

CONSTITUTION-MAKING IN NEPAL: THE NEED OF COMMON GROUND

BACKGROUND

Nepal's future as a democratic republican country largely depends on the process of writing a new constitution. The task is undoubtedly very challenging, and the commitment of political parties for negotiated settlement of their differences will be crucial for preserving Nepal's fledgling democracy. This is probably an unprecedented challenge for Nepal's political parties to utilize their strength and energy for resolving differences among themselves. This is the single biggest contribution required from Nepal's policymakers who are entitled to write a new democratic constitution.

The achievements gained by Nepal in building peace and democracy can be considered as remarkable. Formation of the constituent assembly, establishment of the republican system, formation of the new coalition government, and power-sharing among political parties are the achievements of great importance. However, Nepal's constitution-making process currently seems to have deadlocked due to the growing differences among Nepal's large political parties on a wide range of issues.

This paper analyzes some major issues on which Nepal's political parties have developed different positions. The objective of this analysis is to explore the challenges in Nepal's peace process and constitution-making process. The paper will also illustrate the need of more comprehensive negotiations among political parties which need to be aimed at the search for common ground.

ISSUES OF DIFFERENCES

Political parties have differences on a large variety of issues. Some of these issues are related to the resolution of the past conflict. Diversity of opinion among Nepal's political parties on the integration/adjustment of former Maoist combatants epitomizes the differences related to the resolution of the past conflict. A large number of issues are related to the structure of the future polity. Differences among political parties on number, sizes and the basis of sub-national government may serve as a good example. Similarly, political parties differ on the existing arrangement of power sharing. The fact that Nepali Congress remains in the opposition in the existing coalition has been the basis of differences among political parties on crucial issues related to both past and future. The three examples of differences which dominate Nepal's existing political scenario are discussed in some more details below:

a) Integration/Adjustment of former Maoist combatants

Despite agreement among political parties to 'integrate' and 'rehabilitate' the cantoned Maoist combatants through a formal procedure (Cf. Clause 146 of the interim constitution and point 4.4 of comprehensive peace agreement), political parties have strong differences about where to 'adjust' the former Maoist combatants. There have

been discussions within all large political parties on ways to end the existing situation of dual army. However, there have been no substantive efforts to build common agreement about integration of the Maoist combatants in the Nepal Army or about giving them other roles (such as industrial security, border security, social re-integration, etc.) as proposed by some political parties.

As we see it, the crux of the problem lies not in finding specific ways to adjust the Maoist combatants, but it lies in the lack of commitment among all large political parties to give an end to their perception of the role of armed force. Nepali Congress and Madheshi Jnaadhikar Forum, for instance, are strongly against integrating the Maoist combatants into Nepal Army. The NC is probably fearful of the ideological dilemma which the integration of the Maoist combatants may create in the Nepal Army. The MJF is also skeptical of the 'mind-set' of the Nepal Army against the Madheshi people after the Maoist combatants are integrated in its structure.

The CPN-Maoist, on the other hand, has not been able to get rid of its psychological dependence on the armed forces. Its persistent demand for integrating Maoist combatants in the Nepal Army and the decision of the Maoist-led government to actually increase the budget for the Nepal Army show that the CPN-Maoist has been reluctant to initiate concrete efforts for bringing reform of the security sector. The lack of clear vision of the existing Maoist-led government for downsizing the army have made other political parties more skeptical about its interest in the long run.

b) Structure of the Future Polity

The nature, structure and functions of Nepal's future polity will have to be designed and determined by the constituent assembly. However, the differences of positions among different political parties on the number, sizes and basis of the future federal structure has been an obstacle to move forward in designing a federal structure for Nepal. There has been so much fear and lack of confidence among political parties about federalism that the parties have currently been involved in highlighting differences rather than similarities in their positions.

As we see it, there have been mainly three types of positions among Nepal's political parties on future federal structure. The first of these is in favor of a more centralized form of government with limited autonomy given to the sub-national levels. The adherents of this position are against delineating boundaries of the sub-national governments along ethnic, linguistic or cultural lines, and highlight fiscal and administrative considerations for designing the federal structure for Nepal. In spite of important differences among themselves, Nepali Congress, CPN-UML and some other small political parties carry this position.

The second type of position is carried by the Terai/Madhesh-based political parties. Parties like Madheshi Janadhikar Forum, Terai-Madhesh Loktantrik Party and Nepal Sadbhavana Party have demanded for the 'autonomy' of whole Terai region as one single 'Madhesh Province'. These political parties seem to have less concern about the overall structure of the federal system, but they are pressing hard for the autonomy of the Terai region which covers 22 districts of Nepal having more than one third of the total population of the country.

The third type of position is in favor of ethnicity-based federal structure for Nepal. The supporters of this position argue that the focus and objective of the federal structure has to be the distribution of rights and autonomy to Nepal's marginalized and underprivileged ethnic minorities. According to this position, Nepal's federal structure needs to be designed along ethnic/cultural lines so that the marginalized groups acquire the right to self-governance and autonomy from the federal government. This position is carried mainly by the CPN-Maoist and some other small political parties which favor ethnicity-based federal structure.

c) Differences in Power Sharing Arrangements

Nepal's existing coalition government has many interesting features. Most interesting of these is perhaps that political parties with diverse and even contradictory interests have been united to give a government to the country. The fact that the CPN-Maoist, which was considered a rebellion force until recently, has been in the driving seat of the government is another interesting aspect of this government. Similarly, the distribution of portfolio in the existing coalition government also shows that the government has been the result of a difficult compromise among political parties with opposing interest.

However, the most complex factor of Nepal's existing political coalition is that Nepali Congress, which has been in the ruling position during most of the time under the multi-party system, has been pushed to the opposition. The fact that the second largest political party with an extensive experience of ruling the country is in opposition is something which may create unforeseen problems both to the existing government and the constitution-making process. The symptoms of the problem have already started to become visible as the difference between the CPN-Maoist and Nepali Congress is widening with a great speed.

IMPACTS OF THE GROWING DIFFERENCES AMONG POLITICAL PARTIES

Differences among political parties on the matters of national importance can often be considered normal and natural. It is perhaps natural for the political parties to differ during the transitional period in order to secure their political space and credibility in the future political structure. However, the current differences among political parties have a number of negative impacts for the making of new constitution and for leading the peace process towards a logical end. In the following, we discuss some of the major impacts of the current differences among political parties.

1. The task of writing a new constitution unfortunately has a timeline of two and half years out of which six months have already passed. Given the short timeline, the CA members are supposed to work very hard in drafting the new constitution. However, constitution-making process remains deadlocked due to the growing differences among political parties. As a result, the drafting commissions/committees proposed by the CA secretariat have not been formed. Further delay in the formation of the drafting committees may make the constitution-making process even more difficult.
2. A prolonged transitional period cannot be considered good for the health of a nation. The social, economic and political uncertainties which characterize the transitional phase are heavy especially upon the poor people who need social and financial

security. The only solution to this problem is the stable government based on consensus among all political parties on issues of national importance. However, the differences among Nepal's major political parties have built the ground for the opposite.

3. The lack of common agreement among political parties has undesired consequences for peace-building process. It has not only affected the government's capacity to establish law and order, but has also promoted armed and criminal activities in different parts of the country. The establishment and mobilization of youth wings as pressure groups by all large political parties is another example of the result created by the growing differences among political parties.

CONCLUSION: THE NEED OF NEGOTIATION

The process of writing a new constitution is an integral part of Nepal's peace process. The peace process, therefore, will be completed only after the parties are successful in giving a new constitution to the country. This will require broad-based negotiations among Nepal's political parties on substantive basis. Such negotiation will have to be based on the need of the country and the people not on the positions which different political parties carry for different reasons.

