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OPINION

Nepali women seize the new
political dawn:
Resisting marginalisation after
ten years of war

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The Centre for Humanitarian Dialogue (HD Centre) is an independent mediation organisation dedicated to helping improve the global response to armed conflict. It attempts to achieve this by mediating between warring parties and providing support to the broader mediation community.
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“hd Opinion

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On 28 May, 2010, a political crisis in Nepal loomed, threatening the constitution making process and with it the opportunity to inscribe women's rights into the foundation of a 'New Nepal'. To stave off this crisis, a group of women that cut across party and caste lines rushed to the well of parliament house. They appealed to the party leaders in the all-male 'high level political mechanism' to cut a power sharing deal. Most of the 197 women in the 601 strong Constituent Assembly (CA) – particularly the disempowered, poor, and semi-literate rural women from oppressed castes - knew that both their place at the decision-making table and the cause of women's rights in the Constitution was at stake. This was especially true for the habitually disempowered, poor, semi literate rural women from the oppressed castes; whom the Maoists Peoples War had vaulted to political agency.

A last minute deal was struck behind closed doors but it has not bridged the fundamental political divisions that are endangering Nepal's four year old peace process. A remarkable cross class consensus had buoyed the

1 The Jana Andolan II or the People Democratic upsurge peaked in April 2006 and was crucial in forcing the authoritarian monarchy to give up power. The peaceful democratic movement in the urban centres saw protest demonstrations of 100,000 people. Meanwhile the Maoists who had declared a ceasefire, demonstrated their strength in the surrounding rural areas and swelled the strength of the urban protests. It is called Jana Andolan II to distinguish it from the unfinished democratic movement of the Jana Andolan I in 1990.

2 Since the Maoists walked out of the government, precipitated by a confrontation over the balance of power between civil- military authority, Nepal has been plunged in political uncertainty. The Nepal Army has re-emerged as a focal point for the status quo forces. The transformative institutions of the peace process like the CA are fast losing their political significance, as politics gets reduced to back room deals.

Jana Andolan II movement¹ for democracy and the Comprehensive Peace Agreement (CPA) of 2006 bringing to an end ten years of civil war and enabling the Maoists to join democratic politics. That political consensus has fractured.² Elections to the Constituent Assembly in 2008 brought the Maoists to power in a surprise victory, prompting a bitter tussle between those that hold power and those that are excluded, and between the Maoists representing change and the status quo forces that coalesced around the established political parties who have ruled Nepal for the past four decades. While the political legitimacy of the latter may be low, they enjoy support from neighbouring India, which is determined to prevent a Maoist led state. Meanwhile, the authoritarian political culture of the Unified Communist Party of Nepal (Maoists) has further strained Nepal's post conflict democratic transition.

Political decision making in Nepal is shifting away from the democratic and plural fora of the Constituent Assembly and Parliament to back room deal making between the all male leaders of the political parties. Women and other disadvantaged and oppressed social groups are lowering their expectations that the Peoples Democratic movement for 'inclusion' and 'proportionality' would allow the historically excluded to seize Nepal's new political dawn. The 2006 peace agreement paved the way for getting gender sensitive language in the interim constitution and enabling remarkably plural and gendered representation in the CA – but further progress is threatened by the unravelling of the political consensus holding together the peace process

The 2007 interim constitution represented significant strides forward in the struggle for rights, incorporating inclusion and proportional representation of "women, Dalits, Janajatis, Madhesis, and other disadvantaged groups". The Citizenship Act was amended to recognise claims of descent through one's mother. In Nepal where just 1 per cent of women hold property, equal property rights for women have been finally recognised over parental property rights. Abortion rights were included as well as rights to reproductive health. A third of all positions in public bodies were reserved for women; and the Election Act was amended to require a total of 33 per cent women in the CA.

