

Committee on Natural Resources, Financial Rights and Revenue Sharing: Differences over Compensation

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Though the political parties were clear about the political issues and other subjects, they were not clear on natural resources, financial rights and revenue sharing even after the election to the Constituent Assembly. In the Interim Constitution 2007, the election manifestos of the political parties and other documents did not clearly define the relationship between the provinces and the centre. This is the result of uncertainty the parties themselves were in. However, it is not unnatural that the parties that have different backgrounds hold different views regarding this particular subject.

The differences notwithstanding, Committee on Natural Resources, Financial Rights and Revenue Sharing managed to reach consensus on many issues through discussion. The CA members of United Communist Party of Nepal (UCPN-Maoist) sternly stood in favour of revolutionary land reform while the Nepali Congress (NC) and Communist Party of Nepal (CPN-UML) voiced for “scientific land reform”. After the discussion, the Committee agreed to call it “scientific revolutionary”. The parties had debates as to what to do to confiscate the land of the individual that holds more land than set by the limitation in the process of executing land reform. For the UCPN (M) compensation was not necessary in confiscating such land (more land than set by limitation) while the NC and UML and other parties advocated compensation.

The UML prepared a draft as an attempt to erase the growing dissents among the Committee members. The draft said, “In executing scientific and revolutionary land reform, the state may capture or take the land beyond the land limits according to the law”. The UCPN (M) gave its nod to this proposal but the NC remained adamant. Discussion continued for long but there was no consensus. So the CA members from UML and NC demanded additional time for discussion. But the Committee Chairperson Amrita Thapa Magar insisted that there could be no additional time available, and contentious issues had to be settled. Voting followed as a result.

The UCPN (M) stood in favour of the draft prepared by the UML. Majority of the Committee members passed the statement “In executing scientific and revolutionary land reform, the state may capture or take the land beyond the land limits according to law.” But UML, surprisingly, stood against the proposal it had earlier agreed upon. In the Committee meeting UML CA member Bijaya Paudel said that the earlier draft was only an attempt at consensus and would be final only if all the parties agreed to it. The UML cited that additional time was not granted and there was no consensus among the parties for it to backtrack its decision.

The Nepali Congress and Madhes parties bitterly opposed the working style of the Committee Chairperson. In the dissent presented by the UML and the Nepali Congress it has been stated about Chairperson Thapa “we seriously object to the way the respected chairperson presented the issues for decision while the discussions were still continuing, like in earlier meetings, against the wishes and opinions of most of the CA members from the political parties without prior notice. Not all the members of the Committee were notified about the agenda for the decision of the meeting. They were not issued prior notice about the election procedure. So members were deprived of

participating in the decision-making process. Despite repeated attempts on the part of CA members to draw your attention toward this fact, you did not listen. So we express our full disagreement on the decision made without following the working regulation”.

Suggestions for the Preamble

The Committee has suggested ensuring the rights of the indigenous, Janajatis and local people in the preamble of the constitution for utilisation and sustainable growth of natural resources, economic prosperity, balanced development, socialism-oriented mixed economy, and food sovereignty. According to the Committee proposal, every citizen bears the right to earn, sell, use, and transact his property according to the law. The Committee also mentions about the provision of compensation to those people whose property the state might confiscate or receive or establish rights over such properties by any means for public good. In such cases the state pays compensation to the people. The report also mentions that in executing scientific and revolutionary land reform, the state may capture or take the land beyond the land limits according to the law. The state can, according to the report, formulate law and execute land reform plan for public good and social justice.

Sharing of Revenue Sources

According to the Committee proposal, the central government can collect revenue: value added tax (VAT), excise duty, institutional income tax, personal income tax, casino income, service charge, carbon service, royalty from the natural resources, and other income and fines. Revenue should be regulated by the central government because the Committee proposal justifies revenue is related with gross production, import and export and taxation of the country, and it can even affect the competitive capacity of the country. So it is necessary to monitor international trade through trade tax.