Most of Nepal's political parties have accepted, if not adopted, the agenda of state restructuring and transformation. However, the Maoist combatants who fought for a long period of time for the same agenda are being seen as a burden. CPN-Maoist is definitely responsible for not building confidence among other political parties about the role and characteristics of its army. However, Nepal's peace process and constitution-making process cannot go ahead smoothly without determining the ways of adjustment of the Maoist combatants. Political parties currently face this challenge to negotiate and build agreement on the permanent solution of this problem.

Federalism may provide the opportunity to preserve the rights of all ethnic groups without creating 'ethnic tensions'. This may require serious efforts from the political parties to incorporate ethnic aspirations as well as administrative and fiscal considerations in designing the future federal structure. The current differences among political parties on the structure of federal system may seem to have originated from their feeling of insecurity about the future structure. Earnest negotiation can only build environment for designing a federal structure that meets the standards set by different political parties.

Finally, we can expect that the political parties understand the challenges inherent in the historic task of making a new federal democratic constitution for a country which has been crippled for so long due to the armed conflict and lack of democracy. Greater and more effective efforts from all political parties for the resolution of conflict through dialogue and negotiation are the only option for giving permanence to democracy and peace in Nepal.

Nepal Set to Write a New Constitution

Nepal's peace process has reached the stage of new constitution-making. The complete resolution and/or settlement of the armed resistance of the Maoists and various other powerful resistance movements will depend on the success of the constitution-making process. At the same time, the success of the constitution-making process will create a path for building a peaceful, democratic, and prosperous country aspired by common Nepalese.

The task of making a new constitution is, however, full of challenges. Nepal's political parties are currently faced with a challenge to implement their earlier declaration to replace monarchy with republican system. The task of designing a federal structure in place of the age-old unitary system is another crucial challenge. The framers of the new constitution will also have to face crucial challenges for incorporating diverse needs and expectations of geographically, ethnically and economically diverse population. Similarly, the integration/reintegration of the former Maoist combatants who are currently speculating on their uncertain future in different cantonments around the country can be considered a crucial challenge which the members of the constituent assembly will have to face in the coming days.

The present review shall analyze some of these challenges by examining the current political scenario. The positions, interests and needs of some major political parties shall be explored to shed light on the prospects and challenges of the constitution-making process.

Post CA Election Scenario and Political Controversies

The successful completion of the constituent assembly election has arguably built a path towards making a new democratic constitution for Nepal. However, the significant victory gained by the Maoists and some region-centered political parties in the election has important consequences for the political coalition which has played crucial roles in the peace process after people's movement. The victory of the Maoists has been enough to fuel fear and suspicion among some of Nepal's major political parties which have not been able to hold their past status in terms of popular votes. This fear and suspicion, especially in Nepali Congress and CPN-UML, can significantly affect the broad political coalition which is immensely important for making a new constitution.

The CPN-Maoist considers that its huge success in the CA election has to be a basis for forming a new coalition government under its leadership. The Maoist leadership is even publicizing its programs for social welfare, economic reforms and improvement in

security situation to be implemented after forming a new government under its own leadership.

The other political parties, especially Nepali Congress and CPN-UML, seem skeptical of the Maoists' programs for social and economic reforms. Although none of these political parties have clarified their respective positions on the formation of the new government, various senior leaders of these political parties have been persistently saying that the militant behavior being performed by the Maoist cadres could become worse if the Maoists are given the opportunity to form the government. Some senior leaders of both of these parties have even argued that the political party having its own army could not be given the opportunity to form a government until the peace process reaches a logical conclusion.

The suspicion of different political parties on the probable Maoist led government is being manifested through different conditions set against them. The first condition, in fact a set of seven conditions, was put forward by Nepali Congress. Nepali Congress expects the Maoists to dissolve its youth wing name YCL and the return of all properties ceased by the Maoists to the respective owners before the formation of the new government. The CPN-UML has not publicly put forward any conditions, but it has also been demanding the dissolution of the YCL. Similarly, its strong reluctance to join the future government under Maoist leadership could in itself be a pressure for the Maoists to run the government.

Similarly, some major political parties of the seven-party coalition and a Madhesh-centered political party called MJF has been demanding for amending the provision of the interim constitution which says two-third majority is required for changing the sitting Prime Minister. Their demand that such provision has to be changed before the Maoists form a new government under their leadership clearly shows their skepticism against the Maoists.

It can be expected that the controversies surrounding the formation of the new government will be effectively resolved in days to come. However, it cannot be denied that the controversies based on the structure and functioning of the new government can be a basis of suspicion and fear among the political parties. Therefore, the structure of the new government and its roles in maintaining broad political coalition among different political parties will have huge impacts on constitution-making process.

Implementation of the Republicanism: underlying challenges

The coalition among the seven political parties was based on a powerful resistance against king Gyanendra's dictatorial regime. The people of Nepal have repeatedly approved the conclusion of Nepal's political parties that Nepal's monarchy is the major threat to democracy and development of the country. The popular participation in the movement called by the political parties and the votes gained by the political parties in the constituent assembly election held in April 2008 are the clear evidence of Nepalese people's desire to replace Nepal's monarchy with republican system.

Nepal has been already declared a republic from the third amendment in the interim constitution, and the responsibility to 'execute' the republican system has been assigned to the first meeting of the constituent assembly scheduled for June 28. However, so far neither the king has shown any signs to abide by the interim constitution nor the ordinary people have been convinced that Nepal has been a republican country. Therefore, the political leaders representing people in the constituent assembly have now the responsibility to institutionalize the republican system.

Almost all political parties in the constituent assembly have expressed their commitment for republican system. Similarly, as mentioned above, Nepal has been already declared a republic, and it is only the implementation part remaining to be completed. In this sense, the implementation of the republican system seems easy. However, the task of removing the king from the palace and formally abolishing the institution of monarchy from the Nepalese history is a grave challenge which demands strong confidence and understanding among the political parties.

There are a number of questions to be resolved while 'executing' the declaration of the interim constitution that Nepal will be a republic country. Some of these questions are: status of the present king after he loses his throne; the provision of the head of the state; the utilization of state property used by the present monarch; the role of the army in the republican system; and measures to vacate the royal palace in case the king does not want to abide by the CA's instructions. The resolution of these questions requires a high level of confidence among the political parties. In more precise terms, Nepal's political parties need to strengthen their confidence to face challenges in the process of institutionalizing the republican system. However, the skepticism and distrust based on the unexpected loss faced by some of the big political parties and significant success gained by the Maoists could be a source for crisis of confidence.

Federalism: a solution or a problem?

The second amendment of the interim constitution has defined Nepal's future model of government as federal. The constituent assembly is given the responsibility to design the structure of the federal system as appropriate for Nepal. The promise of federalism has made different social and identity groups, especially deprived and marginalized groups and communities, optimistic about the state restructuring process to be executed by the constituent assembly. The supporters of federalism have argued that federalism can be an appropriate solution for providing people with their right to self-rule which has been historically denied by the centralized unitary system.

Federalism may provide an opportunity to institutionalize democracy in Nepal as it may provide the people with the opportunity for self-rule vis-à-vis the opportunity to participate in the political processes. Consequently, the federal system of government may be a platform for ending the traditional structures of exclusion and discriminations which is a major basis of different forms of conflict in Nepal.

The designing and establishment of federal system, however, entails numerous challenges and risks in the case of Nepal. On the one hand, the immense ethnic, geographic and economic diversity of Nepal is a challenge to create boundaries for provinces. On the other hand, the high expectations related to self-rule in different social and identity groups is a challenge to build an effective procedure for sharing power between the center and provinces. Similarly, the distribution of resources and protection of the rights of minority groups with the provinces are significant challenges, too.

Therefore, lack of adequate knowledge on the values and principles of the federal system of government and soaring expectation of some social groups and political parties from the system could convert federalism from an effective solution to a source of conflict. Therefore, Nepal's policymakers and the constituent assembly members seem to have difficult days ahead to prevent the federal system from being a source of new forms of conflict and to create a federal model which is appropriate for Nepal.

