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Nepal: The Politics of the Constituent Assembly Elections

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- The power struggle among the ruling parties, the movement of subsidiary identities and non-state armed actors with a number of demands have challenged the state's monopoly of power, weakened its ability to govern and facilitate the political transition.
- New demands of various groups for a federal republic, a proportional representation election system, an adjustment of the armed forces of both sides and contesting visions on social, economic and political reforms generated high political dynamics and forced the postponement of the Constituent Assembly (CA) elections twice.
- Public security, timely CA elections, human rights, reconciliation and peace building continue to engage the policy of the international community and civil society.

Introduction

The political transition of Nepal from feudalism to democracy has suddenly hit a snag. On September 18, the Communist Party of Nepal (CPN-Maoist)'s exit from the interim government headed by Premier G.P. Koirala for not meeting its 22-point demand including a declaration of Nepal as a republic before the CA elections on November 22, a fully proportional election system, an adjustment of the People's Liberation Army (PLA) and Nepal Army (NA) and a roundtable dialogue to address the grievances of all subsidiary identities encouraged a variety of angry groups to intensify their activities. The ruling parties expressed an inability to hold the CA elections as scheduled, negotiate a new date for it and also find a new political consensus based on a changed context.

The paradox of Nepali politics is that in spite of a vibrant press, public opinion and articulate civil society, constitutional behavior essential to a civic political culture has not been entrenched in governance. The history of authoritarian politics and the lack of an independent checks and balances of power challenged the boundary between private and

public, reduced the sovereignty of the political arena - the state, its ability to mediate contending interests and foster democratic governance. Despite the promise of the Comprehensive Peace Agreement (CPA) to end impunity, to ensure the rights of the victims to return to their homes and to disclose the whereabouts of disappeared persons, the processes of reconciliation and winning victims' trust have yet to begin. The government's reluctance to establish a Truth and Reconciliation Commission (TRC), a Commission on Enforced Disappearances (CED), a Peace and Rehabilitation Commission (PRC) and a State Restructuring Commission (SRC) has given continuity to the vacuum in the rule of law. The TRC bill provoked heavy criticism from the international community for ignoring the rights of victims to transitional justice, granting amnesty to perpetrators and breaching the provisions of the UN basic principles on compensation, reconciliation and rehabilitation. To restore its image of a justice-oriented democratic nation the Nepali leadership's vision should be inclusive, collectively-oriented and forward looking.

Key Actors of Conflict and Peace Seven-Party Alliance (SPA)

The SPA consists of recently unified centrist Nepali Congress (NC) and Nepali Congress (Democratic) and Nepal Sadbhavana Party (NSP-A) and four leftist parties - Communist Party of Nepal-United Marxist-Leninist (CPN-UML), United People's Front-Nepal (UPF-N), United Left Front (ULF) and Nepal Workers and Peasants Party (NWPP). Based largely on strong personalities, it is formed to agitate against the royal takeover together with CPN (Maoist). After the success of the movement in April 2006, the power struggle between them began to undermine coherence in performance. The SPA rejected the Maoist demand of a republic before the CA saying that it violates constitutional provisions and that the fate of monarchy shall be decided by the first meeting of the CA.

The major bones of contention between the CPN (Maoist) and SPA are: the status of monarchy, lack of conducive public security for CA elections due to the emergence of the southern flatland, the Tarai region, as a lawless frontier, problems in the adjustment of the PLA and NA, ambiguity on federalism, contesting vision on social, economic and political reforms and resolution of conflict residues. The General Assembly meeting of the NC on September 23-24 approved the party's unification and federal democratic republic for the sake of the eight-party unity. But, the only surviving founder member of the party, K.P. Bhattarai, and the dissident central committee members led by K.B. Gurung favored a reconciliation with the King. Assuming that the Maoists' return to the government would ensure his survival, elections for the CA, the legitimacy of the regime and the peace process, Premier Koirala turned down the reconciliation proposal. In protest, Bhattarai resigned from the party while 29 ex-district presidents of the NC dubbed the unification process a faulty one and warned to go on fasting unto death. Laxman Ghimire, one of the 35 central committee members of the parent NC, claimed that some conspiracies played a role in getting the party manifesto adopted with provisions for a federal structure.

CPN (Maoist)

Many factors prompted the departure of CPN (Maoist) from the government. First, it molli-

fied the radical faction within the party who believed that the peace process has only weakened their clout in rural areas. Harsh life and no role in cantonment psychologically enfeebled them and increased the number of the PLA's defection. Second, it pacified its cadres' fear of the degeneration of the party into a comprador bureaucratic class like the SPA. They argued that even in the government, the party cannot fulfill the legitimate demands of the people such as taking action against the culprit of the April movement and People's War, proclaim a republic, declare those killed during the war as martyrs, distribute the lands of feudals to peasants and disclose the whereabouts of all those disappeared or killed by security forces.

