

Issues of Constituent Assembly Election in Nepal: Electoral System and Security

Sudarshan Dahal, Tokyo Institute of Technology

1. INTRODUCTION

The main agenda of the Nepalese April movement in 2006 was to conduct the Constituent Assembly (CA) election so as to make the constitution of Nepal by the elected body. However, this has not been made a realization yet due to hurdles created from many political quarters and has been postponed twice from the scheduled date. Breaking a long political deadlock, the Seven Party Alliance (SPA)¹ has recently reached the consensus that Elections for a Constituent Assembly will be held by 12 April 2008. This assembly will draft a new constitution and will therefore also decide on the fate of the Nepalese monarchy. There will be around 17.5 million eligible voters. Also, the SPA has reached the consensus on the following number and distribution of seats: 335 members would be elected through a proportionate electoral system, 240 members through First-past-the-post and 26 on recommendation by the Prime minister. However, it is likely that the election will be postponed, as the Election Commission fears that the time is insufficient to adequately prepare the election. On account of the huge pressure by Maoist, the word "republic" was also included Interim Constitution (IC), but will have to be confirmed by the Constituent Assembly. This paper will present two important issues of Nepalese CA election i.e. electoral system and security.

2. OVERVIEW

Nepal is a multi-ethnic, multi-lingual, multi-cultural and multi-religious country with geographic variations. The deep cultural pluralism of Nepal consists of at least 61 castes, sub-castes, ethnic and sub-ethnic groups. There are about 90 languages and 10 religious communities. The discrepancies are based on the above fuelled political and economic exclusion, discrimination and/or exploitation for a large segment of the Nepali population.

Nepal's post-independence history has been marked by series of movement and violence in the name of constitution. After the demise of Rana regime (hereditary prime-ministership) in 1951, the state power has been transferred from king to parliament and again to king with many political events. After 30 years of king's direct rule, the historical protest movement in 1990 established the constitutional monarchy and multiparty parliamentary system. It was supposed to be the best constitution till date, but it failed as the constitution could not properly represent the diversity of Nepali people. The king could play under the controversial article 127 of the constitution which stated that "any difficulty arises

1. The Seven Party Alliance (SPA) is comprised of the parties that worked together for signing the Comprehensive Peace agreement and are currently in charge of executive decision-making through consensus.

in connection with the implementation of this Constitution, His Majesty [The King] may issue necessary Orders to remove such difficulty and such Orders shall be laid before Parliament."

The ruling parties lost their morale and could not fulfill people's aspirations. Despite some progress, the huge discrepancy in income between rich and poor widened the gap from 0.32 to 0.43 during the period of 1996 to 2003, which substantially stimulated to experience an armed conflict named People's War waged by Nepal Communist Party (Maoist). More than 12,700 people were killed (4,500 by Maoists and 8,200 by the government) and an estimated 100,000 to 150,000 people were internally displaced as a result of the conflict.

In 2002, due to rising Maoist violence and delayed elections, the King dismissed then Prime Minister and assumed full executive powers. While he maintained the trappings of a constitutional democracy by appointing a series of Prime Ministers, real authority rested squarely with the Palace. The seven political parties formed an alliance and warned of strong protest against the violation of the constitution. Their protests were not that effective due to the reluctance of the people perhaps due to downscaled morality of political parties. In February 2005, the King dropped even this semblance of constitutionality by again dismissing the Prime Minister, assuming full executive authority, and declaring a state of emergency.

This event made the SPA provoking the constitutional monarchy to make a deal with the Maoist to overthrow the king's direct rule. The deal has its origins in the November 2005 SPA-Maoist agreement signed in New Delhi, which provided a basis for the April movement and a guiding framework for subsequent compromises. The CPA² was signed on 21 November 2006 after months of slow progress following the success of the April 2006 mass movement that overturned King Gyanendra's direct rule. The peace agreement charts a course towards elections for a constituent assembly (CA) following formation of an interim legislature and government including the Maoists. In a detailed agreement on arms management, the Maoists have committed to cantonment of their fighters and locking up their weapons under UN supervision; the Nepalese Army (NA) will be largely confined to barracks. The constituent assembly, to be elected through a mixed first-past-the-post and proportional system, will also decide the future of the monarchy.

