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The Second Constituent Assembly Elections

Introduction

The elections were put back on track on 13 March 2013 when leaders of the four major political parties signed a 11-point agreement which led to the formation of an Interim Election Council (IEC) led by Chief Justice Khil Raj Regmi, supported by a loose alliance of Nepal's largest political parties in the High Level Political Committee (HLPC). The IEC announced that the Constituent Assembly (CA) elections in Nepal will be held on 19 November 2013, approximately 18 months after the demise of the first CA.¹ Despite lingering doubts even up to the end of the Dashain holidays (mid-October) that the elections would actually take place, the second CA elections now appears confirmed.

Party Positioning

The election manifestos of the major political parties the Unified Communist Party of Nepal-Maoist (UCPN[M]), Nepali Congress (NC) and Communist Party of Nepal-Unified Marxist Leninist (CPN[UML]) are similar in style. They start with their own viewpoints on the dissolution of the last CA, the backgrounds of their parties and issues resolved and outstanding. Little has changed in their stances on key issues such as federalism and forms of government. The UCPN(M) advocates 11 autonomous provinces on the basis of identity and capability and a directly elected president. The NC has seven provinces according to identity and capability² and a constitutional president and an executive prime minister (PM) under parliamentary rule. The CPN(UML) wants multiple identity based seven federal provinces with a directly elected executive PM and a constitutional president to be

¹ For an analysis of the failure of the first CA see Martin Chautari (MC) Briefing Paper No. 8. "The Debilitating Dynamics of Nepal's Constituent Assembly (2008-2012)," March 2013.

² Both the UCPN(M) and NC have specified identity and capability for federalism in their manifestos, but there are clear differences in weightage given by them to each category.



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ected by parliament. Both the NC and CPN(UML) have made commitments to complete a constitution within a year while UCPN(M) has stated that it will be completed in the shortest time possible. Reflecting the 11-point agreement, all three parties have committed in one form or another to retain the issues agreed upon by the old CA as the base from which to complete the constitution.

Most of the major parties have vastly expanded manifestos compared to 2008. However, overwhelming focus has been given on the economy and development and the role of government. On the constitution – the reason for these elections – the main parties have dedicated the following pages: 16 of 52 pages (UCPN[M]); 13 of 71 pages (NC) and 4 of 36 pages (CPN[UML]). A key player in the former CA and government following the 2007 Madhes movement, the Madhesi Janadhikar Forum Nepal (Upendra Yadav) has dedicated 6 out of 40 pages to the constitution with Mahanth Thakur led Tarai Madhes Loktantrik Party giving only 3 of 23 pages.

Thus replicating 2008 dynamics, it appears the importance of these elections for the constitution-writing process and the different role to be played by the CA has been overshadowed by regular electioneering elements. In the 2008 CA elections, this could be viewed positively given the need to return to normality. With the failure of the last CA to produce a constitution, the relative lack of importance given to the writing of a constitution is cause for concern.

The Election Setup

The electoral system replicates that of the prior CA elections. There are parallel first-past-the-post (FPTP) and proportional representation (PR) contests. Although the 2011 census revealed new population data, conflicting constitutional provisions rendered superfluous the work of the Constituency Delineation Commission and left unchanged constituency boundaries. Further, initial attempts to adjust the electoral system were challenged by a number of smaller parties, resulting in the same 2008 configuration of 240 FPTP and 335 PR seats with 26 seats to be nominated by the post-election council of ministers.

127 out of 130 registered parties at the EC filed applications to contest the elections. 6,128 candidates have been registered for the FPTP race and 10,707 candidates for the PR. Breaking down the FPTP candidates in terms of inclusion for the three major parties of UCPN(M); CPN(UML) and NC reveals the following: women constitute 11 percent; Dalit 1.5 percent; Madhesi 16.5 percent; Newar 6 percent; Janajati (excluding Newars) 21 percent and Muslim 1.8 percent. There was a less significant decline in percentage for Janajatis relative to women and Dalit candidates possibly due to calculations of losing Janajati leaders to Janajati movements and parties.³ None of these figures are proportionate to the population ratios for these groups. The Constituent Assembly Members Election Act 2007 requirement that “political parties must take into account the principle of inclusiveness while nominating the candidates for the FPTP system” appears to have been taken only as suggestive for the FPTP system.

However, specific percentage requirements for inclusion for different marginalized groups in the PR system were set: women 50; Dalit 13; Oppressed Caste/ Indigenous groups 37.8; Backward region 4; Madhesi 31.2 and Other Groups 30.2. Important to note is that the same “closed list” PR system used in the 2008 CA elections is being utilized. Roundedly criticized then, this PR system allows voters only to cast a vote for the party. It is up to the political party leaders themselves to fill the seats after the election from the list. This is at variance from common practice in closed list systems, in which seats are filled from the top of the candidate list so voters can influence selection.

