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469A Bukit Timah Road
#07-01, Tower Block, Singapore 259770
Tel: 6516 6179 / 6516 4239
Fax: 6776 7505 / 6314 5447
Email: isassecc@nus.edu.sg
Website: www.isas.nus.edu.sg



Nepal's Constitutional Crisis

Hema Kiruppalini¹

Abstract

In November 2011, the Supreme Court of Nepal ruled in favour of a fourth extension for the promulgation of the constitution. A final deadline of 27 May 2012 was set for the delivery of this mandate. However, once again the task has not been fulfilled and this stalemate will certainly push Nepal into a deeper political crisis. Inter- and intra-party politicking, ideological clashes and the inability to reach a consensus on the state's restructuring process on the basis of ethnic federalism have altogether hampered the major political parties from working together. Although some political headway has been made in the recent months, the transition to a federal democratic republic and the overall peace process in Nepal will remain incomplete if a constitutional crisis persists.

In a brief interview with the Prime Minister of Nepal, Dr Baburam Bhattarai, on 3 November 2011, questions relating to the future of Nepal's political transition were touched upon. This interview which was held at the Prime Minister's official residence in Baluwatar was conducted two days after the peace agreement that was achieved on 1 November 2011. This agreement was considered to be a political breakthrough as it was the result of Nepal's major political parties – the Unified Communist Party of Nepal-Maoist (UCPN-M), Nepali Congress (NC), the Madhesi parties and the Communist Party of Nepal-United Marxist Leninist (CPN-UML) – agreeing to a landmark peace deal after years of disputes over the

¹ Ms Hema Kiruppalini is Research Associate at the Institute of South Asian Studies (ISAS), an autonomous research institute at the National University of Singapore (NUS). She can be reached at isashk@nus.edu.sg. The views expressed in this paper are those of the author and do not necessarily reflect those of the Institute.

rehabilitation and integration of former Maoist combatants. The 1 November 2011 deal also saw the ‘parties [being] committed to forming an expert panel to work out the details of the federal system which was to replace the state restructuring commission mentioned in the interim constitution’.²

When asked whether he was hopeful about the constitution being drafted by the renewed deadline, Bhattarai remarked with much optimism that ‘the first draft will be ready by November 2011 and then we need another six months’³. And, prior to this affirmed that he is ‘focused on two tasks; the completion of the peace process and the writing of the constitution’.⁴ However, yet again, Nepal missed the 27 May 2012 deadline for the promulgation of the constitution. And, Bhattarai addressed the nation, announcing the dissolution of the Constituent Assembly (CA) and the cabinet’s decision to hold fresh elections for the CA. This announcement has been disapproved by the NC, UML and other parties. Moreover, while the Prime Minister now added that the ‘current government would hold elections and he would enjoy executive rights as per the Interim Constitution, the NC, UML and other fringe parties have demanded immediate resignation of the PM to pave way for national consensus’.⁵

In April 2008, the citizens of Nepal voted for the CA, giving it a two-year mandate. In November 2011, when the Supreme Court granted the fourth extension, the May 2012 deadline was deemed final, and failure to meet the deadline would amount to the dissolution of the CA. Intra- and inter-party disputes, ideological clashes and conflicting viewpoints over the country’s state restructuring procedure have derailed Nepal’s constitutional transition.

Firstly, the varying political stakes of the major parties have gradually sharpened the divide among them thus attenuating inter and intra-party tensions. While the UCPN (Maoists) and Madhesi Front agreed that the Prime Minister should not resign before the constitution was promulgated, the ‘Nepali Congress (NC) and United Marxist Leninist (UML) have been demanding the resignation of Dr Baburam Bhattarai to pave the way for national consensus government before the new constitution could be promulgated within the stipulated time’⁶. Also, the Maoist-Madhesi alliance is bolstered by their commitment to federalism and, in particular encourages the latter to seek political empowerment by allying with the largest

² ‘Nepal’s Peace Process: The Endgame Nears’. *International Crisis Group (ICG)*. Kathmandu/Brussels. 13 December 2011. p.7.

³ Interview with Dr Baburam Bhattarai, Prime Minister of Nepal conducted by Hema Kiruppalini. 3 November 2011. Kathmandu, Nepal.

⁴ Ibid.

⁵ *Kamal Dev Bhattarai*. ‘CA Goes Sans Statute; Govt Plans Fresh Elections’. *The Kathmandu Post*. 28 May 2012. <http://www.ekantipur.com/the-kathmandu-post/2012/05/27/top-story/ca-goes-sans-statute-govt-plans-fresh-elections/235347.html>. Accessed on 29 May 2012.

⁶ ‘UCPN (M) Decides to Remain in Power until Constitution is Promulgated’. 24 May 2012. <http://www.nepalnews.com/home/index.php/news/2/19017-ucpn-m-decides-to-remain-in-power-until-constitution-is-promulgated.html>. Accessed on 27 May 2012.

political party. On the contrary, the opposition parties, the NC and CPN-UML insist that ethnic federalism will sow the seeds of disintegration.⁷

The political divide is further apparent because in an official promise made to NC president Sushil Koirala by the Maoists, the NC will be allowed to lead the government that will conduct the next elections once the new constitution is promulgated.⁸ However, having failed to deliver on the mandate, the Prime Minister has set new elections for 22 November 2012, thus making it difficult to ascertain the political position of the Congress party. In an interview that NC members gave to the International Crisis Group (ICG), the party acknowledged its fears of not being back in power before the next elections and therefore having less access to state authority.⁹ While the credibility of the Maoist party wanes in the eyes of the public and its ideological and organisational abilities are at stake, the opposition parties await how the leadership of the caretaker government will unfold in the coming days and how it is going to undermine or strengthen their position and power.

