

# Choosing a government for Nepal

The world's youngest federation prepares to write its new constitution



Then Primer Minister Pushpa Kamal Dahal "Prachanda", left, administered the oath of office to newly appointed Foreign Minister Upendra Yadav, right, and Finance Minister Baburam Bhattarai, second right. President Dr. Ram Baran Yadav, second left, looked on.

BY KRISHNA KHANAL

**O**n May 28, 2008, Nepal formally embarked upon its new destiny as a federal republic. At its first meeting, the newly elected Constituent Assembly abolished the 240-year old Shah monarchy and instructed the last king, Gyanendra Shah, to vacate the royal palace within 15 days.

The declaration formalized the pre-election promise of the political parties. Under the Constituent Assembly (CA), elections held on April 10, 2008, no single party had achieved a majority in the 601-

member Assembly. But there had been, nevertheless, a massive victory for the parties supporting a federal republic.

Republicanism and federalism rode a strong nation-wide political wave during the April 2006 popular uprising and no party could risk resisting it. Contrary to speculation, former King Gyanendra, along with his wife, Komal, quietly left the palace, handing over crown and sceptre to government officials. For many, the creation of the republic was complete when the Assembly elected the

President and Vice President on July 22, 2008, clearing the way for the much-awaited formation of the new government and transfer of power.

On August 15, 2008, the Assembly elected Pushpa Kamal Dahal "Prachanda," chairman of the Communist Party of Nepal Maoist (CPN-Maoist), as the prime minister with an overwhelming majority. The interim constitution provides for a government based on consensus. Since the political parties (chiefly the Nepali Congress) did

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not join the Maoist-led government, there was a division of the vote in the Assembly. Of the 25 political parties represented in the Assembly, 21 had voted for Prachanda. He received 464 votes against 113 for his rival, Sher Bahadur Deuba of the Nepali Congress party. The government was basically a three-party alliance: the CPN-Maoist; the Communist Party of Nepal (Unified Marxist-Leninist) (CPN-UML); and Madhesi Janadhikar Forum, Nepal (MJFN). However, three other smaller parties were also included in the Council of Ministers. The Common Programmes adopted by the Alliance partners stressed (1) the framing of a new constitution within two years, (2) integration and rehabilitation of the Maoist army cadre within six months, (3) consolidation of peace and security by curbing crime and lawlessness.

#### Assembly to begin constitution making

It took more than three months for the Assembly just to elect its speaker, Subash Chandra Nembang of the CPN-UML, on July 24, 2008. In the meantime, on June 26, Girija Prasad Koirala, leader of the Nepali Congress Party, had announced his resignation as prime minister. However, the resignation had to be approved by the President of Nepal, and it was not until one month later that the CA finally elected a president, Dr. Ram Baran Yadav (also of the Nepali Congress Party). Yadav's election as president paved the way for the CA to fill the office of prime minister by electing Prachanda.

There was a Maoist campaign to provide the president of Nepal with executive powers instead of the symbolic role that presidents have in republics with a parliamentary system. However, the Fifth Amendment to the interim constitution provided for the continuity of a parliamentary model of government – a president as the constitutional head of state and a prime minister as the executive head of government. The Maoists had to give up, at least temporarily, introducing the presidential system. Undoubtedly, the governmental system, whether parliamentary or presidential, will again be debated in the Assembly.

#### Forming alliances

Post-election politics in Nepal are fluid and marked by shifting alliances. The Assembly consists of 25 parties and two independent members, ranging from the



REUTERS/ SHRUTI SHRESTHA

Local residents watch the Matyaha festival in Patan in Kathmandu on August 18, 2008. Family members who have lost their loved ones take part in the festival to bestow peace upon the departed.

largest, CPN-Maoist with 220 seats, to more than a dozen parties with one or two seats each. The nomination of 26 members has also been made on the basis of proportional representation. Alliances remain highly unpredictable. Alliances will line up either in favour of the Maoist party or against it. Given past political experience, it is likely to be unstable. The Maoists could form a more stable alliance, either with the CPN-UML or the Nepali Congress, but they are tempted by a "winner take all" approach, which jeopardized the emergent Maoist-UML alliance even before it took shape. In such a situation, the dirty politics of horse-trading cannot be ruled out. The Maoist leader Prachanda described it as "the same old game by corrupt figures." Nepal's current transitional politics may be seen as "politicking without a political system."

Maoists suspect that the power shift is deliberately being delayed by forces that it alleges wish to maintain the *status quo*. In fact, with the emergence of the CPN-Maoist as the largest party in the Assembly, although other parties concede that it should lead the government, they have at the same time strong reservations and are not willing to allow it to be the sole power holder. Sensing the possibility of his party's being prevented from coming to power, Prachanda has accused former Prime Minister G.P. Koirala of the Congress Party and others of being "corrupt figures" and vowed that his party will

"chase away those corrupt figures in case they come to power by manipulation."

#### Resolving constitutional issues

There are several complex constitutional issues on which the Assembly needs to build consensus before drafting the new constitution. Some include carving out provinces as constituent units of the new federation, distributing power between the centre and the constituent units, and determining the system of government and type of electoral system. While many political leaders and professionals draw comparisons to the situation in South Africa in 1994, there is no agreed-upon format in Nepal to guide the parties and Assembly members in making the new constitution. The major parties, though they speak about "making a new Nepal," appear more preoccupied with consolidating their position at the helm rather than with developing a sound foundation and principles for the new political order.

