

June 2008



Nepal: The Constituent Assembly Election and Challenges Ahead

Dev Raj Dahal, FES Kathmandu

- The Constituent Assembly (CA) election in Nepal has established the primacy of ballots over bullets and unveiled the mandate for peaceful change. The first sitting of the CA declared Nepal a federal democratic republic. It has been mandated with the tasks of drafting a new constitution to ensure democracy based on popular sovereignty, making the state inclusive and ushering in durable peace.
- The advent of CPN (Maoist) that came out the biggest political party from the elections has provided it an opportunity to transform its wartime ideology, structures and goals into a mass-based competitive party. It has also given an opportunity to old parties - NC, CPN-UML, RPP, RJP, etc - to foster the democratization of party structures and leadership. The emergence of new political parties - CPN (Maoist), MJAF, TMLP and SP - has provided mobility to new social groups in politics. It has substantially increased the representation of various social groups - women, youth, Dalits and ethnic groups in the 601-member CA.
- The CA election produced a fractured mandate to the political parties ushering in the need for continuing the coalition politics that has been going on in Nepal for some time.

Introduction

On April 10, 2008, Nepal went through a silent transformation, witnessing a triumph of democratic impulse rooted in the primacy of ballots over bullets. The Constituent Assembly (CA) election held that day favored the Communist Party of Nepal-Maoist (CPN-Maoist) by allocating it 220 out of the 575 seats in the fray. Its emergence as the single largest party has provided it an incentive to transform itself from a class-based revolutionary organization into a mass-oriented governing party. Over 60 percent of 17,609,408 adults casted their votes to elect the assembly. Out of the total, 240 members were elected through the first-past-the-post system, 335 through proportional representation (PR) and 26 members were to be nominated by the government. Among the 74 political parties that had registered themselves with the Election Commission (EC), only 54 actually contested. Nine of the parties secured seats through both systems of election while 25 parties could have access only to those seats that were allocated for the proportional system. Parties receiving more than 23,512 votes in the proportional system garnered at least one seat in the CA. The evolution of the fractured popular mandate, with none of the parties com-

manding an absolute majority, has provided considerable space for many small parties to play influential roles in the constitution-making process, a participatory exercise.

The CPN (Maoist) outmaneuvered the two traditionally ruling parties, the Nepali Congress (NC) which scored 110 seats and the Communist Party of Nepal Unified Marxist-Leninist (CPN-UML) with 103 seats. Out of the 116 seats allocated for the Tarai plains, the southern flatland, the CPN (Maoist) captured 42 seats thus posing a competitive challenge to regional parties. The regional parties are an offshoot of the Madhesi movement that based itself on identity politics that ranged from the pursuit of rights and identity to outright secession. By the time the elections were held, the leaders of the Madhesi movement showed that they were capable of joining the mainstream if only to guarantee autonomy for their region in the new constitution. The Madhesi Jana Adhikar Forum (MJAF) scored 52 seats, Tarai Madhesh Loktantrik Party (TMLP) 20 seats and Sadbhavana Party (SP) 9 seats only (See <http://www.election.gov.np/EN/>). Other smaller parties got less than 9 seats each. The existence of

various ethnic groups, a multi-class society with a mixture of indigenous and hill people across the Tarai, and the cultural pluralism practiced by Hindus, not to mention the inclusion of hill candidates by MJAF were the reasons for softening the ferocity of exclusionary identity appeal banded about during the Madhesi movement. Cross-party affiliation of the Madhesi candidates also diluted the growth of self-identification and differentiation among the indigenous and ethnic population.

The parties believing in the parliamentary system with support from the civil society and the international community have demonstrated their skill to persuade the CPN (Maoist) to join the democratic struggle. They were able to bring the Maoists in to sign a peace accord, participate in the election and become an agent of peaceful social transformation. A modicum of cohesion in its apex party structure, massive support of the voters following its entry into the peace process and international legitimacy worked together to offer the revolutionary party an opportunity to transform its wartime structure, ideology and strategy into a vote-seeking competitive democratic political entity.

