

News Update from Nepal

June 3, 2008

Despite sweeping changes occurring at the super-structural level, such as secularism, federalism, republicanism and greater representation of social diversity in the Constituent Assembly (CA), the new leadership faces complex challenges ahead - improvement in human rights conditions, abolition of the culture of impunity, justice to the conflict victims, restoration of security, law and order, inclusive development and reconciliation policies. The representative of the UN High Commissioner for Human Rights in Nepal Richard Bennett said, "Among the major responsibilities facing the new administration and CA is the strengthening of respect for human rights, including the creation of an environment in which the people have confidence that their institutions have the capacity and the will to uphold the rule of law and holding accountable those responsible for rights violations, whether they were committed in the past or in the present." The government has decided to give continuity to the Election Security Base Camps of the Armed Police Force in Tarai, the southern flatland, due to law and order problems. Violence in Tarai continues and 800 Village Development Committees do not have secretaries to support administrative and development works in the villages.

Businessmen demanded proper security for their businesses and action against those involved in the killing of the businessman Rajesh Begani. On May 21, Kathmandu valley was shut down over Ram Hari Shrestha's murder by the Communist Party Nepal (CPN, Maoist) cadres in the UN-monitored cantonment on charge of stealing one UN-registered pistol and \$25,000 in cash. Maoists suspended Bibidh over Shrestha's killing and the cabinet has formed a three-member judicial commission headed by Justice Rajendra Bhandari to investigate his killing. On May 27 and 28, bombs exploded in the heart of the capital city, Kathmandu by Ranabir Sena, demanding the restoration of the Hindu state and monarchy. On May 28, police firing killed three people in Bardiya.

The outcome of the CA election has expanded the social base of political representation and provided an opportunity to democratize civil society, political parties and state institutions. In the newly elected CA, women have 33.22 % representation, Madhesis 34.22 %, Dalits 8.17 %, ethnic and indigenous groups 33.39 %, backward region 3.83 % and other groups of people 33. 91%. Only nine parties secured seats in the plurality system while 25 parties did so in the proportional system. The controversy hovers about the selection of 26 members by the cabinet. Political parties failed to ensure the representation in the CA of at least 20 marginalized groups and thereby violated the 20-point agreement they signed with the Nepal Federation of Indigenous Nationalities (NEFIN) on August 7, 2007. According to it, 20 ethnic groups out of the total of 59 have been left out by the political parties from both the proportional representation and the first-past-the-post election lists.

Nepal Becomes a Federal Democratic Republic

The first meeting of the CA on May 28 has declared Nepal a federal democratic republic thus terminating the 239-year old monarchy. Out of the 564 CA members who took part

in the voting on the republican proposal proposed by Home Minister Krishna P. Sitaula, 560 voted in its favor while four members of the Rastriya Prajatantra Party-Nepal voted against it. The CA also approved a proposal stating that the King should vacate the Narayanhity royal palace within 10 days and strip him of all perks and privileges except his common citizen rights. The royal palace will be turned into a national museum or used in national interest as deemed necessary by the government. The Nepali Congress (NC), the Communist Party of Nepal Unified Marxist Leninist (CPN-UML) and the CPN (Maoist) also agreed to establish a constitutional president and an executive prime minister and to bring about necessary changes in the interim constitution for this purpose.

The president will be the supreme commander of the Nepal Army (NA), act as per the recommendation of the Prime Minister, will be authorized to declare emergency in accordance with the cabinet decision and will play a role in the appointment of constitutional bodies. He can exercise his power to resolve any constitutional or political deadlock and fulfill other normal presidential responsibilities. The President will be elected by the CA. The details about his election process will be worked out and incorporated in another amendment proposal soon. Following the decision, the CA has been prorogued until June 5. Due to public pressure the royal flag has been replaced by the national flag in the palace. The government has announced a public holiday on May 28-30, to celebrate the republican set-up in the country. The UN and India supported Nepal's decision for a republic. The US hoped "political parties in Nepal to embrace a common vision of a stable, democratic and prospering Nepal." But, it did not remove "the Maoists yet from two US terrorist designations that barred party officials from visiting the country and froze their assets."

