



## Editorial

# Constitution Building in Asia: the tipping point for democratization?

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Two important constitution-building processes currently underway in Asia are reaching a tipping point. Last week, the Nepali people elected members of a Constituent Assembly; while in May the Burmese people will vote on a draft Constitution.



Constitution building is often a key component of democratic transitions. The way a constitution is drafted, discussed, adopted and implemented can to a large extent determine the success or failure of democratization efforts. A process which includes preliminary agreements, a high degree of public participation, and commitment by all main political actors throughout the drafting *and* the implementation phase, carries better chance of success. Moreover, these processes can be highly political, especially in transitional environments. A constitution-building process mired in political stalemate, that lacks public buy-in, and that takes place against a backdrop of insecurity can lead to further political turmoil.

Significant apprehension mounted ahead of the Constituent Assembly elections that took place in Nepal on 10 April, particularly since uneven progress had been made in bridging the political divides that have marred previous attempts to hold the elections and move the peace process forward. The failure to make effective progress on the disarmament process and deal with key aspects of security sector reform had also raised anxiety that both parties remain ready for combat if the election results are not to their liking.

Conversely, three days after the elections, it appears as if the first hurdle has been surmounted; despite certain challenges during the polling hours and the fact that certain disputes still need to be resolved, it appears that the Nepalese people can shift their gaze toward the actual functioning of the Constituent Assembly. A positive acceptance of the results of the elections by all parties will further cement the democratization process and move towards upholding the fundamental rights of *all* Nepalese. Further challenges will have to be confronted by all political actors within the political process. The next two months will be decisive in determining just how inclusive and ultimately successful the process will be. Key indicators will be the degree of post-election political collaboration, particularly with regard to Madhesi armed groups that have thus far opted to remain outside the peace process. Other challenges will include dealing with the legacy of the past.

Despite its ups and downs and the complexity of the issues at stake, there are

lessons to be learned from developments in the Nepal process. The fact that political leaders have remained committed to a process which was prompted by popular demand and that aims to create the basis for a fully inclusive society *is* a positive signal – one that could serve as an example to the military leaders of Burma.

After almost half a century of military rule and 20 years after the suspension of the 1974 Constitution, the Burmese people were recently informed that they would be called on to vote on a new draft Constitution. A referendum has been scheduled for May. While news of the referendum has been met with anticipation by both national and international actors, the failure of the military junta to commit to a participatory drafting process once again lowers the ante for prospects of democratization. As this newsletter goes online the text of the draft Constitution has yet to be made freely available to the wider public.

Based on lessons learnt from several constitution-building processes, International IDEA maintains that while national contexts differ, constitutions enjoy greater legitimacy when the drafting process has been nationally owned and has been broadly inclusive and participatory. Key to such a process is the broad dissemination of the draft Constitution and allowing the necessary time for deliberation by the widest possible range of national actors on the key elements of the text. (Contemplate for a moment that the constitutional process in post-apartheid South Africa took six years of extensive consultations.) The holding of a referendum entails further requirements if due democratic process is to be respected. The process in Burma clearly falls short of widely accepted international practice in these respects.

Efforts by the United Nations Special Envoy and others to ring this truth home appear to be ignored. It remains the responsibility of the Government of Myanmar to prove the contrary.

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