In addition, intra-party cleavages in the Maoist party have jeopardised the party's image in the eyes of the Nepalese. Responding to my question about whom he considers to be his closest associate given the intra-party tensions in the Maoist party, Bhattarai remarked:

‘Ours is a communist party and it has a different structure from the other parties...we need to have unity in action and centralism...as a communist, one always thinks as a collective. Individuals do play a role but the role of the individual is secondary to the role of the collective. In that sense, the individual expresses the will of the collective or the will of the masses. So, my close associates, I can't just identify with individuals. It is about the expression of the will of the people through the party. That is my strength and I associate with all of my comrades. There is a division of labour and certain people specialise in certain things.’¹⁰

Although the PM alluded to cordial relations in the communist party, the divide between Maoist hardliner Mohan Baidya (Senior Vice-Chairperson of the CPN-M) who engages in the rhetoric of a revolutionary struggle on one hand, and Bhattarai who would rather take the line of ‘peace and constitution’ on the other, is clear. Now, in view of the post-CA climate, this factionalism has the potential to widen, threatening a split within the party.

⁷ John Narayan Parajuli. ‘Nepal Enters Crisis Mode as Constitution Talks Fail.’ *BBC News Asia*. 28 May 2012. <http://www.bbc.co.uk/news/world-asia-18234114>. Accessed on 31 May 2012.

⁸ ‘Nepal’s Peace Process: The Endgame Nears’. *International Crisis Group (ICG)*. Kathmandu/Brussels. 13 December 2011. p.4.

⁹ Ibid.

¹⁰ Interview with Dr Baburam Bhattarai, Prime Minister of Nepal, conducted by Hema Kiruppalini. 3 November 2011. Kathmandu, Nepal.

Secondly, a related question at stake is the political direction Nepal is headed in. In part, the stalemate in the country is a result of the challenge the Maoist party is encountering in trying to transcend from a communist formation to a social movement that will address the demands of the various ethnic groups that are clamouring for recognition in a ‘New Nepal’. When asked about the relevance of Maoism in contemporary Nepal and how the party’s communist ideology has evolved, the Prime Minister commented:

‘We are a communist party where the principles of democracy apply; where people have the freedom to discuss...we should see things in a dynamic frame and not in a static frame. Things always change, conditions change and you should also change according to the situation. When we mounted the Armed Peoples’ War, the autocratic monarchy was ruling the country. There was rampant feudalism in the countryside both in the economic, political and social sphere and to dismantle that, we had to apply force. Without force, what we did in 10 years would have taken 100 years. So that way, that struggle was needed. It was a historical necessity. After reaching a certain stage of the struggle, and the situation changes, we adopted a new strategy of overthrowing the monarchy – and go for Constituent Assembly (CA) elections and institutionalise changes through the CA. That has started a new phase of struggle...we have got republicanism, federalism, secularism, and then we have tremendous change in the mind-set of the people. We have to institutionalise these new changes through CA and through the new constitution...’¹¹

The current political deadlock underscores the complexities of reconfiguring the Maoist-communist ideology in the context of a transition to a federal democratic republic. Now, the dissolution of the CA implies that hardliners – the Mohan Baidya faction that resisted taking the line of ‘peace and constitution’ – may attempt to change the course of the party’s direction. The impending political polarisation within the Maoist party and among the major political parties reflects the failure of the leaders across different parties to work together. While the Maoist party itself is experiencing an ideological divide, the other major parties have their respective political affiliations – rightist, Marxist, federalist, etc – which, although are not necessarily mutually exclusive, have nonetheless contributed to a clash of viewpoints. Thirdly, disagreement over the state-restructuring process on the basis of ethnic federalism is one of the most sensitive issues plaguing the peace process. Major political parties are unable to reach a national consensus over details such as the number of provinces in federal structure, the boundaries and the names of the respective states. The state restructuring on the basis of ethnic federalism has proven to be a double-edged sword. Ultimately, a constitution premised on an ethnic based solution is a utopic ideal that will reap a catastrophic outcome in reality. In spite of the intricacies in Nepal’s ethnic diversity, there is a struggle to recognise

¹¹ Ibid.

dominant groups that have been marginalised historically with the caveat that ethnic prejudices will not be present in any territory. Therein lies a potential danger because in the long run if ethnic federalism prevails, issues pertaining to ethnic/caste/clan identity and inequality will be politicised from a geographic standpoint contributing to heightened tensions between old and new identities. In recent months, different *janjati* groups have taken to the streets of Nepal to assert their identity and this new region-based politics on the basis on ethnicity has to be delicately handled.

Nepal's constitutional impasse has resulted in a renewed political uncertainty that is further threatened by a legal crisis with some political parties alleging that another extension would be considered unconstitutional and illegitimate. There are several possibilities that could redefine the political climate in Nepal. One, as the Prime Minister announced, is to seek a fresh mandate from the people by holding elections on 22 November 2012 for the Constituent Assembly. Another possibility could be: holding a referendum on ethnic federalism prior to making any demarcation of boundaries. In any case, it remains to be seen whether the Prime Minister will be able to gain the support of all his comrades, widen his coalition and remain in power till the completion of the peace process or will resign in the light of pressure he is facing from opposing parties to step down and make way for the formation of national consensus under another leadership. In either scenario, there is dire necessity for the major political parties and fringe parties to hold a series of discussions so that the respective stakeholders can attempt to reach a compromise.

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