Constant pressure by women was required to ensure these successes. At first, key interim constitutional structures – such as the Interim Constitution Drafting Committee, the Ceasefire Code of Conduct Monitoring Committee and the Rayamajhi Commission of Inquiry into abuse of authority – were dominated by men. It was only after lobbying by an inter political party women’s alliance, supported by high profile women activists and backed by UN agencies, that women were given places in these committees. Four women were included in the 16 member drafting committee to the interim constitution, and three women in the ‘back up’ team of the 32 member peace committee. Similarly, when the interim government appointed 27 new departmental administrators in 2007, not one was a woman – though subsequently several were named, including the front ranking Maoist women political leader Hsila Yami who attempted to reform the Water Resources Ministry.

But the most critical change came with the Constituent Assembly elections in April 2008, which translated the interim constitution’s rhetorical commitment to proportional representation into reality. The interim constitution’s provision that at least one third of the total number of candidates nominated be women produced Nepal’s most diverse legislature. In the 1991, 1994 and 1999 general elections, women’s representation hovered between 3 and 6 per cent. This rose to 33 per cent with the 2008 CA elections, making Nepal the fourteenth best legislature in the world in terms of women’s representation. The Vice Chair of the CA is a woman, and seven women head the different legislature and constitutional committees. There is a Women Caucus in the CA and a Women’s Committee in Parliament.

Nepal appeared to be bucking the trend of women being marginalised after a violent conflict, with rural women from oppressed castes rising to political office. Nepal’s adoption of a mixed electoral system encompassing both first past the post’ (FPTP) and proportional representation through party lists, breached for the first time the country’s system of institutionalized exclusion. Sapana Malla, a member of the CA and one of Nepal’s leading legal activists, attributed this leap forward to the concerted action of women’s groups in support of proportional representation for traditionally excluded groups like Dalits, and within those categories, 50 per cent reservation for women. In the FPTP polls, the Maoists fielded about 42 women candidates, of whom 24 were elected, including those from the Dalit, Janajati and Madhesi minority and discriminated communities. While the established parliamentary parties,

3 In the 601 member CA: 29 women won first past post (FPP) and proportional 162. The Maoist's won 24 FPP; and fielded 42; NC – 2 won FPP; 26 fielded, UML -1 FPP, 27 fielded.

4 Hsila Yami, 'Women's Role in the Nepalese Movement: Making of a People's Constitution', *Monthly Review*, 8 August. [<http://mrzine.monthlyreview.org/2010/yami080310.html>], accessed 1 Nov 2010], 2010.

5 *Ibid.*

6 Mallika Aryal, 'Women Push for Gender Equality in New Constitution', *IPS*, August 3, 2009. Accessed from <http://ipsnews.net/news.asp?idnews=4>, 1 November 2010.

the Nepali Congress and Communist Party of Nepal (Unified Marxist Leninist), better known simply as the UML, together fielded 57 women candidates, only three women were elected and all upper caste.³ When combined with seats won through the proportional representation system, Maoist women secured 74 seats, the UML 36, the NC 39, and the regional Madhesh parties 17.

It was expected that these 74 Maoist women would be at the forefront of women's rights in the CA, particularly given the longstanding commitment to inclusion and equality in Maoist ideology and policy. Hsila Yami, confidently asserted that Maoist women, "*raised gender issues before the People's War started and put into practice their response to class and gender issues during the ten years of the People's War*".⁴ Property rights for women were a key demand of the Maoists 1995 charter of demands. At one time thirty per cent of the People's Liberation Army (PLA) were women. Though the majority of women in the PLA were only 15-25 years old, some rose to become commanders and vice commanders within brigades, platoons, squads and militia. A 2003 survey conducted by the Women's Department of the Party, revealed that more than 40 per cent of women in the movement 'coveted working in the PLA' because its culture was seen as less bound by oppressive patriarchal bonds keeping women back. For 20 per cent of the respondents, it was the equality between men and women in the 'Peoples War' which they liked the most. There were limits though in redefining the power equation. The Maoists' ceasefire negotiation team of 2004, was careful to include representation of region and ethnicity, but failed to include women.

