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Attendance and Process in Constituent Assembly II

Martin Chautari

INTRODUCTION

Progress in the constitution-writing process since the second Constituent Assembly (hereafter CA-II) elections in November 2013 has been slow.¹ There have been two main challenges to progress in constitution-writing. Firstly, as in the aftermath of the first CA (hereafter CA-I) elections, the major political parties have prioritized power distribution and the consolidation of power. The new government was formed four months following the elections² and inter-party differences continue to be compounded by intra-party divisions in all the major political parties. Secondly, again as with the duration of CA-I, the progress on peace building has determined the pace of constitutional change. If in the tenure of CA-I the issue of the integration of the two armies had been

¹ For an analysis of the failure of CA-I see MC (2013). All MC policy reports are available at <https://martinchautari.org.np/mc-book-series/research-briefs>.

² Nepali Congress (NC) head Sushil Koirala's election as Prime Minister (PM) on February 10, 2014 nearly three months after the election has not greatly improved the pace of constitution-writing. Indeed although head of a strong coalition government, with a weakened opposition and stable social context, Koirala's government has been seen as slow, ineffective and lacking in plans and strategies (see Rawal 2014).

central, in the second tenure, it has been the establishment of the Commission on Inquiry of Disappeared Persons and the Truth and Reconciliation Commission³ and more recently, the demand by the Unified Communist Party of Nepal-Maoist (UCPN-M) to establish a High Level Political Committee (HLPC) agreed upon as part of the December 2013 four-point deal. The agreement originally ensured UCPN-M's participation in CA-II and was agreed upon at the time as an instrument to facilitate the constitution drafting process and resolve issues concerning the peace process.⁴

With this background, this Martin Chautari (MC) briefing paper focuses on the progress and challenges of CA-II and lessons learnt, and not learnt, from CA-I with special reference to attendance. It begins with an analysis of the general processes of the CA, followed by a discussion of attendance patterns and a brief conclusion.

CA-II PROGRESS AND LESSONS

PROCESS

Key progress to be noted in the post 2013 transition period includes ownership of the constitution agendas agreed by the previous CA. Thus in contrast to the one main Constitutional Committee, ten thematic committees and three procedural committees of CA-I, there are a total of five committees in CA-II. They are: Committee to Study and Determine Constitutional Records (headed by Bishnu Paudel of the Communist Party of Nepal-Unified Marxist Leninist [CPN-UML]); Statute Drafting Committee (headed by Krishna Prasad Sitaula of the Nepali Congress [NC]); Committee on Constitutional-Political Dialogue and Consensus Building (headed by Baburam Bhattarai of the UCPN-M); the Committee on

³ The President signed the bill into an Act on May 11, 2014 (see Rai 2014: 1).

⁴ While stated to not over-rule the CA, HLPC's actual function vis-à-vis the Baburam Bhattarai-led Committee on Constitutional-Political Dialogue and Consensus Building remains unclear as does its composition (Giri 2014: 1). The unconstitutional nature of such a body and its possible undermining of democracy and rule of law has been highlighted (Nagarik 2014: 6).

Capacity Enhancement of Lawmakers and Resource Mobilization (headed by Laxmi Chaudhary of the Madhesi Janadhikar Forum-Nepal [MJF-N]) and Committee on Citizen Relations and Public Opinion Collection (headed by Pramila Rana of the Communist Party of Nepal-Unified).⁵ The Committee to Study and Determine Constitutional Records was tasked with studying the documents of CA-I. It formed six sub-committees to study two of the reports each of CA-I, namely, reports of the eleven committees and one by the dispute resolution sub-committee. After the submission of the sub-committee reports to the main committee, a comprehensive report on agreed and disputed issues from the previous CA was to be produced. The former was sent to the Statute Drafting Committee and the other to the Committee on Constitutional-Political Dialogue and Consensus Building. The latter has an extended deadline of September 30, 2014 by which to settle the remaining contentious issues of the constitution-writing process (The Kathmandu Post 2014a: 1).

