

# PARLIAMENT WATCH – NEPAL\*

## APRIL 2011



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## 1. Context

The 12-point agreement concluded between the Seven Party Alliance (SPA)<sup>1</sup> and the Communist Party of Nepal (Maoist) [UCPN (M)]<sup>2</sup> on 22 November 2005 forms the basis of the ongoing peace process in Nepal. It was the 12-point agreement that led to the people's uprising of 2006, and this popular movement compelled the King to abdicate.<sup>3</sup> After the UCPN (M) formally joined the peace process in 2006,<sup>4</sup> the election to the Constituent Assembly (CA) emerged as one of the prime agenda of the peace process. Despite two postponements,<sup>5</sup> Nepal managed to hold the election of the CA on 10 April 2008. The CA transformed Nepal from a monarchy to a parliamentary republic.<sup>6</sup> The 'Federal Democratic Republic of Nepal'<sup>7</sup> regained its parliamentary status as soon as the CA started to function as Legislature-Parliament.

Under the formulation of the Constitution, the CA shall also act as Legislature-Parliament as long as the CA remains in existence.<sup>8</sup> Furthermore, a separate committee shall also be constituted to conduct necessary regular legislative functions.<sup>9</sup> The Chairperson and Vice Chairperson of the CA shall be the Speaker and Deputy Speaker of the Legislature-Parliament, and the Secretariat of the CA<sup>10</sup> and its personnel shall be the Secretariat and personnel of the Legislature-Parliament.<sup>11</sup> Similarly, when the CA acts in the capacity of the Legislature-Parliament, the provisions contained in Part 8,<sup>12</sup> with necessary modifications, shall be applicable to the Assembly.<sup>13</sup>

In order to carry out the objectives of the provisions contained in the Constitution, especially with regard to the Secretariat of the Legislature-Parliament, the Act Relating to Legislature-Parliament Secretariat 2008 was promulgated. According to the Act, the Secretariat conducts

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<sup>1</sup> The SPA, which spearheaded the popular people's uprising of 2006 (*Jana Andolan*, Part II of 2062 and 2063 B.S.), was basically a coalition of seven Nepali political parties, comprising of (i) Nepali Congress, (ii) Nepali Congress (Democratic), (iii) Communist Party of Nepal (Unified Marxist and Leninist), (iv) Nepal Workers and Peasants Party, (v) Nepal Sadbhavana Party (Anandi Devi), (vi) United Left Front, and (vii) People's Front, seeking to end King's autocratic rule in the country.

<sup>2</sup> For more information please visit the official website of UCPN (M), <http://www.ucpnm.org/english/index.php>.

<sup>3</sup> On 24 April 2006, the King ordered the reinstatement of the then parliament. For details, please visit <http://www.timesonline.co.uk/tol/news/world/asia/article708775.ece>, last accessed on 27 June 2011.

<sup>4</sup> The Comprehensive Peace Agreement, which officially ended the decade-long armed conflict in Nepal, was signed by the then Prime Minister Girija Prasad Koirala [on behalf of the Government of Nepal (GoN)] and the UCPN (M) Chairman Pushpa Kamal Dahal 'Prachanda' on 21 November 2006.

<sup>5</sup> For detailed information please visit [http://news.bbc.co.uk/2/hi/south\\_asia/7182902.stm](http://news.bbc.co.uk/2/hi/south_asia/7182902.stm), last accessed on 27 June 2011.

<sup>6</sup> The first meeting of the CA, convened on 28 May 2008, officially abolished the 240-year old monarchy from Nepal's political history.

<sup>7</sup> See basically the Preamble and Article 4 of the Interim Constitution of Nepal, 2007. The fourth amendment to the Interim Constitution on 28 May 2008 declared Nepal a 'federal democratic republic'.

<sup>8</sup> The original deadline of the CA was for two years till 28 May 2010, which was later extended by a one-year term but the CA was unable to promulgate the Constitution even during the extended period, i.e. 28 May 2011, hence the term was again extended for three more months amongst the midnight drama that surfaced on 28 May 2011. One full month of the CA extension has already passed by which will now last till 28 August 2011.

