



Introduction¹

The Nepali election held in April 2008 was probably the most critical to regime legitimacy in Nepal's political history. The election, the first held since 1999, marked the end of the old order and opened the door to a political process to negotiate a new constitution for an inclusive, representative and democratic state. It brought an end to the royal dictatorship dating from the 2005 'coup,' representing the culmination of the peace process with the Maoist insurgency and re-conferring de facto legitimacy on the political parties.

This note sets the election within its wider political context, highlighting its significance to the peace process and the role of the international community in contributing to its successful delivery.

Background

Multiparty democracy has had a short but troubled history in Nepal. After the 1959 adoption of a multiparty constitution, in 1960 King Mahendra seized power and suspended parliament, introducing a new constitution in 1962 that allowed him to exercise direct control at all levels of governance. The decades that followed saw periodic uprisings in favour of democracy and a multiparty system. There were occasional elections and parliaments, but these were largely unstable, ineffectual, and elite-controlled. Democracy returned in 1991, a key moment in Nepali history, but did not bring freedom and opportunity to the majority of the country. Mainstream parties failed to deliver to voters, and the monarchy failed to rule constitutionally in line with the settlements reached at different junctures over the past 60 years. Repeated royal takeovers were increasingly out of line with evolving opinion. These upheavals fuelled grievances and enabled the growth of a massive Maoist-led insurgency.

¹ This brief is adapted from 'Nepal: A Case Study on Elections and the Role of the International Community' by Peter Owen, Catinca Slavu, and Krishna Hachhethu. December 2008.

In 1999, national elections took place against the backdrop of a political settlement under severe challenge. There followed an escalation of insurgency and conflict, a royal coup and subsequent suspension of democracy in 2005, leading to a mass uprising in 2006. These events finally led to a peace agreement that in time created the space for elections in a radically changed political landscape.

Peace Process

In April 2006, the seven major political parties formed an alliance, the 'SPA' (Seven Party Alliance), and united with the Maoists in a mass movement and uprising against the royal regime. Within a short time, this forced a return of power to a reinstated Parliament, and formation of a coalition government which initiated a peace process with the Maoists. The new Parliament issued a declaration in May 2006 which became known as Nepal's Magna Carta. This declared Nepal to be a secular state with parliament the sovereign body, called for a reduction in the powers of the King, removed the title 'royal' from the army and state institutions and included a promise to hold an election for a Constituent Assembly. The peace process (albeit subject to periodic reversals) continued to move forward, leading to a Comprehensive Peace Agreement (CPA) signed between the government and Maoists. This declared an end to the war, placed Maoist combatants in cantonments and provided for their supervision by the UN. The Maoists joined the interim Parliament in 2007 and entered the interim government soon after.

Elections

The Nepal elections in 2008 were a major milestone in a resoundingly successful peace process. The election, seen within the context of the wider peace process, helped to transform the contestation of power from a violent conflict to a political process. The process was highly challenging, and it is a remarkable success that the elections took place at all under the immense administrative challenge of organising them during a period of such turbulent political transition

The Maoist former-insurgents won a plurality with 38% percent of the 601-seat Constituent Assembly. This result was surprising to many, as both domestic and international media were hesitant to admit the possibility of a Maoist victory. Overall, the Assembly is far more representative and inclusive than past parliaments, owing to a big increase in the representation of women and ethnic and religious minorities. It has changed the balance of power in Nepal, forging an opening in the political space to such marginalised groups.

A number of factors underpin this success. First, elections were seen widely as an opportunity to consolidate the peace process² and open the door to a new political settlement. Second, due in part to the adjustments made during the postponements of the election date, the contesting parties felt that the election arrangements were fair and legitimate. Third, a competent and impartial Election Commission was able to administer a smooth election process and identify needs to be met with substantial help available from the international community.

A huge number of challenges were encountered along the way. Getting the timing right was one of the first obstacles to address. Although the November 2006 peace agreement provided for elections in June 2007, it was necessary to postpone them in order to have sufficient time to negotiate crucial aspects of the peace agreement and to put

² Surveys during 2004 and 2008 record an overwhelming consensus among the political parties and people of Nepal in favour of democracy and a republic.

administrative arrangements in place. This meant a trade-off between the aspiration to maintain momentum in the peace process – strongly supported by the international community – and the need to reduce electoral risk by ensuring that the right systems were in place. At issue were the demand for inclusiveness by formerly marginalised groups, and demands (led by the Maoists) for a federal republic and an electoral system weighted towards proportional representation but retaining a ‘first past the post’ element as well. The eventual emergency settlement was not only in response to violence by these groups, setting a dangerous precedent for dealing with future disaffected groups, but was barely in time to hold the elections. The election finally took place in April 2008 following a third constitutional amendment and various last minute agreements. Better risk analysis and mitigation by UNMIN would have identified regional tensions in the Tarai region earlier and sought to deal with these issues at a more upstream stage in the design of the election system.