Electoral Preparations

The Election Commission (EC) has stated that technical preparations for the election have largely been on schedule. The accuracy of the 2008 CA voter rolls had been widely questioned. A new voter registration drive by the EC with biometric data resulted in the registration of 12,147,865 voters. However, issues of the accuracy

³ The Kathmandu Post. 2013. Parties Snub Inclusion in FPTP Vote. 7 October, p. 1.



of the voter rolls remain. According to the 2011 census, there are 16 million potentially eligible Nepali voters. There have been various drives by the EC to ensure that citizenship certificates – the only legal document proving an individual is a citizen and therefore eligible to vote – reach those lacking documentation especially among the historically excluded. These have been important remedial measures. However, the drives have been widely criticized by especially marginalized groups as inadequate. Further, voter ID cards were made ready by the EC only on 8 November, 2013. Chief Election Commissioner Neela Kantha Uprety had stated that the cards would reach the districts by November 13, with distribution planned to take place from November 15 to 17, and even on election day.⁴ However, the transportation strike called by an alliance led by Mohan Baidya's Communist Party of Nepal-Maoist (CPN-M) as part of election boycott activities will clearly affect this schedule and other election logistics. For example, hundreds of government employees deputed to over 100 polling centers in Ilam district were unable to reach as scheduled because of the bandh.⁵ The EC has recently stated that other government issued identity cards can also be used if voters are without the official voter cards.

18,528 election booths⁶ have been set up and the EC has printed 14,952,000 PR ballot papers (light red) and an equal number of FPTP ballot papers (light blue), around 22 percent extra ballot papers. These were delivered to the districts by 8 November 2013.⁷ Given the one week delay in the nomination process, the EC's ability to publish and deliver the papers has been commendable. The EC also prepared an extensive voter education program, including the airing of public service spots on television and local FM stations. Special voter programs had also been launched in districts where the invalid vote percentage in the 2008 elections – which

averaged 5.15 percent – had exceeded more than six percent.⁸

However, the Carter Center's 31 October 2013 publication stated that most interviewed district election officers had not yet received voter education material.⁹ Further, media reports in late October 2013 noted problems with EC's large sized posters illustrating people how to vote. The posters only included two columns pictured on the ballot paper (reportedly due to the use of already published material) whereas some FPTP ballot papers have up to four columns while PR ballots have up to seven columns (which is two more than the first CA elections).¹⁰

As part of the government's Integrated Security Plan (ISP), around 140,000 security personnel are active: 62,000 Nepal Army, 45,000 Nepal Police and 29,000 Armed Police Force.¹¹ 45,000 temporary police personnel have also been hired. The Nepal Army and Armed Police Force will form outer circles of security, with only the Nepal Police in the central areas. The ISP has categorized 1,562 polling stations as "most sensitive" and 3,850 as "sensitive."

Code of Conduct and Monitoring

The contravention of rules of electoral financing and the election code of conduct in Nepal has been widely reported since the 1990s.¹² These have centered on the violation of prohibitions on the use of government offices and facilities; promotion of government employees during the election period and the exceeding of ceilings on electoral spending. The last had been a key issue in the first CA elections. The code of conduct for

⁴ The Himalayan Times. 2013. IDs to be Issued even on Poll Day. 10 November, p. 5.

⁵ República. 2013. Govt Staff Deployed for Polls Stranded by Strike. 13 November, p. 4.

⁶ MC interview with EC official; 13 November 2013.

⁷ MC interview with international election expert; 14 November 2013.

⁸ Of the 39 constituencies with seven and nine percent invalid votes, 38 were in the Madhes. Kamat, Ram Kumar. 2013. Higher Invalid Vote Percentage Likely. *The Himalayan Times*, 26 October, p. 1.

⁹ The Carter Center. 2013. Pre-Election Statement of the International Election Observation Mission to Nepal's 2013 Constituent Assembly Election. October 31.

¹⁰ Kamat, Ram Kumar. 2013. Higher Invalid Vote Percentage Likely. *The Himalayan Times*, 26 October, p. 1.

¹¹ Upadhyay, Akhilesh and Chetan Adhikari. 2013. Security Situation is but Stable. *The Kathmandu Post*, 8 November, p. 4.

¹² For more details on political finance in Nepal see MC Briefing Paper No. 6. "Political Finance and the Public Right," February 2012.



