

Elections to a Second Constituent Assembly in Nepal

by Karl-Heinz Krämer

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On November 19th, 2013, the people of Nepal went to the polls to elect a new Constituent Assembly (CA-II). A first one (CA-I) had been elected in April 2008 and was dissolved without results on 27th May, 2012. A new constitution was necessary after the country's first democratic system, introduced in 1990 following a first people's movement, (Jana Andolan I), had failed. The democratization of 1990 had been incomplete because of numerous compromises with old feudal elites and lacking participation of greater sections of society. Instead of developing the young democracy, the leading party politicians had engaged in power struggles and corruption. This formally invited a Maoist insurgency (1996-2006) and a royal putsch (2002-2006). A second countrywide people's movement (Jana Andolan II) in April 2006 finally ended the insurgency and royal coup and urged the political parties to initiate a new start for an inclusive federal republic of Nepal and durable peace on the basis of a new constitution. The way was prescribed in the still valid interim constitution of January 2007 that had been written by representatives of the political parties including the then CPN-Maoist.

Among the different reasons for the failure of CA-I, one has to especially mention the misunderstanding, or better, misinterpretation of the corresponding guidelines of the interim constitution. Instead of enabling the elected representatives discuss and write the constitution, the leaders of the main parties misused CA-I for their power struggles, discussed the new constitution only among themselves and, finally, dissolved the assembly after they could not even agree on names, numbers and territorial aspects of the planned federal provinces.

The dissolution of CA-I threw the country into a legitimacy crisis without a constitutional way out. CA-I had also served as the parliament and this was needed to introduce constitutional and legal changes necessary for holding elections to a new CA. The crisis was further intensified when the Nepali Congress (NC) and CPN-UML, the main opposition parties before the dissolution of CA-I, demanded the replacement of the democratically elected government of Prime Minister Baburam Bhattarai (UCPN-M) before they were willing to discuss a solution to the crisis.

In March 2013, the party leaders chose an extremely unconstitutional way to hold new elections. The leaders of UCPN-M, NC, CPN-UML and UDMF (United Democratic Madheshi Front) labelled themselves High Level Political Committee (HLPC), the highest executive authority. The Bhattarai government was replaced by a so-called election government that was led by Chief Justice Khil Raj Regmi. The separation of state powers was annulled since the latter formally also remained the head of the Supreme Court (SC).

For a long time, it looked as if the elections to CA-II could not take place, especially, after the CPN-M, a radical party under Mohan Baidya that had split from the UCPN-M in June 2012, together with 32 other parties tried to prevent the elections at any cost. In the end, there were two things that made the elections successful: the presence of almost 200.000 security forces, including 62.000 from the army and, especially, the strong backing of the elections by civil society. The latter can be seen from the enormous participation in the elections of almost 78% under the PR system and 74% under the FPTP system, though these figures must also be treated with caution. Several millions of Nepalis had been excluded in advance because of labour migration and missing citizenship papers. The election was relatively peaceful according to the Election Commission (EC).

The interim constitution of January 2007 demands that the aspired new constitution is written by the elected representatives of the people. A special combination of direct and proportional election systems has been introduced in 2008 to guarantee a just inclusion of the country's social groups. On the basis of the FPTP (First Past the Post) system, 240 representatives have to be elected from the same number of constituencies. 335 others are elected through the so-called PR (Proportional Representation) system. Before the elections, the parties have to submit their PR lists to the Election Commission (EC). The candidates on these lists have to represent the main social groups of Nepal according to their population share in the national census as follows:

group	male candidates	female candidates
Madheshi	15.6%	15.6%
Janajati	18.9%	18.9%
Dalits	6.5%	6.5%
backward regions	2.0%	2.0%
Bahun, Chhetri, Thakuri	15.1%	15.1%

The number of candidates that are elected through this system depends on the percentage of votes which the party receives nationwide. In any case, the selection of this group of elected representatives must respect the composition as shown above. Which candidates from each group are selected, still depends on the decision of the party leaders, but the system guarantees that all population groups are represented in the CA approximately according to their population share.

Finally, the government shall nominate 26 persons from civil society or social groups that would still not be pre-represented in the assembly, so that the CA in the end will have 601 members. This provision had been misused by the leading parties in 2008 to nominate additional party representatives.