As for the right of the central government over VAT, tax is imposed at different stages of goods from production to sale in retail market. The VAT of the first stage is cut in the latter stage, and he who consumes the goods at the end pays VAT. When VAT is put under the jurisdiction of the central government, the chain of tax exemption will not be broken and the tax limit cannot be adjusted. Provinces can collect excise duty, entertainment tax, transportation tax, registration charge for home and land, service charge, royalty, fines and other income. Local bodies can collect entertainment tax, property tax, land revenue, business tax, registration charge for home and land, service charge, royalty, fines and other income. Both the provinces and the local bodies can extract entertainment tax and registration charge for home and land but excise duty is specific to the centre and provinces. Service charge, royalty from natural resources, fines and other income go to local bodies, provinces and the central authority.

Sharing of Financial Rights

The centre exercises the rights to control and monitor national defence and the army, central police, international trade, telecommunication, money and monetary policy, banking and insurance, immigration, foreign affairs and international treaties and agreements, financial policy, national planning policy, statistics, international border, security, detective service, research trusts, civil aviation and airport, railway service, etc. Likewise, the centre holds power over the postal service, quality of food and people's health, population and family planning, measurement, quality control, labour relations and protection, and economic rights of the trade unions. The centre also reserves the rights over science and technology, federal civil service, national highways, large and inter-province irrigation, large drinking water projects, higher education, university, large- and medium-scale hydropower projects, control of communicable diseases, electricity development, drinking

water and minerals, land consumption policy, marshy land, electricity distribution, industries, monitoring foreign investment, and economic rights over forests.

The Committee has proposed to give authority to the provinces over provincial police, provincial planning policy, research trusts, airports, provincial railways, family planning, provincial civil service, medium-scale drinking-water project, university, technical and vocational education, curriculum, syllabus and textbooks, and examination; monitoring the quality of health services, traditional treatment measures, medium-scale hydropower, agriculture, electricity distribution, alternative energy, sports, industrial management, water resource area, mines and minerals, wildlife reservation, marshy land, etc.

The local body is responsible for formulating local planning policy and is also responsible to look after family planning, local service, local urban road, small drinking-water project, management of garbage and dumping sites, small irrigation project, education up to 10 + 2, non-formal education, the hospital (now district level), micro-hydropower, electricity distribution, alternative energy, minimising calamity, small and cottage industries management, registration of birth, marriage, and death, migration, environment and other economic rights.

The Committee has also proposed the condition of just distribution of revenue among the centre, provinces and local bodies. An independent National Financial Commission will be formed to recommend the result of smooth handover of economic gains of the local bodies and provinces to the centre. And also a National Finance Commission will be formed to facilitate easy sharing of revenue.

Different Opinions of One's Own

Greatly dissatisfied by the passing of land reform proposal, the NC, UML, Madhesi Janadhikar Forum (MJF) and Tarai Madhes Loktantrik Party (TMLP) and other parties expressed their dissents. The different opinion presented by them states "In executing scientific and revolutionary land reform, or in receiving, capturing or confiscating anyone's land or property or by owning the said property by the state, compensation will be provided according to law. The criteria and basis of such compensation will be as determined by law". Those CA members who voiced different views regarding land reform argued that seizing land without offering compensation is objectionable, both on practical and notional grounds. Objecting to the provision of taking away land without compensation, they said "it is against the spirit of all past agreements, the Interim Constitution, and universal principle of human rights".

Rajendra Khetan, CA member from Nepal Communist Party (ML), argued strongly in favour of restitution. He said, "In executing scientific and revolutionary land reform, or in receiving, capturing or confiscating anyone's land or property or by owning the said property by the state, compensation will be provided according to law. The criteria and basis of such compensation will be as determined by law". Other CA members like Binod Kumar Chaudhary, Diwakar Golchha, and Surya Bahadur KC seconded Khetan. Industrialist duo Binod Chaudhary and Diwakar Golchha belong to UML and NC respectively while Surya Bahadur KC is from Rastriya Prajatantra Party (RPP). Nawaraj Koirala of Nepal Workers and Peasants Party was of the opinion "in executing revolutionary land reform, the state may capture or take the land belonging to individuals and organisations for public good." Jitendra Sonar, Hemraj Tated and Ramnaresh Raya suggested writing "local" in the preamble about use of natural resources before indigenous and Janajati people. They also demanded that one member each from provinces should be included in the proposed National Finance Commission. The nomination of such member should be proposed by the provincial government of the respective provinces. Also they voiced for the right of the

provinces to individual income tax and organisational income tax. Binod Chaudhary said that property tax should be limited to land and house.