3. RESEARCH FRAMEWORK

In the 12-point comprehensive peace agreement (CPA) signed by Maoist and Nepal Government on 6th November, 2006, the main focus was to conduct the constituent assembly election with mixed electoral system. Also, it clearly stated that the fate of Monarchy would be decided by the first meeting of Constitution Assembly. The scheduled election on 20th June, 2007 was postponed on the ground of the delay in passing of the necessary bills to conduct the election within the prescribed time. The Election Commission itself declared its inability to conduct the election within time due to time constrained

2. Comprehensive Peace Accord signed, Armed Insurgency declared officially over,

<http://www.nepalnews.com.np/archive/2006/nov/nov21/news12.php>

technical problems. Also newly scheduled date on 22nd November 2007 was deferred by the hurdles created by Maoists going back from their commitment on the mixed electoral system and demanding the fully proportional system of election and declaration of Monarchy prior to the CA election. They quitted the government to exert pressure to fulfill their demand. These events have put the long awaited historical CA election of Nepal into a chaos.

Apparently, we see that there are two major issues of holding the CA election. One is the type of electoral system to be adopted and the second is deteriorating security situation of the country. This research investigates these two main issues of the CA election in Nepal. First, the prevalent system of election around the world is presented. The proposed system of election by major parties will be summarized here. Also, the practice of election system in previous elections in Nepal is presented. Secondly, the issue of security to hold the CA election will be presented. The cause of ethnic unrest, the growing violence and its aiding factors and the necessary steps that the government should take will be analyzed. The issues of politicizing of criminal activities and the failure of SPA government to address them properly will be investigated.

4. ELECTION PROCESS

This is presently the most controversial issue³ among the ruling parties of SPA. The election process coincides with voting system and voting system is a means of electing a number based on the contribution of a number of voters in favors of the candidates or parties. Three - single winner, multiple winner and mixed theories (proposals) might be applicable in the case of Nepal.

A. Single-winner Theory

Single winner is a system that uses to elect member(s) of a parliament/state council or president based on single member constituency. It is called a relatively simple majority method, which is also known as FPTP or winner-take all voting system. In the case of Nepal, this theory may partly be applied at this stage as most of the mainstream political parties including the CPN (Maoist) have expressed their concern over party-list proportional representatives and mixed theory. Before popular April movement, the FPTP had been applied to be electing members of parliament or village development committees.

B. Multiple-winner Theory

Multiple winner election systems comprise of proportional representation (PR) which is more concerned with multi-seat composition of constituency than exactly which candidates get elected. This system exists upon party list proportional, which corresponds directly with the name of candidates given by the parties. One system is Single Transferable Vote (STV) that considers as a specialized form of cumulative voting system. It uses preferential voting system to ascertain the results of election. It means voters rank candidate(s) in order of preference in a multi-member constituency. A successful individual candidate must attain a quota being the total number of votes received divided by the number of

3. "Fringe Parties Ask PM to Go for Mixed System of Election"

candidates to be elected plus one. If a candidate wins election keeping him/her in a number one rank, his/her surplus (excess) vote is transferred to second choice. This process is continued till all seats are filled. On the other hand, Single Non-transferable vote (SNTV) is the semi-proportional method, which is simple than cumulative voting. It is a special variation of cumulative voting where votes cannot be divided to other candidates. It also is known as multiple-winner method where each voter casts one vote for one candidate (one share one vote) in multi-candidate contest.

The Communist Party of Nepal (UML) put forwarded the concept of inclusive and proportional election system. Similarly, the Nepali Congress (NC) has put forward both single winner and multiple winner theories, which is also floppy. The Maoists also propose for federal autonomy and proportional representations. However, any single proposal is not sufficient taking into consideration Nepal's diverse social, cultural, linguistic, caste/ethnicities, class and topographical regions.

