

High-level Taskforce: Fails to find Consensus Major Issues

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The High-level Taskforce was unable to find consensus only in minor issues but not in issues that have stalled the constitution-drafting process. The UCPN (M) chairperson Pushpa Kamal Dahal-led Taskforce held 27 meetings and was able to garner consensus in some minor issues but it disappeared from the scene without fulfilling its responsibility despite two extensions.

A seven-member High-level Taskforce of senior leaders from various political parties was formed on October 11, 2010 to resolve disputes seen in constitution-drafting. UCPN (M) chairperson Pushpa Kamal Dahal was chosen as the coordinator of the Taskforce in a meeting attended by 27 political parties. Its members were Congress parliamentary leader Ram Chandra Paudel, UML chairperson Jhala Nath Khanal, Forum chairperson Upendra Yadav, Nepal Majdoor-Kisan Party chairperson Narayan Man Bijukchhe, Prajatantrik Samajbadi Dal president Prem Bahadur Singh, and Sanghiya Loktantrik Rastriya Manch leader Rukmini Chaudhari.

The following were selected to assist the Taskforce: Ramesh Lekhak from Congress, Bharat Mohan Adhikari from UML, Deb Prasad Gurung from UCPN (M), Ratneswor Lal Kayastha from Forum, Sunil Prajapati from Nepal Majdoor-Kisan Party, and Prem Bahadur Singh and Rukmini Chaudhari from other smaller parties. However, there was dispute from the beginning on the formation of the Taskforce and participation from political parties.

Question on Taskforce Formation

As soon as Constituent Assembly chairperson Subash Nemwang had formed the Taskforce, questions were raised on the constitutional legitimacy and formation process. Those raising these questions were not only independent intellectuals and lawyers but also Nilambar Acharya, chairperson of the Constitutional Committee tasked with preparing the draft of the constitution. By raising the question of legitimacy, chairperson Acharya had indicated that the ad-hoc decision of the CA chairperson might invite disputes later on. He made it clear, 'Since this is a political taskforce, the Constituent Assembly is not obliged to accept its decisions. If the taskforce was constituted from within the Constituent Assembly, it would have been constitutional'.

Experts on procedural matters argued then that since the Taskforce was formed without amending the CA calendar of events, it impinges on the authority of the sovereign CA, so the Taskforce is unconstitutional. The CA chairperson had formed this Taskforce without first amending the provision where all the thematic committees had to submit their reports by October 17, 2010. The critics, therefore, argued that the formation of this Taskforce is not only against the CA Regulations but also against the spirit of the Interim Constitution 2007.

Who should have the say: the Committee or the taskforce?

After the Taskforce reached a different consensus from the Judicial System Committee of the Constituent Assembly, question was raised the legitimacy of the thematic committees of the Constituent Assembly. The Judicial System Committee a majority in its report submitted to the Constituent Assembly had proposed that the judiciary would remain under the parliament and the appointment of the Chief Justice and justices would be done by the parliament. However, the Taskforce reached a consensus on a separate independent authority to make the appointment to these posts. After it was concluded that such a mechanism would be headed by the chief executive, the chairperson of the Committee Prabhu Saha Teli and other UCPN (M) members of the Committee raised their objections. After the UCPN (M) Committee members including its chairperson Saha expressed their dissatisfaction to Deb Prasad Gurung on November 2, 2010, at the Taskforce having reversed the Committee report that was passed through a majority, it could be understood that UCPN (M) had decided to not to give continuity to the Taskforce. Yet, it was seen as flexibility on the part of UCPN (M) to reverse the decisions of the Judicial System Committee that was headed by one of its members, Prabhu Saha Teli.

Three days after the Taskforce had reached a consensus on the chief executive heading a similar mechanism similar to the present Judicial Council or the Constitutional Council, on November 3, the then Chief Justice Ram Prasad Shrestha expressed his dissatisfaction at the decision.

On the one hand, there is the preliminary draft prepared by the Committee after lengthy discussions and which has also been endorsed by the Constituent Assembly. On the other hand, there is the report prepared by the Taskforce constituted outside of the Constituent Assembly on consensus found in some minor issues. The report prepared by the Committee has been discussed as draft part of the constitution. It has been through the lengthy constitutional and legal process. Now, should the Constituent Assembly endorse the consensus found by the Taskforce? If it should, what should be the procedure? Amidst these questions, those forming the Taskforce did not extend the mandate of the Taskforce nor did they dissolve it.

Even after discussions of two months and 10 days, the Taskforce could not enter into discussion on the future form of the government and state restructuring. Forum Chairperson and member of the Taskforce Upendra Yadav was perplexed at the tendency of the Taskforce to seek consensus on minor issues without entering into the issues of form of government, electoral system, state restructuring and other contentious issues. He said, "There will be no guarantee that a new constitution will be drafted unless there is consensus on these issues. We seriously object to the 14 states proposed by UCPN (M). After the Taskforce member Rukmini Chaudhari was adamant on a bicameral parliamentary system, the consensus reached a day earlier in her presence fell into dispute. Amidst the disputes, the Taskforce has reached consensus on an independent judiciary, an important part of the constitution-drafting; however, it has discussed and reached a consensus on other minor issues.

Issues of agreement and disagreement

The Taskforce has said that it has resolved 127 disputed issues out of 210 that Report Study and Suggestion Committee had left unresolved in its 8 months of work. The issue of whether to retain the present structure of districts after state restructuring has been left to the Committee on State Restructuring and Distribution of State Power after the Taskforce agreed to conclude it after discussion with the Committee. There has been an agreement not to declare emergency in the states. There has also been an agreement not to present an alternative when registering a vote of no-confidence on the chief ministers of the states. The Taskforce has also reached a consensus on separate local bodies for executive, parliament, and judiciary, and also on the formation of the parliament.

