated in the constitution and we have not been able to able the desired achievement in forging consensus on them. I, on behalf of the Committee, would like to draw, through the Rt. Honorable Chairperson, serious attention of all Honorable Members to this fact. We are not outside the ambit of time and process irrespective of the seriousness and importance of subject-matters. Rather we are tightened with the limitation of time and process. In view of this fact, the Committee is expecting creative guidance and support of the Rt. Honorable Chairperson, Honorable Vice-Chairperson of the Constituent Assembly, respectable leaders of political parties represented in the Constituent Assembly and all Honorable Members of the Constituent Assembly in exploring consensual resolution of all these pending unanswered questions, acceptable to all, in the near future.

After the submission of the preliminary report on 2066.10.20, in the course of accomplishing its responsibilities, the Committee held additional eight meetings. Preparation of synopsis of the matters raised in the Assembly in the course of deliberations on the report of the State Restructuring and State Powers Allocation Committee and identification of the matters which were overlapped in the report of that committee and on which consensus could not be forged have been accomplished. Despite the Committee's sincere wish and commitment to present to the Rt. Honorable Chairperson at the same time the suggestions and directives to be given by the Constituent Assembly to the Constitutional Committee on all the remaining 10 reports, by fully accomplishing its responsibilities entrusted by the esteemed Constituent Assembly, in view of the gravity and complexity of subject matters, there arises again a compulsion for the Committee to present a partial report. I would like to humbly submit this matter. For the time being and in the periphery of this compulsion, I have, pursuant to the decision made by the 81st meeting of the Committee held on 2066.11.18, submitted this supplementary report, as adopted by consensus, containing the suggestions and directives to be given in relation to the report of the committee on determination of structure of constitutional bodies. I would also like to inform that the

Committee is actively engaged in the preparation of the suggestions and directives to be given in relation to the reports of the other nine committees and will gradually submit reports thereon on the days ahead.

Finally, I would like to express sincere gratitude to the Rt. Honorable Chairperson, Honorable Vice-Chairperson of the Constituent Assembly, respectable leaders of political parties represented in the Constituent Assembly and all Honorable Members of the Committee who have facilitated in the preparation of this instant supplementary report on suggestions and directives. I would like to extend my sincere thanks to the Committee's secretariat and the employees serving for the Constituent Assembly secretariat, who have rendered direct support in the discharge of the functions of the Committee.

18 Falgun 2066

Sd.

Agni Prasad Kharel

Coordinator

Part-2

**Chapter on matters revealed from the study undertaken by the Committee,
and suggestions and directives to be given by the Assembly to the
Constitutional Committee**

**2.2 In relation to the report of the Committee on Determination of Structure of
Constitutional Bodies:**

2.2.1 Matters excluded from being incorporated in report:

- In a situation where it is certain that the future structure of governance of the country will be based on federal system, the necessity, formation, functions, duties and powers of a financial commission for the proper protection and promotion of natural resources and biological diversity of the country, their equitable use and allocation and equitable distribution of financial resources of the country.

**2.2.2 Matters falling within the terms of reference of another committee but
repeated in the report of this committee:**

The matter falling within the terms of reference of **the Constitutional
Committee:**

- Preamble

**2.2.3 Divergent opinions and matters failing consensus during deliberations at
the Assembly:**

(a) On preliminary draft:

- Issue whether, out of the 11 commissions as proposed in the report of the Committee, other commissions, except the currently existing five commissions, should be kept under the umbrella of the existing human rights commission and incorporating the functions, duties and powers of the proposed new

- commissions in that commissions or a separate federation commission should be formed and these commissions should be held under it or human rights and gender commission should be formed and they should be held under it.
- All commissions proposed by the Committee should be maintained and other various commissions should also be formed.
 - Given that there should also be the structure of commission in provinces also in the context of all the proposed commissions, whether it should be mentioned in the beginning of all proposed commissions that there shall be one federal ...commission or not.
 - The matter that the gender neutral word shall be substituted for the word "President" contained in various places of the report.
 - The matter that the expenditures of constitutional bodies should be chargeable on the consolidated fund.
 - The report incorporates two alternatives on the appointment of office-bearers of constitutional bodies: appointment by the President on the recommendation of the Constitutional Council or hearing by the Legislature in the event of appointment by the Executive Head. Arguments were made both for and against of them.
 - Provisions should be made that all commissions do not have an equal number of members but have different number of members according to the nature, workload and need of the respective commission.
 - The matter whether minimum age limit for appointment to all commissions and retirement age should be decreased or maintained or whether they should be reappointed or not.
 - The matter whether the Commission for the Investigation of Abuse of Authority should be maintained as a constitutional body as proposed or a separate authority with authority should be formed under the Executive in order to perform this function.
 - The matter that the rationale behind the provision that appointment of members to commissions consisting three office-bearers shall be made on the basis of

proportional representation and inclusion and this word should be defined and made clear.

- The phrases "high moral character" and "social prestige" as mentioned in various places of the report should be defined.
- The matter that the functions of appointment of employees of public corporations and vacancy fulfillment and their promotion should also be within the jurisdiction of the Public Service Commission.
- The matter that the provision "however this clause shall be ally to those office-bearers in respect of whom other law provides for a separate special provision" contained in the proviso to point number (1) of page 4 of the report limits the provisions of the constitution.
- The matter to the effect that the Commission for the Investigation of Abuse of Authority shall institute a case against a person on the offense of corruption only with the consent of the Attorney General, contained in clause (4) of page 4 of the report.
- The phrase of "settlement of disputes between parties" contained in point number 2(b) of page 17 of the report.
- The matter that the provision "the national human rights commission shall have no jurisdiction over the matters falling within the purview of the Military Act" as contained in clause (4) of page 23 of the report, has narrowed the jurisdiction of the human rights commission.