Today, Yami asserts, Maoist women "*are vigorously raising the issue of 'inclusive and proportionate' participation during the constitution-making process*".⁵ Amrita Thapa, the Maoist chairperson of the Natural Resources Committee in the CA, spoke of the expectations of the masses of rural women she had encountered during her 'field consultations'. They had only one suggestion: "*do not repeat the mistakes of previous law makers*".⁶

But have Maoist women in the CA members taken advantage of their numbers to advance women's rights? Sceptics claim that largely uneducated women elected to the CA do not have the capacity to contribute effectively to political debate. In particular, critics target the 74 Maoist women amongst the 191 women in the Assembly. Many of these women have only basic schooling. Next to these underprivileged Janajati and Dalit women belonging to the Maoists party sit the upper caste, upper class and better educated women of the NC and the UML, including the wives and daughters of former Prime Ministers. Maoist CA member Sarala Regmi, who defeated a UML heavyweight, Bam Dev Gautam, defiantly rejects such criticism: "*It was extremely hard for some sections of our patriarchal society to accept that women were on the frontline sacrificing their lives during the Peoples War. Now they doubt us and say we will not be able to write a good constitution*".⁷ However, senior party leaders do say that lack of experience is showing. , Bindya Pandey, chair of the Fundamental Rights Committee, admits that while women "*have been successful at advocacy, when it comes to policy making we still need to hone up our skills in presenting points logically*".⁸ Mohammadi Siddiqui the coordinator of the women's caucus in the CA, admits "They (CA women) have the qualities required of a good leader but without training that is of little use."⁹ Recognising this, women in the CA have eagerly embraced capacity building resources such as the Gender Toolkit for CA Members and training workshops organised by the UN and donor agencies.¹⁰ Some women activists, however, challenged this notion of women lacking "capacity". It is an excuse to silence women, especially as the capacity of men remains unquestioned, a leading Nepali women's rights campaigner said.¹¹

7 Sarala's struggle', Nepali Times October 24-30, 2008.

8 Personal interview with author, July 18, 2010.

9 Mallika Aryal op cit.

10 International Alert and the Institute for Inclusive Security (2004, updated in 2007), Inclusive security –Sustainable Peace: A Toolkit for Advocacy and Action, available at <http://www.huntalternatives.org>.

11 A leading Nepali woman political party leader as told to Rita Manchanda, Kathmandu, 27 September 2010.

Increasingly, in Nepal, the factor limiting the ability of women to realise their political goals is less their supposed lack of capacity and more their dependence on the fragile cross-class and caste consensus holding together. That political consensus propped up the peace process anchored in the 2006 Comprehensive Peace Agreement between the Seven Political Parties and the Maoists that brought an end to the authoritarian monarchy and ushered in a republican and secular Nepal. However the surprise victory of the Maoists in the 2008 elections revealed a shift in the balance of power in favour of the Maoists. This brought to a head the contest between the 'elite' and the institutionally excluded that has deadlocked the peace process and the writing of an 'inclusive' and 'egalitarian' Constitution.

12 Personal Interview with Sarita Giri, Kathmandu, July 18, 2010.

“When there is difference between the parties, the possibility of asserting a cross party gender sensitive agenda shrinks”, observed veteran politician Sarita Giri, a member of the drafting committee of the Constitution.¹² When it came to statutory rights for women regarding citizenship and property rights, cross party alliance building has proved too weak to translate advocacy into policy decisions. In the lead up to the drafting of the new Constitution, a series of agreements, especially the Interim constitution (2007) had loftily proclaimed in the fundamental rights section, affirmation of women’s rights, and decried patriarchy. More specifically, the Interim Constitution had provided for equal citizenship rights to men and women and equal rights to ancestral property, rights to reproductive health as well as social security for women. But the language of the proposed citizenship law adopted by the CA derogates from the equality principle proclaimed in the interim constitution and discriminates against citizenship rights of children born of a Nepali mother and a foreign father.

