

DEMOCRACY

RESOURCE CENTER

Political Update

Political situation and mobilizations around the January 22, 2015 political commitment to promulgate the constitution

1. Introduction

In this report, Democracy Resource Center, Nepal (DRCN) presents its findings and assessment of Nepal's national political situation and mobilizations around the January 22, 2015 political commitment to promulgate a new constitution. The report is based on interviews conducted in Kathmandu, Kailali, Banke, Dang and Kaski districts. The Center observed the polarization of national politics over contentious constitutional issues and its impact on local politics. The report compares observations around the recent deadline to the political mobilizations that occurred in the lead-up to the May 28, 2012 deadline.¹

Based on interviews with prominent political leaders, civil society activists, local party members and journalists, this report emphasizes the importance of the timely promulgation of a constitution to move the prolonged political transition forward. The new constitution, however, should adequately reflect the spirits of past agreements signed as a part of the peace process.² Past experiences have shown that a situation that appears calm can quickly erupt in tensions in reaction to an external trigger, for example central level decisions on federalism.³ It is important to take into account that the new constitution provides a crucial opportunity to address long-standing and underlying political grievances arising from the political and economic

¹ The January 22, 2015 was a self-imposed deadline, or political commitment, made by major political parties in their election manifesto and reiterated in the second CA. Although the current CA's tenure is five years, major political parties resolved to take ownership of the work done by first CA and promulgate a new constitution within a year. In contrast, May 28, 2012 was a strict deadline, imposed by the Supreme Court of Nepal, for the then CA to promulgate a new constitution. The first CA was dissolved the night of the deadline amid prolonged and partly violent protests from different opposing interest groups over the issue of federalism.

² The government and political parties of Nepal have reached several agreements since the 12-Point Agreement between the seven-party alliance and Communist Party of Nepal (Maoist). These agreements include but are not limited to the peace process, army integration and arms management, federalism, proportional electoral system, and the inclusion of marginalized groups in state institutions. A list of the agreements can be found here: <http://www.peace.gov.np/content.php?id=167#>

³ See 'Carter Center observation on recent identity-based mobilization in Nepal,' The Carter Center, 8 June 2012; available at http://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/Nepal-Carter-Center-Observations-on-Identity-Based-Mobilization-060812.pdf

marginalization of certain ethnic groups and geographic regions and the highly centralized structure of the Nepali state. These grievances can be addressed through political and economic decentralization and inclusive electoral and state policies – enshrined in the constitution. While this report highlights the importance of reaching consensus on contentious constitutional issues to avoid further polarization and conflict, it also emphasizes the need to move forward the constitutional process.

2. Political Context

Following the November 19, 2013 elections, the major political parties of Nepal unanimously agreed to promulgate the new constitution on January 22, 2015 as outlined in the Constituent Assembly (CA) calendar adopted on April 4, 2014. The Carter Center in its post-election assessment of June 2014 observed that “the new CA was off to a promising start”, with the formation of three crucial constitutional committees headed by three prominent leaders of major political parties. The committees were formed “with an emphasis on consensus and outreach” and to ensure “wide participation of members in debate on crucial issues”.⁴ Politics soon plunged into crisis after the Political Dialogue and Consensus Committee (PDCC) of the CA, led by Unified Communist Party of Nepal (Maoist) (UCPN(M)) leader Baburam Bhattarai, was unable to forge consensus on contentious constitutional issues despite several attempts and extensions of its deadline to submit a report to the CA. The crisis further deepened when the ruling coalition of Nepali Congress (NC) and the Communist Party of Nepal - Unified Marxist-Leninist (CPN-UML) forwarded a 9-point joint proposal on contentious issues outlining their views on federalism, electoral system, form of governance and the judiciary. Opposition parties, mainly UCPN(M) and the Joint Democratic Madhesi Front (JDMF), rejected this proposal, which proposed seven provinces based on geography, as going against the Maoists’ agenda of ten provinces named on the basis of identity.⁵ The NC-UML⁶ proposal was perceived as backtracking on other earlier agreements such as a mixed electoral system, an 11-state federal model based on multiple-identity, and a mixed form of governance. Subsequently, the government and opposition debated during PDCC meetings and related side negotiations whether to submit the NC-UML proposal as PDCC report based on NC-UML’s majority in the CA or try to form consensus and submit a unanimous report. Bhattarai eventually submitted the report with the NC-UML proposal amidst pressure from the ruling coalition.

