

## **Committee for Determining the Structure of the Legislative Body: Deadlock over Key Issues**

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Published date: 2 June 2010

<http://asd.org.np/en/transition/constitution/legislative/63-key-issues>

The Committee for Determining the Structure of the Legislative Body has proposed two Houses, namely the House of Representatives and the National Assembly in the federal legislature, which is known under the umbrella term parliament. There will be 151 members in the House of Representatives with 76 of them elected in first-past-the-post election and 75 elected through proportional representation system. The Committee has proposed that 76 constituencies should be retained to elect one each from the constituency in the House of Representatives.

While choosing candidacy in proportional representation system, political parties have to ensure representation, on the basis of “provincial closed index” system, of women, Madhesi, Tharus, oppressed caste, Dalits, indigenous community, Muslim, backward class and region, and minority community taking into account the size of their population. The Committee also holds that at least one-third of the total members in the House of Representative should come from women. The Committee report has proposed the term of the House of Representatives to be five years.

In the National Assembly, on the other hand, there will be 51 members. Of them 13 members, at most, will be chosen from minority communities, backward class in terms of religion and language, and nationally reputed experts, such members who have not had representation in the lower House of the parliament. They will be chosen through the principle of proportional representation and single transferable voting system. They will be elected by the Lower House. The draft report states that members will be chosen equally from each province as the National Assembly is mainly the assembly of the province representatives. To be a member of the Assembly, the candidate has to be a Nepali citizen, have attained at least 25 years of age for the House Of Representatives and 35 years of age for the National Assembly, should be eligible according to all laws, and should not be holding any office of profit, any official designation and titles in the government level.

### **Privileges**

The draft report has made the provision of privileges with the objective of letting the members entrusted by the people and representing them in the parliament express their opinions and views freely and fearlessly without crossing the boundaries set by the constitution. They use their conscience in making decisions and casting vote. There will be complete freedom of speech in both Houses of the parliament, and no member will be subject to arrest, detention, and prosecution in the law courts for the opinion expressed in the parliament or for the vote cast in the parliament. The Committee proposed to put this provision in the privileges of the constitution. The report also mentions that every House of the legislature-parliament shall have full power to regulate its business, and it shall have the exclusive right to decide whether or not any proceeding of the legislature-parliament is regular. No question shall be raised in any court in this regard. The report clearly states “no comment shall be made about the good faith of any proceedings of the legislature-parliament, and no person shall make or disseminate anything about comments or suggestions made by any member, deliberately misinterpreting or distorting their meaning”.

Similarly, the Committee recommends that no proceedings shall be initiated in any court against any person for publication made under authority given by the legislature-parliament of any document, report, voting or proceeding. No member of the legislature-parliament shall be arrested during the session of the legislature-parliament. But with regard to criminal allegations, any member on a criminal charge under any law shall be arrested. But if any member is so arrested, the authority making such an arrest shall immediately inform the person chairing the respective House immediately.

Any breach of privilege of any House shall be taken as the contempt of the parliament. The legislature-parliament shall have the exclusive right to decide whether or not any breach of privilege of the legislature has taken place. If anybody condemns the parliament, the person chairing the meeting may, in accordance with a decision by the meeting to that effect, reprimand, warn or impose a sentence of imprisonment not exceeding three months or impose a fine of up to ten thousand rupees on such a person.

### **Province legislature**

The Committee has conceived of a unicameral legislature in the provincial level. The provincial legislature will be called the Province Assembly in which there will be as many as 35 members according to population size; of these 18 will be directly elected while 17 will be from proportional representation system. The Committee proposes that in the Province Assembly a minimum of one-third of the total number of the candidates shall come through direct and proportional representation system. To acquire membership of the Province Assembly the candidate has to be an inhabitant of the respective province, should have attained 25 years of age, should be eligible by law, and should not be holding any office of profit. It has been interpreted that "office of profit" means any position, other than a political position, filled by election or nomination, for which remuneration or economic benefit is paid out of a government fund.

### **Four Different Opinions**

Seventeen CA members from UCPN (M), 3 from MJF and 4 from UML have put their different opinions in the draft report of the Committee. Devi Lal Thapa from the UML has put his own different opinion. The UCPN (M) has objected to the name of the parliament itself. While the NC, UML and other parties are content with "legislature", the UCPN (M) insists that it should be named Federal People's Representative. The Committee proposes bicameral legislature but the UCPN (M) have rooted for a unicameral system. The UCPN (M) holds that there should be 151 to 250 members, of even number, Federal People's Representative incorporating all from the centre. Federal People's Representative (FPR) is constituted by direct first-past-the-post election system, on principle of multimember election system taking into consideration the principle of inclusive representation, on the basis of geography and population, with proportional inclusive representation of women, Dalits, oppressed communities/indigenous groups, Madhesis and Muslims.

