

Political Parties, Civil Society, and Electoral System in Nepal

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1. Introduction

The objective of this paper is to analyze the issues and challenges facing the political parties, civil society and electoral system in Nepal in the context of the proposed election for the Constituent Assembly, one of the key tasks assigned in the Interim Constitution promulgated in January 2007. There are serious doubts whether the elections would ever be held, and if held whether it would be free, fair and credible. The only way out of the deepening crisis in Nepal is elections but even this looks unlikely given the wide divergence of views on the electoral process. As a matter of fact, elections were originally scheduled for mid-June 2007 but now likely to be held on 22 November 2007. Even the new date looks ambitious.

2. Conceptual Framework

The role of the political parties, civil society and the electoral system in the context of the upcoming constituent assembly needs to be examined from the perspective of state-building, peace-building and democracy-building which are interconnected. Before Nepal can have democracy, it must first have a State. The State has been defined as a set of political institutions that exercise authority over a territory, make and execute policies, extract and distribute revenue, produce public goods, and maintain order by wielding an effective monopoly over the means of violence.¹ The last one – relative monopoly on the use of force – is the most fundamental requirement of any state. This means until the arms of national security including the army, police, and intelligence are sufficiently numerous, trained, armed, equipped, organized, and mobilized to establish law and order in the country, no political stability – democratic or otherwise – will be possible. State-building requires the ability to control and demobilize alternative sources of violence at the hands of non-state actors. It is also desirable to reduce structural incentives to violence by designing political institutions and processes so that political actors play the rules of the democratic game.²

In the post-conflict states, the goal of both state-building and peace-building is democracy-building. This is best done through elections, which has to be free, fair and credible. In a post-conflict setting, argues Diamond, it may be sometime before free, fair and credible elections can be organized. Unelected authority has to administer the country until representatives are democratically elected. He also points out that the best solution in a transitional government in which the former combatants share power by some agreed formula until democratic elections can be organized.³ Enough time needs to be provided in order to prepare for elections. This requires mobilization of human and financial resources for the vote, construction of an electoral system that provides right kind of incentives to restrain and transcend conflict, deployment of all the arms of the security forces to provide reasonable security of life and property for campaigning and voting, registration and education of voters on the issues, etc. Stage-managed elections

¹ Larry Diamond, "Promoting Democracy in Post-Conflict and Failed States: Lessons and Challenges," paper prepared for the National Policy Forum on Terrorism, Security, and America's Purpose, September 6-7, 2005.

² Larry Diamond, "Building Democracy After Conflict: Lessons from Iraq," *Journal of Democracy*, Vol. 16, No. 1, January 2005, p. 22.

³ Ibid.

produce neither democracy nor reduce potentials for new or relapsed conflicts. The political parties, civil society and the electoral exercise have to be mobilized to the full potential in order to ensure that elections are not only free and fair but also credible and democratic.

3. Political Perspectives

The political developments since April 2006 have indeed been monumental. The House of Representatives soon after being reinstated promulgated the Declaration of the House, drastically curtailing the powers of the king. Accordingly, it renamed His Majesty's Government into a more appropriate Nepal Government, and Royal Nepal Army as Nepal Army. The Interim Constitution promulgated on January 15, 2007, brings the CPN-M into the political process with the key goal of having elections held for the Constituent Assembly to draft a new constitution. The monarchy has been put under animated suspension until the elections. The first meeting of the Constituent Assembly is to decide the fate of monarchy, according to Article 159 (3), by a simple majority.⁴

Once the Interim Constitution was promulgated, the 205-member House of Representatives was co-opted to the nominated 360-member "Legislature Parliament" or the Assembly, to include, in addition to retaining the political parties represented in the House, unelected CPN-M and a handful of civil society members close to them. On the April Fools Day in 2007, the CPN-M was inducted in the Interim Government. The basic law of the land was so horridly drafted that the First Amendment was approved on March 9, 2007, providing for a number of changes. First, Article 33 has been amended to pledge for "proportional inclusion" of Madhesis, Dalits, ethnic groups, women, workers and peasants, disabled, disadvantaged groups and regions in "all areas of state structure." Article 63 (3) was amended to provide for representation in the Constituent Assembly on the basis of similarities in population, geographical features and other distinctions and on the basis of population in the Madhesh. Article 138 similarly provides for "loktantrik federal governance system" Finally, Article 154 provides for a five-member Constituency Delimitation Commission.⁵

In less than three months, a Second Amendment to the Interim Constitution has been approved by the Interim Cabinet to provide for the removal of the Prime Minister by a two-thirds majority no-confidence vote in the Assembly, and a two-thirds majority vote to abolish the monarchy if the king is found to pose grave obstacles to the holding of the elections. It is not clear on what grounds the king would be found to be posing "grave obstacles."⁶ On the basis of the structure and balance of political forces, the current regime has accurately been described as the "eight party 'oligopolistic pluralism' or 'monopoly of non-democratic power.'"⁷

The ceasefire holds strong but peace is not yet in sight. The management of arms and armed personnel is underway under the United Nations Political Mission in Nepal (UNMIN). So far, 31,152 CPN-M fighters are camped in 28 camps, seven of them main

⁴ *Nepalko Antarim Sambidhan 2063*, Kathmandu: Prerana Publications Pvt. Ltd., 2007, p. 68.

⁵ First Amendment to *Nepalko Antarim Sambidhan*, 2007.

⁶ The Cabinet approved the 11-point Second Amendment to the Interim Constitution on June 6, 2007 and registered the motion the same evening at the Assembly secretariat.