Negotiation for Government

The CPN (Maoist) leader Prachanda (Puspa Kamal Dahal) called for the resignation of Premier Koirala to pave the way for the Maoists to start formal consultations to form a new government. He said, "People have given us a clear mandate to lead the future government." On May 13, Maoist ideologue Dr. Baburam Bhattarai criticized NC and UML's "greed for sticking on power." He also claimed that no leader of a party defeated in election can become president." After the pressure increased, Premier Koirala formally asked Prachanda to take initiation, as the head of the largest party in the CA, to form a new coalition government and garner consensus as per constitutional provisions. But, political jockeying for power has created hurdles in the formation of government as no party commands the absolute majority of 301 seats in the 601-member CA. NC and CPN-UML have set preconditions to support a Maoist-led government including the dissolution of the Maoist's people's army, the people's courts and the people's government, the disbandment of Maoist-affiliated Young Communist League (YCL), the time-bound integration of the Maoist army and the disposal or surrender of their weapons to the state, the return of the property seized by them, the rehabilitation of displaced people and the cessation of intimidation, threats and extortion. It set legal provisions to keep the courts, the constitutional bodies, the government media, the police administration and the army away from political influence. They together with Madhesi Jana Adhikar Forum (MJAF) formed a common negotiating position and demanded the constitutional president to head the NA and to be able to declare the state of emergency, a simple majority should form and topple the government and seized property by the CPN (Maoist) must be returned.

In response, Maoist leaders (May 26) submitted a 9-point proposal: 1) the meeting of the CA should implement a republican agenda; 2) all past agreements must be fully implemented, 3) all parties shall be committed to maintain law and order, 4) the commitment to transform Maoist-affiliated YCL into a political organization and end its para-military style acts; 5) the PLA shall be brought under the state's command; 6) all-party high level steering mechanism for consensus-building shall be headed by Premier Koirala with special constitutional powers; 7) sharing ministerial portfolios as the parties' strength in CA; 8) minor changes in interim constitution, no change in two-thirds provision of interim constitution to remove government and 9) government shall take immediate measures to facilitate the availability of petroleum products and foodstuffs.

On May 26, CPN (Maoist) proposed a fourth amendment to the Interim constitution to implement the republican agenda by the first meeting of the CA on May 28 and to shift the power of the head of state to the Prime Minister and to scrap Article 159 (5) which still recognizes the king, though powerless. NC and CPN-UML came up with their own proposals regarding an amendment to the interim constitution. Both have proposed to replace the provision of a two-thirds majority to form and remove the government by a simple majority and create posts for the president and vice president after the monarchy is abolished. The departure of monarchy now has left an institutional vacuum in the country. Three political parties, NC, CPN-UML and CPN (Maoist) are negotiating to fill this vacuum and expand their political base. The supporters of a Hindu state and monarchy have, however, vowed to resort to an armed struggle to restore them.

Reactions

The Rastriya Prajatantra Party-Nepal Chairman Kamal Thapa warned against a hasty abolition of the monarchy. He said "If the country is declared a republic immediately without having substantial ground for its sustainability, then the country becomes trapped between ultra-leftist and separatist elements that will ultimately embroil the constitution-making process. The monarchy should be retained until the new constitution is drafted." He blamed foreign powers especially India for this, whose implication on the security forces of Nepal, social, cultural and religious fabrics and then administration and foreign policy will be grave. He pointed out that there are no guiding principles for constitution drafting and no consensus on sensitive issues such as the right to self-determination, federalism and army integration.

According to a constitutional lawyer, Bipin Adhikary, the procedures followed by the CA had three serious flaws. First, the CA started its proceedings without the 26 nominated members, who should have been present in the House to fulfill the membership requirement of the Assembly under Article 63(3) of the Constitution. The President of the House ignored this requirement, because the Prime Minister was not able to nominate them in consultation with the parties before the meeting started. This flaw would make the proceedings of an incomplete House open to challenge. Secondly, the motion to abolish monarchy and operationalize Article 159 was not subjected to discussion before the voting on it according to the parliamentary practice. The chair ignored the repeated requests by the opposition group of the RPP-Nepal, the only monarchist voice in the entire CA, to allow discussion on the motion, so that they could register their opposition before the voting. Thirdly, the implementation of the 'republican plan' was done without any statutory basis, and certainly without giving any opportunity to the King to explain his case before the sovereign House.