C. Mixed Theory

Mixed Theory is a combination of Single Winner Method and Multiple Winner Method, which eliminates the weaknesses of both the methods. The mixed election system functions mainly in diverse population or in geographic, socio-cultural and economic realities and the FPTP. The proposed recommendations of the some political parties for CA elections suggest for mixed theory; which are as follows:

NC: CA elections within one year of IG Proclamation consisting 50% each of direct and indirect representations; indirect composed of women, dalits, indigenous/ethnicities, Madhesis, minorities, differentially-abled, backward areas, professionals and civil society.

Maoist: CA elections within one year of IC Proclamation; 225 CA members comprising 90 from nine autonomous regions; and 125 from 200-thousand population each; and 10 from marginalized and experts, ensuring inclusion and proportional representations of women, disadvantaged castes, ethnicity, differentially abled

5. ELECTION SECURITY

A. Security Challenges

a) Armed groups, criminals and violence

Security for the CA election is the great challenge for Nepal. With the elongation of the crisis period, the violent groups are increasing day by day. While some of the protest programs seem to be justifiable, most of the activities are backed by criminal activities. There are many armed groups, especially near the Indian border⁴, having the same separatist demand and carrying out the murdering, torturing and intimidating separately. Mostly they are involved in forceful collection of money and robbery.

4. "THT Online Special: Tarai Abductions - 33 in 26 Days"

Sometimes they themselves also attack each other. They are usually led by the leaders retaliated from the former rebel groups. Some are active to fulfill their personal interest via violent activities. Some are aimed at reducing the influence of other political parties. Government should immediately take action against these criminal activities to maintain social law and order. Government should immediately formulate the comprehensive security plan and adequate security personnel should be deployed in the concerned area.

b) Protests by marginalized groups

On the other hand, some ethnic groups have united to raise their voice to be heard. In the 237 years after unification of the country, the voice of these people always remained unheard. Though Nepalese society comprises of the diverse ethnic groups, castes and religions, the state power has always under control of certain class of people. The minorities are not given opportunities in the decision making process. Now they are protesting to secure their civil rights. The government should negotiate to these groups and fulfill their justifiable demands. They should also be invited to assist in conducting the free and fair CA election.

c) Cantonments, Integration and YCL⁵

According to the CPA, the Maoist militias have been confined to the cantonments. The verification process is going on under United Nations Mission in Nepal (UNMIN). The former militias are planned to reintegrate into the society guarantying their safe livings. However, there are grievances that the present facilities of the camps are inadequate. Also the local peoples of the cantonment areas are protesting against their presence. Furthermore, the integration of these militias into Nepal Army has been a controversial issue. These sorts of events are creating frustrations among those militias and many of them are escaping out of camps to join other armed groups. Maoist and government should both be serious in this issue. Similarly, the activities of Maoist affiliated Young Criminal League (YCL) has been widely criticized for their high handedness. Other political parties can not trust on the fairness unless their highhandedness in breaching the law is controlled. For this Maoist should be responsible for controlling their activities and should be accounted for any violation of law and order by them. There should be dialogue with Maoist to control the activities of the YCL and deployment of it for social welfare under the current social law and order.

B) Security Bodies

There exists the challenge of security arrangement for the CA election. The main security body for holding CA election in Nepal is Nepal Police (NP). This is the main security body for maintaining the law and order in the country. NP also fought against the rebels under the unified command led by Nepal Army (NA) during the period of insurgency. However, NP lacks the modern equipments and arms to control the growing violence across the country. Another security body is the Armed Police Force

5. YCL high-handedness continues

<http://www.nepalnews.com/archive/2007/dec/dec07/news09.php>

(APF) which was formed during insurgency to fight against rebel groups. They are trained for counterattack with the armed violence. So, deploying them in election security has the risk that they are not familiar with the public issues. The main security body, NA, has been confined to barracks according to the CPA between Maoist and government. So there is the challenge of security arrangement for the election. There might be the provision of temporary recruitment of security personnel as in the past elections. However, the training and equipment supply to this force is an important issue.