⁷ Ganga Thapa, "Democratisation process: Taking a wrong approach to it," *The Himalayan Times*, February 6, 2007.

camps, and 3,475 weapons registered and stored in containers under UNMIN monitoring. A large number of fighters are reported to be outside the camps and the registered weapons are a tip of the iceberg. The Nepal Army has similarly stored the same number and types of weapons also under UNMIN. The second stage of registration and verification remains stalled mainly because it would be a huge embarrassment for CPN-M as the camp is full of underage children and other young people promised jobs and income. The delay in verification would delay elections, which no one wants in any case. The elections were scheduled initially for mid-June 2007 but now being postponed until 22 November 2007. Even the new date looks highly ambitious in view of the breakdown in law and order as a result of the absence of State and the growing presence of at least nine armed groups operating in the Terai⁸ and the extra-constitutional warlords like the Young Communist League, which Prime Minister Koirala describes as “Young Criminal League” engaged in arson and terror.⁹ A Cabinet minister proposed a ban on the YCL.¹⁰

The paper is based on three assumptions. First, there are deliberate attempts to sideline the Nepali people in making key decisions affecting their lives, including the choice of the political regime by pre-empting the constituent assembly elections. The Communist Party of Nepal-Maoist (CPN-M) wants the unelected Legislature Parliament proclaim Nepal a republic because, it argues, there would never be elections for the Constituent Assembly so long as monarchy was not abolished. Elections are possible only under two conditions. First, if all the political parties agree to retain ceremonial monarchy. This is impossible because only Prime Minister Koirala favors. Second, if the Assembly abolishes monarchy by a two-thirds majority.¹¹ Such an authoritarian decision would not only raise questions on the very legitimacy of such a decision but would certainly pre-empt what would be the largest democratic exercise in the country’s history.

The second assumption is that there is no consensus among the political parties on the very concept and nature of democracy and good governance. There is no guarantee that all the political formations would abide by the verdict of the Constituent Assembly even if elections are free, fair and credible. So the threat to the new political dispensation would remain from no one else but the very political parties who have the unabashed track record of humiliating the people’s verdict. Finally, it is now being publicly and frankly being admitted that the lords of destiny are not the “sovereign” Nepali people but foreign powers as is now being admitted, surprisingly honestly by some politicians.¹²

4. Political Parties

⁸ These new groups are the Madhesi Jana Adhikar Forum (MJAF), and the rival armed factions of the Jantantrik Terai Mukti Morcha (JTMM) led by Jwala Singh and Jay Krishna Goit, Janabadi Ganatantrik Terai Mukti Morcha, Madhesi Mukti Tigers, Terai Tigers, Terai Cobra, Nepal Janatantrik Party, and Nepal Defense Army. *The Kathmandu Post*, June 1, 2007.

⁹ Prime Minister Girija Prasad Koirala quoted as saying at a meeting with business leaders at his official Baluwatar residence. See *Rashtriya Samachar Samiti*, June 4, 2007.

¹⁰ Minister for Land Reforms and Management Jagat Bahadur Bogati quoted in *Nepal Samacharpatra*, June 8, 2007.

¹¹ CPN-M Chairman Prachanda quoted as saying in an interview to *Janadesh*, June 5, 2007.

¹² Narayan Man Bijukchhe, President of the Nepal Majdoor Kisan Party told an interaction program organized by the Federation of Nepalese Journalists in Bhaktapur: “New Delhi holds the key to the talks between the government and the Maoists. Both the big parties and Maoists are dependent on India.” See *Kantipur*, October 23, 2006.

4.1 Constitutional Provisions

Part 18 of the Interim Constitution is devoted to political parties. Article 141 (1) prohibits the ban on any political party formed by a group of individuals committed to any ideology, philosophy and program. However, Article 141 (3) disqualifies any political party from registration if they are formed with the objectives opposed to the letter and spirit of the Preamble of the Interim Constitution.¹³ The political parties must be registered with the Election Commission (EC) if they want to contest election. Article 142 (5) requires any new political party to have at least 10,000 voter's signatures to get registered with the EC. This is discriminatory because those represented in the Assembly are not obliged to do so. It is therefore designed basically to prevent and discourage new political parties from challenging the current "political syndicate system."¹⁴ A Bill on Political Parties is in the process of enactment but it would be premature to comment on yet-to-be-born-baby.

4.2 Status of Political Parties

So far 62 parties have applied for registration with the EC. These include 14 parties represented in the Assembly – the Nepali Congress (NC), Communist Party of Nepal (United Marxist Leninist), NC (Democratic), Nepal Sadbhavana Party (Anandi Devi), Nepal Majdoorra Kisan Party (NMKP), Jana Morcha Nepal, Samyukta Jana Morcha and CPN-M, known as SPAM, as well as Jana Morcha Nepal (KC), Jana Morcha Nepal (Subedi), Rashtriya Prajatantra Party, Nepal Janasakti Party and Nepal Sadbhavana Party. None is ready yet for the elections.

The oldest among the political parties is the NC committed to "nationalism, democracy and creating a just, dynamic, independent and egalitarian society."¹⁵ Fresh vision and ideas are not its forte. It has been effectively under the control of Girija Prasad Koirala. Its activities are mainly confined in the village tea shops and district headquarters because its workers have been beaten and harassed in the countryside. The eleventh general convention of the party in September 2005 decided to remain neutral on monarchy after having concluded that "even though the constitutional monarchy was established as a result of the agreement between the people and the king, this agreement has time and again been unilaterally violated by the king. In this context, monarchy is no more relevant in our party statute."¹⁶ But Koirala, a split personality who favors a "ceremonial monarchy" as well, rejected in May 2007 demands for convening a special general convention of the party to discuss and take a clear position on monarchy.¹⁷

The CPN-UML seeks a "total transformation of the Nepali society" by establishing "*janatako bahudaliya janabad*." This indeed was a great leap forward in the history of communist movement in Nepal. It came in the wake of the collapse of the Soviet Union and the communist regimes in Eastern Europe and the adoption of capitalist reforms in

¹³ *Nepalko Antarim Sambidhan 2063*, op. cit., p. 61.