<sup>9</sup> See Article 83 (1) of the Interim Constitution of Nepal, 2007.

<sup>10</sup> Article 80 (1) of the Interim Constitution of Nepal, 2007 proclaims that "there shall be a Secretariat to conduct the business of the CA".

<sup>11</sup> See Article 83 (2) and (3) respectively of the Interim Constitution of Nepal, 2007.

<sup>12</sup> Part 8 of the Constitution contains matters relating to legislative procedure, which includes (a) authority to introduce a Bill, Article 84 (b) procedure for passage of Bills, Article 85 (c) withdrawal of the Bill, Article 86 (d) certification of the Bill, Article 87, and (e) ordinances.

<sup>13</sup> See Article 83 (4) of the Interim Constitution of Nepal, 2007.

the business of the Legislature-Parliament, and makes arrangements, inter alia, for the smooth operation and management of the Legislature-Parliament.<sup>14</sup> The Secretariat is an independent and autonomous body,<sup>15</sup> and in order to effectively manage it, there shall be an Operation and Management Committee comprised of the Speaker, (who will preside as chairperson), Deputy Speaker, the Secretary General and Secretary as members, and the Secretary of the Secretariat as the Member-Secretary.<sup>16</sup> The administrative Chief of the Secretariat is the Secretary General. The functions, duties and powers of the Legislature-Parliament Secretariat are the following:<sup>17</sup>

- Provide necessary services and facilities to the Legislature-Parliament, the Committees of the Legislature-Parliament, Office Bearers and to the Members;
- Effectively manage the administrative, financial and infrastructure to maintain the smooth operation of the Legislature-Parliament;
- Make the information system of the Legislature-Parliament efficient, and maintain security at the premises of the Legislature-Parliament;
- Provide necessary services and facilities to parliamentary parties of the Legislature-Parliament.

Despite the above statutory framework, the CA has, having exercised the powers conferred by Article 78 of the Interim Constitution of Nepal 2007, framed the Constituent Assembly (Conduct of Business of Legislature-Parliament) Rules 2008 pursuant to Article 83 of the Constitution. The broad objective of the Rule is to conduct the business of CA in its capacity as Legislature-Parliament, whereas, other major objectives include: maintaining order in the House, form necessary Committees and regulate their functions, activities and matters relating thereto.<sup>18</sup>

The Legislature-Parliament of Nepal operates within the ambit of the above-mentioned politico-legal domain. The Legislature-Parliament is in its Tenth session after it came into being in May 2008. The Legislature-Parliament has made some remarkable decisions in the recent political history of Nepal.

## **2. Reporting (April 2011)**

The Ninth session commenced on Sunday, 9 January 2011, and ended on Friday, 22 April 2011, totaling 104 days. As many as 32 meetings were convened in 38 days, 46 hours and 05 minutes was spent to carry out the actual business. The major highlights of the Ninth session, during the month of April,<sup>19</sup> are the following:

1. The *twenty-sixth* meeting of the Legislature-Parliament commenced on 1 April 2011, at 16:10 hours, presided by the Speaker, Rt. Hon'ble Subas Chandra Nembang. As soon as the meeting started, Hon'ble Ram Sharan Mahat,<sup>20</sup> having secured the permission from the Speaker, spoke, among other things, about the supplementary budget, that it not be

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<sup>14</sup> Clause 3 (1) of the Act Relating to Legislature-Parliament Secretariat, 2008.

<sup>15</sup> See Clause 4 of the Act.

<sup>16</sup> Clause 6 of the Act.

<sup>17</sup> See basically Clause 5 of the Act.

<sup>18</sup> See the Preamble of the Constituent Assembly (Conduct of Business of Legislature-Parliament) Rules, 2008.

<sup>19</sup> Only the proceedings of twenty-sixth meeting onwards have been covered in this report, as a total of seven meetings (twenty-sixth to thirty-second) were held in the parliament during April, 2011.

<sup>20</sup> Mr. Mahat represents the Nepali Congress Party.

