

The saga of Nepal's embattled constitutional politics continues

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*As the deadline for drafting Nepal's constitution looms, it seems unlikely the Constituent Assembly will be able to deliver on time. The question of federal restructuring has been a particular roadblock, but the opaque nature of negotiations and the exclusion of minority interests have also inhibited compromise, writes **Mara Malagodi**.*



Almost a year has passed since Nepal's second Constituent Assembly (CA2) was elected in November 2013. Regrettably, no significant progress has been made so far on constitution drafting by the new legislature/Constituent Assembly. As a result, the peace process that put an end to a decade of civil war in 2006 remains to this day incomplete, and the country's political situation deeply unstable.

In March 2014 the CA2 finally succeeded in adopting the many agreements reached by the first Constituent Assembly (CA1). However, the thorny issues that caused the CA1 to be dissolved without a new constitution after four years of deliberations and four extensions (2008-2012) remain embattled and divisive.

The questions of federal restructuring and form of government have polarised Nepal's political spectrum. On the one hand, the Nepali Congress, the UML (or Communist Party), and other smaller conservative and left-wing parties advocate for territorial restructuring along the lines of devolution, and to retain a parliamentary form of government. On the other, the Maoists, alongside Madhesi and Janajati parties, promote federal restructuring along ethnic lines to secure the inclusion of the many marginalised groups, and a presidential system in which the President is elected by popular vote. The Nepali Congress and UML currently dominate the CA2, making the former institutional roadmap the most likely outcome. However, a qualified two-third majority of CA members is required to pass the new constitution. The two dominant parties are short of a handful of votes, which forces a degree of compromise. Negotiations therefore remain ongoing.

At this point, it seems unlikely that the CA2 will succeed in promulgating the new constitution before the current deadline of January 2015. However, while Nepal's 'constitutional moment' now appears to be irremediably lost and radical state restructuring a very distant prospect, I believe that a constitutional settlement will eventually be reached. What seems unlikely is that the new constitution will considerably depart from the 2007 Interim Constitution which is currently in force. Simply put, the consensus amongst Nepali political actors and the balance of power between the various political forces in the country have not significantly changed over the past seven years. Diametrically opposite competing visions of the polity and of the organisation of the state persist. It will be difficult to reconcile those divergent positions and the partisan interests that inform them. The key question remains how wide and inclusive the coalition supporting the new document will be: the broader the consensus, the more stable the new constitution; but the broader the coalition, the greater the number of institutional compromises required.

Passing a new constitution necessitates the agreement of Nepal's main political actors and forces. It is therefore important to understand who the main actors are in the process and the modalities of political decision-making in the country. This is particularly important with regard to the critical issue of social exclusion, which the current constitution-making process endeavours to tackle. The failure of the CA1 can be traced back, in my view, to two main factors which highlight the flawed approach to compromise and addressing exclusion.

First, the top leaders of the main political parties took crucial decisions about the new settlement outside the constitution drafting body. No proper inclusive and transparent deliberations within the Assembly were allowed to take place, reducing the opportunity to iron out differences between the various political forces. Instead, the task of resolving the most contentious issues was put into the hands of the old guard of party leaders. This is particularly

ironic, as key political figures did not even succeed in getting elected to the CA1 (although many leaders – including current Prime Minister Sushil Koirala and former Prime Minister Madhav Kumar Nepal – managed to get a seat in the CA1 despite not being elected). Ultimately, the modus operandi of backdoor secret negotiations and opaque deals concocted by the [High Level Political Committee](#) outside the Assembly undermined the legitimacy of the constitution making process and failed to forge a compromise solution.

Second, the spontaneous formation of cross-party groups along identity and gender lines demonstrated that other bonds of solidarity and political cooperation existed beyond party affiliation within the Assembly. However, the use of party whips not just in ordinary legislative matters, but also in votes on constitutional issues by subjecting rebellious members to a three-line-whip, effectively curbed those initiatives. This was especially the case for the CA members elected under proportional representation, as expulsion from their respective parties would have directly resulted in the loss of their seat in the CA. Thus, the main three political parties, all dominated by upper caste Pahari Hindu males, succeeded in silencing voices of dissent and demands for inclusion within their own parties and in the Assembly. In this respect, the new coalition government has attempted to prohibit the formation of caucuses in the CA2, while the use of party whips continues.

In these political circumstances it is unsurprising that the CA2 has made little progress on constitution drafting. At the time of writing, the ruling coalition of the Nepali Congress and UML hints at the possibility of passing the new constitution 'by process', i.e. by a qualified two-third majority vote in the Assembly in accordance with the procedures of the Interim Constitution. However, a Maoist-led alliance of twenty-two parties threatens to reject the document if not forged 'by consensus', and to take to the streets and launch a programme of protests. It can only be hoped that Nepal's constitutional conundrum will be eventually resolved through peaceful deliberations, and that the mounting levels of frustration will not result into the streets becoming the main theatre of Nepal's embattled constitutional politics.

About the Author

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