¹⁴ Madhav Kumar Basnet, "Aprajatantrik sambidhanko abhyash," *Kantipur*, December 26, 2006.

¹⁵ See *Nepali Congressko Bidhan, 1961*, as in www.nepalicongress.org.np

¹⁶ See text of the Political Report prepared by Policy and Program Committee headed by Ram Chandra Poudyal, as quoted in Subas Devkota, *Santibarta: Antarkatha*, Kathmandu: Yugantar Publications, 2007, p. 86.

¹⁷ *Nepal Samacharpatra*, May 16, 2007.

China under its paramount leader Deng Xiaoping. Thus, the CPN-UML long ago rejected the concepts of one-party dictatorship in favor of plural and competitive democratic system. It has remained a moderate left party even if CPN-M has stolen most of its grassroots cadres.¹⁸ The 12th meeting of its central committee in August 2006 approved the plan to have a referendum on the choice between *loktantrik ganatantra* and constitutional monarchy, arguing that it was not certain that the elected constituent assembly would necessarily opt for a republic.¹⁹ Its insistence on proportional representation reflects reluctant to go to the polls. It is also in the process of finalizing Vision 20, outlining the strategies in the fields of income and employment, education, irrigation and drinking water, electricity and communications.²⁰

The NC (D) is a breakaway faction of the NC, which refused to endorse Prime Minister Sher Bahadur Deuba's decision to extend emergency in order to "keep the momentum" of the on-going military campaign to quell terrorism unleashed by CPN-M whom he accused of having "betrayed me and let down the country."²¹ The disciplinary committee of NC expelled Deuba from the party's ordinary membership in May 2003, which did not affect Deuba continuing as caretaker premier but did further widen fissures in NC. The party split vertically, which was natural and expected. Its birth reflects both the frustration with Koirala's long but largely wasted innings in Nepali politics. His failure in helping build foundations for strong political and economic institutions and processes based on the rule of law, good governance and independent justice system is indeed monumental. The on-going efforts for unification of NC and NC (D) is expected to be neither dignified nor just.²²

No party has split and merged more than RPP, which now has at least three separate formations. One is led by Pashupati Shumshere Rana and the other by Rabindra Nath Sharma. The Rashtriya Janasakti Party led by Surya Bahadur Thapa, who fresh from a visit to New Delhi, is oozing with confidence for an "alliance of non-communist democratic parties." He has rejected SPAM's right to decide the fate of monarchy, saying people should decide the issue at the Constituent Assembly.²³

The NSP claims to espouse the cause of the Terai people but its members during the 1990 regime were nothing more than of ornamental values. Faced with challenges from the left and right, it is seeking a common ground with other non-communist formations, especially on monarchy.²⁴ The party had split following personality clashes and ego during the fourth general convention in Rajbiraj in March 2003. However, the two factions decided to unite in June 2007.²⁵

¹⁸ During an extended field survey in mid-west and far-west Nepal in January-February 2001, most CPN-UML workers confided the author that they were CPN-UML workers during the day time to protect themselves from the harassments of the security forces but were CPN-M guerrillas during the night to survive from the accusations from the rebels of being informants or government spies.

¹⁹ Raghu Pant, "Amale baithak ra loktantrik ganatantra," *Roadmap*, September 7, 2006.

²⁰ The details of Vision 20 are sketchy but the exercise itself is a major undertaking by any political party in Nepal. See interview of Dr. Govinda Bahadur Thapa in *Roadmap*, June 7, 2007.

²¹ Sher Bahadur Deuba quoted as saying in an interview with the *Associated Press* on January 8, 2002.

²² *Saptahik Punarjagaran* weekly, May 22, 2007.

²³ *Kantipur*, May 22, 2007.

²⁴ Sarita Giri, "Naya Nepal nirmanko sandarbha," *Kantipur*, November 5, 2006.

²⁵ *Gorkhapatra*, June 9, 2007.

The Nepal Majdoor Kisan Party (NMKP) has been active in Bhaktapur. Its boss Narayan Man Bijukchhe (Rohit) is worried that key decisions in the name of the sovereign Nepali people are being made in New Delhi and Washington. He was the first to admit that political changes in Nepal in April 2006 came largely because of the role played by India and America. Instead of focusing on only political issues, Bijukchhe wants the current government to resolve problems of peasants. He says although part of the SPAM, it is not responsible for delays in elections.

The CPN-M is the only party that has its own military, the 'people's liberation army' and para-military forces. At the second national conference believed to have been held in Goa, India in February 2001, CPN-M adopted *Prachandapath* to combine "armed mass revolt" and "people's war" in what was described as a "progressive shift."²⁶ It also amended its statute to allow the formation of a three-tiered leadership – a central committee, a politburo and a standing committee, perhaps reflecting the power struggle between Prachanda and Baburam Bhattarai. The central committee meetings at Chunwang in October 2005 and at Kamidanda in September 2006 endorsed the policy of "effective political interference and mass mobilization" which laid the foundations for the 12-point understanding between the SPA and CPN-M.²⁷ The strategy devised since then combined the "people's war, people's movement, talks and diplomatic initiatives" as various forms of revolution.²⁸ Key officials have been assigned different professional groups to keep the momentum of chaos and "struggle" until final seizure of power.²⁹

Whether the CPN-M will give up arms and join the mainstream is not clear. It cannot join the political process by "having a gun stashed in their back pockets."³⁰ If it gives up arms, the people will be no more obliged to bow to it. There is also a wide gap of understanding on what the CPN-M wants and what SPA understands CPN-M wants. Its main goals are restructuring of state, election of a constituent assembly and a federal *loktantrik ganatantra*. Restructuring means integration of the "two armies to build a new army, integration of two laws and law courts to build a new one, unity of new and old regimes to undertake revolutionary land reforms, write off agricultural loans, adequate wage to workers and integration of education system."³¹ It has not given up its primary goal of the "long-term people's war which is to destroy the reactionary regime and build the new people's regime."³² It could be perhaps for this reason that the United States

²⁶ CPN-M Press Release, February 25, 2001.