Changing Political Equation

The CA election manifested the decline of the old Kathmandu-centric establishment and the rise of new political forces such as the CPN (Maoist) and regional parties such as the MJAF, TMLP and SP. The coming to the fore of ethnic, indigenous, women, Madhesi, Dalit and youth groups from the periphery to seek representation in mainstream politics is the most prominent feature of current politics in Nepal. But, authority and decision-making are still personalized by the top leadership. The electoral trend indicates that a bulk of NC voters in the Tarai voted for Madhesi parties while indigenous, ethnic, Dalits, under-privileged Madhesi and marginalized voters shifted their support from the CPN-UML to the CPN (Maoist). The increased political clout of CPN (Maoist) among the marginalized social groups has thus sparked off a tectonic shift in the historically evolved caste-based, patriarchal and hierarchical agrarian social order. New social forces are claiming their rights and projecting new visions of a new egalitarian society. The resilience of a few old leaders would merely indicate that they are weaker and less legitimate today than before as they are presiding over a decrepit institutional structure, often challenged by youths and civil society groups to fill up the inherent democratic deficit. Having squandered the popular support,

they face several social contradictions thus being forced through a process of party restructuring. This is a healthy trend as popular demand for institutional participation in political parties can glue the ties of social forces with the state.

The CPN (Maoist) commands a relative majority of seats but falls short of the two-thirds majority needed to form a single-party government under the terms of the interim constitution. The political necessity of coalition politics requires compromise, the overcoming of sectoral ideologies of the political parties based on class, ethnicity, caste and territorial differences and the development of common programs for power sharing. Many top leaders of NC, CPN-UML, Rastriya Prajatantra Party (RPP), RPP-Nepal and Rastriya Janashakti Party (RJP) lost their electoral bid. The defeat of old leaders has provided them an opportunity to democratize the leadership structure, build party structures from the bottom up, become inclusive of existing social diversity and people-oriented and abolish the spoils and hereditary privileges distributed by the leadership factions to those swirling around them. CPN-UML Secretary-General M.K. Nepal re-signed from his post accepting moral responsibility for the electoral defeat of his party. One obvious reason of the defeat of CPN-UML is its rejection of proposals of a left alliance offered by CPN (Maoist), and of NC a "democratic alliance" offered by non-left parties despite the fact that they share a common electoral space. The CPN (Maoist) has successfully played with the contradictions it generated within parliamentary parties and became closer to each of them than they are with each other.

From a sociological perspective, women substantially increased their voice and representation and captured 33.22 percent of the total CA seats. The previously under-represented Dalits have noticeably improved by scoring 8.17 percent, ethnic and indigenous communities have also enhanced their presence by receiving 33.39 percent seats, Madhesi too scored 34.09 percent, backward regions 3.83 percent and other high caste and unspecified groups of people 33.91 percent seat representation. The political representation of broad segments of people in the assembly is expected to contribute to the social democratization of civic institutions, address the root causes of conflict and serve as an exit strategy for the nation's peace process. The electoral outcome also illustrates a generational shift in Nepali politics as increasingly young candidates have been elected in the first-

past-the-post system (FPTP). Direct election of 184 youth below 50 years of age in the FPTP is a significant achievement for the nation's political stability as over half of the nation's voters belong to 18-35 age groups.

Definitely, illiteracy, poverty and unemployment made the mass of voters vulnerable to innovative appeals of CPN (Maoist). There are other factors: initiatives in agenda-setting of the CA including republicanism, secularism, federalism, right to self-determination, forward-looking transformation, socially inclusive nature of candidature, systematic electoral campaign, projection of the negative image of other parties as comprador class and corrupt, mobilization of nationalist sentiments to woo supporters of the King and critical remarks against India's vocal support to NC; mobilization of Nepalese voters in India; promise of collective goods, such as social justice, land reforms and emancipation of the downtrodden and marginalized sections of society; and articulation of an open-ended choice saying that in the case of its defeat by conspiracy it will wage a peaceful revolt. Fed up with the politics of violence, the Nepalese voters expressed their preference for a demilitarization of politics, the protection of human rights and peaceful change.

The inability to maintain a semblance of accord among fractious leaders and the defection of influential cadres of NC, CPN-UML, RJP, RPP, RPP-Nepal and NSP (A) to newly emerged Tarai groups have conspired to cut down the size of the already eroded political base of mainstream parties. Forceful political agitations for property rights, redistributive justice and Madhesi cultural identity of these new regional parties acted cohesively against the political base of the old parties. Mainstream parties could not even repair their grassroots connection crippled during the decade-long Maoist People's War and mobilize their support base for the election. All the parties of the *ancient regime* - RJP, RPP, RPP-Nepal - staged their presence in the CA only through the proportional system.