The UCPN-M that had won 50% of the FPTP seats in the 2008 elections is the big loser this time. The winners under the FPTP system are the dominating parties of the 1990 political system, i.e. the NC and the CPN-UML. Both parties together have garnered 82.5% of the direct mandates. Only ten parties have been able to win FPTP seats; it had been nine parties in 2008.

In 2008, the people voted in great number for the Maoist party that had made big promises, while NC and CPN-UML, had been responsible for the failure of the 1990 system. But the UCPN-M, besides many other failures, could not implement any of its ideas and promises, even though many had been urgent and reasonable. So, the voters returned to the other big parties hoping that they had learned from prior mistakes. For some 20 years now, the voters have repeatedly proven that they understand how democracy works, but the party leaders, so far, have not displayed the same level of "know-how"; neither those from NC and CPN-UML in 2008 nor those from the UCPN-M this time around.

The three leading parties of the FPTP system also lead under the PR system, but the absolute dominance of NC and CPN-UML has vanished. The NC is the leading party here as well, but compared to 2008 it was only able to get about 4.46% more votes. The CPN-UML received 3.39% more than in 2008, while the UCPN-M lost about 14%. The conservative hard-line party RPP-Nepal, that stands for monarchy and a Hindu state and rejects a federal setup of the country, came in fourth place winning about 24 PR but no FPTP seats. In 2008 it had won only four seats, the only MPs who voted against the abolition of monarchy in May 2008. Its conservative mother party, the RPP, has also improved slightly, winning five seats more than in 2008. NC and CPN-UML together have failed to put together a two-thirds majority in CA-II which had looked possible after the FPTP counting.

Altogether 30 parties could win seats (25 in 2008); 92 parties have won no seat (29 in 2008). As in 2008, two independent candidates have won FPTP seats, one of them being a NC dissident.

The multiplicity of Madheshi parties - 34 in these elections - has led to a decline of directly elected representatives from these parties in CA-II. Four Madheshi parties won 12 FPTP seats. In 2008, a same number of Madheshi parties had won 43 seats. Janajati parties (parties representing the interests of the numerous ethnic groups) have also participated in a greater number this time and as in previous elections they seem to have failed, which can predominantly be traced back to missing unity.

What does this contemporary election result mean for the moment? Nepal's politics is once again legitimated by the people's vote. The question of who is the more powerful has been answered anew, but this has little real implications. In CA-I, the UCPN-M had been the strongest party with about 38% of the MPs, but it had not been able to push through its agenda, even though NC and CPN-UML together had less MPs. None of the three big parties has been able to foster cooperation and compromise, and there is no reason to believe that this will change now. So, most probably, the party leaders will take this new legitimacy to continue their power struggles that have dominated the four years of CA-I.

All parties have failed in the past 18 months to discuss the problematic issues of CA-I, like federalism and inclusion, among themselves or even with other parties. This means that CA-II will start at the point of highest dissension where CA-I had been dissolved. Besides, it is hard to believe that the party leaders now understand that not they but the elected representatives of the people have to discuss and write the new constitution. The passing of the constitution requires a two-thirds majority. Not even the two leading parties together have this majority in CA-II. In addition, all three big parties are i divided internally into several camps; this factionalism makes common party lines difficult.

In addition the parties' name lists for the FPTP elections had been far less inclusive than those of 2008. This means that there will be fewer women, Janajatis, Madheshis and Dalits in CA-II. NC and CPN-UML already had rejected an ethnically inclusive federalism in CA-I. This was the main reason many members from ethnic communities left these parties after the dissolution of CA-I. All parties are dominated by male leaders from so-called high Hindu castes who do not understand that all the future federal provinces will be multi-ethnic as well, but that the so far excluded groups have to find their own identity in these states. This should not lead to separatism but to integration. The issues of inclusion, identity and federalism will be the most sensitive and decisive aspects of future constitution writing.

In recent days members of civil society have been suggesting that the Regmi government shall stay in office until the new constitution is promulgated. A party-led government should only be installed after the first parliamentary elections under the new constitution. This could be a great incentive for the party leaders to concentrate on constitution writing instead of power struggles, provided Regmi resigns from his office as Chief Justice. But it seems now that NC president Sushil Koirala will try to form a new government. Before this, several by-elections are necessary because some of the party leaders have won from two constituencies. So, at best, it will take one month until CA-II first convenes and tries to elect a new government.