²⁷ Ram Bahadur Thapa (Badal), "Bartaman rajnaitik sankat tatha nikashko prashna," *Janadesh*, May 29, 2007.

²⁸ Baburam Bhattarai, "Bichar, Banduk ra Naya Karyadisha," *Janadesh*, May 29, 2007.

²⁹ Prachanda is in charge of students and health workers. Others include Mohan Baidya (culture), Bhattarai (labor and intellectuals), Krishna Bahadur Mahara (teachers and employees), Dinath Sharma (farmers, dalits, election, human rights, UNICEF), Dev Gurung (women, industry and commerce, nationalities, regional forums, INGOs, UNDP, development projects), Barsha Man Pun (Ananta) (Sports), and Ram Karki (Bhutanese refugees). See *Janadesh*, January 9, 2007.

³⁰ The skepticism was expressed by Assistant Secretary of State for South and Central Asian Affairs Richard A. Boucher at the House of Representatives International Relations Committee's Sub Committee on Asia and the Pacific in Washington on May 17, 2006.

³¹ Netra Bikram Chand (Biplav), "Naya karyanitalai dhridhatapurba karyanwayan garau," *Janadesh*, April 17, 2007. Chand is CPN-M central committee member.

³² Baburam Bhattarai, "Naya karyadishalai bujhne prayas," *Janadesh*, June 5, 2007.

continues to list it in terrorist category as it has “neither renounced violence nor changed its behavior.”³³

4.3 Key Issues

4.3.1 One party, two party or multi-party?

If the CPN-M finds a Kerensky, it will take full advantage of the current chaos, just like between the overthrow of Czar Nicholas II and the final coup that propelled Bolsheviks to power.³⁴ If this happens, it is possible, at least theoretically, for Nepal to be under a single party communist dictatorship. Another possibility is if the two major formations – CPN-UML and CPN-M – integrate into the mainstream left force. CPN-UML called for unity among “forward looking patriotic, pro-people and supporters of social justice” to achieve the goals of drafting a new constitution to establish *loktantrik ganatantra* through election to the Constituent Assembly.³⁵ Subsequently, CPN-UML and CPN-M agreed to work together for the proclamation of Nepal as a *loktantrik ganatantra* if elections for the Constituent Assembly are delayed.³⁶ A member of the ruling coalition in India instantly endorsed the agreement, saying India would have no problem if Nepal became a republic.³⁷

Despite the rich rhetoric, unity is not possible between CPN-UML and CPN-M because they are rival forces if one goes by the mood at the Lenin Day talk program organized by the Kathmandu Valley regional bureau of CPN-M on April 22, 2007. The situation today is such that no political party would be in a position to do anything if the CPN-M and CPN-UML unify. Yet, the fact of life is unity between them is next to impossible. Such a unity will not only vertically divide SPAM and produce a dramatic change in power equation but also but divide the international community on their policies on political alignments. There is a sea of differences in political, economic and social programs between them.³⁸ CPN-UML’s Madhav Kumar Nepal has ruled out unity because of policy differences, international situation and ground realities.³⁹ Even the concept of *loktantrik ganatantra* has different connotations for CPN-UML, which is committed to democratic ideals and style, CPN-M, which looks at the concept as yet another form of “people’s war.”⁴⁰

It is theoretically possible for the non-communist parties to form an alliance, as suggested by Surya Bahadur Thapa. It is also possible for the NC and CPN-UML to engage in “permanent cohabitation” for the “establishment of permanent loktantra and permanent peace through the Constituent Assembly” as reportedly suggested by Indian Prime Minister Manmohan Singh to the party’s delegation which visited India in June

³³ United States Ambassador James F. Moriarty, as quoted in *ekantipur.com* as accessed on May 18, 2007, after meeting with Prime Minister Koirala.

³⁴ Krishna Singh Bom, “Nepalese Kerensky in the making?,” see www.bangladesh-web.com

³⁵ Press statement issued by CPN-UML General Secretary Madhav Kumar Nepal on the occasion of the 58th anniversary of the establishment of CPN on April 22, 2007.

³⁶ The agreement followed talks between CPN-UML led by Madhav Nepal and CPN-M led by Prachanda at CPN-UML Headquarters at Balkhu on April 25, 2007.

³⁷ Sitaram Yachuri, Communist Party of India-Marxist, quoted in *Nepal Samacharpatra*, April 26, 2007.

³⁸ Pradip Gyawali, “Naya dhruvikaranko sambhavana,” *Kantipur*, May 8, 2007.

³⁹ CPN-UML general secretary Madhav Kumar Nepal speaking at the Central Relations Department of the party at Balkhu. See *Kantipur*, May 13, 2007.

⁴⁰ Narayan Khadka, “Nepalma communist ekta,” *Kantipur*, May 10, 2007.