With the end goal of producing a constitution by January 22, 2015, the CA Secretariat had proposed a first draft of the constitution by mid-November 2014. However, the CA body had brought the deadline for first statute draft closer by one month from mid-November to mid-October 2014. Fears expressed by the CA Secretariat officials at the time of the impossibility of meeting the new endorsed deadlines (The Kathmandu Post 2014b: 1) have since come true. While the heads of the five committees were nominated on time, the deadlines for the preparation of committee work plans and nominations of experts (by April 28, 2014), and the forging of consensus on disputed issues (first week of September 2014) were not met. This pushed back the proposed deadlines for the vote on

⁵ The reduction in the number of committees has resulted in what the media has tagged “jumbo” committees, with people such as the former head of the CA-I’s Constitutional Committee Nilamber Acharya expressing concern at the ability of these committees to make quick decisions since they can be bogged down in debates and processes (see Panday 2014: 1).

contentious issues (September 15, 2014) and the preparation of the first draft of the constitution (second week of October 2014), with possible consequences for the January 2015 promulgation date.

Important to note is that according to the new CA Rules and Regulations (2070 v.s.), the Committee on Citizen Relations and Public Opinion Collection will, among other things, undertake citizen outreach and public hearings on the draft in every district. The CA schedule had allocated a month for the outreach, a time frame critiqued by CA members as being insufficient.⁶ The head of the Committee Pramila Rana had noted in mid-May 2014 that the outreach dates fall around the Dashain/Tihar time, making their work difficult although planning on utilizing media, undertaking workshops, public hearings, etc. has begun by a fifteen-member sub-committee.⁷ While deadlines have not been met, almost four months later, Rana revealed that no decision has been taken on adding time to the Committee's work, only that their work has been postponed. As before, plans remain to make teams of thirty CA members to cover the 240 election constituencies in the seventy-five districts, with no strategy to reach the village level.⁸ Lessons from CA-I—including the fact that the missing of deadlines in CA-I resulted in the continuous decreasing of time allocated for citizen outreach and the need for planning for meaningful participation and consultation with structured feedback mechanisms into the constitution-writing process⁹—appear not to have been learnt.

LESSONS LEARNT FOR ELITE CONTROL

As in CA-I, party and party leader hierarchy remain intact within CA-II. Newspaper reports have noted the manner in which the “big three” parties—NC, CPN-UML and UCPN-M—“divided the leadership of ‘three vital committees’ among themselves, while

⁶ MC interviews; September 10 and 11, 2014.

⁷ MC interview; May 13, 2014.

⁸ MC interview; September 10, 2014.

⁹ On the opinion collection exercise of CA-I, see MC (2009: 6–8).

allocating the chairs of the two remaining committees to the Madhes-centric and fringe parties” (Bhattarai 2014a: 1) Questions regarding the making of the “important” and “less important” committees were raised in the CA by CA member Gagan Thapa, including if the Committee on Constitutional-Political Dialogue and Consensus Building was made for all the big leaders and those regarded unimportant in the party relegated to the Committee on Capacity Enhancement of Lawmakers and Resource Mobilization (Panday 2014: 8). Reports also noted the discontent of lawmakers on the power-sharing deals reached by a few leaders—NC lawmaker Ram Hari Khatiwada stated, “We are not in the position to pick the chairperson of our committee ourselves. We are not even aware of the discussion among the parties regarding sharing the committee chairs” (Dahal 2014: 4).

Further, while in contrast to CA-I there are no explicit rules on the division of speaking times in this CA,¹⁰ the CA Business Advisory Committee does determine the amount of time allocated to parties and party members, roughly according to party strength. According to interviews with the CA-II members, the larger parties are allocated most of time to speak while smaller parties usually get three to five minutes, invariably pushed to the back of the list regardless of when they sign up.¹¹ Thus while not explicit as in CA-I, discriminatory processes are still being practiced.

Other small changes made to the new CA Rules and Regulations are telling. For example, the new rules have increased the number of continuous days (from four to five) in which a CA member can be absent in committee meetings before becoming liable to expulsion by the Committee chair. While such punitive actions were not taken in the past and are unlikely today, the change serves as an enabler for absenteeism in CA-II. In the backdrop of the public furor over low attendance rates of especially leaders in CA-I, instead of enforcing

¹⁰ For details on the structuring of discussion time in CA-I see (MC 2010).

¹¹ MC interview with CA member; September 11, 2014.

standards of attendance, CA-II has sought to compromise on the rules.

