

Constitutional Assembly Elections in Nepal 2013: Some Pre-Poll Reflections

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November 14, 2013

About the Author

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Having witnessed decades of political imbroglio, Nepal is once again set to go to the polls on November 19. After 2008, it will be the second time that the electorate has to cast their ballots for a Constitutional Assembly (CA) - the country's national parliament. However, instead of gleefully looking forward to what is meant to be a 'feast of democracy', sentiments of concern prevail among Nepalese and international observers. On the face of it this might seem odd because the call for an election is the logical next step now that a new constitution has been drafted. What is more, this constitution provides for higher empowerment of the people and a more stringent observance of the rule of law, which is a crucial prerequisite for national stability. However, as the polling day approaches the political situation in the country is turning increasingly murky. There are serious concerns among the around 12.5 million voters in the 240 constituencies that the elections will be not free and fair at all. In fact there are numerous indications that the polls, especially the legitimacy of them, will be challenged through different determinants.

First of all, the electoral campaigns of the major political parties, especially the Communist Party of Nepal-Maoist (CPN-M), Unified Communist Party of Nepal-

Maoist (UCPN-M), CPN-Unified Marxist-Leninist (UML), the Nepali Congress (NC), United Democratic Madhesi Front (UDMF) and Rashtriya Prajatantra Party (RPP), were accompanied with a remarkable upsurge of violence. Most noteworthy in this context is the attempt to enforce a general strike ('bandh') of an alliance of more than 33 oppositional parties (out of 124 officially registered ones) under the leadership of the CPN-M, which is a splinter group of the UCPN-M. The CPN-M, also known as 'Mohan Baidya group' is boycotting the CA elections. This casts a dark shadow both on the actual electoral process but also on the acceptance of the electoral results. Besides the latest strike to undermine the polls, other violent criminal activities were carried out, including attacks on buses, explosions with improvised explosives, robberies, and lootings. This was obviously done to create an atmosphere of fear and lawlessness in the country and to flank additional activities of the anti-elections camp of the CPN-M like door-to-door campaigns to 'convince' the people not to vote. It is worth mentioning, however, that most of these violent clashes occurred between supporters of the CPN-Maoist and the UCPN-M. One has to be also aware that the issue of how far a military option (war) should remain an acceptable

constituent in the political strategic portfolio led to the split up of the hard-line faction CPN-Maoist from the UCPN-M. Until now, the CPN-Maoists refrained from direct, armed confrontation with the security forces.

Furthermore, there is the problem that a substantial part of the Nepalese voters (around 3.5 millions) did not get registered. In other words, neither the ideal scenario of getting all of the 16 million Nepalese which are eligible to vote nor the less ambitious aim of the Election Commission of having 14.7 million of the people enrolled in the voters list was achieved. Here, a major issue was without doubt the issue of undocumented residents and the problems related with the obviously insufficient government-initiated citizenship campaigns. This marks a clear indication for a lack of legitimacy of the electoral process.

There are also several reports that some political parties and (independent) candidates were restricted in their political freedom of movement to carry out campaigning activities. Due to significant security issues the affected parties and politicians were faced with hindrances to organize large gatherings. In other words, they were forcefully limited in their rights

for political participation, association and speech. Here, some of the most reported incidents include obstructions of campaigning and vandalism of party materials, vehicles and offices. There were also numerous other violations of the 'election code of conduct', including activities to disrupt voter registration, theft and destruction of voter education materials and the obstruction of civic educators. Furthermore, there is an increasing numbers of reports about the mismanagement of financial funds during the electoral contestation of the CA by several candidates.

Last but not least – and arguably worst of all – there is the most important issue of impunity. Numerous candidates of the ongoing CA elections were involved in serious human rights violation during the civil war, such as extrajudicial killings, rape, torture, and enforced disappearances, and other criminal offences – and most of them have not been brought to justice. There is no difference between candidates who belonged to the state agencies or the Maoists, since both sides enjoy absolute impunity. However, beside the fact that Nepal recognizes most of the international judicial standards, the country's authorities did nothing substantial to bring justice to

the country. This is gaining significance, since the country has signed most international agreements regarding human rights and the current interim constitution of the country is stressing the government's commitment towards the implementation of its human rights obligations. Instead, recommendations by the National Human Rights Commission (NHRC) were ignored. Furthermore, a law limiting the function and independence of the NHRC's mandate was enforced. Even court verdicts are not implemented by the state authorities. For example, several hundred cases (many of them murders) were withdrawn in March 2012 on the basis of being political in nature. The situation is getting even more complicated due to the lack of protection and security of human rights defenders. Regarding several human rights organization like the Nepal-Dialogue Forum for Peace and Human Rights, defenders of human rights, attempting to document cases of human rights abuses and offer legal advice to the victims, are exposed to all kinds of physical and non-physical threats, intimidation and discrimination. As long as there is no coherent investigation and strict prosecution of all human rights abuses as well as infringements of international humanitarian law and general disrespect for the rule of law, elections will

suffer from a crucial lack of legitimacy.