2007.⁴¹ The Indian suggestion was described by Prachanda as a “game plan to finish the Maoists.”⁴²

4.3.2 Erosion of Established Political Parties

The political parties became part of the political process after a 30-year old ban on them was lifted in 1990. As they began to get reorganized and expand their network on a national scale, they began to reflect contradictions in their goals and policies to suit everyone. They pursued contradictory goals of democratic socialism and policies of liberal capitalism.⁴³ The highly centralized structure of the party prevented issues at the grassroots from being heard at the central level, and as a result policy formulation and interventions suffered. The parties were devoid of ideology, policy and programs for social and political transformation, which only perpetuated exclusion because there was little active participation. The party organizations declined qualitatively, and narrow thinking benefited only groups and subgroups within each party. Local and national issues became secondary. This wide gap between the political parties and the society eroded the democratic structure introduced in 1990.

4.3.3 Emergence of New Class

A more prosperous and powerful new class emerged, further marginalizing the poor and unrepresented. The first group included traders and businessmen, contractors and middlemen, and professionals who not only dominated policy decisions and discussions but led to a rise in consumerism. On the other hand, people living below the poverty level suffered as a result of poor progress on land tenure and tenancy reforms. The resultant widening social and economic gaps affected access to and quality of education, health care and communications to benefit the emerging new class at the cost of the poor. Foreign aid and debt continues to grow despite serious doubts whether it is relevant at all to the needs of the people. The casualty has been the national self-reliance and confidence.⁴⁴

4.3.4 Internal Democracy

It is ironic that the political parties are effectively under the thumb rule of a small coterie, thus discouraging young talents. For example, only “active” NC members can vote but its president and general secretary have the arbitrary power to decide who are active and who are not without attributing reason. Only half of the 31-member central working committee is elected, the rest are president’s nominees. The party machine dances with the whims and swings of the party president, who is accountable to none but himself. Other parties are not very different even though the voice at the grassroots is heard by the central leadership of CPN-UML, CPN-M and NMKP. CPN-UML encourages open debate within the mandate of the national convention. The debates are sometimes so intense that it vertically split in 1996 following the acrimonious debate on the controversial Mahakali Treaty. The party would have avoided split had there been no

⁴¹ The suggestion was made by Indian Prime Minister Manmohan Singh to a three-member CPN-UML delegation led by General Secretary Madhav Kumar Nepal. See *Kantipur*, June 6, 2007.

⁴² Comment by Prachanda to the Indian suggestion at a function organized by Revolutionary Journalists Association at Butwal, *Kantipur*, June 7, 2007.

⁴³ Chaitanya Mishra, “Samaj; 2046ko das barsha yata,” *Mulyankan*, Mangsir 2057, pp. 33-34.

⁴⁴ *Ibid.*

flow of money – allegedly from extraneous sources as admitted or suspected by the party members themselves – to swing the vote.

4.3.5 Financial Transparency

The main sources of income of the parties are membership fees, levies from members occupying remunerative positions, contributions and donations from business houses and “some outside” support. For example, the NC raises Rs. 100 from “active members.” CPN-UML collects Rs. 5 per month from “organized members.”⁴⁵ CPN-M, perhaps the richest party has a centralized system where the party decides who gets what. This applies even to the party legislators. The tricky part is the donation from business community. Very little information is available on such funding. Business houses contribute undisclosed amounts to parties on the condition that the figures are not disclosed to anyone. Once the figures are disclosed, other parties with far less influence ask for more. In order to make this transparent, then Finance Minister Prakash C. Lohani introduced a system under which the donations to the party were waived of income taxes. The plan never took off. A new study on the political parties recommends the need to look at proposals to provide state funds to enhance transparency.⁴⁶

The main job of the political parties should be to fulfill the constitutional obligations of holding free, fair and credible elections for the Constituent Assembly. Instead of focusing on the elections, the political parties are focusing on spoils of office and other trivial issues, skirting the primary responsibility. The main victim of such a lack of trust and confidence would be democracy and good governance.

5. Civil Society

The civil society agenda is highly politicized and has been clearly identified with those of the CPN-M.⁴⁷ It has yet to identify its interests with those of the common people in terms of social, economic and cultural uplift.⁴⁸ Media has played a major role, but mainly in propaganda than in educating the people on values and sanctity of democratic institutions and processes. However, there are a number of issues that need to be resolved in order to strengthen the independence of media in the evolving democracy. Many of the issues have been addressed in the Concept Paper of the Ministry of Information and Communications, which seeks to promote an “independent, impartial, pro-people journalism sensitive to national independence.”⁴⁹

5.1 Redefine Role of State Media

Firstly, the role of the state media needs to be redefined. There is now no justification whatsoever for the state-run print media – the *Rising Nepal* and *Gorkhapatra* – because

⁴⁵ Dwarika N. Dhungel, *Inside Out: Political Parties in Nepal*, Kathmandu: Institute for Integrated Development Studies, 2007, p. 31.

⁴⁶ *Ibid.*, p. 92.

⁴⁷ Sanjiv Upreti, “Nagarik andolanka naya chunauti,” *Kantipur*, May 31, 2007.

⁴⁸ An example of the over politicized agenda of the civil society is a 2-point press statement that mainly focuses on the atrocities committed by CPN-M and the absence of governance and rule of law. See “Yuddhamukta Nepal ra trasmukta Nepali,” *Kantipur*, October 20, 2006.

⁴⁹ Concept Paper on Policies and Programs of the Ministry of Information and Communications, Kathmandu, June 5, 2007.

it has failed to combine professionalism with authoritative voice of the Nepali society. They neither reflect the thinking in the Nepal government nor are they party newspapers. They have lost all the use except for serving as an unabashed propaganda tool. It is tragic that an institution rich in infrastructure, full of multifarious talents and with a long history of serving information needs of the people is allowed to rot by its unimaginative political masters. Since it is a powerful propaganda tool, the Interim Government is in the process of publishing *Gorkhapatra* simultaneously in other cities in Nepal. As for the *Rashtriya Samachar Samiti*, there is no alternative but to put it on a more professional and sound financial footing. The political gods that run this agency would do it a great justice if they stop draining its resources for *speech* reporting to allow more space to *news* reporting.

