

16-point Agreement Leads to Draft of the Constitution

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After a long attempt, there was 16-point agreement among the four political parties. Despite objections of many Tarai-Madhes-centred parties and RPP (Nepal) to the agreement, the process of constitution-drafting moved ahead in the Constituent Assembly. The Supreme Court ruled that the agreement was against the Interim Constitution and ordered that the constitution should not be drafted according to the agreement. The Constituent Assembly moved ahead with constitution-drafting ignoring the ruling. The Constitution-Drafting Committee prepared a preliminary draft of the constitution by including the notes of dissent as part of its report.

16-point agreement

The leaders of Congress, UML, UCPN (M), and Forum (Loktantrik) held several rounds of discussion on constitution-drafting, but the main point of difference was in federalism. After much discussion, the leaders of Congress, UML, UCPN (M), and Forum (Loktantrik) were positive on keeping six to eight federal states. Then the parties focused on the names and borders of the state. UCPN (M) proposed delineating the borders but giving the responsibility of naming the states to the concerned states, but Congress and UML proposed giving the responsibility of delineating the border to a federal commission.

After an informal agreement was reached among the four parties, UCPN (M) Pushpa Kamal Dahal and Forum (Loktantrik) chairperson Bijaya Gachchedar held discussions with the parties in the UCPN (M)-led alliance. They suggested not agreeing to federalism without delineation in addition to states based on capacity and identity. The four parties held continuous talks to reach an agreement on federalism and other disputed issues. On June 8, leaders of Congress, UML, UCPN (M), and Forum (Loktantrik) signed a 16-point agreement that would address all the disputed issues of the constitution.

In the agreement, it was mentioned that there would be eight states, the name would be decided by the two-thirds majority of the state assemblies, a federate commission would be formed to delineate the states. In addition, it was also stated that the federal parliament would be bicameral while the states would be unicameral, elections to the House Of Representatives would be through mixed election system, executive prime minister would be from the party with majority in the parliament, and a constitutional president would be elected from an electoral college consisting of federal parliament and state assemblies.¹ UCPN (M) had different opinion on parliamentary and judicial system. Despite its difference, UCPN (M) gave its agreement on taking the constitution-drafting

¹ Agreement between four main parties of the Constituent Assembly regarding constitution-drafting on June 8, 2015.

process forward. Similarly, the parties also agreed, among others, to keep the Supreme Court as court of record, Constitutional Court for 10 years, expediting the constitution-drafting process as per the spirits of the agreements on federalism, form of government, and judicial system, and holding local elections as soon as possible.²

Madhesi Janadhikar Forum, a member of UCPN (M)-led alliance, opposed the agreement. ‘...the agreement is against the spirit of the people’s war, people’s movement, historic Madhes people’s movement, and various Adivasi Janajati movements as well as against the agreements and understanding with various agitating parties and decisions of the Interim Constitution and past decisions of the past Constituent Assemblies, against federalism with identity and constitution with federalism and proportional inclusiveness and is status-quoist and regressive,’³ states the press release by Forum (Nepal).

Mahantha Thakur issued a press release on behalf of 28 parties in the 30-party alliance and called the agreement the beginning of regression. It was his accusations that ‘the so-called agreement is the beginning of regression. It has not only transgressed the article 138 of the Interim Constitution but also ruined the reputation of the Constituent Assembly by restricting its jurisdiction’.⁴ He further said, ‘the agreement on federalism without borders and names is a conspiracy to overshadow the identity and rights of the Adivasi Janajati, Madhesi, Dalit, *khas*, women, Muslims, backward class and marginalised people of Nepal and people’s wish to see a federal democratic republic Nepal. This has pushed people of Nepal into another internal conflict’.⁵

Ruling coalition member UML furthered its campaign to rescue the earthquake-affected and reconstruction of physical infrastructure. It said, ‘this agreement has given new hopes to village-settlements. It is believed the agreement will be a point of departure and milestone in the making a new Nepal through Nepali hearts, Nepali resources, and Nepali effort’.⁶ In a meeting of UCPN (M)-led 19-party alliance after the agreement, UCPN (M) claimed the support of 13 parties. Meanwhile, UN Secretary General welcomed the agreement calling it a milestone in development of democracy. The UCPN (M)-led federal executive committee of Adivasi Regional Federation vehemently opposed the agreement. The Federation alleged, ‘the agreement has lifted the mask off the UCPN (M) and its identity movement on the one hand and weakened the issues of ethnic identity and rights by completely ignoring the desire, demands, needs, and struggle of the oppressed castes and communities. While Congress and UML were well-known to be feudal Brahmans against identity, the agreement has put UCPN (M) in the same category’.⁷

² Agreement between four major parties in the Constituent Assembly on June 8, 2015.