Those who have attained 16 years of age have the right to vote. A candidate should have attained 23 years of age to become a member of the assembly and 30 years of age to be the chairperson and vice-chairperson of the FPR. The UCPN (M) also holds the provision, in their different opinion, of constituting a standing committee with representation of one member from each autonomous province and not exceeding 21 members from among the members of the Federal People's Representative to carry out legislative function in absence of FPR meeting. The UCPN (M) proposed the members of province member to be minimum 25 and not exceeding 45 taking into consideration population of the province as opposed to the Committee proposal of limiting the members to 35. They also have mentioned the provision of calling the member back. After two years of being elected a member can be called back from his tenure in case he fails to represent his

constituency. In demanding withdrawal of the member, at least 10 % of voters, in case of the party that takes initiative for this action is the same as the members belongs to, and 35% voters in case of the initiative taken by other parties have to submit their demand with signatures.

Madhesi Janadhikar Forum (MJF) opined that for the election of members of parliament constituencies in each province have to be determined according to the size of population. Also only one member can be elected from each constituency. MJF holds that the chairperson of the National Assembly should be the vice-president of the country. It also stands against the imposition of prohibition on discussion in its different opinion. The Committee report has stated that no discussion shall be held in any House of the parliament on a matter that may adversely affect justice delivery, which is under consideration in any court of Nepal, and about anything done by a judge in the course of performing his or her judicial duties.

Yasodha Devi Adhikari, Julikumari Mahato and Shila Katila from CPN (UML) proposed to add the provision of 50% seat allocation to women in the first-past-the-post election for constituting the House of Representatives. Likewise, Devi Lal Thapa (UML) has demanded that the constituting process of House of Representative system should be made more clearly defined. The Committee report has it that “there will be 151 members in the House of Representative of which 76 members are taken from first-past-the-post and 75 from proportional representation. The election to the House of Representatives shall be conducted through adult franchise and secret ballot”. Thapa demanded to add “constituency shall be determined on the basis of proportionality of population and geography in determining each constituency” in the Committee report.

The Committee had its first meeting on December 16, 2008. The meeting that lasted for two hours discussed about the election of the chairperson, jurisdiction and terms of reference of the Committee and its timetable. In a meeting held three days later on December 19, the discussion had centred on the need of reference materials for the Committee. In altogether seven meetings as of January 19, 2009, jurisdiction and schedule of the Committee was discussed. During this period, the Chairperson of the Committee was elected. From January 25 the Committee began to take suggestions from subject experts. From January 25, the Committee discussed with the committee members about the modality of questionnaire to collect public opinion. The next day, the Committee discussed on the need to constitute a subcommittee to study the questionnaires. In the thirteen meetings that followed, questionnaires were discussed and suggestions were studied. Discussions were held on the concept paper too during this period. Discussions on the concept paper began on May 18, 2009. Eleven meetings, thereafter, were centred only on the discussion of the concept paper. And the meeting of August 28, 2009 decided to submit the Committee report to the Constituent Assembly. From the beginning to the end, there were altogether 50 meetings held in which 9 hours 45 minutes were spent in discussion.

## **Conclusion**

In the Committee meetings, the NC and UML proposed a system of bicameral federal legislature. As opposed to this, the UCPN (M) stood for a unicameral legislature. To that end, the party put its different opinion too. The NC and UML agreed to follow a mixed election system for the parliamentary election. The UCPN (M) rooted for multimember constituency and proportional representation. Also, it insisted on constituting one standing committee to carry out necessary functions in the absence of House sessions. The main political parties could not reach a consensus on the issues relating to the name, structure, number and representation of/in the parliament. The UCPN (M) introduced the features of one-party system in the Committee discussions. The UML and NC insisted on the continuity of the past system. The UCPN (M) was more concentrated on establishing its influence over others. They argued that the constituencies have to be determined according to population size. Only after long deliberation and discussions, the Committee could prepare the report regarding the determination of structure of legislative body. But still the main parties stand at loggerheads over crucial issues on the centre and provinces.