The CA election was extolled by national and international election observers as relatively peaceful. Former United States President Jimmy Carter observed, "The CA poll was largely free and fair" and added that the "terror tag of the US on Maoist is a mistake." The European Union also expressed its view that the election met international standards. This collective recognition of CPN

(Maoist) by domestic and international communities as a legitimate force is a key incentive for the party to transform itself and develop strategies for the aggregation of broader social interests. The pre-election environment was, however, highly violence-prone due to the security and authority vacuum in the countryside and non-enforcement of the election code of conduct. Re-polling took place in 106 out of 20,888 polling centers owing to electoral fraud and violence. Invalid voting remains at 5 percent of the total votes. Introduction of a new election system in a largely illiterate country, weak public communication campaign and lack of proper civic education and voters' information might have caused this.

Critical Challenges

Multi-sectoral compromise across the political spectrum is essential in the constitution-making process. Ownership needs to be mustered from all sides along with bolstering post-conflict peace building efforts. The challenges for the future are:

Head of state: King Gyanendra, who has been stripped of all his titles under the Interim Constitution and effectively sacked following a declaration of republic by the first sitting of the CA, appealed to the voters to exercise their adult franchise in the CA and greeted the outcome of the people's verdict "in favor of national unity, sovereignty and integrity." The first session of the CA declared the country a federal democratic republic on May 28, abolished the 239-year-old monarchy and instructed the government to make sure that the King leaves the Narayanhiti palace within 15 days. The king accepted the verdict and the government provided him security and residence. The resolution that was put to vote by Home Minister K.P. Sitaula was adopted with 560 in favor and 4 from RPP-Nepal against. There was no debate on the resolution. Constitutional experts argue that a full sitting of the CA requires the nomination of the 26 CA members by the council of ministers. And, this had not been done prior to the first sitting of the Assembly. Sitaula is not a member of the CA and his entry into the House as well as his moving of the resolution demonstrates that the leaders have continued their old-authoritarian style of acting. It did not provide any opportunity for the King to defend himself or his supporters to debate the proposal. Premier Koirala has expressed his desire to continue to run the government by invoking the constitutional clause that says a two-thirds majority is needed to change the prime minister.

Formation of Government: Premier Koirala formally asked Maoist Chairman Prachanda, as the head of the largest party in the CA, to form a new coalition government and garner consensus as per the constitutional provisions. NC, CPN-UML and MJAF have, however, set preconditions for the support to a Maoist-led government: dissolution of the Maoist's people's army, the people's courts and the people's government, disbandment of the Maoist-affiliated Young Communist League (YCL), time-bound integration of the Maoist army and disposal or surrendering of their weapons to the state, return of the property confiscated by them, rehabilitation of displaced people and cessation of intimidation, threats and extortion. These parties have demanded a constitutional president with the authority to head the Nepalese army, declare a state of emergency, play a role in the appointment of constitutional heads and constitutional change with the provision of a simple majority to form and topple governments.

On May 26, the CPN (Maoist) submitted its own 9-point proposal. Apart from declaring the country a republic by the first meeting of the CA, it proposed that the Prime Minister should be the officiating head of state till the drafting of a new constitution. But, if the position of president is created, then both the positions of President and Prime Minister should go to themselves. It also agreed to transform the Maoist-affiliated YCL into a political organization and end its para-military acts, the PLA would be brought under the state's command, a 25-party high level steering mechanism for consensus-building would be headed by Premier Koirala with special constitutional powers, sharing ministerial portfolios in accordance with the parties' strength in the CA, minor changes in the interim constitution and no change in the two-thirds provision of interim constitution to form and remove governments. The last condition shows their fear that this can topple their own government anytime in the future. The CPN (Maoist) has threatened to revolt to establish a people's republic if it is not allowed to form the government. On June 1, a meeting of 13 larger political parties failed to break the ice about the formation of a new post-election government. All the parties, except Maoists pressed for a constitutional amendment to form a new government and elect a president on the basis of a simple majority. For the exercise to go ahead, irrespective of the posturing, they have agreed to remove the names of the seven party alliance from the interim constitution, revamp the Constitutional and Security

Councils and include the provision of president and vice-president. The six-member task force of CPN (Maoist), NC and CPN-UML agreed on electing Prime Minister, President and Vice-President with a simple majority but the latter two could be impeached by a two-third majority of the CA. The CPN (Maoist) wants a non-political personality to head the state and differed with other parties on the integration of Maoist combatants as well as the prerogative of the Prime Minister to appoint members of the Constitutional Council and Security Council. This has created a deadlock.