³ Press release by Madhesi Janadhikar Forum (Nepal) on June 9, 2015.

⁴ Press release by TMLP chairperson Mahantha Thakur on behalf 28 parties in the 30-party alliance on June 9, 2015.

⁵ Press release by TMLP chairperson Mahantha Thakur on behalf 28 parties in the 30-party alliance on June 9, 2015.

⁶ Press release by UML on June 9, 2015.

⁷ Press release by the federal executive committee of Adivasi Janajati Regional Federation on June 11, 2015.

The meeting of UCPN (M) central committee on June 13 decided to take dialogue and discussion with the 30 parties and others to implement the 16-point agreement and to clarify the party's stance on the 16-point agreement and create a favourable opinion on drafting a progressive constitution based on five states based on identity and four states based on capacity.⁸ TMLP, Janadhikar Forum, Sadbhawana Party, Sanghiya Samajvadi Party, and Tarai-Madhes Sadbhawana Party submitted a memorandum to President Ram Baran Yadav claiming the 16-point agreement to be against the Interim Constitution. The memorandum states, 'According to the provision of the article 36(a3) of the Interim Constitution of Nepal, "The main duty of the President shall be to protect and abide by this Constitution", the constitution should be promulgated through the Constituent Assembly without contradicting the constitutional provisions, process, and by following the Interim Constitution and Constituent Assembly Regulations 2070 BS. Therefore, we request the honourable president cause the constitution-drafting by the Constituent Assembly to be carried out following the preamble, directive principles, values and spirit of the Interim Constitution 2063 BS.⁹ Meanwhile, the full bench of the Supreme Court expressed its disagreement over the recommendations of the Dialogue Committee on the judicial system. The Supreme Court expressed serious disagreement on the provision of a separate parliamentary committee investigating and monitoring the work of the Chief Justice and other justices of the Supreme Court.¹⁰

Supreme Court order and parties' reactions

Immediately after the 16-point agreement, the political parties took the constitution-drafting process forward in the Constituent Assembly. The Supreme Court issued an order to not take the constitution-drafting process forward stating that the agreement is against the Interim Constitution. The interim order of the Supreme Court states, 'It is clear that from the article 82 of the Interim Constitution that the business of the Constituent Assembly shall end on the day of the commencement of the constitution passed by the Constituent Assembly and it will be against the constitutional provision to have the dissolution of the Constituent Assembly without delineation, numbers, names, and structure of the progressive restructuring of the states as per the article 138 of the Interim Constitution. Any attempt to go against the constitutional provisions would invite controversy in the future constitution, with potential for disrupting the peace in the country, and fears for another conflict. Therefore, to prevent any untoward incident in the state this interim order is issued to prevent any activity by the defendant against the provisions of article (1), 82, and 138 of the Interim Constitution.'¹¹

A meeting of Congress, UML, UCPN (M), and Forum (Loktantrik) immediately after the Supreme Court order concluded that the order of the Court had intruded in the jurisdiction of the Constituent Assembly. Challenging the Supreme Court, the parties stated, "This is against the people's sovereign

⁸ Press release by UCPN (M) on June 13, 2015.

⁹ Memorandum submitted to President Ram Baran Yadav urging him to protect the constitution by TMLP, Janadhikar Forum, Sadbhawana Party, Sanghiya Samajvadi Party, and Tarai-Madhes Sadbhawana Party on June 13, 2015.