Irregularities, malpractices, voter intimidation, and rigging all took place in the run-up to polling day. These went unsanctioned, as the Election Commission was unwilling to punish those responsible for fear of losing key stakeholders’ backing. Similarly, the violence that did occur, some as a result of the election campaigns, was not dealt with by police. However, though the threat of intimidation and violence lingered in the background, the elections took place without violence and resulted in a peaceful cooperation of divergent groups. All parties subsequently accepted the electoral results.

A key question remains as to whether or not the many years of contestation and conflict, ending with the peace process and the 2008 elections, have created a sustainable political settlement that replaces the former division of power between the royalty and elite factions. The initial signs encouragingly point to this being true, though more recent reports have focused on significant risks³. The stability of the new settlement will depend upon the capacity of the Constituent Assembly, a key development in this shift, to negotiate a new constitution to reconcile divergent groups’ interests, deliver on the details of federalism, demobilise former combatants, reform the security sector and land issues, provide vehicles through which newly politicised groups may pursue their interests, deal with secessionists and respond to minority grievances.

International Donor Action and Lessons

The UN was central to international donor involvement, which was on the whole closely linked to the peace process. A political mission, UNMIN, was set up with a mandate to assist in the management of former combatants of both sides, to coordinate support for different UN agencies, to monitor the cease-fire agreements, and to support the Constituent Assembly electoral process. Further, the UNMIN set up two trust funds, the Nepal Peace Trust Fund (NPTF, roughly £30 million total contributions) and the UN Peace Fund for Nepal (with roughly £10 million)⁴, to which individual donor countries contributed. This funded activities including electoral monitoring and technical assistance. Countries also enhanced their involvement through independent electoral monitoring and electoral assistance programmes. Such donors include DFID, UNDP, USAID, SDC, Denmark, CDC, and NORAD.

The donor-supported programmes were largely Nepali-driven, or demand-led, an improvement on past democracy-assistance programmes. Support was timely, as electoral advisors were deployed by UNMIN immediately after the mission was established and

³ International Crisis Group, (2009) ICG Report 163: ‘Nepal’s Faltering Peace Process’, online at <http://www.crisisgroup.org/home/index.cfm?id=5929> (accessed 26 March 2009).

⁴ Update: a more recent review of funds received by UNPFN as of 1 December 2009 shows receipt of US\$ 23m (£14.2m) and NPTF as of 15 September 2009 received US\$ 100.91 (£62.3m).

money was made available to the two peace funds directly after their set-up as project approvals moved swiftly. Broader programmes of support for human rights, the media, civic education, and empowerment of disadvantaged groups were already designed or underway when the elections took place, providing support to electoral democratisation and the peace process by most donors well in advance of the election.

However, the case study also highlights a number of areas for improvement in donor support. First, the support for civic and voter education in Nepal was uncoordinated and inefficient in places. As a result, citizen knowledge of the Constituent Assembly's role, responsibilities, and workings was very limited. Furthermore, many voters did not sufficiently understand polling procedures, a key shortcoming in efforts to inform the public of democratic procedures.

Second, donor support to the peace process and the election has not been comprehensively mapped. Not even UNMIN undertook an evaluation of its own contribution to the electoral process. Donors may benefit from standardising means of monitoring support so that organisations benefit from each others' experiences. Key to this change would be the evaluation of what difference donor support has made overall, as opposed to analyses of bilateral programmes by individual countries that are currently the norm.

Third, there was a notable lack of international observers in more remote areas. There were 60,000 domestic observers at nearly 21,000 polling stations, but many of these areas overlapped and left regions unmonitored. In addition, many observers were politicised and/or unprofessional, which presents a risk for international donor support.

Looking ahead

Despite the remarkable achievements in the peace process and successful elections, perhaps the biggest challenge to stability in Nepal stems from the prevalence of identity-based politics. This factor could pose risks to future stability and the development of issue- and policy-based platforms, particularly if mainstream parties are unwilling or unable to accommodate minority concerns. The dominance of select political actors has created an informal system that elite factions are able to navigate in order to concentrate power and resources.

By promoting democratic institutions, donors may be able to weaken this system. Moreover, agencies could support projects specifically designed to protect the space for political campaigning from intimidation, enforce the Election Commission's code of conduct more thoroughly, and review arrangements for representation of excluded groups. Such activities would help to consolidate some of the advances made during the peace and electoral process, in the context that nevertheless remains very fragile.