Despite the fact that the vice-chairperson of the Committee belonged to the UCPN (M), its CA members proposed to add some issues in the report. Their proposal says “we express our different opinion to use the clause ‘Constituent Assembly formed from the recurring people’s movements after 1950; people’s war and Madhes movement’ in place of ‘Constituent Assembly Election held according to the people’s wishes after second People’s Movement’ in the ninth line of the first paragraph in the introduction and background sections of the preliminary draft report prepared by our committee”.

Criticism at Last

In the initial meetings, it was hard to make clear the jurisdiction and functions of the Committee. As the specific issues were discussed with the experts, the discussion went well and managed. The Committee had appointed Dr. Rabi Sharma Aryal, Santosh Mani Nepal, Kalanidhi Paudel, Yamnath Sharma, and Dinmani Pokharel as experts. The discussion process sped up as issues were understood by the experts. After the timetable and work description got finalised, Bhimarjun Acharya presented a paper on the problems and possible solution with regard to natural resources and financial rights in the federal structure. Then Rabi Sharma Aryal presented a paper on the present situation of natural resources, financial rights and revenue sharing and things to be considered in making the constitution.

Likewise, Dr. Shankar Sharma presented a paper on distribution of revenue and expenses; Jagat Banset presented on land and natural resources; Dr. Sumitra Manandhar on natural resources, and Pushpa Kandel on financial federalism. The Committee also had taken advice from government mechanisms. The Ministry of Forest and Land Preservation offered suggestion on the present status of forest, financial rights, revenue sharing, and issues to be incorporated in the constitution to be made and the rationale of this. The Ministry of Science and Technology offered its view on the present situation of environment, science and technology, financial rights, revenue sharing, provision to be instituted in the new constitution, and its rationale.

The Ministries of Land Reform and Management, Industry, Physical Planning and Construction, Tourism and Civil Aviation, Agriculture and Cooperative, Local Development, and the National Planning Commission had sent their standing and perspectives on matters relating to financial rights and revenue sharing. The discussion ran in the Committee in a smooth and detailed manner. CA members Hari Roka and Bijaya Paudel were seen actively working in taking the feedback of the parties and settling the differences that came along. The Committee chairperson Amrita Thapa had allowed extensive discussions on the issues raised by the CA members and put enough efforts to forge a consensus. She did not give the same concentration when it came to gaining consensus on land reform.

Though NC and UML CA members demanded additional time, she did not allow it to them. Her insistence to go for voting, earned her some criticism by the same NC and UML members who had been appreciative of her role earlier. She called for voting in the Committee when the majority of the members present were from the UCPN (M). Thapa, apparently, feared majority of NC, UML and Madhes parties against the UCPN (M) in extending time for consensus and therefore called for voting by disregarding UML and NC appeal. She, it seems, wanted the proposal of the UCPN (M) to be passed. The Committee had sat 92 meetings in all and 337 hours were spent in discussion.

Conclusion

The Committee has forwarded a clear proposal on natural resources, financial rights and revenue sharing. The proposal has identified the jurisdiction, rights, limitations and boundaries of the centre, provinces and local bodies. It seems that if the Committee proposal is incorporated in the new constitution, it will significantly contribute to making a successful federal democratic republic. Also the Committee has tried to explain the responsibilities and interrelations between the centre, provinces and local bodies. So no unit may have to remain in confusion about the roles each has to play and responsibilities each has to shoulder. There is less likelihood of dispute between the centre and provinces because the role of each has been clearly defined. The success of the Committee proposals, made on the advice and recommendation from experts, people, government mechanisms, depends on how they are arranged and presented in the new constitution. The relationship between the centre, provinces, and local bodies also depend on this.