- presented to parliament without the express consent of the opposition. Subsequently, proceedings of the house was disrupted by the opposition over various issues, such as, the appointment of the Executive Chief of the B.P. Koirala Memorial Cancer Hospital, Bharatpur; matters relating to immunity enjoyed by casinos evading government tax; the resignation of the Finance Secretary; supplementary budget; and fake VAT Bill, etc., for which the opposition sought clarification from the Prime Minister. Consequently, the meeting was adjourned till 15:00 hours, Monday, the 4<sup>th</sup> of April 2011.
2. The *twenty-seventh* meeting of the Ninth session of the Legislature-Parliament commenced on 04 April 2011, at 16:35 hours, presided by the Speaker. In this meeting, the Prime Minister, Rt. Hon'ble Jhala Nath Khanal,<sup>21</sup> having secured the permission from the Speaker, spoke on the issues of public importance and answered, among others, issues raised by parliamentarians in the previous meeting. Then, the Deputy Prime Minister and Finance Minister, Hon'ble Bharat Mohan Adhikary,<sup>22</sup> gave clarifications on a 9-point circular related to budget savings issued by the Finance Ministry to various other ministries. The meeting was later notified on certified legislation, namely: "The Act aimed at Amending some Nepal Acts in relation to Judicial Administration, 2067 B.S.", which was certified by the President on Tuesday, the 29<sup>th</sup> of March 2011, pursuant to Article 87 of the Interim Constitution of Nepal, 2007. The twenty-seventh meeting next discussed the "Hyalmo Melamchi Drinking Water Project: Field Inspection Report, 2067 B.S.", which was presented by the Chairperson of the Development Committee, Hon'ble Jitendra Prasad Sonar.<sup>23</sup> The "Investment Board Bill, 2067 B.S.", could not be passed, due to a lack of quorum which was, in fact, pointed out in the meeting by the Hon'ble Sunil Prajapati,<sup>24</sup> and later confirmed by the Speaker.
  3. The *twenty-eighth* meeting of the Legislature-Parliament commenced on 06 April 2011, at 15:20 hours, presided by the Speaker. As usual, the meeting witnessed the delivery of speeches by some Hon'ble members, on key issues pertaining to the electoral roll being prepared by the Election Commission. The meeting apprised on how human rights of the stateless persons will be affected if citizenship certificate is considered as a mandatory document for getting one's name included in the roll, since most of the people in the Terai have not yet obtained a citizenship certificate for a variety of reasons.<sup>25</sup> The next item in the meeting was the submission of the "Report Relating to the Bill aimed at making Arrangements for the Procedural Aspects of Mediation, 2067 B.S.", presented by the Chairperson, of the Legislation Committee, Hon'ble Yashoda Gurung (Subedi).<sup>26</sup> The meeting concluded by passing a condolence resolution on the untimely demise of a member of the then House of Representatives, Hon'ble Krishna Bahadur Gurung.
  4. The *twenty-ninth* meeting of the Legislature-Parliament commenced on 11 April 2011, at 15:35 hours, presided by the Speaker. This meeting, among other usual business, unanimously passed two important Bills, namely: "Tobacco Substance (Control and Regulation) Bill, 2067 B.S." and the "Bill Relating to Mediation, 2066 B.S.", both

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<sup>21</sup> The Prime Minister is from the Communist Party of Nepal (United Marxist-Leninist).

<sup>22</sup> The Deputy Prime Minister Mr. Adhikary also represents the Communist Party of Nepal (United Marxist-Leninist).

<sup>23</sup> Mr. Sonar represents the Terai Madhes Democratic Party.

<sup>24</sup> Mr. Prajapati is from the Nepal Workers and Peasants Party.

<sup>25</sup> For more details please refer to the separate section, "Human Rights Concern and the Governance Issues", below at the closing of the report.

<sup>26</sup> Ms. Gurung (Subedi) belongs to the UCPN (M).