The Unfinished Peace Process

It is clear to everyone that Nepal's peace process has not been completed yet. The implementation of the new constitution can be considered the final milestone for the successful completion of the peace process. However, there are some major tasks which have to be completed before the new constitution come into effect. The most challenging of such tasks is the integration/reintegration of the cantoned Maoist combatants.

Nepal's peace process cannot move forward smoothly amidst uncertainty of the future of nearly 20 thousand former Maoist combatants who have been cantoned in different camps around the country. The past political agreements on the future of cantoned Maoist combatants are vague, and they cannot provide a clear guideline for the procedure of the appropriate settlement of this issue. The Maoists' demand to integrate its former combatants in the Nepal Army and other political parties' denial of this proposal could be a source of political deadlock and even a source of political conflict.

Thus, the uncertainty about this issue may affect not only the confidence among different political parties but it may also affect the peace process which still has to cross many difficult milestones. Therefore, Nepal's political parties need to build an understanding in the near future about what could be done to end the existence of dual army in the country. Otherwise, the rift between the Maoists and other political parties will expand further which is likely to affect the whole constitution-making process.

Conclusion

Despite many bumps and bruises, Nepal's peace process is moving forward with success. The biggest responsibility of leading the peace process towards success goes to Nepal's political parties whose political will and commitment to peace has been praiseworthy. The success of the constituent assembly election also shows that Nepal's political parties possess the willingness and determination to carry out the difficult process of state restructuring expected by the people of Nepal.

The challenges, however, are not small. A number of crucial issues such as the establishment of new government, execution of republican system, federalism, integration/reintegration of former Maoist combatants, etc. are yet to be resolved through broad political understanding among different political parties. One single mistake from a political party could lead the country towards unimaginable conflict and instability in the country. Therefore, the political parties cannot have the luxury of overlooking the challenges at this difficult juncture of Nepalese history. The constitution-making process, which will create a new democratic constitution to be suitable for the Nepalese soil, has to run effectively. This will require high level of confidence among Nepal's political parties, and this has to continue throughout the constitution-making period.

Peace Given a Chance: The English New Year Comes with a Hope for the People of Nepal

Background

Nepal's peace process suffered a major crisis during the last three months of 2007. During this period Nepal's major political parties failed to build an understanding on two crucial political demands raised by CPN-Maoists concerning the structure of future polity and the electoral system for the constituent assembly election. As the numerous high level political meetings and the special session of the interim parliament were being unsuccessful to resolve the differences among the political parties, the confidence among the political parties diminished by leaps and bounds. The cancellation of the constituent assembly election scheduled for November and the diminishing confidence among the political parties fuelled suspicion among the ordinary people about the possibility of constituent assembly election and the process of state restructuring and transformation.

However, the last week of December 2007 proved to be fortuitous for Nepal's peace process. On December 23 the political parties of the seven-party alliance agreed to declare Nepal a federal republic from the interim parliament and to execute the declaration from the first meeting of the constituent assembly. Similarly, the agreement was made to increase the proportion of the constituent assembly members to be elected from proportional representation system¹. The agreement on these crucial issues has resolved the crisis faced by Nepal's peace process for the moment. Following the agreement, the CPN-Maoists have re-joined the interim government and all major political parties have agreed to hold the constituent assembly election before the Nepali New Year which falls in April 13.

The Agreement

In addition to the above-mentioned issues, the recent 22-point agreement² has resolved some of the crucial issues which were the subjects of long-standing difference between the CPN-Maoists and other political parties. The political parties have, for example, agreed to form commission to investigate the situation of people disappeared during the armed conflict; truth and reconciliation commission; state-restructuring commission; commission to study and suggest on the policy of scientific land reform; a high level monitoring committee to monitor the implementation of agreements made in comprehensive peace agreement and other agreements; and high-level peace commission.

¹ According to the latest agreement there will be 601 members in the constituent assembly. The assembly will comprise of 240 members directly elected from the first past the post system, 335 members from the proportional representation system, and 26 members nominated by the interim government.

² The agreement actually contains 23 points. The 23rd point expresses a joint commitment of all political parties to hold election in March-April 2008 and a joint appeal to the peoples from all walks of life to cooperate in conducting the constituent assembly election in free and fair manner.

The agreement enumerates the commitment to provide relief fund to the families of the people killed during the armed conflict by 12 February 2008. Similarly, the agreement also clarifies the process of providing the financial support to the cantoned Maoist combatants and the process of integrating the qualified Maoist combatants in the national army.

Efficacy of the Agreement

Some political analysts have questioned the efficacy of the recent 22-point agreement between Nepal's major political parties. They have argued that the decision of the political parties to form an exceptionally large size of the constituent assembly (of 601 members) is unreasonable not only in terms of the cost involved but also in terms of the efficiency of the future assembly itself. Similarly, some analysts have argued that there is nothing new in the recent agreement about the status of the monarchy. Since the parties had already agreed to decide on the fate of the monarchy from the first meeting of the constituent assembly, it was not necessary to make the issue a subject for further debates and discussions, they have argued. Some analysts have also suggested that the Maoists' interest in leaving the government and finding a 'new political ground' for the constituent assembly election was not based on the objective evaluation of the political process but was the result of the internal contradictions between different ideological factions within the CPN-Maoist.

Many of the arguments expressed by the analysts may sound convincing and true. However, the fact that the recent agreement has provided a solid ground for Nepal's volatile peace process cannot be denied. The agreement has helped build confidence among the political parties of the seven-party alliance. The Maoists decision to re-join the government and the joint commitment of all political parties to conduct the constituent assembly in March-April can be considered the indicators of re-established mutual trust and confidence among Nepal's major political parties. The issues related to the size of the constituent assembly can be considered a technical issue, and it can be expected that the political will may help overcome the inconvenience caused by it.

Future of the Agreement

Nepal's political parties have so far been able to build numerous agreements on many crucial issues related to building peace and restructuring the state. A number of these agreements have also been put into practice. However, a significant number of crucial agreements either remain unimplemented or they are very poorly implemented. The political parties have also shown little interest in building effective mechanisms to observe the implementation of the agreements. This is probably the most dangerous aspect of Nepal's peace process. Lack of implementation of the agreements has not only created rifts among political parties in the past, it has also created serious obstacles for the peace process in general. It is probably fair to assume that the Maoists' recent discontent which led to the formulation of their 18-point demands and their withdrawal from the government was caused by the lack of implementation of the past agreements specially related to the management of the cantoned combatants.

Therefore, the efficacy of the recent agreement largely depends on its implementation. On the one hand, it is important for the political parties within the seven-party alliance to win the confidence of the Maoists in the peace process. On the other hand, the Maoists need to win the confidence of the cantoned combatants and the conflict victims to stay firm in their commitment to the past agreements. Such challenge probably underlies every peace process which aims at transforming a violent conflict by restructuring the state. The future of the 22-point agreement, therefore, lies in the sound and efficient implementation of its every point which may help build confidence among all stakeholders in the peace process.

Underlying Threats

In spite of the positive environment built by the 22-point understanding, Nepal's peace process faces a number of crucial challenges. The first of such challenges come from the unresolved questions on the commitment of major political parties in state restructuring and peace building. There have been discontent groups within different major political parties which have been outspoken on their criticisms about the past agreements on crucial agendas associated with Nepal's peace process. This has created fear and suspicion among the people and other stakeholders about the commitment of the political parties on issues such as republicanism and federal system. This suspicion and fear can be a ground for the loss of confidence among Nepal's major political parties.