Sapana Malla, a leading NGO campaigner for women’s legal rights, and UML nominee in the CA, regretted that there was a watering down of rights from what had been secured during the Interim Constitution (2007). On women’s inheritance rights to property the language restricts it to ‘ancestral property’ as opposed to ‘parental property’; on citizenship law, citizenship through either parent is recognised, but it is a claim not a right and is premised on naturalisation and permanent residence in Nepal from birth until 16 years of age. Unlike for Nepali men married to foreign women, no provision is made for Nepali women married to foreign men.

On occasion though, Malla has successfully drawn upon the support of an enlightened cross party leader to overcome opposition from her own party, the UML, to inserting in the Preamble ‘patriarchal values’ alongside feudalism as basic impediments. Malla leveraged the exceptional intervention of the gender conscious Maoist leader, Baburam Bhattarai to shame her own party into agreeing to insert language on “patriarchal values” into the draft constitution. Also, crossing party lines, women have boldly taken gender sensitive positions, as reflected in the dissensions they have entered during the finalization of the draft Report of the Subjects’ Committees of the CA. But translating that into constitutional guarantees is another matter. On the whole, ‘voting’ alignments in the CA are determined along party lines. Participation does not necessarily mean ‘participatory inclusion’ and where there is little or no internal party democracy, there is more likely to be ‘participatory exclusion’. *“We feel women (in the CA) are still supplicants – that position has not changed. Earlier men made laws for women which were imbued with patriarchal*

13 Personal Interview with
Sapana Malla, Kathmandu,
July 16, 2010.

values. Now we are 33 per cent in the CA. We have our own negotiating power. But we forget that we are not in the political decision making bodies, the high level political committees. There has to be proportional representation of women in the political party decision making bodies”, was the message from many of Nepal’s women lawmakers.¹³

As the contest between the ‘elites’ and the institutionally excluded intensifies, it is not surprising that gendered perspectives are being subordinated or elided. Indeed at a time when the Maoists are under siege, the Maoists demonstrate reluctance in the CA and on the streets to push ahead on the commitment to a restructuring of the Nepal state, of taking cognizance of gender, region, Dalit and ethnic and indigenous communities. The gender question is a particularly divisive one in Nepal’s highly patriarchal and conservative society. This may explain why the Maoist women have been so silent on the issue of the integration of the women combatants of the Peoples Liberation Army. The integration of the PLA combatants remains the most contentious issue of the 2006 Peace Agreement’s core commitments. Of the 19,602 PLA fighters verified by the UN Mission in Nepal, 3846 are women. It is striking how little advocacy there is in public by the Maoist woman leader Yami on behalf of the verified women combatants, or the disqualified ‘minors’.

Efforts to raise gender questions are brushed aside as divisive or de-prioritised. For example, recently Kul Gautam, former United Nations Assistant Secretary-General, proposed that 2000 women combatants be integrated into Nepal’s peacekeeping forces for UN service. Currently women constitute 1 per cent of the Nepal Army. Kul Gautam’s proposal of privileging women in the PLA for integration in the Nepal Army, and other excluded communities like the Madhesis, is seen as undermining support for the principle of full ‘integration’ of the PLA. Influential opponents of the proposed ‘integration’ of the PLA have repeatedly sought to push the argument of selectively determining (and thus seeking to divide) who should be included.