¹⁰ Acharya, Dilli. Serious objection of the Supreme Court on the decision of the Constituent Assembly. Retrieved July 1, 2015 from <http://www.rajdhani.com.np/article/0286832001434588308>

¹¹ Interim order issued by the Supreme Court on June 19, 2015.

right to draft the constitution and the principle of separation of powers and the special provisions enshrined in the Interim Constitution 2063 BS. The Constituent Assembly is independent regarding constitution-drafting. The fact that the Constituent Assembly is capable and its decision will be final is self-evident.¹² The four parties stood their ground after the order of the Supreme Court, instead they expressed their resolve to take the constitution-drafting process forward. The press release by the four parties states, 'It is the sovereign right of the Constituent Assembly to draft the constitution in its way. No one should and cannot challenge this fact. No questions can be raised on the constitution-drafting process that is set by the Constituent Assembly. We want to assure everyone that the 16-point agreement on constitution-drafting is very important and the constitution-drafting process will continue move forward based on that.'¹³ As the dispute between the Court and the political parties was carrying on, President Ram Baran Yadav met UCPN (M) chairperson Pushpa Kamal Dahal and Constituent Assembly chairperson Subash Chandra Nemwang. President Yadav urged them to take the constitution-drafting process forward by coordinating with executive, judiciary, and the parliament.

Split in the alliances

Leaders of UCPN ((M) and Forum (Loktantrik) had been engaging in talks with Congress and UML. They used to update the UCPN (M)-led parties from time to time on the progress made during these talks. On the morning of June 8, there was an informal agreement among the four parties. In the afternoon, UCPN (M) chairperson Dahal and Forum chairperson Bijaya Kumar Gachchedar informed about this in the meeting of UCPN (M)-led alliance. However, there was no agreement on the issue of federalism. Tarai-Madhes-centred and smaller parties stressed on promulgating the constitution with federalism. After discussing in the alliance meeting, UCPN (M) chairperson Dahal and Forum chairperson Gachchedar attended the meeting with Congress and UML. After intense discussion and talks, there was agreement among the four parties. But Janadhikar Forum (Nepal) rejected the agreement in a press release: the agreement focused on getting the seat of government and division of resources cannot guarantee the rights of Madhesi, Adivasi Janajati, Tharu, Muslims, Dalit, women, backward class, minorities, and labour class people, who have been discriminated for centuries.¹⁴ Parties in the Madhesi alliance opposed the agreement. However, UCPN (M) chairperson Dahal called a meeting of the alliance. UCPN (M) claimed that 13 parties out of the UCPN (M)-led 19-party alliance were in favour of the agreement. The meeting decided to participate in the Constituent Assembly meetings despite opposition from smaller parties.

Meanwhile there was a meeting of Samyukta Loktantrik Morcha. The Morcha announced formal termination of relations with Forum (Loktantrik) stating it signed the 16-point agreement going against the aims and views of the Morcha.¹⁵ TMLP chairperson Mahantha Thakur issued a separate press release on behalf of the 28 parties. The press release accuses UCPN (M) and Forum (Loktantrik)

¹² Joint statement by Congress, UML, UCPN (M), and Forum (Loktantrik) on June 19, 2015.

¹³ Joint statement by Congress, UML, UCPN (M), and Forum (Loktantrik) on June 19, 2015.

¹⁴ Press release by Forum (Nepal) on June 9.

¹⁵ Basnet, Basant. Gachchedar ejected from Madhesi Morcha. Retrieved July 1, 2015 from <http://np.ekantipur.com/np/2072/2/27/full-story/410633.html>.

of giving itself to the government by leaving the issues of the people.¹⁶ Then the Morcha got split. Sadbhawana Party threatened to leave the Constituent Assembly in a press conference. The Samyukta Loktantrik Morcha of UCPN (M)-led 30-party alliance, 19-party alliance, and Tarai-Madhes-centred political parties got split. UCPN (M), Forum (Loktantrik), Rastriya Madhes Samajvadi Party, Sanghiya Loktantrik Rastriya Manch, Samajvadi Janata Party, Sanghiya Sadbhawana Party, Forum (Gantantrik), and other parties were in one group while TMLP, Forum (Nepal), Sadbhawana Party, Tarai-Madhes Sadbhawana Party, Sanghiya Samajvadi Party, and others were in another group. Madhesi Janadhikar Forum (Nepal) and Sanghiya Samajvadi Party united to form Sanghiya Samajvadi Forum (Nepal).