The second most important threat to Nepal's peace process at present is the worsening law and order situation of the country. The government and Nepal's major political parties have not been able to build effective measures to improve law and order situation which is worsening everyday in all parts of the country in general and the Tarai lowlands in particular. Too much emphasis has been given to the mobilization of security mechanism, and too less attention has been paid to start peaceful political initiatives to bring discontent groups to dialogue. The reluctance to build political measures and excessive use of force to curb insurgent activities may create grave obstacles for the constituent assembly election scheduled to be held in March-April.

Recently there has been upsurge of identity groups demanding for recognition from and representation in the state. Many of these identity groups have their particular needs grown out of their particular place in the history of the Nepali state. However, the government and Nepal's political parties seem to be too slow in grasping the needs and expectations of different identity groups which have suffered by the traditional hegemonic state structure. The political parties have shown little interest in including the aspirations of different identity groups in their negotiations and agreements. The exclusion of identity groups in the process of negotiations may create serious threat not only to the recent 22-point agreement but also to the whole process of making a new democratic constitution.

The interim constitution and the recent 22-point agreement are vague on the integration of the cantoned Maoist combatants in the national army. Similarly, no concrete measures

have been defined for the re-integration of the Maoist combatants who do not qualify or do not wish to be integrated in the national army. The ambivalence on these issues may very likely build ground for the crisis of confidence among the political parties before or after the constituent assembly election. The alliance of seven political parties must take into consideration the importance of winning confidence of the cantoned combatants in the peace process, and the only effective measure to win their confidence is to make them feel secure about their future.

It must be repeated once again that the presence of status-quo elements in the Nepalese politics cannot be undermined. There is a strong presence of the status-quo elements in Nepal's political parties, security organizations, bureaucracy and media who would prefer the political structure enshrined in 1990 constitution rather than any transformation in the power structure. We cannot also rule out the possibility that king Gyanendra would spend all his efforts in mobilizing the status quo elements in his favor during and after the constituent assembly election. Therefore, it is justified to argue that the process of state restructuring and establishment of the federal system may have to face serious challenges in the days ahead.

The Future

Nepal's political parties have just passed an ordeal by peacefully avoiding a major obstacle in Nepal's peace process. A general observation of the existing political scenario suggests that a window of opportunities has been opened and the political parties will now utilize these opportunities to fulfill the tasks assigned to them by the people in the last historic people's movement. In brief, at present everyone has the reason to be hopeful about a successful constituent assembly election and a smooth restructuring of Nepal's traditional state structure.

The risk factors, however, have not significantly decreased from the time the National peace campaign last reviewed Nepal's political scenario. As we outlined above, Nepal's peace process faces threats from those who are either not ready to own the agreements made by the seven political parties or who are against the state restructuring process.

The most practical strategy to lead the peace process towards success is the honest and effective implementation of the past agreements and inclusion of identity groups in the broader peace process. This can consolidate the confidence among the political parties and would enhance the commitment of different stakeholders in the constituent assembly process and the process of state restructuring. Failure to implement the agreements can lead the country towards an unprecedented political conflict the way out of which can be difficult if not impossible.

Nepal's Political Deadlock & Looking Forward

Current Scenario

Nepal's political parties have failed to reach an agreement on how and when constituent assembly election will be held. The failure to reach the agreement has been resulted in Maoists' withdrawal from the government in September 2007 and the postponement of constituent assembly election. The political parties have decided to take the issue to the special session of the interim parliament which has been summoned for October 11. Today, there is a widespread doubt among the people across the country not only about the date but also about the prospect of constituent assembly election.

Positions and Interests

The Maoists have argued that the Constituent Assembly (CA) election would not be possible without declaring Nepal a republic. They have also demanded for a total proportional representation system for the CA election in contrast to the Interim Constitution that has provision for the mixed system. These two demands of the Maoists have been projected as the conditions for their participation in the CA election. The Maoists seem to be readying themselves for an agitation in the absence of political understanding to fulfill these demands.

Nepali Congress has denied the demands arguing that the Maoists are deviating from all earlier agreements and the interim constitution, and their new demands have come about with an intention to delay or jeopardize the election itself. The senior leadership of Nepali Congress has made it clear that they would stick to the mixed electoral system as mentioned in the interim constitution and also that the first meeting of the constituent assembly shall only declare the republican system.

Other political parties including the CPN-UML have so far remained neutral and/or undecided about how to deal with the positions of the two large political parties.

Examining the Peace Process

It is difficult to analyze the existing political crisis without first examining Nepal's peace process. In addition to being prepared in a very short period of time, the past political agreements long suffered from meager implementation from all sides. The comprehensive peace agreement and the interim constitution, for instance, were designed without adequate deliberations and effective participation of key stakeholders of Nepal's multi-sided conflict. In other words, the process in which these agreements were built was non-inclusive and less participatory. It is, therefore, justified to argue that today's

political deadlock can be explained in terms of the weaknesses inherent in the Nepal's peace process which is elite-driven in its characters and lacks ownership of identity groups.

The comprehensive peace agreement, which is at the heart of Nepal's peace process, has failed to deal with a number of crucial issues. The CPA, for instance does not address the issue of restructuring Nepal's security sector and/or integrating the former Maoists combatants in the security forces. This has led to lack of confidence and trust among the political forces. The Maoists have not been able to confide in the Nepal Army which they argue is still loyal to the king. Other political parties, on the other hand, consider the ex-combatants as the 'problem' of the Maoists, and have been reluctant to make a political decision on the management of former Maoist combatants. This has added to the lack of mutual trust and confidence among Nepal's political parties.

More importantly, the designers of Nepal's peace process have failed to realize that basic principles of the future constitution must be set for building confidence among the political parties. As we see it, the lack of this has made the peace process incomplete and inadequate.

Political Parties and their Attitudes

As a result of being non-inclusive and non-participatory, Nepal's peace process has been ineffective to fulfill the needs of Nepal's political forces in general and CPN-Maoist in particular. Over the time, the Maoists have felt that their agenda of establishing federal republican system, which is only vaguely written down in the constitution, is gradually being overshadowed by the status-quo elements strong in Nepal's major political parties. It is not difficult to understand that the Maoists' failure to ensure the establishment of federal republican system will surely create widespread frustration among the Maoist cadres and former combatants who have locked themselves up as a way of sacrifice for the nation. The Maoists, therefore, want to assure its party cadres and its loyalists that their agendas are being successfully incorporated in Nepal's peace process.

Nepali Congress, on the other hand, is reluctant to 'submit' to the Maoists' demands. Nepali Congress leadership seems to be fearful about the dominance of the communist parties and their agendas in the Nepalese politics. Similarly, a group of senior political leaders within Nepali Congress has been dissatisfied about the party's decision to accept federal republican system, and they have been strong and active in lobbying within the party to adopt the policy of constitutional monarchy. Therefore, the relationship between the major political party and the former rebels have aggravated over time giving rise to confusion and political uncertainty.

The Crux of the Problem

Lack of trust and confidence among the political parties lies at the crux of Nepal's political deadlock. In fact, the agenda of republicanism and proportional voting system put forward by the Maoists as precondition to the CA polls cannot be considered undue

political demands. What has been contested is the timing in which the demands have been raised. This issue, therefore, is not as serious as it has been projected and perceived by some people.

However, both the Maoists and Nepali Congress leadership have been unable to build confidence to resolve the current crisis. The Maoists have been unable to assure Nepali Congress of their commitment to free and peaceful election of the CA. Nepali Congress, on the other hand, has been unable to assure the Maoists about the establishment of federal republican system after the CA polls. Some of the behaviors of political leaders and cadres are certainly responsible for the current crisis.

Will the Parliament Solve the Problem?

It will perhaps be a naïveté to hold the view that the parliament will be an effective means for solving the current crisis of confidence. The Maoists seem to have considered the special session of the interim parliament as a forum to publicize their agendas and to show their strength. Nepali Congress, similarly, seems to have understood the special session of the parliament as a means to defend its stand.