Peace Process: Addressing a cheering crowd in Kathmandu, Maoist Chairman Prachanda boasted that the victory of his party is "a mandate for lasting peace, implementation of the democratic republic and rapid economic development." He added that during the transition period his party would work with other parties, promote multi-party democracy and maintain special relations with India and China and good relations with other countries of the world. To assuage the fear of both donors and business communities he began hectic parleys with various stakeholders of society. The inclusive institutional pillars of peace stipulated in the peace accord, such as the High Level Peace Commission, the Truth and Reconciliation Commission, the Scientific Land Reform Commission, the State Restructuring Commission, the Commission on Disappearance, and the Peace Monitoring Commission, have yet to be set up to make a stable society function. Strengthening the Local Peace Committees is useful to foster reconciliation, transitional justice and the peace process. These innovative moves are only one aspect of the tasks that remain to be done. What is more, the government has yet to implement a series of peace agreements it signed with the different groups, like the United Madhesi Democratic Front, the Limbuwan State Council, the Federal Republican National Front, the Nepal Federation of Indigenous Nationalities, for a more distributive regime.

Reintegration of Maoist combatants: Neither the peace accord nor the interim constitution is clear about where to integrate the PLA. The Interim Council of Ministers is mandated to form a special committee to "supervise, integrate and rehabilitate the PLA." The Nepalese army has clearly expressed its willingness to abide by the directives of any legitimate government, but has objected to the merger of politically indoctrinated combatants into the institution. The CPN (Maoist) wants to

restructure the bureaucracy and the judiciary and revamp the security forces assuming that integrating the PLA and the national army is a part of the peace process. But, Prachanda, appreciating the role of the army, said that it needs to be democratized and his own PLA needs to be made professional. Only a professionally fit PLA will join the NA while others can join the police force or a separate and yet to be set up Industrial Security Group. The strength of the combined security forces would then be reduced to 30,000 to 50,000 in a span of 5-7 years. Other political parties prefer the adjustment of the PLA outside the Nepalese army, probably in border security, as forest guards or to provide them overseas employment. The United Nations Mission in Nepal (UNMIN) which has played a key role in the peace process and the CA election wants to facilitate "army integration" but has not been able to muster political consensus to extend its mandate which ends on July 23. On May 17, Secretary-General of the UN Ban Ki-Moon expressed his readiness to "provide continuing support for the completion and consolidation of the peace process and long-term development of Nepal." The government is already facing a problem for the reintegration of the 3,000 PLA personnel disqualified by UNMIN into the society. They prefer to remain in cantonments because of the fear of public retaliation to their past acts.

Federalism: The CPN (Maoist) has drawn a sketch of 11 federal and two sub-states on the basis of ethnic composition, geographical contiguity, linguistic base and ethnic viability. It has proposed the Seti-Mahakali and Bheri-Karnali federal states on the basis of their geographical suitability while the rest - Magarat, Tharuwan, Tamuwan, Newa, Tamsaling, Kirat, Limbuwan, Kochila and Madhesh - are based on ethnicity. Within the Madhesh autonomous state, three sub-states - Mithila, Bhojpora and Awadh - have also been proposed on a linguistic basis. Other parties have principally agreed on a federal structure but have not fully developed the federal map of the country and have expressed their opposition to ethnic-based federalism as a ploy to dismantle national identity. Jana Morcha Nepal has opposed the concept of federalism and expressed its preference of a unitary state with substantial devolution of power.

MJAF coordinator Upendra Yadav has said that his party will not join the government until its pacts with the government are implemented. He urged the CPN (Maoist) to make their stance clear on the

issue of autonomy to the Madhesh and proportional representation of Madhesh, Dalits, indigenous people and nationalities in all structures of governance. As a party nurtured on cultural identity-based movements it also fears Maoist affiliation with various communist organizations and redistributive land reforms. Two-dozen armed groups are already acting as spoilers of democracy and the peace process. All the political parties of the Tarai want a peaceful engagement between the government and these armed non-state groups fighting for different goals - autonomy, cultural and territorial identity and separatism. The support of Madhesi groups is crucial for the government to transform these armed groups into legitimate and viable political parties and a successful implementation of the peace accord.