(b) On Concept Paper:

- The matter that the Commission for the Investigation of Abuse of Authority may write to the competent authority to admonish or take departmental action, as contained in point (3) under the heading of the functions, duties and powers of the Commission for the Investigation of Abuse of Authority in page 106 of the report also appears to be applicable also in the case of constitutional office-bearers who relive of office on the adoption of a resolution of impeachment. So,

the words "pursuant to point number (1)" should be substituted for word "so" as contained in the beginning of point number 3.

- There is a lacking of clear analysis of the relations of constitutional bodies with the governments at various levels.
- Independent constitutional bodies are established based on the concept of limited government in order to make the government responsible and accountable. The matter whether employees serving for such bodies should be under a separate service and conditions of service act of constitutional bodies, instead of being deputed by the existing government-controlled civil service, in order to make these constitutional bodies independent, impartial and effective, is not discussed in the report.
- The terms of reference of the committee include making a report on the formation, functions, duties and powers of constitutional bodies. But the report is not clear whether it is expedient to provide powers of quasi-judicial nature such as receiving petitions, taking depositions, making search and seizure and executing compromise to the human rights commission and proposed..... constitutional commissions, in view of the nature of business of such commissions.

2.2.4 Proposed suggestions and directive to be given by the Constituent Assembly to the Constitutional Committee on the report of the Natural Resources, Economic Powers and Revenue Allocation Committee:

1. The preamble contained in the beginning of the preliminary draft attached with the report of the Committee on Determination of Structure of Constitutional Bodies falls under the jurisdiction of the Constitutional Committee. Thus, suggestion be given to the Constitutional Committee to adopt, as an important reference material, the matters recommended for incorporation in the preamble, from the viewpoint of the committee, in the report of the Committee on Determination of Structure of Constitutional Bodies, and to take account of it in the course of finalizing the text of

preamble. Since the matters raised during deliberations in the Assembly on the preamble presented by that Committee will be addressed by the draft of the Constitutional Committee, this Committee has not discussed and decided this matter here.

2. Directive should be given to the Constitutional Committee to discuss and make appropriate provision on matters of whether, out of the 11 commissions as proposed in the report of the Committee, other commissions, except the currently existing five commissions, should be provided for as proposed by the Committee or be kept under an umbrella commission in an integrated manner or make appropriate provision in relation to the commissions proposed in the course of deliberations at the Assembly.
3. Directive should be given to the Constitutional Committee to reach a proper conclusion by deliberating on all alternatives in order to make the popularly elected government accountable for the matter of corruption control, while maintaining the existing provision on the Commission for the Investigation of Abuse of Authority.
4. In relation to the matter that the expenditures of constitutional bodies should be chargeable on the consolidated fund, it should be done as per suggestions and directives to be given subsequently by the Constituent Assembly to the Constitutional Committee in relation to the report of the Committee on Determination of Structure of Legislative Organ.
5. In relation to the appointment of office-bearers of all constitutional bodies, it should be done as per suggestions and directives to be given subsequently by the Constituent Assembly to the Constitutional Committee in relation to the report of the Governance Structure Committee and reports of other relevant Committee.
6. Directive be given to the Constitutional Committee to make provision that all commissions shall not have an equal number of members but have

- different number of members in view of the nature, workload and need of the respective commission.
7. Directive be given to the Constitutional Committee to discuss and decide the matter, contained in clause (4) of page 4, whether the Commission for the Investigation of Abuse of Authority will have to file a case, in consultation with the Attorney General, against a person on the offense of corruption or may file it by its own decision.
 8. The words "public organization" should also be inserted in clause (2) relating to the functions, duties and powers of the Public Service Commission, as contained in page 12 of the report, and clause (6) should be deleted. The explanation contained in clause (6) should be included in clause (2).
 9. The matter that each province shall have a separate provincial public service commission as provided in law should be substituted for the draft contained in the provincial provision of public service commission as contained in page 13 of the report.
 10. In view of the fact that the election in question may be included within the jurisdiction of the election commission only with the settlement of the matter whether the president and vice-president will be elected by the Legislature Parliament or from outside and the election of local bodies may be included within the jurisdiction of the election commission only after it is clear whether there will be a separate provision of executive and legislative under the local government, as contained in clause (1) of page 17 of the report, it should be done as per suggestions and directives to be given subsequently by the Constituent Assembly to the Constitutional Committee in relation to the report of the Governance Structure Committee.
 11. Given that the business of delimitation of constituencies is not of the election commission but of the election constituency delimitation commission as contained in sub-clause (a) of clause (2) of page 17 of the report, and the functions as contained in sub-clauses (b) through (e) are to

be regulated by law, thus clause (2) should be deleted and the order of clauses should be arranged accordingly.

12. Clause (4) of the provisions on the functions, duties and powers of the human rights commission as contained in page 23 of the report is not required. So, it should be removed.
13. Directive be given to the Constitutional Committee to insert provision that the provincial structure of the commissions to be set after the final settlement by the Constitutional Committee of the other commissions as provided in the report of the Committee shall be as provided in law.
14. Directive be given to the Constitutional Committee to discuss and decide the matter whether the national finance commission as contained in article 37 of heading number 25 of the Natural Resources, Economic Powers and Revenue Allocation Committee should be included in the constitution as a constitutional body or it should be regulated by law.
15. Since the draft in the report itself addresses the other matters listed as those receiving dissenting opinion and failing consensus on them, they should be dealt with according the preliminary draft of the Committee.

Suggestions and directives to be given in relation to the reports of the other 9 Committees will be submitted later.