⁴ 'Nepal after the 2013 Constituent Assembly Elections,' The Carter Center, June 26, 2014, available at <http://www.cartercenter.org/resources/pdfs/news/pr/nepal-post-election-assessment-063014.pdf>

⁵ While there is a general agreement that Nepal will be a Federal Democratic Republic, political parties are divided on whether to carve and name provinces on the basis of dominant ethnic groups or geography. See ‘The Carter Center’s Observations on Identity-Based Political Activity and Mobilizations in Nepal’, p. 7 for more information on the debate over identity and geography. The report is available at <http://www.cartercenter.org/resources/pdfs/news/pr/CarterCenter-Report-IDBasedPoliticalActivity-ENG.pdf>

⁶ The current ruling coalition of NC and CPN-UML is commonly referred to as NC-UML.

The NC-UML and Maoist-JDMF alliances have since maintained their respective stances of 'constitution through majority voting process' and 'constitution through consensus'. While the ruling coalition expressed determination to promulgate the constitution through a majority vote, the opposition formed an alliance of 30 parties led by UCPN(M) in order to agitate for consensus. Several nationwide and regional general strikes were enforced during the second week of January. The January 12 Madhes strike⁷ was reported to be particularly effective and spilled over to the next day after a protestor died in a rally.

On January 19, the ruling coalition decided to go forward with the voting process despite warnings of obstruction from the opposition alliance. The NC chief whip was barred by the opposition from registering a proposal to form a questionnaire committee⁸ and CA members from the opposition alliance resorted to acts of vandalism in the CA. On January 20, the opposition alliance, this time including Communist Party of Nepal-Maoist (CPN-M)⁹ which had boycotted the second CA election, enforced a nationwide general strike that was reported to be much more effective than the ones imposed during earlier weeks.

The dialogue between the government and opposition effectively came to an end after the CA Chairman Subhash Nembang tabled a proposal to form a questionnaire committee and to formally start the voting process in the CA on January 22. The opposition parties have since accused the CA chairman of stepping beyond his role of an impartial speaker of the house and of bias in favor of the ruling parties. The opposition alliance has declared a phase-wise protest which is scheduled to last at least until the end of March if consensus is not reached. The protest programs include picketing of government offices, mass meetings in major urban areas and a 'decisive push' starting from March 30.¹⁰ However, the government and ruling parties have repeatedly called the opposition for dialogue. Prime Minister Sushil Koirala formally invited the opposition to resume dialogue and joint efforts to reach consensus. The Chairman of the CA, Subhash Nembang, also put the CA process on hold on February 12 to give parties time to work toward consensus. The opposition has acknowledged that the Prime Minister's call was positive, but remains firm in its position that the government should unequivocally commit to past

⁷ Several groups and parties are demanding an autonomous province in Nepal's southern plains generally referred to as Tarai. The region has close demographic, economic and cultural ties with northern India. While there have been sporadic struggles for an autonomous Madhes by different groups since 1951, political activities around the demand for an autonomous Madhes has been more frequent and prominent since the 21-days long Madhes movement of 2007 (Madhes Andholan). See 'Madheshi Nationalism and Restructuring the Nepali State' by Krishna Hachhethu available at <http://www.uni-bielefeld.de/midea/pdf/Hachhethu.pdf>

⁸ The questionnaire committee of the CA is entrusted to prepare a questionnaire on contentious constitutional issues for voting before the PDCC.

⁹ The CPN-M (Communist Party of Nepal - Maoist) is a political party currently outside the CA process. CPN-M split from UCPN(M) after the dissolution of the first CA maintaining that it was not possible to promulgate a people's constitution through the CA. The CPN-M boycotted the second CA election and allegedly worked to discourage voters. The two parties organized independent and joint programs in the lead-up to the January 22, 2015 deadline.

¹⁰ 'Oppn declares phase-wise protest', <http://www.ekantipur.com/the-kathmandu-post/2015/02/05/top-story/oppn-declares-phase-wise-protest/272882.html>.

political agreements and scrap the voting process initiated in the CA on January 22 for talks to resume.

In this context, the findings of the Democracy Resource Center's observation are summarized below.