Without any doubts, all these issues have the strong potential to jeopardize the election process. However, the situation becomes even murkier if one looks at the way in which the Nepalese authorities are planning to ensure the protection of the elections as enshrined in the Integrated Security Plan – 2070 unveiled by the Ministry of Home Affairs including a three-tier security structure composed on 54,000 Nepalese Police personnel, supported by 44000 temporary recruits at the core, with back-up by 22000 APF personnel in the second layer, and finally the outer layer consisting of 61,995 NA personnel. This strategy means not only that two-thirds of the country's soldiers are involved in the election process but also the first time of the deployment of the army in electoral security since the end of the civil war. This is gaining significance because of the following reasons: First, the country is characterized by the absence of institutionalized civilian control. Second, the fact that the security personal enjoys absolute impunity for human rights violation and other abuses will not help to reduce the level of fear among the electorate. Third, the still unfinished, insufficient process of reconciliation and the tensions between the former

combatants which merged within the security sector will most likely lead to a continuation of conflicts within the existing agencies of the state and will enforce factionalism. Fourth, there is a phenomenon that politicians and political parties have the habit to influence the process of military organization (especially appointments, transfers, and promotions) will lead to a high level of political awareness among the country's armed forces. Subsequently, there is the imminent threat that the country's armed forces are developing more interests in respective political affiliation than in military professionalism.

Fifth, the fact that the soldiers until now did not show much interest in formal and direct interventions does not mean that they will not develop such desires in the future especially in the context of the deteriorating socio-economic and political conditions. Additionally, one has to be aware that civil-military relations are not only determined by the presence or absence of coups d'états, but rather by a continuum of different forms of interventions including informal, 'behind-the-scenes influence' on political decision-making. The latter is particularly important because the Nepalese army is most likely to choose such an approach should it be interested in influencing politics. In other words, if the

soldiers want to intervene in politics, this will most likely happen in a more concealed manner in order not to get sanctioned by the international community. On top of this, one has to be also aware that it still remains unclear how far the Nepalese Army was able to perform the shift from serving under a monarchial or a democratic form of governance. In other words, democratic principles are not yet fully embedded in the collective mindset of the security forces. This is gathering greater momentum, since civilian institutions are mostly weak and insufficient especially not to carry out effectively civilian control. In sum, these issues are marking serious concerns on the eve of the elections for the second CA. The deployment of security forces without a clear modus operandi, no transparent chain of command, and unsolved internal issues must be identified as a critical act of negligence for the country's democratic transition.

Nevertheless, apart from these tremendous challenges, the authorities and the general people are dedicated to safeguard at least the technical dimension of the elections and will not allow that the process gets interrupted by anti-systemic forces. But even if there are more or less smooth and accepted national polls

leading to the establishment of a newly elected CA, the core issues for the ongoing turmoil will continue to dominate all contemporary and future political processes. More concrete, the new CA will have to take on a heavy burden of deeply entrenched unfortunate political legacies. These legacies led not-only to stagnation in political decision-making in most of the significant areas and tiers of governance but also to a crucial hindrance towards the build-up as well as consolidation of effective democratic institutions. It is noteworthy, that the latest CA which was set up in the aftermath of 10-years Maoist uprising (1996-2006) and the abolition of the monarchy in 2008, was dissolved in March 2012, after failing to draft a post war constitution.

Instead of building the common ground for an effective institutional structure to strengthen the process of peace and national reconciliation, there was a slow but persistent weakening of the existing political-administrative framework. Furthermore, the last years were featured by a deterioration of the quality of political leadership. A phenomenon which was confirmed by a survey, 'Insights South Asia – Nepal Survey 2011', conducted by the South Asia Democratic Forum (SADF) and Gallup Europe found that the lack of political leadership is one of the most

significant factors that hamper, for example, economic growth in Nepal. Therefore, it will be of crucial importance that the new CA will take on the task of ending the constitutional stalemate and find a broadly accepted solution for power sharing. Some of the most important issues are the introduction of a federal system, the debate over an executive presidency as form of governance, or a potential sharing of power between prime minister and president among others. Until now, the constitutional and the consequent legislative vacuum functioned as a catalyzer for the erosion of the rule of law in the country and the denial of justice in the country creating a tremendous level of humanitarian costs among the Nepalese populations. However, at the moment it looks rather grim when it comes to identifying trends which could indicate an improvement of the work of the second CA. Having the country's troubled political history and the latest pre-election scuffles in mind, it appears legitimate to raise the question about the political will and the capacities of the new CA to deliver the most needed reforms. In contrast, due to fact that impunity remains practically unchallenged and mechanism of transitional justice are not established, and subsequently persecutors of human rights violation stand up in elections does not

bode well for the potential output of the second CA. Also regarding the improvement of the situation of other marginalized groups, especially women's rights, one cannot expect much from the CA. Only 10 percent of the registered candidates are women. It rather gives the impression that they might not be interested in changing the status quo when it comes to impunity, justice, human rights, and gender equality.

There are no doubts that holding polls is the only way out of the long-drawn imbroglio hampering any political and socio-economic progress in the country. But it must be ensured that the elections and the subsequent set-up of the second CA own sufficient legitimacy. This is only possible when the elections are perceived as free and fair. Furthermore, there must be an end of impunity of perpetrators of human rights violations and other criminal activities. Just the expression of the political will but no consequent implementation will lead to further tensions and erosion of the existing democratic norms, values and institutional structure in Nepal. Additionally, a condemnation of the culture of violence, accepted mechanism of transitional justice as well as a clear internalization of the notion of accountability, among the state as well as

the society is much needed. In sum, without accepted election peace and stability in Nepal will remain as a distant dream.