As evident from their election manifestos, political parties differ sharply on the future system of government that will be adopted in the new constitution. The debate centres on whether there is to be a parliamentary or a presidential system. Interestingly, the CPN-Maoist and the Madhesi Janadhikar Forum share many of the same views on the system of government as opposed to those of the NC and CPN-UML. The Maoists, the Forum, and a few other

smaller parties, favour the presidential system in which voters directly elect the president who in turn exercises all the executive powers of the government. However the Nepali Congress, CPN-UML and most of the other parties support the continuation of the parliamentary system in which the prime minister is elected by parliamentary majority and is vested with executive power. The president remains the nominal, constitutional head of state.

### Designing a system of government

However, both proposed systems offer some unique features. The Maoist election manifesto states: "There will be a President directly elected by the people and the Prime Minister elected by the legislature." This resembles the French or Russian models in which the president discharges overall executive functions, and the prime minister is responsible for day-to-day administration. The Madhesi Janadhikar Forum party prefers the American model of a president without a prime minister.

Among the parties that favour a parliamentary system, CPN-UML and the Communist Party of Nepal (Marxist Leninist) prefer the direct election of the prime minister instead of by parliamentary majority. The CPN-UML election manifesto states that: "People will elect the Prime Minister on the basis of adult franchise. And an electoral college consisting of the members of federal and provincial parliaments will elect the President." Interestingly, this idea had been advocated by Nepali Congress leader Nara Hari Acharya for almost a decade; however, it did not find a place in his party's position, but rather in a rival party's. Indeed, there is strong opinion in the country that the typical Westminster model of parliamentary government should be adapted to suit Nepali political culture.

Political parties share a lot of commonalities on the preferred type of legislature. Most feel that there should be a bicameral legislature in the centre and unicameral ones in the constituent units. However, they have not expressed a specific opinion about the formation and powers of the upper house of the federal parliament, which is very important in a federal system particularly with regard to the constituent units' power-sharing with the centre.

### Coming up with an electoral system

The choice of electoral system is another important aspect of government and the

exercise of state power in the constitutional design of Nepal. Marginalized and excluded communities such as women, the *Dalits*, the *Janjatis* (indigenous peoples), the *Madhesi* (the non-hill people who have been historically residing in the plain area of southern Nepal bordering India who comprise different caste, ethnic and linguistic groups and religious communities) have demanded an inclusive form of government with proportional representation. In light of Nepal's ethnic and cultural diversity, this demand garnered nation-wide support. About 60 per cent of Assembly seats were elected through proportional representation with fixed ethnic and gender quotas, as opposed to 40 per cent from single-member constituencies with a first-past-the-post-system. As a result, the elections produced a highly inclusive Assembly in terms of the representation of hitherto marginalized and excluded groups. The country cannot revert to a full first past the post system. Full proportional representation, or a blending with the first past the post system, is essential to satisfy ethnic and gender aspirations for equitable representation in the state structure.

The choice of the system of government for federal Nepal, then, depends on how the current coalition government is able to maintain unity and perform day-to-day functions. The Maoist leaders seem allergic to the term "parliament." The president not only changed the name of the Ministry of Parliamentary Affairs to Constituent Assembly Affairs, but also stated that he does not accept a "conventional parliamentary system" based on the Westminster model. Though government business is carried on very much in accordance with the parliamentary process, the Maoist leaders appear to be trying to create the impression that they have made a decisive departure from the past. But Prime Minister Prachanda had to ask Matrika Yadav, the Minister for Land Reform and Management, to resign when the latter defended the appropriation of private land by the Maoist cadre in Siraha district. The main opposition Nepali Congress party and a few others are trying to cash in on this move, alleging that the Maoists are attempting to thwart democracy and impose communist authoritarianism.

### Ensuring stability

This state of affairs is likely to continue until the Assembly resumes its constitution-making responsibilities. The crux of the matter is not whether the system of government should be parliamentary or presidential but how it can be made stable, efficient and accountable. In the past, Nepal's parliamentary system, modeled on Westminster, did not provide this. Instability – with governments falling on non-confidence votes due to an electorate divided among many parties – and non-performance were the main problems. That is why alternative proposals are still being considered. However, if the Nepali Congress Party remains outside the government coalition, it will continue to press for a traditional parliamentary system and is likely to regard any attempt to thwart it as anti-democratic. Therefore, the debate over the system of government is likely to bypass the real issue, namely how to create a stable and effective system of government for Nepal.

As there are no clearly defined and demarcated ethnic or cultural boundaries in Nepal, the formation of constituent units is sure to raise controversy and tension. There will be two major disagreements when drawing these internal borders.

One disagreement will be over whether the *Madhes* should be one large constituent unit, or whether the hill country on the northern fringes of the *Mashes* should be separate. The *Madhesi* parties, the fourth largest group in the Assembly have stood fast by the mantra: "One Madhes, One Province is a must to free the Madhesi people..." So far, they had already shown decisive strength in pressuring the Kathmandu-based rulers to yield to other demands.

The other disagreement will be over ethnic versus non-ethnic constituent units. Most parts of Nepal are mixed in terms of population, and no ethnic or linguistic group is likely to achieve a majority in most of the likely constituent units. Converting a Kathmandu-centric unitary Nepal into a federal system will be challenging and delicate. 