Draft of the constitution ready

After the 16-point agreement among the political parties, the Constituent Assembly had its meeting. It was decided in the meeting to send the disputed issues of the constitution to the Constitutional-Political Dialogue and Consensus Committee. Five small political parties boycotted the Constituent Assembly meeting. Then there was a meeting of the Dialogue Committee where small parties objected to the 16-point agreement. RPP (Nepal) submitted a 9-point note of dissent. RPP (Nepal) demanded a Hindu nation with co-existence of other religions with full religious freedom, the royal institution as the symbol of national and religious-cultural unity, the royal institution as the constitutional head among other things.¹⁷

After the discussion in the Dialogue Committee, UCPN (M) also submitted its note of dissent, which included a directly elected executive president who would also be the head of state; legal provision to ensure representation under the proportional system to the election to the House of Representatives to Madhesi, Dalit, Adivasi Janajati, khas Arya, women, Muslims, backward areas, those living under the poverty line, minorities based on a closed list; establish the principle that the ownership of land belongs to the state and managing and leasing the land to the actual ploughman and landless among the eight points.¹⁸ Submitting a 9-point note of dissent, TMLP, Forum (Nepal), Sadbhawana Party and Tarai-Madhes Sadbhawana Party stated, 'We take serious objection to the unconstitutional act of drafting the constitution through a 'fast track' by suspending constitutional provisions and regulation and the rights of people's and members of the Constituent Assembly, which is tyrannical and undemocratic.'¹⁹

The Dialogue Committee prepared its report with the notes of dissent, which was endorsed by the Constituent Assembly and sent it to the Constitutional Committee. The Constituent Assembly meeting of June 12 directed the Constitution-drafting Committee to prepare a draft of the constitution within 15 days. The Committee formed sub-committee hold discussions and they conducted discussions on

¹⁶ Press release by TMLP chairperson Mahantha Thakur on behalf of the 28 parties on June 9, 2015.

¹⁷ Note of dissent by RPP (Nepal) submitted to the Constitutional-Political Dialogue and Consensus Committee on June 10, 2015.

¹⁸ Note of dissent by UCPN (M) submitted to the Constitutional-Political Dialogue and Consensus Committee on June 11, 2015.

¹⁹ Note of dissent submitted to the chairperson of the Constitutional-Political Dialogue and Consensus Committee by TMLP, Forum (Nepal), Sadbhawana Party, and Tarai-Madhes Sadbhawana Party on June 11, 2015.

various issues. The next meeting of the Constitutional Committee gave the responsibility to prepare an integrated draft to the constitution drafting working group. The working group prepared a preliminary draft on June 27, to which UCPN (M) and some other parties wrote notes of dissent. It was agreed to finalise the draft of the constitution by including the suggestions received during the discussions in the Constitutional Committee. However, Sanghiya Samajvadi Forum, TMLP, Sadbhawana Party, and Tarai-Madhes Sadbhawana Party stated that it would not be acceptable to them.

In the press release by Samajvadi Forum, TMLP, Sadbhawana Party, and Tarai-Madhes Sadbhawana Party states, 'We cannot accept a discriminatory constitution without identity, federalism, proportional inclusiveness by going against the Constituent Assembly Regulations 2070 BS in the name of 'fast track' that is drafted is against the wishes of the sovereign people and in an unconstitutional, tyrannical, and nondemocratic process. We believe that such a constitution will push the country towards more internal conflict and instability'.²⁰ The next day, UCPN (M) objected to alleged changes against the agreement by the Constitutional Committee. Then the scheduled meeting could not take place. The Constituent Assembly meeting could not take place because UCPN (M) did not agree to endorse the preliminary draft of the constitution alleging one-sided decisions on issues not agreed upon.²¹

The draft of the constitution could not be tabled after there was no agreement among Congress, UML, and UCPN (M). There was an agreement among the leaders of Congress, UML, UCPN (M), and Forum (Loktantrik) on the disputed issues in the Constitution-drafting Committee, and then there was agreement among the parties in The Constitution-drafting Committee. The Committee submitted its report to the Constituent Assembly chairperson, which included a prime minister elected from the House of Representatives, 275-member House of Representatives and 45-member National Assembly, constitutional president elected from an electoral college comprising of members from the National Assembly, eight states based on identity and capability among others.²² On June 30, chairperson of the Constitution-drafting committee Krishna Prasad Sitaula tabled the preliminary draft of the constitution in the Constituent Assembly. Madhesi parties against the 16-point agreement tore the draft of the constitution in the Constituent Assembly itself.