Future Scenario

Nepal's political situation has reached a stage from which prediction of future is difficult if not impossible. The existing political crisis can very well lead the country towards unprecedented conflict and its consequence may also lead the country to much intensified identity-based conflict.

What is needed?

Nepal's political parties are yet to realize that it is difficult if not impossible to hold the CA polls without first building basic principles of the future constitution. The recurrent political feuds between and among political parties are resulted by the lack of basic principles of the future constitution, the issue which was not addressed by Nepal's peace process and the comprehensive peace agreement. Its clear that the road to CA polls are going to be difficult without having a set of basic principles for the future constitution, which shall be binding for all political parties. The agreement on basic guiding principles for the future constitution can end the current political impasse and may build a favorable environment for the future CA polls.

The set of basic principles which has to be built in future must address some of the crucial political issues. If the combined political agenda of federalism and republicanism could be underpinned in the constitutional principles today, there would be no room for political conflict in the process of Constituent Assembly (CA). This will certainly lead the country towards holding free and fair CA polls.

CA Polls: An Assessment of Necessity and Threats

Conflict Review

Political Scenario

Nepal's peace process has reached the most crucial and the most challenging phase. The political forces are now faced with a huge responsibility of holding the constituent assembly election -- the common agreement which had built their unity to fight king Gyanendra's autocratic rule. Any failure to hold constituent assembly election in the scheduled date (i.e. November 22, 2007) can lead Nepal's peace process to disarray, and can also disrupt the unity among Nepal's major political parties. On the other hand, success to hold free and fair election of the constituent assembly in the scheduled date can create enormous opportunities for building a democratic and peaceful nation.

The Government of Nepal has repeatedly expressed strong commitment to hold the CA polls in the scheduled date. Some of its actions (such as building framework for the security arrangement for the polls) certainly show that the government is committed to holding the election in time. Similarly, the government has held successful negotiations with two major discontent groups namely, Madheshis and Janajatis, who have now agreed to co-operate with the government in holding the CA election in free and fair manner.

Nepal's major political parties have expressed their strong commitment to hold the CA election on the scheduled date. The political parties of Nepal have been busying themselves in completing necessary works before being fully involved in the election campaigning. Nepal's major political parties like Nepali Congress, Nepali Congress (Democratic), CPN-UML, CPN (Maoist), Nepal Sadbhavana Party, etc. have instructed their party cadres in their own ways to commence activities aimed at CA election. Therefore, it can be estimated that Nepal is gradually moving towards a historic moment which is to elect people's representatives for writing a constitution that can build sustainable peace, strong democracy and inclusive state structure.

However, the general public seems to be little assured about the possibility of CA polls in the scheduled date. There are several reasons for widespread skepticism about the forthcoming CA polls. Firstly, the government established after the historic people's movement has fared badly in terms of delivery of goods and services to people. The Nepalese people did not expect massive price rise, lack of availability of essential goods (such as petroleum products), and poor law and order situation from the multi-party transitional government established after the people's movement. The government's failure to maintain law and order, to curb price rise, and to ensure the availability of essential goods may have created indifference among the people about the government's commitment and promises.

Secondly, newly emerging differences among Nepal's major political parties on some crucial political agenda seems to have reduced the prospects of CA election in the minds of the people. The Maoists have expressed their disbelief about the commitment of other political parties on some crucial agendas of state restructuring,

and they have put forward a 22-point charter of demands the fulfillment of which in their opinion is must for CA election. Other major political parties, on the other hand, seem to be intent on questioning the Maoists' intention on the CA election. This makes it necessary to briefly examine the stakes of some major political forces in the constituent assembly election.

Thirdly, there has been meager implementation of many of the past agreements and understanding between the seven political parties and the Maoists as well as between the government and the identity groups. The government has failed to provide even basic living conditions to the cantoned combatants, and political parties in the seven party alliance seem to be reluctant in security sector reform. The Maoists, on the other hand, seem to have achieved limited success in stopping the use of force. The involvement of Maoist cadre, especially in the name of Young Communist League, in violent activities has been a matter of concern to the general public. Similarly, the government has been strongly criticized by different identity groups for being reluctant to implement the agreements reached during the dialogues.

Nepali Congress and Nepali Congress (Democratic)

Nepali Congress and Nepali Congress (Democratic) have more or less similar perspectives on peace process and constitution-making process. These two political forces, which are expecting a merge in the near future, are on the one hand, eager to acquire popular support by owning the agenda of state restructuring and transformation. On the other hand, they have a tremendous pressure especially from the international community and Nepal's social elites to 'protect' the Nepalese politics from being overpowered by radical communist forces. Both camps of the Nepali Congress are, therefore, at the crossroads.

In spite of this, the Nepali Congress seems to be confident about its popular support which can lead it to its victory in the CA polls. It has also recently owned the popular agenda of federalism and republican democracy which have added to the confidence of Nepali Congress for the CA election. Therefore, it may be justified to argue that Nepali Congress would like to hold CA election in the scheduled date. The only matter which may deter Nepali Congress from going to the CA polls is its fear of being overpowered by the communists and their radical agendas, and this prospect may not be easily overlooked.

CPN-UML

Communist Party of Nepal (UML) is gradually emerging as a strong pro-election campaigner. This party currently faces dual challenges of owning radical agendas of state transformation and distinguishing itself from the radical CPN (Maoist). However, CPN-UML seems optimistic about the strength of its party organization. The party seems to have considered that it is in an advantageous position amidst the rivalry of Nepali Congress and the Maoists. Therefore, the CPN-UML has placed itself in the forefront of the election campaign.

CPN (Maoist)

It is the Maoists who established the agenda of new constitution-making from the elected constituent assembly. Therefore, it would be unwise to suspect Maoists' commitment to hold the CA election. However, the Maoists seem to have felt over the

months that their crucial agendas of state restructuring and transformation (such as federalism, inclusivity, and republicanism etc.) are being seized away from them. Such analysis may have inculcated a fear in the Maoist leadership of being irrelevant during and after the CA election.

However, the greater challenge facing the Maoists at the present circumstances is to manage the expectations of their cantoned combatants and to build the rapidly diminishing confidence among the party workers. The Maoists are, on the one hand, facing tremendous criticism from the social elites and media for being involved in forceful and unlawful activities. On the other hand, the Maoist leadership is under extreme pressure from its own party workers to adopt revolutionary and radical agenda. The Maoist leadership is in a difficult situation due to these disparate pressures.

Challenges to CA Election

Besides inter-party differences, there are some other important factors which are strong enough to hinder CA election from being held in time. Some of these challenges are discussed below.

Worsening Law and Order Situation

Many Nepalese people believe that the worsening situation of law and order may betray the government's resolve to hold CA election in free and fair manner. Incidents of killing, kidnapping and extortions in the Tarai region have created a fear among the general public about the possibility of being able to cast votes on the election date. Recent bomb blasts in the capital city Kathmandu which killed three and injured more than two dozens of innocent civilians can be an evidence of worsening law and order situation. Similarly, the frequent strikes, road blockades, protest rallies, etc. organized by numerous political and non-political groups have deteriorated the condition of peace and security. The government's failure to curb such activities may have strongly negative consequences for the success of free and fair CA polls.

Unfulfilled Needs of the Maoists

The decision by the CPN (Maoist) to end their armed insurgency is a historic landmark to establishing sustainable peace in Nepal. The initiatives taken by the seven party alliance in bringing the Maoists in peaceful political process have been praiseworthy. Similarly, the commitment and political will shown by Nepal's major political parties to end the armed conflict and to restructure Nepal's traditional state structure have been highly effective for giving an end to a decade long armed conflict.

In spite of its strong resolve to remain committed to the peace process, the Maoists have been currently facing difficult circumstances. The difficulties of the Maoists have resulted from the dissatisfaction among its own party workers about the direction towards which Nepal's political process is heading. The Maoists are dissatisfied with the situation of nearly thirty thousand of its combatants who have been living within the cantonments with poor living conditions. Similarly, a large majority of the Maoist cadre feels that its revolutionary agendas are gradually dwindling due to the reluctant attitude of Nepal's major political parties in restructuring the state.