It is also important to note a deletion in the new CA Rules and Regulations. In the CA-I Rules and Regulations 2065 v.s. (2008), the following was specified for *all* the committees of the CA: “While nominating committee members, there shall be proportional inclusion on the basis of the presence of the party structure of the Constituent Assembly as well as on the presence of all minorities, including women, indigenous nationalities/*Janajatis*, Madhesis, Dalits, people from backward regions and Muslims.” In the new CA Rules and Regulations, this clause is only applied to the Committee on Constitutional-Political Dialogue and Consensus Building. Thus there is no institutional mechanism within the CA to ensure the proper representation of the historically excluded. In CA-I, mainly informal but strong cross-party caucuses, especially the *Janajatis*, had challenged the NC and CPN-UML political leadership on party positions on issues such as citizenship for women and ethnicity-based federalism. These two main parties were against the formation of such caucuses in CA-II on grounds that “they will complicate the constitution-drafting process” (Bhattarai 2014b: 1). While unwritten, the “ban” on caucuses in this CA is clear with the Committee on Capacity Enhancement of Lawmakers and Resource Mobilization conceptualized by party elites as a place for the marginalized to voice their concerns.

Lessons learnt by the political elite from CA-I thus appear to be the importance of limiting inclusion, securing the privilege of the main political parties, enabling absenteeism, controlling democracy, and protecting political hierarchy in what should be the site of equal democratic deliberations for a new constitution.

ATTENDANCE IN CA-II

As with other past MC reports on the CA, this report focuses on the attendance records of CA members in their constitution drafting role as a means to highlight issues of accountability and transparency.

The report covers the dates from the first sitting of CA-II on January 22, 2014 until June 30, 2014. During this period there were a total of fifty-two meetings, numbering about 123 hours of the meeting of the full CA.

The report analyzes attendance trends by political parties, political leaders and according to social groups. As stated in past policy briefs, the attendance records of the CA are necessarily limited in that signing in does not reflect actual attendance in session or substantive contributions made. One CA member voiced concerns raised in the media, “There are many that sign in, stay for a while and then leave.”¹²

Analyses according to identity categories were, as in the past, difficult. For example, in the data given by the CA Secretariat, Ramani Ram had been listed as hill Dalit even though she is a Madhesi Dalit while Dhana Pahari had been put in the *Janajati* category although she is a Dalit. In clarifying social backgrounds, approximately 250 people were personally called for clarification. Lastly, the attendance records of four suspended CA members and the four elected in the June 2014 by-elections for the four seats vacated by those members who had won from two constituencies have not been included.¹³

In CA-II, CA members have an average attendance of 76 percent. This is more than the 62 percent recorded average for the full four years of CA-I (for more details see MC 2013). However, the attendance rates still indicate that a little under a quarter of people elected to the CA body by citizens to write a new constitution for the country have been absent. There have been continuing signs of the unwillingness of the political party members to take seriously the people’s charge of writing the constitution; newspaper reports cited the adjourning of meetings due to a lack of quorum (Bhattarai

¹² MC interview; September 11, 2014.

¹³ The four suspended include Ashok Kumar Mandal and Shambhu Pasvan from the UCPN-M, Sanjay Kumar Sah from the Sadbhawana Party and Kanta Bhattarai of Rashtriya Prajatantra Party-Nepal (RPP-N).

2014c: 1), and leaders arriving late and leaving early (Kantipur 2014: 2).

Disaggregating by political party reveals that the largest and second largest party in the CA, the NC and the CPN-UML, come close to the average attendance statistics. The third largest party in the CA, the UCPN-M, has higher rates of attendance than the above two parties, numbering at 82 percent, while the fourth largest party in the CA, the Rashtriya Prajatantra Party-Nepal comes below the average at 72 percent. At the top of the attendance list at 96 percent was the Samajvadi Janata Party followed by the Khambuwan Rashtriya Morcha Nepal (KRM-N) with 92 percent—both parties have one CA member each. The least attendance rate was recorded by the Madhes Samata Party Nepal (also with one CA member)¹⁴ at 33 percent followed by Madhesi Janadhikar Forum-Ganatantrik (MJF-G). The attendance rates of all the political parties are given in Figure 1.

Analyzing attendance records at the individual level and disaggregating by top, influential and well-known political figures reveals interesting dynamics. At the most general level, there were fifteen people, including Chair of the CA Subash Nembang, who had 100 percent attendance records. The second, third and fourth highest attendance rates of 98, 96 and 94 percent also had large numbers—sixteen, eighteen and twenty-eight CA members respectively. This is in contrast to the statistics on the first two years and cumulative four years of CA-I in which single individuals were recorded for the top attendance records. At the bottom of the current attendance charts are Pradeep Giri (NC) with just under four percent and Ram Sharan Mahat (NC) and Khadga Prasad Oli at 12 and 13 percent respectively. For a list of the bottom ten CA attendees, see Table 1.

¹⁴ The CA member Meghraj Nepali is said to be ill and undergoing twice weekly kidney dialysis.