Conclusion

After the agreement among Nepali Congress, UML, UCPN (M), and Forum (Loktantrik), a firm basis for promulgation of the constitution was ready. It was clear that RPP (Nepal) would not agree to republicanism, secularism, and other issues. However, after the 16-point agreement, it became clear that Tarai-Madhes-centred parties which had been raising issues of federalism and identity would not agree to the constitution-drafting process. Though the constitution could be promulgated with

²⁰ Press release by Sanghiya Samajvadi Forum, TMLP, Sadbhawana Party, and Tarai-Madhes Sadbhawana Party on June 29, 2015.

²¹ Budhathoki, Bishnu. Constituent Assembly meeting in confusion. Retrieved July 1, 2015 from <http://setopati.com/raajneeti/30179/>

²² Preliminary draft of the Constitution of Nepal 2072, Constitution-drafting Committee, Constituent Assembly Secretariat, Singha Darbar.

two-thirds majority, there remained a possibility of continuation of political conflict in the future with the failure to bring all the parties on board. In addition, the 16-point agreement among the main parties brought about a conflict between the judiciary and political parties. Perceiving judicial interference in the constitution-drafting process, Congress and UML, which had been advocating for independent judiciary, also ignored the judicial order. Instead, they went against the judiciary alleging unnecessary intervention in the constitution-drafting process. This set a precedent where a judicial order was not implemented and which lowered the honour of the court.

Major Political Developments

June 1

- Meeting of senior leaders of Congress, UML, UCPN (M), and Forum (Loktantrik). No agreement on federalism.
- Meeting of UCPN (M)-led 30-party alliance. A national consensus government only after agreement on the disputed issues of the constitution.

June 2

- Meeting of senior leaders of Congress, UML, UCPN (M), and Forum (Loktantrik). Dispute on federalism continues.

June 3

- Meeting of Congress office bearers. Preparation for a common concept on the constitution for discussion with UML.
- Meeting of leaders of Congress, UML, UCPN (M), and Forum (Loktantrik). Agreement either for six or eight states.

June 4

- Meeting of Congress officer bearers. Discussion on the draft of six-state federal states.
- Meeting of Constituent Assembly postponed at the request of political parties.
- Meeting RPP (Nepal) central committee. Request to send the disputed issues back to the Constitutional-Political Dialogue and Consensus Committee.
- Meeting of Congress, UML, UCPN (M), and Forum (Loktantrik). Discussion on state names and borders.
- Meeting of UCPN (M)-led 30-party alliance. UCPN (M) chairperson Pushpa Kamal Dahal informs the meeting about the talks with Congress, UML, and Forum (Loktantrik).

June 5

- Meeting of Congress, UML, UCPN (M), and Forum (Loktantrik). UCPN (M) chairperson Dahal proposes giving the responsibility of naming the states to the respected states after delineating

them. Congress and UML propose giving the responsibility of demarcation of borders to a federal commission.

June 6

- Congress, UML, UCPN (M), and Forum (Loktantrik) inform UCPN (M)-led 30-party alliance on their discussion on the issues of the constitution. Suggestion to reflect capability and identity while making states.

June 7

- Discussion among leaders of Congress, UML, UCPN (M), and Forum (Loktantrik). Dispute remains on federalism and the number of states.
- Meeting of Congress and UML; attempts to find consensus on the disputed issues of the constitution.
- Meeting of UML standing committee decides to be flexible while drafting the constitution.

June 8

- Meeting of Constituent Assembly. Condolence proposal endorsed.
- Meeting of UCPN (M)-led 30-party alliance. Discussion on the name and borders of the states.
- Congress, UML, UCPN (M), and Forum (Loktantrik) reach a 16-point agreement. Forum (Nepal) raises objection to the 16-point agreement, accusing it of being status-quoist and regressive.

June 9

- Netra Bikram Chand-led CPN (M) remarks that the 16-point agreement is a deception.
- RPP (Nepal) chairperson Kamal Thapa alleges that 16-point agreement of destroying the Constituent Assembly.
- Meeting of Constituent Assembly decides to send the disputed issues to the Constitutional-Political Dialogue and Consensus Committee. Five smaller parties boycott the meeting.
- Meeting of Constitutional-Political Dialogue and Consensus Committee. Smaller parties object to the 16-point agreement.
- Meeting of UCPN (M)-led 19-party alliance. Thirteen parties in the parliament support the 16-point agreement.