3. Democracy Resource Center's assessment of recent political developments at central and local levels.

i. Political mobilizations in the lead-up to the January 2015 political commitment to promulgate the constitution were fewer and less intense compared to those of May 2012.

At the first sitting of the second CA on January 22, 2014 the political parties made a commitment to promulgate the constitution within a year although the tenure of the CA was five years. One of the reasons for DRC's visit to the far and mid-western Tarai and Kaski district was to assess the political mobilization during the lead-up to this self-imposed deadline. The contentious issues in the CA remained the same as in May 2012¹¹ – when unprecedented levels of identity-based activism led to violence and strikes that lasted up to 32 days in some places – with the debate revolving around state restructuring. However, DRC observers found that political activities around January 22, 2015 were fewer and less intense than in the lead-up to the May 28, 2012 deadline.

Interlocutors mainly provided three reasons for the different reactions to the two constitution making deadlines: 1) January 22, 2015 was just a political commitment and not an actual CA deadline and therefore people were less hopeful of a new constitution this time than in May 2012; 2) both groups in favor and against identity-based federalism felt represented by

¹¹ Nepal saw its most intense activism around identity politics in the lead-up to the May 28, 2012 deadline of the first Constituent Assembly. Although the entire country was divided into two broad groups of those supporting single-identity based federalism and those opposed to it, more intense activism was seen in some parts of the far-western Tarai and the western region. The division in the far-western Tarai was between the supporters of a Tharu state demanding that two far-western Tarai districts, Kailali and Kanchanpur, be included in a future Tharu state, and a broader coalition called *Akhanda Sudur-Paschim* or Undivided Far-West (UFW) demanding that any future federal set-up should not separate the districts in question from the far-western hill districts. In the western hills, mainly Pokhara of Kaski district, supporters of a Tamuwan (ethnic Gurung) state and an alliance of Brahmin-Chhetri Samaj advocating against identity-based federalism held respective demonstrations. Overlapping general strikes called by different groups were largely effective across the country and in the case of the far-western Tarai districts lasted for 32 days. Violent clashes ensued between supporters of opposing groups in both far-western Tarai districts and the western districts of Kaski and Nawalparasi. The identity-based activism witnessed in the lead-up to the May 28, 2012 CA deadline was unprecedented in intensity and participation. All protests came to an end after the CA deadline passed without promulgation of the constitution. However, considering the division between two distinctly opposed groups and related tensions, questions regarding the long-term impact on communal relations and possibility of future unrests were brought to attention and remain of importance today. See The Carter Center's Observation on Identity-Based Political Activity and Mobilizations in Nepal, March 2013, www.cartercenter.org/Nepal

mainstream political parties in the CA, and 3) the *Adivasi Janajati* movement has weakened following several leaders' appointments to the CA by NC and CPN-UML.

Political parties are still believed to be representing local agendas despite being widely regarded as unpopular and discredited for their failure to promulgate a new constitution on time. Interlocutors in districts visited widely acknowledged the representative capacity of political parties as one of the reasons for the decline in activism. One interlocutor in Kaski said that while “the *Janajati* demand of identity-based federalism is represented by the opposition, and the Brahmin-Chhetri agenda of retaining the previous state structure is represented by the ruling parties, activists from both camps have not felt the need for any protests”. However, interlocutors were skeptical that this situation will continue, and pointed to the mobilizing power of several parties in the opposition alliance. One journalist in Dang said, “constitutional debate should happen inside the CA but the ruling parties seem to be pushing the opposition out to the streets”.

Some interlocutors believed that the *Adivasi-Janajati* movement has weakened following the appointment of their leaders as CA members by the ruling parties. A *Janajati* activist in Kailali made a joking remark that “there is no *Janajati andolan* since the leaders have been stolen by NC and CPN-UML,” referring to the appointment of the President and General Secretary of Nepal Federation of Indigenous Nationalities (NEFIN) as CA members by NC and CPN-UML respectively. In Dang, a journalist said that prominent Tharu activists joined the Nepali Congress and CPN-UML before and after the second CA election.