Third, it appeased the ethnic, Dalits, Madhesi and minorities' demand for self-determination, secured the space for oppositional politics and prepared the ground for holding "meaningful" CA elections based on a proportional election system. And, finally, it satisfied the Revolutionary International Movement (RIM) and Coordinating Committee of Maoist Parties and Organizations in South Asia (COMPOSA) who are encouraging the Maoist leadership to take revolutionary action aiming to supplement the entire structure of values, division of labor and create new authority within it.

The Chairman of CPN (Maoist) Prachanda, however, is participating in the negotiations, agreed to stay united and find political outlet of the current deadlock. But, if CPN (Maoist) cannot achieve the goal of a republic it will seek a revolutionary polarization, mass revolt and structural transformation. This mood has exposed the fragility of the peace process as it will surely affect the constitution, the government based on the principle of consensus, democratization process and generate uncertainty over the future of the CA elections although it has expressed full commitment to the peace accord and Interim Constitution.

On September 28, the CPN Maoist along with the Left Front and CPN (United) registered a motion at the Prime Minister's office demanding a special session of the parliament to move a resolution to abolish monarchy and ensure a proportional elections system. In the case of adoption of a proportional representa-

tion system, passing of a resolution in the parliament declaring the country a republic but subject to the approval by CA or rebellion, a new polarization is certain to ensue.

Non-State Actors

The continuance of fluid politics in the country stirred the growth of countless organizations including the emergence of 20 armed non-state actors in Tarai and hills. These groups and the movement of the Madhesi People's Right Forum (MPRF) supported by some leaders of the SPA kept the tide of CPN (Maoist) receding. These groups often fight against the state and among themselves for space with varied motivation - power sharing, proportional election system, ethnic autonomy, self-determination and even a separate Madhesi state. Many Madhesi politicians and elites across the party lines are reinventing the social boundaries that distinguish their linguistic, cultural and territorial identity from the hill communities and seek to establish a new regional party. Several movement-oriented actors such as Dalits, women, Madhesis, landless, ethnic and indigenous groups have been no less prone to systemic political conflicts. Their identities, being reinvented symbolically through a shared feeling of victim, are also challenging the boundaries of the mainstream parties. The police has declared eight districts of the Tarai as highly sensitive and 13 other districts of the region as sensitive areas. The incapacity of the police has left a security vacuum that is then being filled by militias, criminals and armed groups. This is a matter of concern as local rebels have easy access to social networks with co-ethnics across the border.

The official negotiations with MPRF, Nepal Federation of Indigenous Nationalities (NEFIN) and Chure Bhavar Unity Society (CBUS) were only partially successful as dissident groups feel betrayed from the accords and vowed to engage in a politics of collective action. The amendments of the Interim Constitution twice within four months of its promulgation indicate the troubles in seeking constitutional stability. The recent communal flare-up in Kapilvastu caused by the killing of local Muslim leader Abdul M. Khan by unidentified elements exposed the fragile security situation, inability of the government to mitigate the Hill and Tarai divide and foster civic in-

volvement and political participation for the CA elections. The state structures are not sufficiently robust to contain various types of conflict, law is collapsed into politics, and distribution of the positions of state among three parties - NC, CPN-UML and CPN (Maoist) - has eroded the state's monopoly on power, institutionalized neo-patrimonial culture and undermined the national identification of citizens to the state.

While traditional parties are afraid of the Maoist-affiliated Young Communist League (YCL), CPN (Maoist) are afraid of a conspiracy by other parties, the NA and international forces. The Maoists are only demobilized, not disarmed, and meaningfully adjusted in the political process. The YCL runs Nepal in hilly areas, the non-state armed groups rule in the central Tarai and Premier Koirala's writ runs only in the Kathmandu valley. In this context, Maoist chairman Prachanda has called for re-scheduling the election for April 2008. The government lacks coherence to push security sector reforms and Demobilization, Disarmament and Reintegration (DDR) of the PLA to build trust and confidence between civil and military, push broad-based administrative reforms, foster economic growth and abolish corruption and culture of impunity. Success in all these areas requires the ability to counter security threats - proliferation of small arms, unmonitored movement of combatants, indefinite strikes, shortage of food items and petroleum products, rocketing price rise, declining job opportunities - and the resource commitment to that effort. The viciousness of violence scuttled the prospect for economic growth, flow of foreign direct investment, tourism and encouraged high-scale youth migration abroad for livelihoods.

