

## Maoists Dominate the Judicial System Committee

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Members of the Judicial System Committee could not reach any consensus over the issues of form, hierarchical order and areas of judiciary, criteria and process of appointing and dismissing judges, and constitutional interpretations of judiciary as they stuck to their party ideology and line. They were seen more motivated to oppose each other's agendas and proposals rather than committed to focus on some common grounds that they could reach to finalise a new constitution for the nation. CA Members belonging to the NC, UML and other parties spoke for a form of judiciary that is autonomous, decentralised and independent. However, those belonging to the UCPN (M) spoke for a form of judiciary that functions under the legislature-parliament. As a result, the Committee had to finalise several crucial issues through voting. Several agendas put forward by the UCPN (M) drew majority votes in the elections. The Committee finally submitted its final report that included opinions of all nature to the Speaker of the CA on September 9, 2009.

### **Judges beyond the Courts**

The Committee has proposed three levels of judiciary: Federal Supreme, Federal and Local or District Courts. It has also proposed for a provision of setting up special court for certain special cases. The Committee in its proposal states that the head of the state can appoint the personnel recommended by the special legislature committee and someone elected by a majority of legislature members as the Chief justice of the Federal Supreme Court. It further states that the personnel meeting the following criteria can be a candidate for the Chief Justice:

- a) He or she should hold a diploma degree in law.
- b) He or she should hold at least a seven-year-long experience of working as a judge either in local or federal or federal supreme courts.
- c) He or she should be an advocate holding a diploma degree in law and a fifteen-year-long experience of advocacy.
- d) He or she should be working as a government official in the judiciary for over twelve years.

### **Federal Court**

The Committee proposes that the head of state can appoint the personnel recommended by the special legislature committee and someone elected by a majority of legislature members as the Chief Justice of the Federal Court. The criteria for such personnel are as follows:

- a) He or she should hold a diploma degree in law and at least a seven-year-long experience of working as a judge at local or district court.
- b) He or she can be an advocate holding a diploma degree in law and a ten-year-long experience of advocacy.
- c) He or she can be an academic or researcher with at least a ten-year-long experience of teaching law or conducting researches in the field of judiciary.
- d) He or she can be a first-class government official holding a seven-year long experience.

### **Provision for Special Legislature Committee**

The Committee in its report states that there should be a provision for a special legislature committee holding power to recommend to the head of the state to appoint, punish and dismiss Chief Justice of the Federal Supreme Court. The vice-chair of the legislature should be the chair of

this Committee whereas the minister of law and other nine members of the legislature selected on the basis of proportional representation should remain as the members, the Committee states in its report.

### **Warning Signs**

CA members belonging to the NC and UML strongly criticised the agenda brought in by the UCPN (M). They argued that the provision of appointing persons from outside the court as the Chief Justice can directly harm the overall structure and spirit of the judiciary. It can maximise party or political intervention into judiciary of the nation. Moreover, in a country where politics is still in its transitional form, the judiciary should never be mingled with politics. Judiciary, not the legislative, holds the right to interpret country's statute, they opined. They further argued that the judiciary should remain independent, judges should be appointed by one single mechanism from the centre across the country, and judges can get transfer anywhere within Nepal. If the judges are appointed only through this mechanism from the centre, there will be possibility of maintaining uniformity of justice, and such a provision can help the nation to create manpower needed for the Federal Supreme Court and to ease out the process of transferring judges across the country.

### **Deciding Controversies**

The Judicial System Committee held its first meeting on December 16, 2009 and started consultations with experts from 29<sup>th</sup> of the same month. Its meeting held on 29 December decided to hold consultation with Nepal Bar Association, Supreme Court, Office of the Attorney General, different political parties, and different institutions and personnel belonging to law and legal issues. It also formed different sub-committees to execute works on time.

The Committee had several rounds of discussion with the leaders of political parties, experts and governmental officials working in the field of judiciary. It also asked the public to send their views and expectations that they have from the new constitution. It discussed over several conceptual drafts and proposals during August and September 2009.

The Committee opened discussion on the provision for reappointing judges. This issue had already triggered debates in the CA. The UCPN (M) stood for the provision that provided power to the legislative body to reappoint judges whereas the NC and UML strongly opposed it, arguing that such a provision is sure to politicise and harm judiciary. Since the Committee could not reach a consensus, it called for voting over the issue. The voting took place on the day when only 32 out of 43 total members were present. The NC and UML walked out of the meeting, 21 out of 32 members of the Committee voted for the provision. The Committee members belonging to the NC and UML blamed Prabhu Saha Teli, the chair of the Committee, for passing the bill without holding further discussions.

The Committee held discussions over issues such as provision for appointing the Chief Justice and justices of the Supreme Court and Federal Courts and the constitutional relationship between the legislature and judiciary. Mostly, the discussion on each issue lasted for two weeks. The UCPN (M) with support from the parties belonging to Madhes managed to draw a vote of majority over the agendas it put forward.

The Committee prepared the final report and submitted it to the CA in the second week of September 2009. Altogether, it had organised 99 meetings and spent 253 hours and 45 minutes on discussion.

### **Conclusion**

Despite huge differences of opinion held by the CA members belonging to the NC and UML over the judiciary issues, the Judicial Systems Committee finally brought its proposal out. Neither did the UCPN (M) CA members make any effort to convince the CA members belonging to NC and UML nor did the latter ones appreciate several important points that the former stood and spoke for. Though all of them agreed that the judiciary should function in a better and effective manner, only able judges should work and people should have easy access to judiciary, they held huge difference over creating an uneasy ambience and atmosphere.

Judiciary needs to function as an autonomous entity, and the Supreme Court, not the legislature, holds power and rights to interpret the constitution in a democratic polity. But the UCPN (M) by assigning power to a body of legislature-parliament over issues of interpreting and intervening into judiciary has posed challenges to a free, decentralised and autonomous form of judiciary.