5.2 Public Service Broadcasting

Electronic media under state control – *Radio Nepal* and *Nepal Television* – need to be developed as a public broadcast system. This means the government provides the resources to run these institutions as vibrant agencies for information dissemination under an efficient, professional and committed management free of government control. The management should be accountable to the public interest, and should enjoy political impartiality. Whether this model will work is a different issue but will definitely reduce the financial burden on the government, provide greater editorial freedom and enhance quality of the programs, and boost competitiveness vis-à-vis the private sector electronic media. There is no sense in preventing the promotion of their institutional and professional growth in the larger interest of the well-being and interest of the Nepali people and the society.⁵⁰ It would be unrealistic at the time to expect much in this area. Plans are underway to expand radio broadcasting in the Karnali Zone by establishing a sub-station of *Radio Nepal*.

5.3 New Thinking

The role of both the Ministry of Information and Communications and Department of Information needs to be redefined in the new political context. They require transformation from a *policing* thinking to *facilitating* thinking. Instead of being instruments for political control, their roles now should be for promoting human resources development in the media and formulating regulatory framework agreeable to the stakeholders. This way, the Ministry and the Department would help enhance media's professional standards. There is also the need to focus on a number of other policy issues such as cross media ownership, foreign investment in media, self censorship and advertising policy of the government.⁵¹ The Broadcasting Association of Nepal wants the government to scrap license issued to Nepal Army to operate FM broadcasts and stop those owned and managed by the CPN-M. It also wants a review of the exorbitant royalty.

⁵⁰ Jan Sharma, et al, "Media" in Dwarika Nath Dhungel and Aditya Man Shrestha, *Nepal: conflict Resolution and Sustainable Peace – Public Institutions Reforms*, Kathmandu: Institute for Integrated Development studies, 2006, p. 118.

⁵¹ The Media Recommendation Commission headed by Radhe Shyam Adhikari submitted its Report to Prime Minister Girija Prasad Koirala on September 15, 2006. Among other things, it recommends up to 49 percent foreign direct investment should be allowed in media sector provided the management chief and editorial staff are Nepali citizens.

5.4 Right to Information

Last but not the least, the Bill on Right to Information has been pending for the last 18 years speaks volumes on the commitment of the political parties on promoting democracy and freedom. The parliamentary Committee on Environment, Communications and Technology on May 21, 2007 formed a sub-committee headed by Raghuj Pant to review the Bill. When, and if, enacted, the Bill is expected to assure the right to information not just for the media persons but the general public as well.

The top priority of the Interim Government is to reconstruct and rehabilitate communications infrastructure destroyed by the CPN-M. A Conflict Affected Media Person's Welfare Fund is also planned with seed money of Rs. 5 million. The fund will provide financial grants to start small business, and scholarships to their children.

6. Electoral System

On April 13, 2007, the EC admitted that elections for the Constituent Assembly were not possible on June 20 as stipulated for five key reasons. Chief Election Commissioner Bhoj Raj Pokhrel discussed these issues with political parties at the EC office in March 2007. First, five poll-related laws were still to be finalized as were policies, directory and code of conduct and they need to be printed in sufficient numbers. Second, the constituencies had not yet been delimited. Third, logistics required at least 60 days to print, acquire, pack and dispatch 60 different supporting materials to polling centers where 140,000 civil servants were to be deployed. Fourth, peace and security situation is so poor that neither the political parties have been able to go to the countryside nor the EC has been allowed to open its offices in many districts. Fifth, national and international poll monitoring teams, including from the United Nations, need to be invited at least three months in advance to mobilize and organize.⁵² Prime Minister Koirala initially insisted that it would be "unusual election under unusual circumstances."⁵³ After returning from extended trip to India in April 2007, he agreed to defer the elections.

6.1 Constitutional Provision

Article 63 of the Interim Constitution 2007 provides for a very complicated mixed electoral system for the 425-member Constituent Assembly. The first 205 members are to be elected directly on the basis of "one person one vote" and secret ballots where candidates are elected by a simple majority in 205 electoral constituencies. Other 204 members are to be elected on the basis of proportional representation system, which means on the basis of proportion of votes political parties are able to muster at the national level. The Interim Government nominates the remaining 16 persons from among people who have made distinct contributions to the national life. The Article also provides that all Nepali citizens having attained the age of 18 or more on December 15, 2006 are eligible to vote. The term of the constituent assembly has been fixed at two years from its first meeting to be extended by six months more if necessary.⁵⁴

⁵² *The Rising Nepal*, March 19, 2007.

⁵³ Statement by Prime Minister Girija Prasad Koirala at the Election Commission after the official briefing on March 19, 2007.

⁵⁴ *Nepalko Antarim Sambidhan 2063*, op. cit., pp. 27-33

Article 128 provides for the EC consisting of a Chief Election Commissioner and four other Commissioners appointed by the Prime Minister at the recommendation of the Constitutional Council for a fixed term of six years.⁵⁵ They could be removed either after attaining the age of 65 or by impeachment. One has to be at least a graduate, should not be a member of any political party “at the time of appointment”, which is tricky, and must have completed the age of 45 and have “high moral character” to qualify for the job. The main job of the EC is to “conduct, supervise, direct and control elections for the Constituent Assembly or referendum under Article 157 or local elections under this Constitution and other Acts.”⁵⁶ The EC depends on the government for human and financial resources.