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the second CA elections took effect from 22 July 2013 and includes a ceiling of expenses of Rs. 1 million for FPTP candidate and Rs. 75,000 for each PR candidate. Media reports have noted that election costs of candidates have already tripled that of the maximum set.¹³ Apart from the non-filing of election expenses by candidates, past attention has centered on the actual costs of electioneering compared to the reports submitted to the EC. Individual candidates are required to submit election expenses within 35 days of the announcement of election results. It is unclear how the EC will audit and take action on candidate expenditure reports post-elections and what affect this will have on the perceptions of free and fair elections.

While, the barring of those convicted for criminal records from contesting the CA elections – including the UCPN(M) leader Bal Krishna Dhungel – has increased the credibility of the EC, the latter has increasingly come under criticisms for inaction in the face of violations of the code of conduct widely reported in the media, including unauthorized use of helicopters by candidates. As in past years, while sanctions exist none have yet been enforced. For the EC the smooth holding of elections has taken priority over the abiding by the code of conduct.

Three international organizations and 54 national organizations have registered as election observers. International monitors will number approximately 235. Although the EC has 74,000 Nepali observers registered, it is unclear how many will be available as less than a week before the elections, only 15,000 election passes had been collected from the EC.¹⁴ Responding to criticisms of the lack of neutrality of some Nepali observer organizations in 2008, the Chief Election Commissioner Upreti has promised action against such organizations this time.¹⁵

Electoral malpractice in the past included intimidation, booth capturing, voter impersonation and fraud, dummy candidates, misuse of state resources and a lack of state neutrality. With the bureaucratic government in place, the

latter two issues appear less important in this election. However, dummy candidates as independent candidates have already been reported in the media and voter intimidation and fraud represent key challenges.

Election Security

The election period is increasingly fraught with security risks and tension. A candidate was killed early in the election campaign period and various real and fake bombs have been planted throughout the country. Negotiations were unable to bring key members of the 33-party alliance led by Baidya's CPN-M into the elections. Initially a peaceful boycott had been promised and a proposed ten day bandh (strike) had been reduced to one full day strike on 11 November, with a transportation strike for the remaining period until the elections. However, the bandh has been violent with petrol bombs flung into buses and vehicles torched. The government arrest of bandh enforcers has resulted in more guerilla tactics by the boycotters. In the face of government action and general defiance by the public, an intensification of anti-poll activities including preventing citizens from voting appears planned.¹⁶

The continuation of the transportation bandh and the violent poll boycott activities have clear implications for voters and the management of the elections. The indiscriminate nature of the violence has had the intended effect of increasing fear among voters and the risk of intimidation of voters has increased with the boycotters' threats. The transportation bandh will also affect the ability of voters living in different parts of the country to reach their own voting stations and therefore voter turnout. For example, an estimated 1.5 million Nepalis left Kathmandu for their homes during the Dashain holidays this year. Many of these will be eligible voters, but it is unclear how many will take risks to return home to vote. In early October before the escalation of violence, Chief Election Commissioner Upreti had predicted an 85 percent voter turnout for the entire country.¹⁷

¹³ Poudel, Surendra. 2013. *Chunav Kharcha Tin Guna Nagdai. Nagarik*. 13 November, p. 1 & 2.

¹⁴ MC interview with EC official; 14 November 2013.

¹⁵ Himal Khabarpatrika. 2013. 'Pheri Samay Magiyo Bhane 4 Mangsirma Chunav Asambhav Chha.' 6 October, pp. 31-33.

¹⁶ República. Baidya Alliance Mulls Anti-Poll Protests. 13 November, p. 1.

¹⁷ Himal Khabarpatrika. 2013. 'Pheri Samay Magiyo Bhane 4 Mangsirma Chunav Asambhav Chha.' 6 October, pp. 31-33.



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The bandh has brought large problems in terms of the logistics of the election. Always difficult given Nepal's terrain, the transportation and security of the voter ballots and materials from the district headquarters to polling stations and then to counting centers following the elections will be especially challenging. The potentially thin spread of security in certain areas renders the process vulnerable at many stages. With the deployment of the army as well as the armed police force in this CA election, the handling of incidents and electoral violence represents a major challenge to the integrity of the elections.

Conclusion

The success or failure of the elections will depend on the extent to which voters and candidates view the electoral

process as credible and accept the legitimacy of the election results. There is a need to protect the electoral process, including the protection of voters, candidates and marked ballots. In the first CA election, international and national election monitors were criticized for not reaching the more remote areas of Nepal. In the absence of both the United Nations Mission in Nepal (UNMIN) and United Nations Office of High Commissioner for Human Rights (OHCHR) and their regional offices and staff, widespread and independent election observation and monitoring will be essential. Furthermore, unlike the 2008 CA elections, regardless of who wins there will be extra systemic challenges made to the legitimacy of the elections by the Baidya faction that will need to be met.

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