Economy: Top Maoist leader Dr. Baburam Bhattarai, speaking at a function held by the Federation of Nepalese Chambers of Commerce and Industry (FNCCI) on April 16 said, "Now, we are entering a new era of economic revolution, after nearly accomplishing a political revolution. Our next fight is to wipe out feudalism and promote a capitalist economy - this is the true concept of Marxism." He pointed out the basic pillars of their economic policy: public-private partnership, new tax system, action against the corrupt, full industrial security, new industrial policy and foreign investment-friendly approach. He said that the Maoists are fully aware of the present policies of privatization, liberalization and globalization. Small left-wing parties criticize the CPN (Maoist) for its deviation from the party program of socialist economy and its degeneration into neo-liberalism.

Foreign Policy: In coalition with other parties the CPN (Maoist) is seeking cooperation from the international community on development, peace and the drafting of a new constitution and expressed its commitment on democracy, human rights and economic reform programs. It, however, prefers to review the Peace and Friendship Treaty of 1950 and the Integrated Multi-Purpose Mahakali Treaty and to regulate the open border with India in the changed context. Maoist leader C.P. Gajurel said that the new constitution would be committed to pursuing a policy of "equiproximity" with its neighbors India and China - both booming economies. To placate the neighbors, he said, "We don't see any role of the United Nations Mission in Nepal (UNMIN) in our future peace process and the integration of NA and PLA." Despite the insistence of national hu-

man rights groups and the international community on Nepal to respect the Charters and Covenants it has already signed in the past, the CPN (Maoist) has adopted the one-China policy and opposed anti-Chinese free-Tibet activities in Nepal.

On April 14, Indian Foreign Minister Pranab Mukherjee, taking the Maoist victory in CA election as a positive development, conveyed the message that "India is ready to work with a Maoist-led government." India's main opposition, Bhartiya Janata Party (BJP) hoped that Nepal under the Maoist leadership will not "be anti-Hindu and anti-India" but feared the implications of a Maoist rise to Indian security. On April 15, the spokesman at the US Department of State Sean McCormack, while congratulating the Nepali people for holding the historic CA election, said, "Although there was considerable violence and intimidation during the pre-election period and some instances of voting irregularities on Election Day, Nepali voters were able to cast their ballots peacefully in most districts." The US government also agreed to continue "its assistance to Nepal" but adopted a "wait and watch" attitude as regards the future government before removing the Maoists from its "terrorist exclusion list". The CPN (Maoist) seems to have learned that the world is not a zero-sum game; rather it offers enormous opportunities for nation-building.

Conclusion

The CA election in Nepal has established the primacy of participatory politics, unveiled the mandate for peaceful change, strengthened the social base of political power and compelled all political parties to pursue a politics of compromise and foster social democratization. But, it has also reinforced the process of *ethnicization* and *territorialization* of politics and weakened the sense of national identity. The new political equation requires an adjustment of new forces beyond the ruling coalition, the formation of a coalition government, addressing people's basic needs and ensuring an equitable distribution of power and resources by the state and a partnership between the public, private and international community for the peace-promoting exercise. The distribution of votes among the parties has given a mandate for building a shared future to be institutionalized through a new constitution, to abolish the disease of its authoritarian political culture, to engage the political actors into a politics of compromise to make a political transition from authoritarianism to constitutional democracy and to institutionalize responsive governance. Peace building is connected to addressing the conflict residues, improving the situation of human rights, eliminating conflict producing causes, such as poverty, unemployment, unbalanced regional development and social and political exclusion and drafting a rational social contract that guarantees the rule of law.

Ansprechpartnerinnen:

Dr. Beate Bartoldus, Tel.: 0228-883-516, E-Mail: Beate.Bartoldus@fes.de (verantwortlich)

Ulrike Ehnes, Tel.: 0228-883-508, E-Mail: Ulrike.Ehnes@fes.de

Friedrich-Ebert-Stiftung

Internationale Entwicklungszusammenarbeit, Referat Asien und Pazifik

Godesberger Allee 149, 53175 Bonn, Fax: 0228-883-575

Die Kurzberichte sowie Informationen zur Arbeit der FES in Asien finden Sie unter: www.fes.de/asien.