- presented by the Deputy Prime Minister, Hon'ble Krishna Bahadur Mahara,<sup>27</sup> looking after two portfolios: Ministry of Health and Population, and Ministry of Law and Justice.
5. The *thirtieth* meeting of the Legislature-Parliament commenced on 17 April 2011, at 15:25 hours, presided by the Speaker. The Civil Code Bill, 2067 B.S., and Civil Procedure Codification Bill, 2067 B.S., was tabled by the Deputy Prime Minister and Minister for Law and Justice, Hon'ble Krishna Bahadur Mahara. Similarly, the "National Dalit Rights Commission Bill, 2066 B.S.", presented by the Minister for Local Development, Hon'ble Urmila Aryal,<sup>28</sup> was also officially tabled in the meeting. The Dalit Rights Commission Bill, basically presents details on how the Commission shall be established and the role of such a Commission in respecting and promoting Dalit rights.<sup>29</sup>
  6. The *thirty-first* meeting of the Legislature-Parliament commenced on 19 April 2011, at 15:35 hours, presided by the Speaker. This particular meeting was immediately adjourned after it was disrupted by some members,<sup>30</sup> over the issue, on making the public service inclusive, and failing to bring (by the government) a Bill aimed at amending some Nepal Acts on that matter.
  7. The *thirty-second* meeting of the Legislature-Parliament commenced on 22 April 2011, at 15:30 hours, presided by the Speaker. This meeting too continued with obstruction by four members of different political parties as well as an independent member.<sup>31</sup> Despite the Speaker's repeated request to these lawmakers not to disrupt the house, as their demand cannot be fulfilled unless the regular business of the parliament continues, these lawmakers did not stop chanting slogans including "deaf government" which was later objected by other lawmakers as not being friendly to the disabled. Hence the Rt. Hon'ble Speaker informed lawmakers that he has deferred all the agenda from the daily business, and read out a letter sent from the President's Office notifying that the Ninth session coming to an end from 21:00 hours the same day.

## Human Rights and Governance Issues

Human rights and governance issues raised during the reporting period are the following:

1. *Citizenship Issue in the Terai-Madhesh region:*

Terai is the southern region of Nepal. It stretches from the east to the west of the country along the Nepal-Indian border, adjoining the Indian states of Bihar, Uttar Pradesh and West Bengal.<sup>32</sup> Madhesh is a term given to areas of the Nepali outer Terai or to the outer Terai as a whole inhabited by people who are racially, culturally and linguistically related to people on the Indian side of the border.<sup>33</sup> Terai is known as

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<sup>27</sup> The Deputy Prime Minister Mr. Mahara also represents the UCPN (M).

<sup>28</sup> Ms. Aryal represents the Communist Party of Nepal (United Marxist-Leninist).

<sup>29</sup> For more details please refer to the separate section, "Human Rights Concern and the Governance Issues", below at the closing of the report.

<sup>30</sup> The members include: (a) Hon'ble Ms. Rukmini Chaudhary of the Federal Democratic National Front, (b) Hon'ble Mr. Bishwendra Paswan of the Dalit Janajati Party, (c) Hon'ble Mr. Buddha Ratna Manandhar of the Nepa: National Party, and (d) the Independent Member, Hon'ble Mr. Sadrul Miya Haque.

<sup>31</sup> *Ibid.*

<sup>32</sup> See basically, *Nepal: Background of the Terai's Madheshi People*, available at <http://www.irinnews.org/report.aspx?reportid=70027>, last accessed on 24 July 2011.

<sup>33</sup> See basically, *Madhesh* in Wikipedia available at <http://en.wikipedia.org/wiki/Madhesh>, last accessed on 24 July 2011.

Madhesh in Nepali language and its indigenous inhabitants are called Madheshis. Terai comprises nearly 17 percent of the land and the Madhesi people make up about 30 percent of the 27 million people of Nepal.<sup>34</sup> The Terai-Madhesh region covers approximately 25 to 35 kilometer wide broad belt of alluvial and fertile land stretching from Mahakali river in the west to Mechi river in the east between the Indian border in the south and Sivalik/Chure Range in the north.<sup>35</sup>

Citizenship, among others, is one of the major issues of the political agenda of Terai-based parties in Nepal.<sup>36</sup> Madhesi people, according to the Madhesi parties, are by and large deprived of the citizenship due to the discriminatory policies hitherto adopted by the state. Consequently, most of the people in the Terai-Madhesh region have not yet obtained citizenship for a variety of reasons. The citizenship issue, according to them, is therefore a vital issue of ongoing debate of state restructuring in Nepal. But against this backdrop, the Election Commission of Nepal, through publishing a public notice, requires citizenship certificate as a valid document for updating the electoral roll. This move of the Commission was vehemently objected in the parliament by the Madhesi parties as they were of the opinion that a majority of the Madhesi people would be deprived of franchise merely on the ground that no citizenship is available to them. The human rights of those stateless people, as these parties raised their concern in the parliament, will therefore be affected if citizenship is considered as a mandatory document for getting one's name included in the electoral roll.