However, earlier observations have indicated that identity-based activities can escalate rapidly in reaction to “a trigger in which a decision is made, or appears imminent, that could produce perceived (or actual) winners and losers”.¹² The lead-up to the January 22 deadline did not attract much local-level response as there was no decision to react to. “There is not even a slim chance that the constitution will be promulgated on time,” said a CPN-UML leader in Kailali, adding that “people would not waste their time for something that is not even likely to be there”. This is in clear contrast to the situation of May 2012 when leaders in the CA believed that there would be a constitution with a federal structure separating the two far-western Tarai districts from the hills and instructed local level cadres to act against it. Although interlocutors from both camps in the far-western Tarai continue to claim the two districts as theirs, observers did not hear of any attempts to forge alliances or of central-level instructions to push their demands this time. However, there is a possibility that the opposition activities will gradually escalate as central-level leaders become more active. A senior Madhesi leader admitted that it could take time to intensify the protest but believed that Madhesis' disillusionment with the state will eventually translate into a strong movement, especially if the constitution is passed by majority vote in the CA.

¹² See The Carter Center's Observation on Identity-Based Political Activity and Mobilizations in Nepal, March 2013, www.cartercenter.org/Nepal.

ii. The polarization of Nepal's central-level politics was reflected in the districts. Local political actors and observers remain divided on the issue of federalism.

As highlighted in the 'Political Context' section of this report, Nepali politics is currently polarized over both the process through which the new constitution should be promulgated and the content of the constitution. The federalism issue and in particular overlapping claims by different groups over the five Tarai districts of Jhapa, Morang, Sunsari in the eastern region and Kailali and Kanchanpur in the far-western region are at the center of this disagreement and polarization.¹³ Previous attempts to settle the boundaries regarding these districts have failed due to extensive and at times violent local reactions.¹⁴ The districts in question are part of the Tarai region but have considerable populations of hill migrants who have been raising concerns over the potential impact on their strong economic and familial ties with the hill districts if hills and Tarai are separated in future federal setup. Besides these local concerns, electoral interests of influential national political leaders who belong to these districts are also perceived to be preventing consensus. A UCPN(M) member in Banke said, "the Koirala family and Oli do not want to be ruled by Madhesis in the east and Sher Bahadur Deuba and Lekhraj Bhatta do not want to be ruled by the Tharus in the west, and thus the problem". Similarly, one political scientist in Kathmandu said "political leaders do not seem to be looking beyond the next election and want their constituency to be the part of the province where their community is in the majority".

The opposition alliance considers this their only chance to ensure their last remaining agendas are incorporated in the constitution. A civil society activist in Kathmandu noted that "Maoists conceded their army, became third party in the second CA from being single largest party in the first CA, gave up the agendas of directly elected president and proportional electoral system; their political relevance will cease if they cannot make sure that their idea of federalism with identity is incorporated in the new constitution."

District-level leaders belonging to both the ruling parties' and opposition alliances by and large reflected central-level views. CPN-UML leaders in Kailali and Banke were firmly against the idea of separating the plains from the hills. On the other hand, a Tharu activist in Kailali, who was supporting the opposition-led protests, called for a Tharuhat state entirely separate from the hill districts. Overlapping claims over the two far-western Tarai districts (Kailali and Kanchanpur) by Tharu and Pahadi¹⁵ communities was believed to be one of the reasons that political parties could not reach an agreement. On the one hand, supporters of a Tharuhat state (with the support of Maoists and Madheshi parties) have demanded those districts to be included

¹³The three eastern districts are claimed by activists advocating for Madhes, Limbuwan and Kochila states. The two far-western districts are claimed by both, advocates of Tharuhat and *Akhanda Sudur Paschim*.

¹⁴ See 'The Carter Center Observation on Recent Identity-Based Mobilization in Nepal', The Carter Center, 8 June 2012; for more information on local reactions to central level decision on federalism available at www.cartercenter.org/Nepal.

¹⁵ *Pahadis* refer to people originally from mid-hills, known as *Pahad* in Nepal.

in the state, whereas the supporters of Undivided Far West want to retain the existing regional structure.

Similarly, an NC leader in Kaski echoed the central voice of his party on the issue of federalism saying that provinces should not bear any particular ethnicity's name and that he is opposed to a Tamuwan state. He supported the NC and UML's position that there should be north-south divisions, and that the Tarai should not be separated from hill areas in a future federal set-up insisting that such an arrangement is necessary to keep Nepal integrated. A Madhesi Jana-Adhikar Forum - Nepal (MJF-N) leader in Banke, on the other hand, saw the 'north-south division' as being anti-federalist.

iii. A constitution passed without broader consensus is unlikely to be accepted by the opposition and will deepen polarization; it will also give more space and strength to radical voices.