The journey of the Maoists from the armed conflict to the peaceful political process is in the interest of the people and all political forces which support democracy, peace

and justice. Therefore, it becomes the responsibility of Nepal's major political parties to assist the Maoists in gaining confidence about the peace process and the process of political transformation. However, Nepal's political parties seem little interested in building the confidence of the Maoists. The political parties of Nepal seem to have considered the problems facing the Maoists as their own 'internal' problems. Such attitude could be harmful for Nepal's peace process, and loss of confidence among the Maoists in the peace process could seriously jeopardize Nepal's forthcoming CA election.

Interest of the Pro-Monarchy Elements

It will probably be misleading to assume that the extremely ambitious and highly resourceful king would act as the petrified observer during the rapidly changing political scenario in which he is losing his economic, political and symbolic powers. The king has time and again showed his interest in establishing monarchy as a strong player in the Nepalese politics. Therefore, he would certainly utilize his will, resources, and supporters to disrupt the CA election the success of which will formally eliminate his position from the Nepalese politics. Therefore, Nepal's king and pro-monarchy elements possess a potent threat for Nepal's CA election.

The Issue of Inclusivity and Representation

A number of different political and identity groups (such as Limbuwan, Khumbuwan, Chure Bhawar Ekata Samaj, Janatantrik Tarai Mukti Morcha, etc.) still remain disgruntled with the government. These groups have been involved in a variety of rebellious activities some of which are violent in nature. Although some of the demands raised by these groups seem to be guided by communal perspective, it is a challenge of the present government to seek negotiated settlement with these groups. The failure to do so may seriously harm the forthcoming CA election.

Imagining the Worst Case Scenario

The failure to hold constituent assembly election on the scheduled date would bring a serious political crisis in Nepal. It is not difficult to imagine that the failure to hold the CA election shall disrupt the alliance among the seven political parties and shall also give an end to the existing coalition between the Maoists and other political parties. Such circumstances shall make void all past agreements and understanding between the Maoists and other political parties thus leading the country towards more violent conflict.

We cannot rule out the possibility of foreign intervention amidst the political chaos resulted by the failure to hold the CA election. During such circumstances, some of Nepal's political parties may be chosen by the national and international players to run the government. However, such solution would be dangerous and it would initiate conflicts not only at the national level but also at the regional level.

Conclusion:

The election of the constituent assembly is crucial for establishing peace and stability in Nepal. However, it will be misleading to assume that the task of holding CA election on the scheduled date is without some significant challenges and risks. The biggest of all challenges is to build confidence between the Maoists and other major

political parties. Different identity groups and pro-monarchy elements still bear the risk of disrupting the CA polls.

We can expect greater understanding, adoption of shared principles, and confidence among Nepal's political parties including the Maoists about the future of Nepal's political process. Such new understandings would greatly contribute to the success of CA election and democratic constitution-making process. We can also expect that Nepal's major political parties would realize as they have done in the past that the problems facing the Maoists are the problems of the whole peace process. The realization of this fact may lead to greater understanding between the Maoists and other political parties. Similarly, the risks, although huge, can be avoided through peaceful negotiations with different identity groups, and by enhancing government's capacity to deal with the security threats for the CA election.

Currently, the people of Nepal have no alternative to being optimistic about the future of Nepal. The commitment and political will shown by Nepal's political parties in the past can be the important basis for such optimism. Hope and optimism among the people about the forthcoming CA election and constitution-making process are vital for achieving success. Nepal's political parties can greatly build confidence among the ordinary people about the prospects of a successful CA election. For instance, the recent move of Nepali Congress to adopt the agenda of federal democratic republicanism can be a basis for further building confidence among Nepal's major political parties and among the Nepalese people about the forthcoming election of the constituent assembly.

HOPES AND FEARS IN TODAY'S NEPAL

Nepal's peace process has achieved significant success in a relatively short period of time. The signing of comprehensive peace agreement, enactment of interim constitution, formation of legislative assembly/parliament, and formation of all party government including the Maoists can be considered crucial milestones for establishing peace and democracy in this war ravaged country. Similarly, a number of decisions made by the interim government after April 2006 (such as nationalization of the late king Birendra's property and declaring Prime Minister the Head of the State) can be considered other crucial moves towards a sustainable democracy. The transformation of violent conflict into peaceful politics has given hope and relief to millions of Nepalese people.

However, it will be too early to assume that Nepal's challenges to build a peaceful democratic nation are over. Instead, we fear, like many Nepalese people do, that the hopes and aspirations of the people as expressed during the April Movement last year are being gradually overshadowed by parochial interests of some political forces and parties which are sceptical or reluctant about massive transformation of this traditional and unitary state. In the following, we examine some of these obstacles or recent challenges which are hindering Nepal's journey to peace, state restructuring, and transformation.

DATE OF CONSTITUENT ASSEMBLY ELECTION

Election of the constituent assembly was the only agenda which united Nepal's seven political parties and the Maoists for a peaceful rebellion against the king. Similarly, it was the major mandate of the past April Movement. The Nepalese people helped Nepal's political parties in overthrowing the king's autocratic rule because they were told by the parties that constituent assembly election would give an end to Nepal's violent conflict and would build an inclusive democracy. At present, the people of Nepal are still eagerly waiting for the constituent assembly election, and they want the election to be held as early as possible.

However, it is unfortunate that the date of the constituent assembly election is still in limbo. The government and some political parties have paid little attention to persistent requests by the Election Commission to formulate required laws and fix the date of the CA election. After the Election Commission expressed its inability to hold constituent assembly election in June, the uncertainty about the election grew further. Today, the uncertainty of CA election is not only about when it will be held. People are asking to themselves: if it will be held at all.

The reason behind the reluctance of the government and some political parties about CA election is still not very clear to ordinary people. The Prime Minister and chairman of Nepali Congress Mr. Girija Prasad Koirala has expressed that the Maoists must 'improve' and return the land seized from ordinary people before CA election date is announced. On other occasion, he has expressed that the 'establishment' of peace and security all over the country is a precondition for the announcement of CA election date. Some other leaders of Nepali Congress have hinted that

the end of all disruptive activities of the Young Communist League (YCL) is a precondition for the announcement of CA election date.

However, the (pre)conditions put forward by the Prime Minister and some leaders of Nepali Congress about the announcement of the date of CA election seem more strategic and less convincing for a number of reasons. Firstly, issues such as the return of the land to respective owners are important for the establishment of peace, but cannot be a pre-condition for the announcement of CA election date. Similarly, the activities of YCL can be controlled and/or regulated through peaceful dialogue between the Maoists and other political parties which are lacking over the months. Secondly, peaceful environment is crucial to holding CA election in free and fair manner, but peace and security are not something which can be established once and for all. The environment of peace and security may worsen even after the CA election date is announced, but the political leadership need to have commitment to overcome such a challenge. Therefore, it has become important to examine what actually is deterring Nepal's Prime Minister and his political party from announcing the date of CA election.

We believe that there are a few concerns which are making the Nepali Congress and its leadership hesitant about holding CA election under present circumstances. The first and the most significant of such concerns is the increase in influence and popularity of the communist parties. In fact, the communist parties of Nepal (especially CPN-Maoist and CPN-UML) have strong organizational bases which have the potential to belittle the achievement of Nepali Congress in the CA election. Similarly, these two political parties have owned most of the issues/agenda for revolutionary transformation of the state such as republican democracy, inclusivity, federalism, etc., and are therefore popular among the masses. Nepali Congress may have a substantive fear that the combined strength of CPN-UML and CPN-Maoist will weaken its opportunity to build the constitution based on its ideological/political principles.