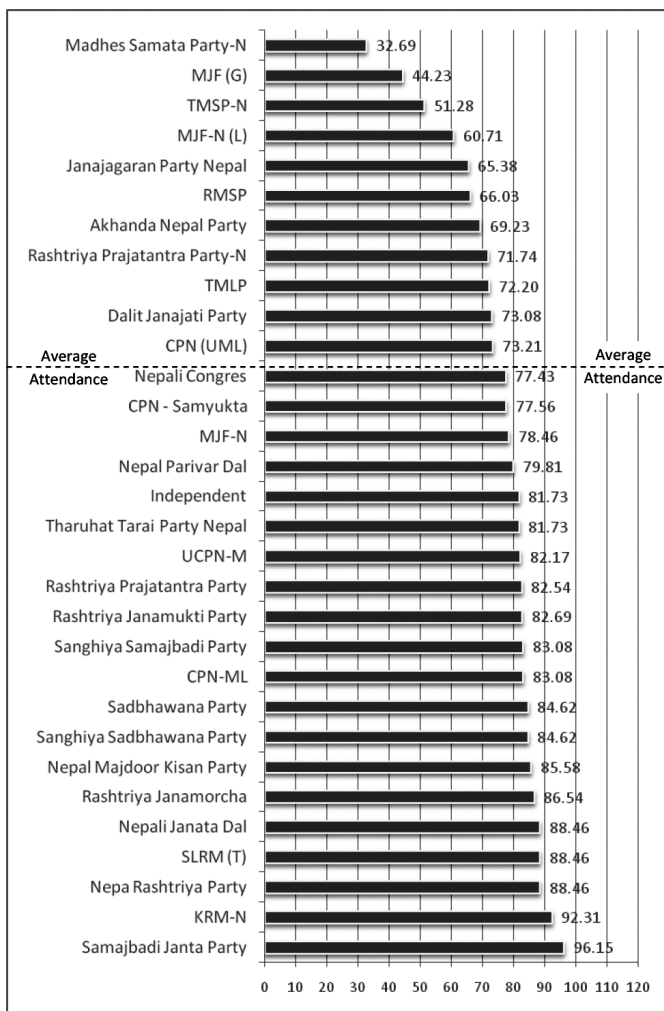
Figure 1: Average Attendance of Political Parties (in %)

Table 1: Bottom Ten Attendees

S.N.	Name and Party	Attendance (in%)
1	Pradeep Giri (NC)	3.85
2	Ram Sharan Mahat (NC)	11.54
3	Khadga Prasad Oli (CPN-UML), Rajya Laxmi Golchha (CPN-UML)	13.46
4	Pawan Kumar Sharada (MFJ-L), Narayan Prakash Saud (NC)	25.00
5	Sayendra Bantawa RPP-N	30.77
6	Megh Raj Nepali Nishad (Madhes Samata Party Nepal), Tek Bahadur Gurung (NC), Lila Koirala (NC), Karna Bahadur Thapa (CPN-UML), Bamdev Gautam (CPN-UML)	32.69
7	Sushil Koirala (NC)	34.62
8	Asha Chaturvedi (MJF-L), Dev Raj Bhar (CPN-UML)	36.54
9	Gyanu Devi Gaire (CPN-UML)	38.46
10	Ramani Ram (MJF-L), Sher Bahadur Deuba (NC), Kamaleshwar Puri Goswami (TMDP)	40.38

Compared to CA-I, top leaders have been attending CA more regularly. For example, Sher Bahadur Deuba (NC) had consistently been at the bottom of the CA attendance records during the four years of CA-I, recording an overall 2.46 percent, with Pushpa Kamal Dahal (UCPN-M) second in absenteeism for the same period coming in at 6.56 percent. Bijaya Kumar Gachhadhar (MJF-L), Upendra Yadav (MJF-N), and Krishna Bahadur Mahara (UCPN-M) were also in the top ten absentees for the four-year period of CA-I, with attendance rates of 17, 18 and 19 percent, respectively (see MC 2013: 4). In CA-II, both Deuba and Dahal have attendance rates in the 40 plus percentile while the latter three record in the 70 plus percentile for attendance. Chairman of the CPN-UML Khadga Prasad Oli has an attendance rate of 13 percent, the third lowest overall. For a larger list of the rate of attendance of influential and well-known political figures, see Table 2.