There is a strong possibility that the opposition alliance will not accept the new constitution if it is promulgated through majority vote in the CA without the opposition's participation. MJF-N and UCPN(M) leaders in Banke maintained that they would not feel obliged to accept a constitution if it did not include their parties' views and agendas of change. The UCPN(M) representative said, "I wanted the constitution to be promulgated on January 22 as well, but not just any constitution". He emphasized that the constitution must include established agendas of change otherwise it "will be burned the day it is promulgated". Similarly, a senior Tharu leader in Kailali claimed that they would not accept a constitution passed through majority vote in the CA as it would likely ignore their demand of a Tharuhat state.

Interlocutors raised concern that if the mainstream political forces fail to forge a consensus and work together on the constitution it will provide room and opportunity to extremist voices on the ground. A senior Madhesi leader said that the possibility of the rise of extremist outfits would depend on the performance of the mainstream political forces. He further added that "if the opposition, Madhesi parties in particular, could not garner popular support it would create a void, which might be filled by people like CK Raut".¹⁶ Similarly, a Kathmandu based journalist argued that if the UCPN(M) failed to protect their progressive agendas and to retaliate strongly against the 'conservative' ruling coalition it would potentially create a space for the breakaway ultra-left Biplav (Netra Vikram Chand) faction. There were also reports that the CPN-M led by Mohan Baidhya was keen to unite with UCPN(M) following their cadres' defection in large numbers to the Biplav-led Communist Party of Nepal (Maoist)¹⁷. A journalist in Pokhara said

¹⁶ CK Raut is non-violently advocating for a separate Madhes nation. Educated in Cambridge University, he is believed by Madhesi civil society activists to have a strong support base among young educated Madhesis. He was arrested in September 2014 for advocating the splitting of the nation which is a criminal offence in Nepal under Crime Against State and Punishment Act. He was released on bail following strong reactions from civil society and human rights activists.

¹⁷ The CPN-M, a splinter faction of the UCPN(M), again split on December 2014. The new party retained the insurgency period name (Communist Party of Nepal Maoist) and the agenda of People's War.

that “a gesture of a radical step from Prachanda will lead to the reunification of the two Maoist parties”. That gesture could be a walkout from the CA by the UCPN(M). The same journalist said, “it is even more concerning that even local UCPN(M) cadres are encouraging their leaders to walk out of the CA to facilitate reunification of the two parties as they believe that split before the election cost them dear”. So far, the UCPN(M) have maintained that they will remain committed to the promulgation of a new constitution through the CA but continue to push their ‘progressive’ agendas through protests.¹⁸

4. Conclusion

Nepal needs a constitution to move forward the prolonged political transition and consolidate the past achievements of republicanism, secularism and political and economic restructuring of the state. The constitution also remains an outstanding commitment of the peace process. Political parties were closer than ever in finding consensus regarding contentious issues, especially on federalism on May 15, 2012 before the dissolution of the first CA. The change in balance of power after the second CA election in November 2013 and recent political developments have widened the gap between political parties even on previously agreed constitutional issues. In spite of this, leaders of the major political parties have reiterated their commitment to consensus and the promulgation of the constitution through the CA. On February 12, the Prime Minister invited the opposition for formal talks and CPN-UML Standing Committee deliberations on February 7 mainly focused on bringing the opposition back to negotiations. Leaders from the opposition alliance have also suggested possible solutions to the current deadlock.¹⁹

The political parties need to resume formal talks based on this willingness to work together and start new dialogue on the content of the constitution. The new constitution should adequately reflect the past political commitments expressed in CPA, the Interim Constitution and various other agreements reached with historically marginalized communities such as Madhesi, Janajatis, Women and Dalits for their political mainstreaming. Several interlocutors have expressed concerns over the risk of the reversal of the political process and the rise of political and secessionist extremism in absence of collaboration between major stakeholders of the peace process in addressing genuine grievances of political and economic marginalization. Therefore, a new constitution should be promulgated timely but through consensus honoring calls from civil society, prominent media institutions and the international community.

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¹⁸ The Maoist leaders reiterated their commitment to the CA process during a mass meeting held on February 28, 2015 in Kathmandu.

¹⁹ Multiple identity based federalism was a point of agreement between political parties in May 2012.