Besides these, there has been agreement on making Nepali the official language, issuing of citizenship to non-resident Nepalis without right to political participation, not banning of registration of political parties without affecting national integrity, adherence to mixed economy among others. However, the Taskforce did not enter the crucial issues of forms of government and state restructuring.

Activities of the Taskforce

1st Meeting: October 13, 2010

Formation of the Taskforce with UCPN (M) chairperson Pushpa Kamal Dahal as coordinator. The members are Dr Ram Sharan Mahat, Ramesh Lekhak, Bharat Mohan Adhikari, Deb Prasad Gurung, Ratneswor Lal Kayastha, Prem Bahadur Singh, Sunil Prajapati, and Rukmini Chaudhari.

2nd meeting: October 14, 2010

Senior leaders discuss form of government, state restructuring, and other basic issues of constitution for the first time.

3rd meeting: October 19, 2010

Agreement on 9 issues out of 11 on the form of government. Agreement to settle the issue of whether to retain the present structure of districts after discussion with the Committee on State Restructuring and Distribution of State Power. Agreement not to declare emergency in the states. No need to present an alternative while bringing a vote of no-confidence against the chief minister of the states. Agreement on separate local bodies for executive, parliament, and judiciary. Agreement to form parliament at the local level.

4th meeting: October 20, 2010

Agreement to have unicameral parliament in the states.

5th meeting: October 21, 2010

No agreement on judiciary. The agreement of the previous day is disputed after member Rukmini Chaudhari insists on bicameral parliament in the states.

6th meeting: October 22, 2010

Coordinator Pushpa Kamal Dahal leaves for 5-day trip to China. Next meeting is uncertain. The deadline of the Taskforce is until October 24.

7th meeting: October 23, 2010

Discussion on the judiciary but disagreement remains.

- **October 24, 2010**

A meeting of 27 political parties extends the deadline of the Taskforce for another 11 days.

8th meeting: October 25, 2010

Discussion on citizenship, property rights, and other issues.

9th meeting: October 28, 2010

Meeting chaired by coordinator Pushpa Kamal Dahal, inclusive.

10th meeting: October 29, 2010

Consensus on appointment of the Chief Justice and judges of the Supreme Court through an independent body.

11th meeting: October 30, 2010

Discussion on the judiciary inconclusive. Congress and UML disagree on the proposal of UCPN (M) that the Constitutional Council should be chaired by the chairperson of the parliament.

12th meeting: October 31, 2010

Agreement on the chief executive to be the head of the body formed to appoint judges. Rejection of UCPN (M) proposal on the judiciary being under the parliament.

13th meeting: November 1, 2010

Agreement on appointment of the Chief of the Army Staff by the head of the state on the recommendation of the Council of Ministers, the centre has to seek consensus of the states while entering into treaties and agreement that affect the authority of the states, permission of the centre should be sought while entering into industrial and financial agreements in the states. Disagreement on UCPN (M) proposal for compulsory military training for every citizen above 18 years of age and mentioning of people's war in the constitution.

14th meeting: November 2, 2010

Agreement to make Nepali with Devanagari script to be the official language.

15th meeting: November 3, 2010

Agreement on a single citizenship to be issued by the central government. This resolves the disagreement among political parties on whether citizenship should be issued by the central government or the state governments.

16th meeting: November 4, 2010

Agreement to provide citizenship to non-residential Nepalis without right to political participation. Agreement on providing citizenship by naturalisation to any foreign female married to a Nepali male upon submission of evidence of having renounced foreign citizenship and to any foreign male married to a Nepali female who has resided continuously in Nepal for 15 years.

17th meeting: November 14, 2010

Agreement not to ban registration of political parties based on political convictions; however, ethnicity- and religion-based parties that might hurt the integrity of the country will not be allowed.

18th meeting: November 16, 2010

Agreement to form land reforms commission; disagreement persists on the modality of the commission.

19th meeting: November 17, 2010

Dispute on land ceiling inclusive.

20th meeting: December 1, 2010

Meeting is uncertain in the absence of coordinator Pushpa Kamal Dahal.

21st meeting: December 2, 2010

Disagreement on whether to include pluralism in the constitution and individual property rights.

22nd meeting: December 4, 2010

Consensus on a mixed form of government with power-sharing between the prime minister and the president; election to the presidency and its authority remains inconclusive.

23rd meeting: December 5, 2010

Agreement to adhere to a mixed economy.

24th meeting: December 7, 2010

Agreement to include the past movements in the preamble of the constitution.

25th meeting: December 8, 2010

No consensus on pluralism, right to self-determination, and people's war; agreement to forward the issue to the Constitutional Committee.

26th meeting: December 9, 2010

Discussion on the national flag and issues to be included in the preamble inclusive.

27th meeting: December 10, 2010

Congress and other parties express disagreement on UCPN (M) proposal to make only sovereignty and republic as amendable provisions of the constitution. They insist that human rights, press freedom, rule of law, periodic elections, republic, sovereignty should be made unamendable provisions of the constitutions.

After the meeting of 27 political parties on December 20 could not extend the deadline of the Taskforce, its existence became doubtful. Constituent Assembly chairperson Subash Nemwang started to coordinate and chair the meetings of the 27 parties thereafter. Meanwhile, after the split of Tarai Madhes Loktantrik Party, the number of political parties represented in the Constituent Assembly has reached 28.