Table 2: Attendance Rate of Influential and Well-known Political Figures

S.N.	Name and Party	Attendance (in %)
1	Amrit Kumar Bohara (CPN-UML), Kamala Dong (UCPN-M), Jeevan Bahadur Shahi (NC)	100
2	Chitra Bahadur KC (Rashtriya Janamorcha), Laxman Lal Karna (Sadbhawana Party)	94.23
3	Jhalanath Khanal (CPN-UML), Ashok Kumar Rai (Sanghiya Samajbadi Party), Milan Kumari Rajbanshi (Nepal Parivar Dal)	88.46
4	Rekha Sharma (UCPN-M)	86.54
5	Gopal Dahit (Tharuhat Tarai Party Nepal)	84.62
6	Sarvendra Nath Shukla (TMDP)	82.69
7	Surya Bahadur Thapa (RPP)	80.67
8	Baburam Bhattari (UCPN-M), Bijaya Kumar Gachhadar (MJF-L), Rabindra Adhikari (CPN-UML)	78.85
9	Upendra Yadav (MJF-N), Krishna Bahadur Mahara (UCPN-M)	73.08
10	Ram Chandra Paudel (NC), Narayanman Bijukchhe (NWPP), Gagan Kumar Thapa (NC)	71.15
11	Gokarna Raj Bishta (CPN-UML)	69.23
12	Madhav Kumar Nepal (CPN-UML)	65.38
13	Bidhya Devi Bhandari (CPN-UML), Kamal Thapa (RPP-N), Sujata Koirala (NC)	61.54
14	Bishwendra Paswan (Dalit Janajati Party)	57.69
15	Pushpa Kamal Dahal (UCPN-M)	42.31

However, a closer look at the attendance rate of the seventy-member Committee on Constitutional-Political Dialogue and Consensus Building of which all the main political leaders are members, there are slightly different statistics. For example, Deuba

and Dahal have an attendance rate in this committee of 51 and 49 percent respectively, while Gachhadar has a higher rate of attendance of 90 percent. For attendance figures for select individuals in this Committee see Table 3.

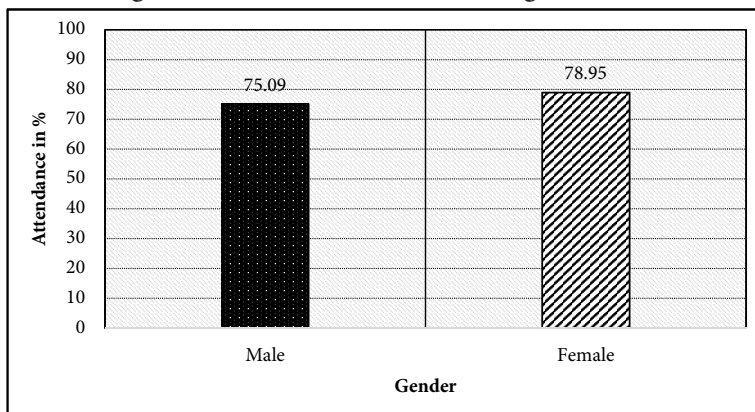
It is clear that political leaders who have been given the responsibility to write a constitution by the electorate are still not attending the CA in any meaningful sense. According to an ex-CA member and former Minister, CA members' attendance "is not good but top leaders were not present yesterday and are not present in today's CA."¹⁵ The overall low rates of attendance by political leaders in CA-II have been seen by other CA-II members as an indication of their lack of seriousness towards the constitution-writing process.¹⁶

Table 3: Attendance Rate (in 39 meetings) of Influential Figures in the Committee on Constitutional-Political Dialogue and Consensus Building

S.N.	Name and Party	Attendance (in %)
1	Prem Bahadur Singh (Samajbadi Janata Party), Ram Chandra Paudel (NC)	100
2	Chitra Bahadur KC (Rashtriya Janamorcha), Gopal Dahit (Tharuhat Tarai Party Nepal)	95
3	Laxman Lal Karna (Sadbhawana Party)	92
4	Surya Bahadur Thapa (RPP), Chandra Prakash Mainali (CPN-ML), Bijaya Kumar Gachhadar (MJF-L)	90
5	Sarvendra Nath Shukla (TMDP), Ashok Kumar Rai (Sanghiya Samajbadi Party)	87
6	Jhalanath Khanal (CPN-UML)	85
7	Narayanman Bijukchhe (NWPP), Sujata Koirala (NC)	59
8	Sher Bahadur Deuba (NC), Kamal Thapa (RPP-N)	51
9	Pushpa Kamal Dahal (UCPN- M), Bidya Devi Bhandari (CPN-UML)	49

¹⁵ MC interview; September 12, 2014.