Party Politics

On May 15, the 18th central committee meeting of the CPN-UML elected Jhala Nath Khanal as the party's general-secretary to lead the party till the new convention on November 16. After the electoral defeat of the CPN-UML, Madhav Kumar Nepal resigned from his post on moral grounds. On May 14, a polit bureau meeting of one of the factions of Janatantrik Tarai Mukti Morcha (JTMM) led by Jwala Singh suspended Singh from the post on the ground of financial embezzlement.

Foreign Affairs

With the departure of monarchy, Nepal looks set to become a cockpit of struggle for influence between its neighbors and great powers. On May 2, the American Ambassador Nancy Powell for the first time met the Maoist leader Prachanda and discussed the Maoist plans for the CA, the future of US-Nepal relations, sought the new government's commitment to current donor agreements to ensure the safety of those implementing them. Powell raised the concern of police crack down against Tibetans to Premier Koirala. On May 24, the US Deputy Assistant Secretary of State for South and Central Asian Affairs Evan A. Feigenbaum arrived for a three-day visit for political consultations and met leaders of major parties including Maoists.

On May 7, the special envoy of the Indian Prime Minister, Shayam Sharan, said that Maoists in Nepal have to form a united government. He added, "We were interested in the process of transformation in Nepal from a monarchy to a democracy." On May 10, the Maoist ideologue Dr. Bhattarai clearly voiced for the regulation of an open Nepal-India border arguing that without this Nepal cannot industrialize and develop. On May 11, the Indian Ambassador to Nepal B.K. Sood suggested the Maoists to make Koirala ceremonial president and CPN-UML speaker and Prachanda himself executive Prime Minister.

On May 12, the Chinese Ambassador to Nepal Zheng Xinglin expressing serious dissatisfaction over the ongoing anti-China protests by Tibetans in Nepal since two months said it is "a drama of the Nepalese government to arrest and release the Tibetans" under "tremendous pressure from some international groups and UN agencies and human rights organizations provoking it."

On May 5, the Norwegian Deputy Minister for International Development Hakon A. Gullbrandsen arrived on a five-day visit to take stock of the situation and discuss about post-conflict peace building. On May 17, the UN Secretary-General Ban Ki-Moon said that he does not anticipate the extension of the term of UNMIN which ends on July 23. But, "the UN is ready to provide continuing support for the completion and consolidation of the peace process and long-term development of Nepal. On May 18, the Finance Minister Dr. Ram Sharan Mahat reacted: "Killing of Ramhari Shrestha in the Maoist barrack highlights the ineffectiveness of UNMIN. We are yet to decide as to when to bid farewell to UNMIN, but it is necessary that we minimize its role."

On May 16, the former Indian ambassador to Nepal Dev Shankar Mukherjee said, "If Americans are playing a certain kind of game to deny the Maoists legitimate governance and India is backing them, this could lead to instability due to possible reactions by China, given the conditions in Tibet." On May 20, the Special envoy of Indian Prime Minister Shayam Sharan said, "Certain understanding has been arrived between the gov-

ernment and Madhesi parties with respect to granting of citizenship rights, employment guarantees...whatever understanding has been arrived at, these should be implemented."

On April 7, the World Bank approved a grant assistance of \$127 million to Nepal to support the ongoing peace process, expand primary health services in rural areas and improve rural water supply and sanitation. ADB provided a \$2.5 million grant for the implementation of information technology and development. On April 29, Nepal and Bahrain signed a labor pact providing the Nepalese workers secure employment opportunities and legal recognition. The pact seeks to protect the rights of workers and prevent illegal practices of labor supply.

With enormous challenges ahead such as state-building, social contract, development and durable peace, the power struggle among key players at home and great power rivalry abroad do not hold a promise for political stability unless politics of compromise is pursued by the drivers, actors and stakeholders of peace.

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