During the ten years ‘Peoples War’, with half of male householders caught up in seasonal migration, and women being the mainstay of subsistence agriculture, it was essential to mobilize women for the agrarian based revolutionary struggle. Property rights for women, was a key demand in the Maoists 1995 demand charter. Moreover, overriding traditional constraints, the Maoists opened up the fighting ranks to women. The result was the mass visibility of poor, rural, illiterate women, the majority from oppressed castes and indigenous communities, in the movement

14 Hsila Yami, "People's War and Women's Liberation in Nepal" Purvaiya Prakashan, Raipur, 2006.

– as propagandists and mobilizers, party cadres and district secretaries and above all as soldiers in the people's militia and People's Liberation Army. In the propaganda rhetoric of the movement, the women in PLA, constituting more than 30 per cent of the force, had a special place of importance. "Today, the image of tired malnourished women carrying children at one end and rearing cattle at the other end has been transformed into image of dignified fighting women with guns," Hsila Yami proudly asserted.¹⁴

Women in the PLA were commanders and vice commanders within brigades, platoons, squads and militia. The possibility of an emancipatory politics for women in militarized movements is deeply contested in feminist scholarship and policy debates. Also, anthropologists like Lecomte-Tillouine have questioned the formulaic explanations forwarded by Maoist leaders in their writings and interviews, of why such an overwhelming number of girls responded, that is, the socio political opportunity to shed gendered oppression. The 'Survey' mentioned previously, suggests that while 65 per cent were motivated to join because of class oppression some 16 per cent added gender discrimination. Women like Jayapuri Gharti from the Maoist heartland, Rolpa joined the movement in 1990 when still at school. Coming from a family that was poor, belonging to a socially downtrodden caste, and being the seventh of eight children, she was lucky that she was sent to school. In high school she fell under the influence of her Maoist teacher, Nand Kishore Pasang and joined the party. In 1998 she became Central Committee member, in 2003 head of the women's wing. In 2008 she defeated seven rivals, all male, to become CA Member. Sarala Regmi, in the CA, was among the first batch of 60 women guerrillas in PLA.

These former PLA women in the CA have made no apparent claim for gendered representation in the Special Technical Committee set up by the government for supervising, integrating and rehabilitating Maoist combatants. Ironically, Nepal had been touted as the one peace process which promised gender sensitivity as regards the DDR-SSR process. Expectations about equal opportunities for women and male combatants were further raised with the involvement of UNMIN in the peace process. However, if the UNICEF –UNDP process to oversee the discharging of 2973 'disqualified' former child soldiers is anything to go by, gender sensitivity again slips through the cracks. The process has proved poorly equipped to deal with the social challenges of reintegrating some 1000 girl combatants. Rachna Shahi and Shanta Karki of Kailali district found that their families rejected them, their neighbours demanded they leave for good. Society looks askance at their freedom of movement in the PLA when they fought alongside men. Speculative rumours of sexual license

have tainted them. Moreover what do they go back to – to resume the oppressive subordinate roles of women?

Mohammadi Siddiqui, blames the flagging enthusiasm of the women's movement, for the weakness in sustaining the campaign for gender rights. *"Getting 33 per cent in the CA was the first step, but the voice of the women's movement has been strangely missing since last year (2008). The reason we don't have a separate committee for women in the CA is because the women's movement outside the CA has given up"*.¹⁵ By contrast, strategic lobbying by various women's groups, the UN, and donor agencies kept gendered representation on the agenda during the run up to the CA.

15 Mallika Aryal op cit.

In Nepal as in many peace processes, there is the danger of slipping back to the old ways of servitude of cooking, cutting grass and carrying wood, of becoming invisible again, of 'doing nothing'¹⁶ as a young Maoist cadre said. The gender alert was sounded early during the 'no war no peace' interregnum of ceasefire negotiations in 2004. The Maoists had judiciously put together a negotiating team which reflected their multiple constituencies e.g. Janajati (indigenous), Madhesi (regional). But where were the women? Top Maoist leaders Baburam Bhattarai defensively explained that women did not have to be physically included to have their interests represented. The historical track of gender neutral representation and gender neutral policies has led inevitably to disadvantaging and discriminating against women's rights.