The second major factor behind the hesitation of Nepali Congress to announce the CA election date would be the pressure from the international community. Some members of international community (especially United States and India) have remained sceptical and overtly critical about the role of the Maoists in the peace process. In fact the United States still considers the CPN-Maoist as a terrorist organization and has included the Maoists in its long list of the FTOs (Foreign Terrorist Organizations). Therefore, the United States would not mind a delay in or obstacles to the CA polls which is likely to be dominated by the communists. Similarly, India would prefer to accept the reluctance of Nepali Congress in holding the CA election than to build path for communist dominated constituent assembly in future.

WHY EARLY CA ELECTION IS NECESSARY?

The experiences gained by countries around the world suggest that constituent assembly is generally a time-taking process. The argument that peace process and constituent assembly process require a long time for raising people's awareness and making them more participatory is justified. It would of course be more reasonable to give adequate time for these processes than to choose a hasty time frame.

However, Nepal's case is different. If Nepal's current political situation is considered, an early CA election appears to be more fruitful and practical for Nepal and the Nepalese people. There are a number of reasons which make early CA polls necessary for Nepal.

Firstly, the past talks/negotiations between Nepal's political parties have been narrow in their scope. The dialogues and negotiations have been limited only to a few crucial issues (such as peace agreement, formation of all party interim assembly/parliament, interim government, etc.) and a significant number of other crucial issues (such as future of monarchy, federal structure, integration of two armies, etc.) have been left to the constituent assembly. Assuming that CA polls would be conducted at the earliest opportunity, Nepal's political parties have not even held dialogue/negotiation for the fundamental principles of the future constitution. Therefore, early CA election is necessary to end uncertainty prevalent in today's Nepal.

Secondly, Nepal's peace process has been less participatory and less inclusive from the beginning¹. Nepal's eight political parties have practically failed in engaging/involving various social and political forces in broad dialogue and negotiation. The consequences of less participatory and less inclusive peace process have been gradually emerging in different parts of Nepal as ethnic racial conflicts. A constituent assembly election would be the most appropriate political process at this moment for involving/engaging these social political forces in broad dialogue and negotiation.

Thirdly, unlike many other countries which have practiced CA, Nepal still bears the risk of losing democracy. In spite of the claim by some political leaders that the king is 'almost' powerless, some of his recent activities suggest that it would be hard to tame Nepal's king let alone overthrowing the monarchy. There is the possibility that the king and some of his henchmen in the Nepal Army may use their means to undermine Nepal's recent achievements. Therefore, an early CA election is more desirable than a prolonged process which creates more risks and uncertainty.

POSSIBLE SCENARIO

The current political situation of Nepal is dangerous for it shows diminishing trust and confidence among country's major political parties which have led the people's movement to success. The decrease in trust and confidence among political parties is caused by the uncertainty about CA election. On the other hand, the uncertainty about CA election is caused by the fear/scepticism of Nepali Congress as it is concerned over the increasing communist influence around the country.

We can hope that Nepali Congress adopts a more progressive approach on the issues of state transformation and restructuring in future. If the Nepali Congress actually owns agendas such as republican democracy, federalism, inclusive democracy, etc., it can still ensure a significant success in future CA election. The role played by Girija Prasad Koirala played during the peace process and international legitimacy which the Nepali Congress enjoys may be the assets of Nepali Congress for claiming its significant share in the CA election. The realization of these facts by Nepali Congress leadership may end Nepal's existing political uncertainty.

¹ We have raised this concern in almost all of our previous updates, formal seminars and informal interaction with senior political leaders of Nepal.

So far, Nepali Congress has been desperately trying to stop the wave of republicanism (and federalism) which is rapidly gaining popularity among its party workers and followers. If Nepali Congress fails to change its existing stance on (continuation of) monarchy and unitary state, the political uncertainty may arise within Nepali Congress itself which will further give rise to uncertainty about CA election. This may aggravate Nepal's political scenario and may put the peace process and democracy in danger.

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SOME REFLECTIONS ON THE MADHESHI MOVEMENT OF NEPAL

February 12, 2007

THE MOVEMENT

The recent *Madheshi*¹ Movement in the terai² was the harshest shock that Nepal experienced during its transitional period. The movement cost more than two dozen lives and caused a huge impact to the country's already vulnerable economy. The difficulties which people faced by the strike and shutdowns make the movement even more costly. The protestors vandalized government offices, disrupted transportation, and clashed with the police against the curfews imposed by the government. Due to the uprising, the country stood still for three consecutive weeks which was enough to instill fear among the ordinary people about the future of Nepal's peace process and the process of building a new constitution.

BACKGROUND OF THE MOVEMENT

The Madheshi Janaadhikar Forum (MJF), an organization initially established to 'study' the conditions of the Madheshi people of Nepal's terai region, had remained critical of the newly promulgated interim constitution. Its president Upendra Yadav had argued that the Interim Constitution had done nothing towards eliminating traditional state-controlled suppression and discrimination against the Madheshi people. Guided by this conviction, the MJF announced a general strike in the terai starting from 18th January demanding for proportional representation system for the constituent assembly election and the provision of federal system in the new constitution of Nepal. The protest programs announced by MJF were immediately backed by Janatantrik Tarai Mukti Morcha (Goit) and Janatantrik Tarai Mukti Morcha (Jwala Singh) both of which have been involved in an armed struggle against the state for achieving autonomy of the terai region³.

The protest programs were successful in gaining popular support among the Madheshi people. Spontaneous protest programs were being held at various locations, and they were mostly peaceful. The nature of the protests started to become violent when a Maoist cadre shot a protestor dead and a group of Maoists took control over the dead body by the

¹ The term Madheshi refers to the Nepalese people living in the terai region of Nepal. Majority of the Madheshi people are Hindus with caste hierarchies. Some of the Madheshi groups living in Nepal's terai region are aboriginal groups while some of them have migrated from Indian plains at different times in history. The Madheshi people widely differ from the hill Hindus in terms of their language and cultural practices. The language and cultural practices of Madheshi people are similar to the people living in North Indian states such as Bihar and Uttar Pradesh.

² The term terai refers to the southern plains of Nepal which stretches from east to the west.

³ The senior most leaders of all these three organizations/political parties [namely, Upendra Yadav of MJF, Jwala Singh of JTMM (Jwala Singh) and Jaikrishna Goit of JTMM (Goit)] had held senior positions in the Nepal Communist Party (Maoist) during its armed struggle against the state. There are conflicting arguments about why they left CPN-Maoist, but the Maoist leaders have to say that they had been forced to leave the party due to their misconducts.

use of force. This incident was followed by intense protests against the state in all parts of the terai region where Madheshi people had a majority.

The government seemed unwary of the Madheshi movement in its initial stage. Although the home minister called the agitating groups for dialogue, it showed little interest in seriously studying the movement and the demands put forward by the agitating political parties. Instead, the government applied force. It imposed curfews in the affected areas and the police shot several people dead, which in no way helped calm the situation. The powerful protests continued until the second address of the Prime Minister in which he assured Madheshi people (including all ethnic and minority groups) of amendment in the Interim Constitution to accommodate proportional representation system for the constituent assembly election and federal system in the new constitution of Nepal.

THROES OF THE MADHESHI PEOPLE

The Madheshi people have been the victims of the traditional structure of the Nepalese state which provided access and opportunities only to the high-caste hill Hindus and paid little attention to the problems and aspirations of the Madheshi people. A large number of Madheshi people, for example, were deprived of their right to acquire citizenship certificate until recently. They have been the victims of cultural abuse and humiliation. In addition to this, the state had paid little attention to providing resources for the development of the terai. As a result, the Madheshi people had meager representation and participation in social, economic and political spheres of the country. They had been living as a second class citizen in their own homeland.