6.2 Key Issues

6.2.1 Security Situation

The peace and security is the first prerequisite for a free, fair and credible election. The security environment is marked by “unacceptable levels of continued fear, intimidation and physical violence.”⁵⁷ Fear, intimidation, threats, extortions, and insecurity continue. The activities of different groups in the Terai and the YCL elsewhere have only made the matters worse. The police force, responsible for maintaining law and order, is so demoralized, politicized and ill-equipped that very few feel secure. It is being suggested that since the current SPAM government is not in a position to hold elections, an “independent government” should be appointed in consent with the SPAM to hold the elections.⁵⁸ This the parties will never accept because they lose the benefit of incumbency to influence, if not swing, the vote. Koirala has only been recently stressing on enforcing law and order, but the prime suspect is his Home Minister Krishna Prasad Sitaula, a relative of Prachanda. At a recent Nepal Army function, Koirala not only showered praise on the Army for serving the people and defending the nation but also reiterated “our national obligation to make the Army more active in protecting the rights of the people.”⁵⁹

6.2.2 Legislative Reforms

Apart from the Second Amendment to the Interim Constitution, several other key legislations have to be enacted to allow the EC to proceed with the registration of candidates, voter education and design and printing of ballots, constituency delimitation and completion of the voter registration list, among others. A total of six Acts, six Regulations, and 25 Manuals are required for the elections. So far only three Acts have been enacted – Election Commission Act 2007, Election (Offense and Punishment) Act 2007, and Electoral Rolls Act 2007. The remaining three Acts – Constituent Assembly Election Act, Constituent Assembly Election Tribunal Act, and Constituent Assembly Member Act – are not yet ready. Only Electoral Rolls Regulation 2007 and Political

⁵⁵ *Nepalko Antanim Sambidhan 2063*, op. cit., p. 53.

⁵⁶ *Ibid.*, p. 54.

⁵⁷ See Pre-Election Statement issued by Carter Center Election Observation Mission in Nepal, April 16, 2007. See also http://www.cartercenter.org/news/pr/nepal_preelect_041607.html

⁵⁸ Nilamber Acharya quoted in *Chhalphal*, June 3, 2007.

⁵⁹ Prime Minister Girija Prasad Koirala praised the Nepal Army while inaugurating its rehabilitation center at Ichangu Village on May 25, 2007.

Parties Registration (Election) Regulations are ready now while four other Regulations under different stages of legislation. Of the 25 Manuals required, only three are ready. EC has already finalized the Voter and Civic Education Policy 2007.

6.2.3 Voter Awareness and Campaigning

There is a widespread lack of awareness among the people about the purpose and meaning of the Constituent Assembly elections. According to the latest opinion poll, 70 percent of the people interviewed had “heard” about it, 31 percent claimed to have “knowledge” about it and 25 percent admitted they “correctly understand” it.⁶⁰ Voter education campaign needs to enhance understanding on various facets of the Constituent Assembly beyond election manifesto and propaganda literature to allow genuine and active participation of people. Only an active and informed citizenry will enhance the credibility of the political process. Political parties must reach the voters with a door to door campaign for information, registration and voting. The number of polling centers has declined from 8,225 in 1991 to 7,412 in 1994 to 6,821 in 1999 whereas the number of electorate continued to increase. However, EC has promised to increase the polling stations this time by 30 percent, to allow one polling center for each of the 1,000 voters.

6.2.4 Constituency Delimitation

One of the key reasons for exclusion in a geographically diverse country like Nepal is settlements spread far too wide on remote mountains while the Terai is undoubtedly under represented. Many voters in isolated hamlets are effectively denied access to participation in terms of information, registration and voting. The current discussions overwhelmingly focus on a more vocal group in the Terai, possibly because of violence. The Constituency Delimitation Commission headed by former Supreme Court Justice Arjun Prasad Singh has already presented its report, which is not yet public. He is understood to have recommended 497 constituencies.⁶¹ The Assembly members representing the Terai and CPN-M have been demanding the abrogation of the report and disrupted the Assembly proceedings for several weeks in April 2007. They want a fresh census, which is not due until 2011, on the basis of which constituency should be delimited. The CPN-UML wants the Singh report implemented and issued whip not to disrupt the Assembly proceedings. The whip was ignored.

6.2.5 Majority vs. Proportional System

Although the Interim Constitution provides for a mixed system of election, the SPAM constituents do not agree on the details. The CPN-UML insists on proportional representation. But even delimitation of the constituencies for the first-past-the-poll system has not been provided for. As for the proportional representation, whether to

⁶⁰ Sudhindra Sharma and Pawan Kumar Sen, Nepal: *Contemporary Political Situation – IV*, Patan: Interdisciplinary Analysts, 2007, p. 14.

⁶¹ The report, submitted to Prime Minister Koirala on April 12, 2007, recommends direct elections from 240 constituencies on the basis of majority votes, another 240 elected on the basis of proportional representation and 17 to be Cabinet nominees. It provides for 16 Himal constituencies, 108 Hill constituencies and 116 Terai constituencies. See *Nepal Samacharpatra*, April 13, 2007.

follow mixed proportional or listed proportional or other systems has not been agreed upon. The SPAM is also silent on the federal structure. The mixed system is in response to the anomalous experience during three parliamentary elections which produced wide gaps in representation and popular votes. For example, the NC got 110 seats with just 39.5 percent of popular votes and yet formed the government in 1991. The NC could muster just 83 seats but got 33.4 percent of the popular votes in 1994 compared to the CPN-UML's 88 seats with 30.92 percent, which formed the government. In 1999, the CPN (Marxist-Leninist) got 6.38 percent of the popular votes but got not a single seat. There are also concerns over poor representation of women, who constitute half the electorate. The new provision reflects the contemporary debate on electoral reform in an endeavor to strike a balance between the need for constituency representation and desire for proportionality in electoral outcomes.⁶²