International Actors

Divergent motivations of international actors about democracy, development and peace have trapped Nepal into the vortex of regional and global geopolitics. India's Foreign Minister P. Mukherjee described the Maoist withdrawal from the government as "internal issue of Nepal to be resolved by Nepal itself" although India was involved in bringing the SPA and CPN (Maoist) to sign a 12-point accord for a regime change. Now, India has increased its vigil across adjoining areas of Nepal - Uttarakhand, Uttar Pradesh, Bihar, West

Bengal and Sikkim where Indian Maoists have escalated their revolt against the Indian state. The US, the EU, Germany, China and Japan have expressed concern and hoped that the CA elections will take place in time. The EU urged all political parties to immediately create public security, resolve their differences and find common ground to ensure the CA elections. On June 17, Chinese Ambassador to Nepal, Zheng Xialing said, "China will not tolerate any foreign intervention in Nepal" and showed interest to actively involve in Nepal's peace process.

The EU added, "If the elections cannot be held on time with the full support of all parties this will be a betrayal of the people's aspirations and damage the credibility of the peace process in their eyes and in the eyes of the international community. We request all political forces to give a clear commitment to maintaining public security and to support the Election Code of Conduct." The separate meeting of government and CPN (Maoist) with the UN officials and their commitment to the peace process hold the prospect of compromise. The United Nations Mission in Nepal (UNMIN) is assisting the peace process through electoral assistance, human rights monitoring and arms registration and verification. The US Assistant Secretary of the State for South and Central Asia R. Boucher said, "To decide the sensitive questions of constitutional change and the role of monarchy in Nepal, it is essential to consult the voters." He said the US government would continue to treat the Maoists as extremist outcasts until it becomes a normal political party. The US has also issued a travel warning to its citizens due to "sporadic incidents of terrorism and politically motivated violence."

CA Election Preparedness

Nepal has 17.6 million voters. The government has distributed citizenship to 2.2 million people and even changed citizenship laws under which citizenship can be acquired also by the mother's name. The Election Commission (EC) has updated the voters list. District judges, joint secretaries and under secretaries are appointed as chief election officers and election officers in 240 constituencies. The EC, political parties and a number of civil society organizations are launching a comprehensive campaign for civic and voters' education.

Preparations are underway for the accreditation of domestic and international observers groups. The EC has mobilized 8,400 volunteers for civic education and will deploy 225,000 staffs for conducting the election. This is important in Nepal because the majority of voters are illiterate and lack civic competence. Activation of the periphery, special programs for women, Dalits, youth, ethnic groups and indigenous people and an innovative use of the media are important to execute the two-track communication between the public and decision-makers.

61 political parties of various hues are registered with the EC, constituencies have been delimited and election symbols are distributed to political parties. A three-member CA Court has been set up to settle electoral disputes. To ensure the representation of diverse social groups Nepal has adopted a mixed election system to elect 497 CA members - 240 on the basis of proportional representation (PR) where political parties will contest, 240 geographical constituencies based on first-past-the-post (FPTP) election and 17 persons will be nominated by the cabinet. Altogether 33 percent of the total seats have been reserved for women. It has also ensured the representation of 59 nationally recognized ethnic groups in the CA. A candidate who has filed nomination in FPTP cannot be named by the political parties in the closed-list for PR. But, he or she can contest the election from two geographical constituencies. Political parties interested in PR have to prepare the closed list of their candidates based on the following proportional criteria and send it to the EC for approval. If the list is 90 percent accurate, the EC grants recognition to it. It accepts 10 percent margin of mistake. The EC also grants recognition to those parties which have filled candidates in less than 20 percent of seats but have allocated equal seats to men and women and included other groups fairly. But, Dalits are demanding 20 percent of the seats in the CA as they feel under-represented in the nation's 27 million people. Disgruntled ethnic groups demand the representation of all 102 ethnic groups and nationalities. Moderation of ethnic cleavages is essential to the success of the election. Citizens have two votes - the faint blue ballot paper for candidates and faint red for the political party.

Percentage of Candidates for Closed-List¹

No.	Group Represented		% of Candidate
	Women		50%
1.	Madhesi	Female	15.6%
		Male	15.6%
2.	Dalit	Female	6.5%
		Male	6.5%
3.	Oppressed and Indigenous tribes	Female	18.9%
		Male	18.9%
4.	Backward region	Female	2%
		Male	2%
5.	Others	Female	15.1%
		Male	15.1%

The Election Code of Conduct also came into force. As most of the issues are decided by the incumbent parties, independent citizens doubt the autonomy of the EC and its future integrity given the lack of its capacity, independence and authority.