¹⁶ MC interview; September 10, 2014.

Figure 2: Attendance Rate According to Gender

In CA-II, of a total of 567 members,¹⁷ 171 (30%) are women and 396 (70%) are men. The attendance records reveal that as with CA-I, women continue to have higher attendance rates—79 percent compared to 75 for men (Figure 2). Both these figures reveal an increase in attendance relative to the first four years—women recorded 65 percent while men had 58 percent in the 2008–2012 period, and a closing of the gap in difference in attendance between the two sexes.

In terms of the social composition of CA-II, 233 (41%) are Brahman-Chettri-Thakuri (or “Others”), 181 (32%) are *Janajatis*, eighty-six (15%) are Madhesis, twenty-nine (5%) are Hill Dalits, thirteen (2%) are Madhesi Dalits, nineteen (3%) are Muslims and six (1%) are Marwaris (Figure 3). A comparison of the attendance rates disaggregated by social groups reveals trends similar to CA-I (Figure 4). More specifically, Hill Dalits, as in CA-I, continue to have

¹⁷ As well as the eight members mentioned before (four suspended and four from the by-elections), this number does not include the seventeen members nominated on August 29, 2014 out of the total twenty-six seats of CA-II stated officially to be allocated for “distinguished personalities and underrepresented communities.”

the highest rates of attendance of all social groups (79.64%), with the Marwaris at the other end (53.53 %).¹⁸

Figure 3: Composition of CA in Terms of Caste/Ethnicity

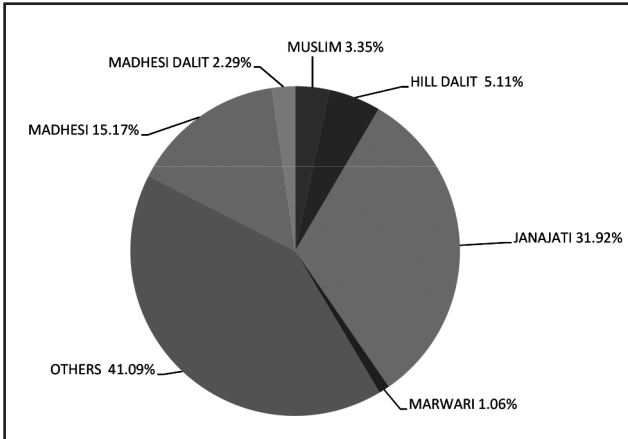
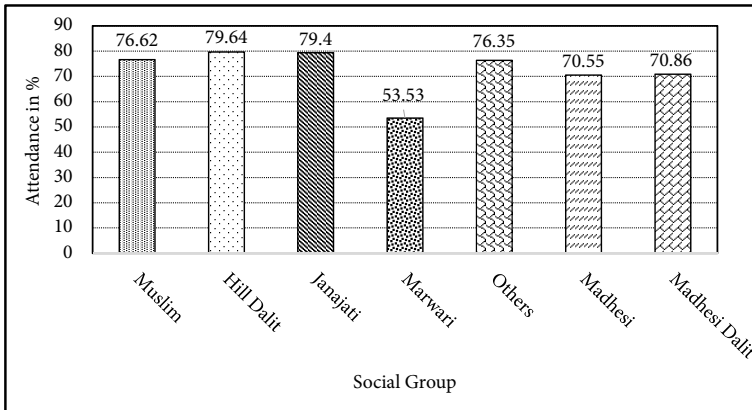


Figure 4: Attendance Rate of Different Social Groups



¹⁸ According to a CA member, differences in attendance rates for the excluded groups in CA-II may stem from the fact that they “need justice.” MC interview; September 11, 2014. For reasons cited for the difference in attendance rates of members in CA-I see MC (2010: 11).

CONCLUSION

As with CA-I, political elite commitment—as seen by attendance records—to the writing of the constitution is suspect. Moreover, the structuring of CA to privilege the main political parties and the maintenance of political hierarchy renders obsolete the idea of the CA as an arena in which political equals take part in democratic deliberations in the writing of the new constitution. The consequences of the attempts to control political opinions will be apparent once a tangible form of a draft constitution is available and when actual debates on issues begin to take place. Further, the lack of attention to ensuring wide-spread and meaningful public debates and participation given past experience with the compression of deadlines is short-sighted. The right of citizens to have a say in the designing of the new federal Nepal should not be neglected for the sake of meeting deadlines. As stated before, there will be large political risks in the forgoing of meaningful public opinion collection in the completion of a popular, democratic constitution.

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