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A Fresh Start in Nepal

Lingering Uncertainty After Constituent Assembly Elections

Christian Wagner and Nishchal N. Pandey

The mainstream Nepali Congress (NC) and Communist Party of Nepal (Unified Marxist-Leninist) (CPN-UML) emerged as clear winners of the 19 November elections to Nepal's second Constituent Assembly. The Unified Communist Party of Nepal-Maoist (UCPN-M), which was the largest party in the 2008 election, came a poor third. At first glance the outcome should impact positively on a string of disputes that the first Constituent Assembly failed to resolve. But this political fresh start can only succeed if the parties can overcome their internal quarrels and reach an urgently-needed consensus on contested aspects of the new constitution.

The Nepalese Maoist insurrection unleashed in February 1996 against the monarchy and the democratically elected Nepali Congress government was ended by a peace agreement in 2006 after mediation by India. In the April 2008 Constituent Assembly elections there was overwhelming support for the Maoists. However, that first Constituent Assembly, which simultaneously functioned as interim parliament, turned out to be incapable of agreeing a new constitution. Six different prime ministers since the end of the civil war in 2006, political power struggles and personal rivalries, inadequate economic development and widespread corruption combine to stoke a permanent constitutional crisis in the Himalayan state. Heated political disagreements exist not only between the political parties but also within the conservative NC of Sushil Koirala, the social democratic CPN-UML of Jhala Nath Khanal and the Maoist UCPN-M under Puspa Kamal Dahal ("Prachanda").

Negotiations to finalise a constitution were finally abandoned on 27 May 2012 over the sticking point of federal arrangements. President Ram Baran Yadav appointed an interim government under Chief Justice Khil Raj Regmi, which eventually set 19 November 2013 as the date for new elections. After the dissolution of the first Constituent Assembly the radical wing of the UCPN-M split off. Mohan Vaidya Kiran, who had argued for continuing the revolutionary struggle and opposed cooperation with the established parties, became the leader of the Communist Party of Nepal-Maoist (CPN-M).

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The Election of 19 November

In mid-November 2013, 12 million voters were called upon to elect 601 members of a new Constituent Assembly. The electorate was about five million smaller than in 2008, above all because the ongoing economic crisis had led many Nepalese to seek work abroad. Of the 601 members, 240 were elected in single-seat constituencies and 335 by proportional representation. Another 26 are to be appointed by the government. The size of the parliament, which is the largest in the region despite Nepal being one of the poorest countries in South Asia, drew much criticism. By comparison India's 700 million voters elect just 545 members to that country's lower house (Lok Sabha). More than 120 parties competed for nationally allocated PR seats. Despite calls for a boycott by the CPN-M and its alliance of 33 parties, and a string of violent incidents, turnout exceeded 70 percent and was higher than in 2008. International observers regarded the process as free and fair.

Challenges for the New Government

The established NC and CPN-UML have governed frequently since the democratic transition of 1990, but lack a two-thirds majority in the new Constituent Assembly. Like its predecessor, the second Constituent Assembly is plagued by conflicting interests, in particular in relation to the structure of the future political system, the form of federal order, economic development especially of rural areas, reconciliation of the conflict parties and the question of prosecution of war crimes. However, the new political majorities are more likely to enable compromises on these matters and the importance of certain issues will fade as the position of the Maoists is weakened.

The only success of first Constituent Assembly was the integration of Maoist fighters into the regular army. After protracted negotiations it was agreed in November 2011 that no more than 6,500 out of more than 19,000 Maoist fighters would be integrated into the armed forces. The others were to be rehabilitated and integrated into society with the help of special programmes.

The Structure of the Political System

One bone of contention in the first Constituent Assembly was whether Nepal should have a parliamentary or a presidential system. The leader of the Maoists, Prachanda, argued for a presidential system because he enjoyed great popularity after his 2008 election victory. In light of the success of the NC and CPN-UML, which are proponents of a parliamentary system, this topic is more or less off the table. And the boycott by the CPN-M means that its demand for a "people's democracy" in which political majorities in parliament would be able to alter basic rights and amend the constitution is also likely to ebb away.

Federalism

Federal arrangements remain the trickiest question. Nepal is a multi-ethnic society, and the 30 parties entering the new Constituent Assembly reflect the socio-cultural fragmentation of Nepalese society. The Maoist insurgency was also directed against the power of the upper castes in the established parties, and received support from ethnic minorities and lower caste groups.