6.2.6 Voter Registration

There is then the issue of voting rights for temporary residents who under the current law can exercise their right in areas of their permanent residence. If they have moved to other places, they are required to vote only after registering in the new area on the basis of their migration certificates. Such a provision leaves many displaced by conflict effectively without voting right. This way they are disenfranchised. In several places including the Kathmandu valley CPN-M has seized the voter list, and voter registration has been hampered due to the Terai unrest. On March 23, 2007, EC began updating the voters list in the 58 VDCs of the mountainous region – by launching special programs in Taplejung, Dolkha, Gorkha, Manang, Mugu, Mustang, Dolpa, Dhading, Bajhang, Humla, Sankhuwashava and Solukhumbu districts and the Maoist cantonments in the second phase of the collection of names of the temporary residents for the voters list.⁶³ But in several VDCs, EC officials are being prevented from updating voter's list.

6.2.7 Transparency

Transparency also needs to be promoted by reducing the cost of election. Campaign funds have a lot to do with the credibility of elections because only the people with money and muscle power can contest elections. Under the present circumstances, each candidate is vying to outdo the other in effectively buying votes. This does not help democracy. Transparency could be enhanced by providing for the declaration of assets by elected members, and auditing of party funds and campaign financing. Whether the EC retains four categories of ceilings on election expenses – Rs. 275,000, Rs. 253,000, Rs. 165,000 and Rs.115,000 – remains to be seen. There is no sense in continuing the constituency development fund under which each legislator gets Rs. 500,000 in the new political context.

6.2.8 Neutral Caretaker Government?

The political parties have always manipulated to head the caretaker government to hold elections even if the parliamentary tradition has been that the incumbent governments hold such elections. The political parties now in power will never resign and will do

⁶² Dev Raj Dahal, "Electoral System and Election Management in Nepal," in http://www.nepaldemocracy.org.civic_education/election_management.html

⁶³ *Rashtriya Samachar Samiti*, March 13, 2007.

everything possible to remain in power. So the prospect for a neutral caretaker government is rather slim. In any case, this only strengthens the case for a politically neutral civil service and security forces in order to enhance the professional management of elections. The EC appoints election officers from among judge or official from judicial service. But often even the CDOs are also named for the same. Returning officers for each constituency and polling officers for each polling stations are appointed from among government or semi-government officers. A former Chief Election Commissioner admitted that there has been “erosion in the capability of administrative machinery, sense of accountability and discipline in this election.”⁶⁴

6.2.9 Registration of Political Parties

Article 142 of the Interim Constitution provides for registration of the political parties. The details of the same are also provided in the Political Party Registration (for the purpose of Election) Rule 2007 posted on the EC’s official website. Article 142 (3) says parties need to meet four conditions. First, it must be committed to the democratic ideals enshrined in the Preamble of the Interim Constitution. Second, the statute of the party must provide for election of its office bearers at all levels at least every five years. Third, the party must be inclusive of women, Dalits and deprived and oppressed sections of the society. Finally, the party statute should provide for an effective mechanism for discipline of its members.⁶⁵

Article 142 (4) also provides for four conditions under which the registration of certain political parties can be denied. First, any political party that has objective prejudicial to the basic letter and spirit of the Preamble of the Interim Constitution can be denied registration. Second, parties can be denied registration if they discriminate on the basis of religion, caste, tribe language or sex. Third, party whose name, objectives, insignia or flag are of such nature as prejudicial to the communal or religious harmony or undermine the integrity of the country. Finally, party whose statute have their objectives of protecting and promoting either “partylessness” or single party dictatorship. Of the political parties that have applied for registration, several do not meet all the conditions.

Article 141 (5) provides that any new political party must have the petition signed by at least 10,000 voters. This is discriminatory because this applies only to new political parties but not those represented in the Legislature Parliament. The intention seems to discourage new parties to get registered and to participate in the elections.

6.2.10 Code of Conduct

The political parties agree to a code of conduct on the eve of the elections mainly to govern campaign, funding of political parties, financial ceiling fixed to candidates, norms about broadcasting of election news, among others. No one expects strict adherence to the agreed behavior but the idea is how to make the polls free, fair and credible.

On January 10, 2007, UN Secretary General Ban Ki-moon called for a small new United Nations political mission in Nepal (UNMIN) comprising of unarmed military inspectors,

⁶⁴ Bishnu Prapat Shah. “Nirbachan Pranali Ra Loktantrako Sudridhikaran,” a paper presented at a seminar on Politics of Consensus and Implementation of Constitution, Kathmandu, November 12, 1998, as quoted in Dev Raj Dahal, op. cit.

⁶⁵ *Nepalko Antarim Sambidhan 2063*, op. cit., p. 62.

electoral experts, and police and civil administration teams to monitor the peace accord for a period of 12 months. The mission will deploy up to 186 unarmed active and former military officers to monitor Maoist cantonments and Army barracks as required by the ceasefire signed in November 2006. A team of monitors are also to be deployed to review technical aspects of the electoral process. The mission will establish a small UN police advisory team comprising senior police advisers at national and regional levels to help ensure “critical” security during voter registration, campaigning and polling.⁶⁶

Nepal today has tremendous opportunity to lay strong foundations of democratic institutions in order to promote the well-being and interest of the Nepali people and the nation. The political parties and politicians need to rise above their petty interests to lay foundations for strong political institutions and processes. They need to focus their energy on building conducive environment for free, fair and credible elections whereby the Nepali people will meaningfully participate in the democratic exercise without any threat or fear.

⁶⁶ <http://www.un.org/apps/news/story.asp?NewsID=21197&Cr=nepal&Cr1=html>