Problems in Election Management

Without the creation of physical security it would be hard to hold elections. The political parties have not made sufficient preparations to reconnect themselves with the grassroots, mobilize and educate the voters, enable them to make a distinction between the CA and periodic elections and test their mandate. The Maoists' protest programs - door-to-door public awareness, rallies, exposure of the corrupt people and those named as guilty in the report by Rayamajhi Commission, stage sit-ins in front of all the District Administration Offices and threat to launch a nationwide general strike to prevent the filing of nominations by the candidates - forced the SPA to agree to suspend all the election processes till the special session of the interim parliament called by CPN (Maoist) on October 11 which will defer the election date.

¹ Since many candidates represent more than one group, the sum total of the percentage of all candidates exceeds 100%. The candidates can represent more than one group, for example, one candidate can represent women, Dalit, Madhesi, backward etc. Backward region refers to Achham, Kalikot, Jajarkot, Jumla, Dolpa, Bajhang, Bajura, Mugu and Humla districts. Others denote those groups that have not been included in this table.

The EC has frequently asked the government to ensure security for the free, fair and impartial CA elections and political parties to go to the villages to campaign for it in order to boost the confidence of the people. The law enforcement agencies are weak. Police personnel themselves are not secure and therefore cannot guarantee voters to freely exercise their franchise. The defeat of the police at Maoists hands in the past and its politicization have lowered its morale. The Maoists and people from hill districts cannot visit in many areas of Tarai. Recently, many violent incidents in the capital and the countryside heightened insecurity. Both the factions of the armed Jantanrik Tarai Liberation Front (JTFL) and Madhesi Liberation Tiger (MLT) have vowed not to allow the CA elections to take place in Tarai and warned that they would take "physical action" against those taking part in the election campaigning.

Yet, Nepal Police, the main among the two police agencies, claimed to have arranged special security around the voting centers of highly sensitive districts and announced a special security plan for CA elections by mobilizing 41,000 men and women in uniform. The other police department, Armed Police Force (APF), can mobilize up to 21,000 personnel.

But, armed non-state actors continue to carry out killings, abductions, extortion, torture, and intimidation of people. With the PLA cadres registered in the UN-managed cantonments, the Maoists have been carrying out their activities through the YCL. The Joint Revolutionary Peoples' Council (JRPC) and People's Liberation Army (PLA) are kept in high alert. Prachanda declared that the YCL activists would continue to take actions against the "corrupt" people based on its list and threatened to take action against them. It has also revived its People's Courts in the villages.

The ordinary public feels that there can be no free and fair elections unless the armed groups are completely disarmed. The NA's recently drawn scenarios of civil war in cases of the postponement of the election and weak support for CPN (Moist) in the election has alarmed the public. What brings the unity of the ruling parties is common aspiration to monopolize power and common fear of pro-

monarch forces and the NA. But, a lack of a shared vision for the future divides them deep over the ends and means of politics. Strategically, both are seeking new allies to strengthen their position. But this time, there are more than 30 thousand PLA in cantonments and the leftists have a combined majority in parliament.

The international community still has the time to redefine the terms of the peace process and ensure at least the following steps for peace in Nepal: restore the state's authority and power and thereby ensure accountability, responsiveness, inclusiveness and legitimacy of the government; help restrain CPN (Maoist) and armed non-state actors, deploy adequate international security forces and election observers by enlarging the mandate of the UN-MIN, expand the development space and establish a rule of law which is indispensable for providing adequate security to voters.

Conclusion

A negotiated peace and CA elections are keys to political stability. Engagement of all members of society in these processes through informed opinion and opportunity can create democratic legitimacy and increase development prospect. Stakeholders' search for common interests, a sense of ownership in the constitutional talk and reflection of their genuine participation in peace, democracy and development are crucial indicators for constructive change. Safe political transition requires a number of steps:

- Formulation of a long-term national security scheme and short-term election-related security plan and set up of a mechanism for non-state armed and movement-oriented actors to co-opt, contain and fight the extremism and promote the rule of law. The government should, however, positively respond to their legitimate interest in peaceful communication, listen to their grievances and manage the multi-partisan governance.
- Major human rights challenge in Nepal springs from inadequate human security, law enforcement response and a justice system that is not fair and effective. In the Tarai, the lack of a consistent response by the government to illegal activities of non-state actors has created a crisis of confidence among the key actors and a state of fear among the general public. To overturn this trend, local governance institutions, security forces, political parties and civil society must work together for human rights and democracy. Local peace councils should be institutionalized to achieve revolutionary change.
- The international community needs to encourage incumbent political parties to refrain from political interference in court, public administration and police for a clientelist regime while enabling the state to perform core state functions and initiate reforms in areas of participatory political process, governance and peace building.

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