The debate revolves around whether the federal state is to be apportioned ethnically or territorially. In January 2010 the responsible committee of the first Constituent Assembly proposed dividing the country into fourteen provinces, nine of them on the basis of ethnicity. But because this would have excluded certain ethnic groups repeated demonstrations and protests against the proposal ensued.

While the clear majority for NC and CPN-UML and losses for UCPN and ethnic parties like the Madheshis represents a clear rejection of the ethnic federalism that brought down the first Constituent Assembly, the new government will have to take account

Table
Results of the Constituent Assembly election, 19 November 2013

Party	*Seats constituency*	*Seats proportional*	*Seats total*	*Share of vote in percent*
Nepali Congress (NC)	105	91	196	32.61
Communist Party of Nepal (Unified Marxist-Leninist) (CPN-UML)	91	84	175	29.12
Unified Communist Party of Nepal (Maoist) (UCPN-Maoist)	26	54	80	13.31
Rastriya Prajatantra Party (Nepal) (RPR)	–	24	24	3.99
Madhesi Jana Adhikar Forum-Democratic (MJAF)	4	10	14	2.33
Rastriya Prajatantra Party (RPR)	3	10	13	2.16
Tarai Madhes Loktantrik Party (TMLP)	4	7	11	1.83
Other parties and independent candidates	7	55	62	14.65
Nominated candidates	0	0	26	0.00
Total	240	335	601	100,00

Source: Election Commission of Nepal, http://election.gov.np/CA2070/CAResults/reportBody.php?selectedMenu=5&rand=1384967216 (Translation Dev Raj Dahal, Friedrich-Ebert-Stiftung, Nepal).

of the interests of the Madheshis, whose stronghold is in Terai on the Indian border, if it wishes to organise a majority on this question in the Constituent Assembly.

Economic Development

Economic development in Nepal, which is one of the world's poorest countries, was massively hampered by the ten-year civil war and the ensuing political instability. Energy shortages, rampant corruption, political instability and strikes and demonstrations that shut down public life meant that economic growth was only 3.5 percent in 2012/13. Labour migration to India, the Gulf states and Southeast Asia has risen noticeably, with remittances now contributing 22 percent of GDP. Approximately 150,000 people displaced by the civil war who often have no economic perspective in their original home areas represent a particular challenge.

The tourism industry has begun to recover, with the figure of 600,000 visitors reached again in 2012. Nepal also has the potential to generate about 83,000 MW of hydroelectric power, of which only 650 MW is currently developed. Political instability and the difficult relationship with India have to date prevented the country exploiting its enormous hydro power resources.

The Legacy of the Civil War

The question of how to deal with war crimes and human rights violations is a particular sensitive one. About 13,000 people lost their lives in the ten-year insurgency from 1996 to 2006. Civil society organisations have increasingly sought to sustain a public debate on the associated injustices. Although an amnesty for the former adversaries, Maoists and national army, would draw a line under the events politically and legally, it would hardly serve the victims' wish for justice. Inevitably, the second Constituent Assembly will again be confronted with demands for a truth and reconciliation commission and a body to address the fates of the disappeared.

International Support

The international community supported the peace process launched in 2006 and the post-2008 Constituent Assembly through the United Nation Mission in

Nepal (UNMIN). In the face of political blockades UNMIN ceased its activities in January 2011. Germany and the European Union have been among Nepal's biggest donors for many years and have supported the peace process through channels such as the Nepal Peace Trust Fund.

Nepal's neighbours India and China also tussle for influence. China has engaged very strongly in recent years, especially economically, while India traditionally enjoys great influence by virtue of its open border, and mediated between the political parties and the Maoists to end the civil war. But Indian involvement is also very controversial domestically, with many parties fearing a return to overbearing influence. These reservations also impede Indian investment in the expansion of hydro power.

A New Political Start in Nepal

At first glance, the chances of adopting a constitution have increased with the election of the new Constituent Assembly. The vote represented a clear rejection of ethnic federalism and a demand for the traditional parties, NC and CPN-UML, to work more closely together. However, political uncertainty will persist, as demonstrated by the dispute between NC and CPN-UML about forming a cabinet and the demand for the president's resignation. Moreover, the losing parties of the Maoists and the Madheshis still possess sufficient disruptive potential to block any constitution.

Responsibility now lies with the established parties. They must demonstrate that they have learnt from the mistakes of the 1990s that led to insurrection and that they have drawn the lessons of the period after 2008. Another failed Constituent Assembly would risk violent clashes erupting again in parts of the country.

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