## 2. *Dalit (Oppressed Ethnic Group) Issue:*

The National Dalit Rights Commission Bill 2066 B.S., introduced in the Parliament in the thirtieth meeting of the Ninth session, basically intends to respect and promote human rights of the Dalit community. Dalits are oppressed ethnic groups under the caste system prevalent in Nepal, and are considered as the "lower caste" in the society.<sup>37</sup> The basic purpose of the Bill is to establish a high-level Commission for maintaining social justice by empowering the Dalit community so as to enable them to participate in public life, and thereby effectively accommodating them in the national mainstream.<sup>38</sup>

The Bill presents details on how the Commission shall be established,<sup>39</sup> and elaborates further what role such a Commission shall assume in respecting and promoting Dalit

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<sup>34</sup> See the *IRIN: Humanitarian News and Analysis Portal*, <http://www.irinnews.org/report.aspx?reportid=70027>.

<sup>35</sup> See basically the *FAQs Commentary on Madhesh/Terai Conflict*, 13 February 2008, by Krishna Hari Pushkar available at <http://madhesh.org/articles/faq-commentary-on-madhestarai-conflict/>, last accessed on 25 July 2011.

<sup>36</sup> The other demands of Madheshis are: an adequate and respectful inclusion; proportional representation; rights of self determination; "One Madhesh-One State"; the right to be free from racial, social, cultural, political and administrative discriminations; Madhesh governance; and the Madhesh government etc., *Ibid*.

<sup>37</sup> Dalits are broadly categorized in three different ethnic groups—namely Dalits among the 'Pahadi' community; Dalits among the 'Newari' community; and Dalits among the 'Madhesi' community—under Annex 1 of the National Dalit Rights Commission Bill, 2066 B.S., and include several castes such as *Kami, Damai, Sarki, Kapali, Kusuli, Pode, Kori, Mushahar* and *Dusadh*.

<sup>38</sup> Preamble of the National Dalit Rights Commission Bill, 2066 B.S.

<sup>39</sup> Chapter 2, Sections 3-9 of the Bill details out the provisions relating to the formation of the Commission, appointment of the Members, and the matters with regard to the Meetings of the Commission and the formalization of the Decisions thereto.

rights.<sup>40</sup> The Commission, in the event of a complaint being filed, or if such matters are taken cognizance of through any other source, can investigate the following matters,<sup>41</sup> inter alia:

- a) If the Dalit community is deprived of their rights on the ground of untouchability;
- b) If the Dalit community is victimized by any type of violence or social malpractices; and,
- c) If ethnic discrimination is perpetrated.

While investigating the above-mentioned grievances, the Commission is vested with the following powers:<sup>42</sup>

- a) Record testimonies by demanding someone's presence before the Commission;
- b) Summon witnesses, and record testimonies;
- c) Issue orders for the submission of any document or paper;
- d) Avail any document or a copy thereof from any government or public office or the court;
- e) Carry out or direct others to carry out on-the-spot inspections;
- f) Conduct public hearings;
- g) Adopt, on the basis of the prior notice, preventive measures to avoid any untoward incident; and,
- h) Take measures to ensure that legal action is initiated against the person/persons who if found guilty, and do the necessary follow-up on whether guilty is booked and brought to justice.

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<sup>40</sup> Chapter 3, Sections 9-11 of the Bill enumerates the provisions on the Function, Duties and Power of the Commission.

<sup>41</sup> Section 9 (2) of the National Dalit Rights Commission Bill, 2066 B.S.

<sup>42</sup> Section 9 (3), *Ibid.*