16 Manjushree Thapa, "Girls in Nepal's Maoist War", Himal South Asia, June 2003.

Waning support from the international community is another factor. The UN Mission in Nepal (UNMIN) was mandated to support the peace process, including ensuring a free and fair democratic transition through the CA elections and monitoring the two undefeated militaries. During the first phase, UNMIN had a gender point person, Ratna Kapur, with a limited mandate of gender auditing the CA elections. But during UNMIN's second phase, when it was tasked just with monitoring the two armies, the gender position was not retained. Presently, the UN Peace Fund supports a range of UN agencies involved in the discharging of 'disqualified' Maoist soldiers and transitional justice activities. However, only a vague commitment to supporting programmes that apply the provisions of UN Security Council Resolution 1325 on women, peace and security has been made by the Secretary-General.

What would a gender audit reveal of the workings of the UN agencies in Nepal's peace process? If the Report on the EC-UN Partnership on Gender Equality for Development and Peace is any indicator, the gender audit's findings would be bleak. *"Government, donors, experts and civil society have not shown their (sic) interest to support women through this Fund,"*

17 The Report was submitted to the UN by the Nepal Ministry of Finance in 2008. The Nepal component gender budget audit is part of the 12 country EC-UN Partnership on Gender Equality for Development and Peace, in Nepal Gender Responsive Budgeting (GRB) was instituted in 2007-2008. The Report was submitted to the UN by the Nepal Ministry of Finance.

18 In 2004 the Royal Nepal Army personnel took Maina Sunwar (15 years old) and subjected her to simulated drowning, and electrocuted her with a 220 volt charge which may have killed her. She was secretly buried. In 2007 her body was finally located and exhumed.

stated the Report submitted to the UN in 2008.¹⁷ However since then a more serious and vigorous effort is being made to incorporate gender sensitiveness in the peace process. In 2010 Nepal's Ministry of Peace and Reconstruction, supported by international stakeholders, launched a National Action Plan to implement UNSC Resolutions 1325 and 1820.

On the whole though, there has been inadequate recognition by international donor agencies in Nepal of the connection between the conflict and growing gender based violence (GBV); a relationship well established in feminist scholarship. Impunity for mass sexual violence in conflict tends to reinforce and legitimise post-war sexual abuse of women. There are dispersed initiatives, such as studies commissioned by UNFPA documenting increasing levels of GBV. More recently, there are growing reports of women attacked as witches and Dalit women forced to eat faeces. But there is a lack of co-ordination and focus that could bring direction and focus. While it is noteworthy that the draft Truth and Reconciliation Bill excluded 'rape' from the recommended general amnesty for gross violations of human rights, Nepal suffers from an entrenched culture of impunity. The failure to bring to justice the accused in the high profile case of the rape, torture, and murder of Maina Sunwar despite the national and international condemnation, is testimony to the blatant systemic flouting of the rule of law.¹⁸ In 2008 the Kavre District Court issued an arrest warrant against Major Niranja Basnet one of the four accused. When pressure from human rights campaigners resulted in Major Basnet's repatriation from peace keeping duties in Chad, it was hoped that justice would take its course. But Nepal's Defence Minister Bidya Bhandari supported the Army's refusal to let him stand trial, saying that he had faced a Court Martial. But that was for 'indiscipline'.

Despite these disappointments and political complexities we need to remind ourselves that the gendered narratives of Nepal's peace process are far from finished. For example, the newly formulated Domestic Violence and Punishment Act is a significant achievement of the women's movement in and outside the legislature. It substantively expands the meaning of domestic violence and the socio-economic support systems needed. Nepal's National Action Plan promises to bring co-ordination and priority to gender concerns. The women's committee in Parliament and powerful gendered voices in the legislature committee continue to be the sentinels safeguarding women's rights. Veteran politicians like Chitralekha Yadav are positioning themselves in the core centres of party decision making structures, contesting and winning crucial high level party positions. For example, in September 2010 she assumed the position of Treasurer within her party. Above all, the women in the CA who rushed to the well of the House in May will not give up without a fight. Though greater political polarisation poses a formidable challenge, Nepali

women continue to assert their claim to equal political space so that they can help write a new constitution that may guarantee a genuinely inclusive society.

About the author

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