

RESPONSE TO PRACHANDA

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PM Pushpa Kamal Dahal, better known as Prachanda, is the democratically elected head of government of the Federal Democratic Republic of Nepal. His party, the Communist Party of Nepal or CPN (Maoist) has received in the elections of early 2008 roughly 30% of the votes and 38% of the seats, both pluralities, in combined first past the post and proportional voting.

He is the first self declared Maoist who has been chosen in democratic elections and parliamentary process to head a democratic, coalition government, and quite strikingly, since Lenin, he is the first Leninist (and perhaps even revolutionary Marxist) to head the executive power in the face of a democratically elected constituent assembly. As in the case of Lenin, who headed a coalition government much narrower than Prachanda's, his party too is in a minority in the assembly even though, in distinction to the Bolsheviks it is the largest single party. Before asking him whether under any conditions he might wish to follow the actions of Lenin, who wound up dismissing the constituent assembly by force, it is well worth considering Prachanda's quite different constitutional situation.

Prachanda and the CPN (Maoist), though clearly revolutionaries who have engaged in a long revolutionary insurrection, do not come to power in a revolution whether internal or externally imposed. With national specificities characteristic of Nepal, the radical transformation that took place in that country belongs to the type of negotiated transition or regime change first experimented with in Spain in the 1970s, further developed in Central Europe in the late 1980s and early 1990s and perfected in South Africa in the mid 1990s. The key elements of this kind of process are civil society mobilization and pressure, negotiations among the major political actors, the creation of an interim constitution that brings provisional government under the rule of law and indeed constitutionalism, and the election of a constitutional assembly that is itself under rules and is therefore not sovereign in the sense of the classical European tradition since 1789 that was still assumed by all Russian revolutionaries. Without underestimating the bravery and the importance of the insurrectionary activity of the CPN

(Maoists) for a decade or more that helped to initiate the process, it remains hard to dispute that the transformation that led to today's constitutional assembly began with a negotiated agreement between that party and Nepal's seven liberal and reformist parties in 2005. From that point on, the non-violent civil society based initiatives and movements that put an end the king's dictatorship was much more important than any insurrectionary activity. And, even more crucially, the negotiation of an interim constitution by an 8 party alliance, squarely took Nepal out of the tradition of revolutionary transformations and established a Nepali version of the negotiated transition that continues to this day. Though there has been severe conflict and even bloodshed, what is much more remarkable is how the main political actors ultimately adhered to this chosen paradigm, repeatedly renegotiating it when new actors with new claims appeared, without ever abandoning it. At the head of a revolutionary party that possessed its own insurrectionary forces and means of violence, I think Prachanda and his colleagues deserve special praise for the *self-limitation* making such a peaceful regime change process possible.

The process I briefly described puts him and his government in a very different, though hardly less complex constitutional situation than the one faced by Lenin in early 1918. The Nepali constitutional assembly is not a sovereign one; it is itself under constraining constitutional rules. It could and already did change those rules, but it requires 2/3 majority to do so. But no party has more than Prachanda's 38%, and no two parties even have the two thirds needed to change the interim constitution. This was not the situation in which Lenin found himself in early 1918. We will never know whether he dissolved the constituent assembly because he could not impose his will without a Bolshevik majority, or because he feared that there was a majority of the peasant based Social Revolutionary party that could alone dominate the assembly and the process. We do not know how he would've acted in Prachanda's place especially since a minority of Bolshevik's were opposed to the action against the assembly. Prachanda also does not have the majority to impose his own constitutional ideals. But unlike Lenin, he has more than the required 1/3 vote under the rules to stop any constitutional provision, or any draft as a whole from passing. He is in position to work on a constitutional compromise on favorable terms to his side; but not to impose on the majority or even a large minority constitutional solutions that they cannot possibly accept. If he is satisfied with that he would not have to resort to Lenin's solution even if he wanted to and was in the political-

military position to be able to (and I doubt, as far as he personally is concerned that he wants to, or is in the political position to be able to.)

So what kind of constitution will Prachanda and his party actually try to achieve, and what kind of constitution can they achieve? The party remains a radical party of the left, and though they are following a social democratic strategy in many ways, the kind of change Prachanda and the CPN (Maoist) wish to lead is probably far more thorough and far-reaching than any historical social democracy that was in power. Here I am certainly not any kind of expert, but I do believe Nepali society does need radical economic and social change, and the CPN (Maoist) owes its support for having effectively represented it. But many who want that kind of change think in terms of decentralizing, federalizing, pluralizing previous state authority, and for a left party the agency through which change can be achieved has always been that of state power. I see three areas where Prachanda will have to clarify not only to us, but to himself and to the Nepali electorate what he and his party are trying to establish: the structure of the state; the structure of government; and the structure of elections.

As to the structure of the state almost everyone is now committed to some kind of federalism in a previously centralized state. But what kind of federalism, geographically or ethnically based, and with how many units? And how will the powers of the center and the new units be distributed? Will the central state retain enough powers to accomplish the changes the CPN (Maoist) is committed to?

Regarding the structure of government, the amendments to the interim constitution produced a parliamentary structure with a weak president elected by parliament. It is to the significant credit to Prachanda, that he democratically accepted the defeat of his party's candidate in the elections for that position. But now will he be tempted to try to write in the new constitution a popularly elected president, either with or without significant powers, that in either case could become a threat to the democratic order under crisis conditions. On that we have the authority of the Marx of the 18th Brumaire, and yet in a new republic there must be a strong temptation to fill the empty place of the king with the figure of a democratic plebescitary leader. In India too there have been attempts, so far failures, to introduce presidential government with extra-ordinary powers. We see the results of such populism in some of the South American Andean republics, that have

made new presidential constitutions in processes and with results that should not be and have not been so far the models for Nepal's efforts.

Finally, still under the veil of ignorance, the CPN (Maoist) was for a system of pure PR. As an unintended gift of some opponents, the FPTP seats were increased, and it turned out that the CPN (Maoist), a party with 30% of the votes gets a pretty big surplus of seats in such a system. Prachanda in an interview now dreams of getting 2/3 in the next elections, and perhaps 90% in the one after that. These are still traditional Leninist dreams, and I think he will find that if polls and elections are kept free and fair, in a divided society like Nepal where all reforms will have losers as well as winners, it will be tough to go over 40 %. But under some electoral rules, even such a percentage could lead to 2/3 of the seats if not the votes. Prachanda must seriously consider whether he and his party should not return to the principled position taken under the veil of ignorance, i.e. proportional representation, that would continue to allow (unlike FPTP) for the largest number of Nepali political forces to remain represented.

Undoubtedly, the audience will add other questions to these, and it would be certainly interesting to hear Prachanda speak about his plans for the constitutional assembly.

But for now Welcome and Congratulations, and may the political transformation of Nepal that has created a democratic constitutional republic continue with the same success as before!!!