6. DISCUSSION

Despite being rich in ethnic, cultural, religious and geographical diversities, the state power of Nepal has long been under the control of certain class of people and the marginalized people has never been given the opportunity in the decision making process. Though, Nepal has been declared free from Rana regime (hereditary prime-ministership) in 1951, Nepalese people have never been given opportunity to decide their fate themselves. This means, the Nepalese constitution has never been written with the consent of the people. The dictators were always feared of disapproval of their ruling by the people. Though the movement against Rana-regime was organized to have the constitution assembly election, Nepalese people are still struggling to write their constitution themselves securing the representation of each and every strata of the society in the decision making process.

With the violence of Maoist-led so call 'People's War' and the politics on this violent activities, the country passed through the very critical stage. With the development of twisting political situations, the SPA and Maoist came to the same forum and called the joint protest against the King Gyanendra. They succeeded in overthrowing him from the power after April movement in 2006. Now, everybody assume that it's the right time for holding CA election. However, the power sharing among the ruling parties and the dispute on the grounds of conducting election has put CA election into chaos. It has already been cancelled the CA election two times. Now the tentative date has been fixed around coming March. However, many fear that this will also be postponed as the election system has been changed and the election commission might not be able to conduct the election under new conditions within the prescribed period.

Regarding the security issues, strong political will to strengthen and build the capacity of the NP and APF and transform supporting institutions, such as the judiciary, is key to strengthening the overall security of the country. Similarly, prioritizing dialogue and building trust and consensus on issues that could be potentially destabilizing if gone unaddressed, such as integration of the Maoist militias into the security sector, will likely increase security for elections. Political parties can also make public their intention to refrain from historically used methods of intimidation and interference in policing matters. The international community and the donor community can encourage the government to take the above-mentioned initiatives, provide assistance to the police and election security measures, and support civil society as they attempt to play a constructive role in preparing the public for elections.

7. CONCLUSION

There still exist many challenges to hold the free and fair election on time. Many Nepalese peoples are still unaware about the constitutional assembly election and its working process. They also think that it is only the general election. Many government officials are still unaware about the constitutional assembly, electoral system and federalism so they are not cooperating as requires. Election constituency determination should to be a scientific basis and the rationality should be appearing.

The leading political parties should be responsible to preserve the people's power and should quickly make a consensus regarding the free and fair CA election. The government should start negotiating the agitating groups so as to make the safe environment for the free and fair election. The international community should keep on supporting the Nepalese people to establish the fully democratic society. One should note that nobody will loose in this historic election as they have common vision on the democratic framework of the country.

8. REFERENCES

- [1]. BN Tiwari, "An Assessment of the Causes of Conflict in Nepal", *Himalayan Research Papers Archive*, September 2007.
- [2]. Stuart Gordon, "Evaluating Nepal's Integrated "Security" and "Development" Policy: Development, Democracy, and Counterinsurgency", *Univ California Press*, 2005
- [3]. K. Cochran, Budhathoki and C. Rausch, "Constituent Assembly Elections and Security in Nepal", *United States Institute of Peace*, August 2007.
- [4]. "The 12-point Understanding between the political parties and Maoists", http://www.advocacyforum.org/pdfcoll/12_Point_Agreement_between_spa_and_maoist.pdf
- [5]. P G Rajamohan, "Constituent Assembly Elections in Nepal", *Institute of Peace and Conflict Studies (IPCS)*, April 2007
- [6]. Election Commission of Nepal, www.election-commission.org.np/
- [7]. Ministry of Peace and Reconstruction, Nepal, <http://www.peace.gov.np/>
- [8]. United Nations Mission in Nepal, <http://www.unmin.org.np/>
- [9]. www.nepalnews.com
- [10]. www.ekantipur.com