June 10

- UN Secretary General Ban Ki Moon welcomes the 16-point agreement and calls it a milestone democratic development.
- Meeting of Constitutional-Political Dialogue and Consensus Committee. Six-member sub-committee formed to seek a consensus proposal. RPP (Nepal) submits a 9-point note of dissent.

June 11

- Meeting of Constitutional-Political Dialogue and Consensus Committee. Report endorsed to seek consensus later on disputed issues. UCPN (M) writes a note of dissent.
- Meeting of Constituent Assembly endorses the report of the Dialogue Committee.

June 12

- Meeting of Constituent Assembly directs the Constitution-drafting Committee to prepare a draft of the constitution within 15 days by including the report of the Dialogue Committee. Five small parties boycott the meeting.

June 14

- Meeting of Constitution-drafting Committee directs the sub-committees to prepare a draft within 2 days as per the 16-point agreement.

June 15

- The Supreme Court expresses dissatisfaction at the provisions regarding the judiciary in the report of the Constitutional-Political Dialogue and Consensus Committee. Madhesi Janadhikar Forum (Nepal), Sanghiya Samajvadi, and Khas Samabesi party announce party unification.

June 16

- Rajendra Mahato-led Sadbhawana Party holds a press conference and warns of leaving the Constituent Assembly.
- Meeting of UML standing committee concludes the disagreement by parties opposed to the 16-point agreement will not fundamentally affect the constitution-drafting process.

June 17

- Meeting of Constitution-drafting Committee gives the responsibility of preparing an integrated draft to a working group.
- Nepal Federation of Indigenous Nationalities meets UCPN (M) chairperson Pushpa Kamal Dahal and demands guarantee of federalism with identity.

June 18

- Full bench of the Supreme Court draws attention to amend the provision in the draft of the constitution of a parliamentary committee investigating and monitoring the Supreme Court.
- Meeting of Constitution-drafting Committee decides to give the responsibility of compiling the disputed issues from the sub-committees to the constitution-drafting working group.

June 19

- The Supreme Court issues an interim order to not draft the constitution according to the 16-point agreement.
- Meeting of Congress, UML, UCPN (M), and Forum (Loktantrik) claims the Supreme Court order is interference in the Constituent Assembly.

June 20

- Meeting of UML standing committee call the Supreme Court order an attempt to curtail the special rights of the sovereign Constituent Assembly.
- President Ram Baran Yadav and UCPN (M) chairperson Pushpa Kamal Dahal hold a meeting. President Yadav urges to take the constitution-drafting process forward by coordinating and respecting all three branches of the state.

June 21

- Meeting of RPP (Nepal) central working committee concludes the Supreme Court has interfered in a political issue.

June 22

- Meeting between President Ram Baran Yadav and Constituent Assembly chairperson Subash Chandra Nemwang. President Yadav urges for maintaining smooth relations between the three branches of the state.

June 23

- Meeting of Congress, UML, UCPN (M), and Forum (Loktantrik) discusses the disputed issues of the constitution.

June 25

- Constituent Assembly chairperson Subash Chandra Nemwang calls Constituent Assembly meeting for June 30.

June 26

- Meeting of UCPN (M) thought management committee decides to work to promulgate the constitution as soon as possible even by writing a note of dissent.

June 27

- Integrated constitution drafting working group finalises a preliminary draft of the constitution.

June 28

- Constitution-drafting Committee prepares a preliminary draft of the constitution.

June 29

- Meeting of Sanghiya Samajvadi Forum (Nepal), TMLP, Sadbhawana Party, and TMSP decides to tear up the preliminary draft of the constitution in the Constituent Assembly.

June 30

- Several meeting between the leaders of Congress, UML, UCPN (M), and Forum (Loktantrik). Agreement to prepare the draft the constitution as per their agreement.
- Constitution-drafting Committee gives final shape to the draft of the constitution.
- Meeting of the Constituent Assembly. Chairperson of Constitution-drafting Committee tables the draft of the constitution. Constituent Assembly members from Madhesi parties tear up the draft constitution.