REASON BEHIND THE RECENT REBEL

In spite of the fact that Madheshis exist as a disgruntled community within Nepal, the leaders of Nepal's peace process showed little interest in listening to the aspirations of the Madheshi people while formulating the Interim Constitution. Neither the leaders of seven political parties nor the Maoists felt it necessary to include the two political parties involved in the armed struggle in the terai in the dialogue. The conviction (of the political parties) that the Madheshi wings of the eight political parties could represent the Madheshi people proved to be wrong. Therefore, it is justified to say that the recent uprising and unrest in the terai region can be considered as the outcome of our less inclusive peace process.

The next major reason behind the deaths and devastation caused by the Madheshi movement lies in the sentiment of Nepal's political parties. Today, the people of Nepal expect a massive transformation in the traditional state structure while the political parties do not seem to have prepared themselves for such transformation. The prolonged controversy and hesitation over the issue of federalism shows that the political parties have not been able to free themselves from the legacies of the centralized and unitary state structure. The political parties could prevent the Madhesh uprising by adopting the federal system in the interim constitution.

THE ISSUE OF COMMUNALISM IN THE MADHESHI MOVEMENT

Some people in Nepal believe that the Madheshi movement was caused by communal sentiment among the Madheshis and that the protest itself had the communal character. Some incidents in which non-Madheshi people (the hill-migrants) were beaten by the protestors and the protestors had looted the property of non-Madheshis during the protests have been put forward to justify the communalism theory. Some of the demands put forward by MJF and JTMM (for example, the withdrawal of non-Madheshi administrator from terai) also show communal sentiment in the leaders of the Madheshi movement. From this perspective, the theory of communalism cannot be completely ruled out from the analysis of the Madheshi movement.

However, communalism theory can be misleading for the analysis of the recent Madheshi movement in many ways. First, it is natural for the Madheshi people to speak against the historical domination by the non-Madheshi people. Their dissatisfaction against the domination of non-Madheshi people in the state structure cannot be labeled and ignored as communalism. And secondly, the leaders of the movement have described their movement as peaceful protest against the unitary state structure instead of being a fight against the non-Madheshi people. Therefore, the characterization of the movement as a communal one is the result of the non-Madheshi bias against the legitimate demands of the Madheshi people.

If there are incidents to suggest the rise of communalism among the Madheshis, it is the political parties who should be held responsible for this. The political parties of Nepal especially the major political parties, have paid little attention to listen to and understand the voices of the Madheshi people let alone to incorporate these voices in their policies and programs. The party structure has been centralized in Kathmandu, the national capital, and there are few activities of the political parties in the terai region. From this perspective, the probable rise of communal sentiment in the terai can be interpreted as the result of the vacuum created by the lack of activities of political parties in the terai region.

CONCLUSION: WILL THE PRIME MINISTER'S ADDRESS SOLVE THE PROBLEM

The Prime Minister's second address to the Madheshi movement which he made on February 7 expresses commitment of all eight political parties to follow proportional representation system for the constituent assembly election and adopt federalism in the new constitution. Such provisions may benefit the Madheshi people and many other ethnic groups by providing them with access to and opportunities from the state structure. The restructuring of state through federalism can be a useful means to end the historical domination of a certain social groups over other communities. Prime Minister's call for the agitating groups for dialogue is yet another positive gesture for the solution of the current problem.

However, Nepal's political parties have not sufficiently focused on promoting inclusivity and wider participation in Nepal's peace process. If this continues, there could be more

troubles to Nepal's peace process in future as there are many disgruntled groups in Nepal who have been historically deprived from access and opportunities. The current conflict can be resolved if the major political parties show interest in conducting peaceful dialogues with different communities and groups which are linguistically, culturally, and economically different, and who have different needs and aspirations. Otherwise, the people of Nepal may have to experience identity-based violent conflicts jeopardizing their goal to build a new democratic constitution.

Nepal's Peace Process: Hopes and Fears

December 18, 2006

BACKGROUND

The peace process of Nepal has gained unique and extraordinary success. The signing of peace agreement and the agreement on the Interim Constitution are two major indicators which show Nepal's zeal to move towards a democratic and peaceful nation. The commitment to build peace and strengthen democracy is strong among all political parties including the Maoists. This commitment has been substantiated by their acts which have contributed to rapid and stable development of the peace process.

In spite of some minor upheavals in the relationship between the Seven-Party Alliance (SPA) and the Maoists, the environment of mutual trust and confidence between them has faced no major crisis. Following the recent Peace Agreement, the Maoists have started to keep their combatants in the cantonments, and the government has initiated the process to store some of the weapons of the Nepal Army under the United Nations' supervision. The Interim Constitution has laid a foundation for the making of a new constitution through the constituent assembly election. Preparations are underway to form an interim government which will also include the Maoists. Nepal has received a historic opportunity to transform violent and protracted armed conflict into inclusive state, stable democracy and sustainable peace.

Nepal's rapidly developing peace process, however, entails some major threats and challenges. In the following, we examine Nepal's peace process so as to find its weaknesses, which can possibly create obstacles to Nepal's journey towards democratic peace.

A) THREAT FROM THE NEPAL ARMY AND THE ROYAL PALACE

Every agreement and/or understanding between the SPA and the Maoists reflects their commitment to restructure the traditional state and to establish democratic peace in the country. This commitment, however, has not been adequately substantiated in their practice especially concerning the issue of restructuring the traditional relationship between the Nepal Army and the royal palace. For instance, the debates and discussions on disarmament are generally centered in the Maoist army, but not in the Nepal Army. We cannot rule out the possibility that the existing relationship between the army and the palace, if not transformed immediately, may cause greater threats during the elections to the constituent assembly in the near future.

The task of changing the traditional loyalty of the Nepal Army entails more than attitudinal change. The political parties, especially those belonging to the SPA, seem to be interested in changing the 'attitude' of the army rather than reforming, restructuring and/or transforming the army organization. The reason behind this may be their fear about the Maoists. In our perspective, Nepal's prospects for free and fair constituent assembly election will be endangered if the political actors fail to act upon bringing

significant changes in the structure of the Nepal Army. The restructuring of the Nepal Army is inevitable to make it loyal to the peace process and state restructuring.

The royalists and/or pro-monarchy forces may not be very much active at the present political context. However, they could spend significant efforts to disrupt Nepal's peace process, forthcoming elections to the constituent assembly and the process of making a new constitution. More precisely, these forces may utilize their power and resources to foil the constituent assembly election or to gather popular support for the royal palace. Such activities may not only create disturbances to the CA election, but also may disrupt the hard-built trust and confidence between the Maoists and the SPA.

B) CLARITY AND PRECISION IN THE COMPREHENSIVE PEACE AGREEMENT (CPA)

Certainly, the Comprehensive Peace Agreement (CPA) is a historic achievement. The National Peace Campaign (NPC) hails the signing of the CPA. However, in spite of giving an end to the violent armed conflict, the recent comprehensive peace agreement (CPA) between the government and the Maoists lacks clarity and precision while dealing with some crucial issues. In some instances, the language of the CPA is rhetorical rather than precise, and it does not clearly mention the root causes of Nepal's armed conflict. In our understanding, the root cause of the armed conflicts in the political history of Nepal is the failure of transferring power from monarchy, supported by the army, to the civilian authority. Only the timely restructuring of the Nepali army and its absolute control by the civilian government ensures and sustains the transfer of power to the civilian government. The failure to address the root causes may create difficulties in formulating future policies for building sustainable peace. Similarly, the CPA is silent on the coordination mechanism, which may create confusion about who will coordinate peace-building efforts. The CPA does not clearly delineate the security provision necessary to conduct constituent assembly election in free and fair manner. In our view, such ambiguities may result in misinterpretations of the agreement, and may contribute to division among the political parties.

In the CPA the government and the Maoists have agreed to form a Truth and Reconciliation Commission "to *seek* truth about the involvement (of people) in the human rights violation and criminal acts against humanity, and to build the environment of reconciliation in society"¹. The agreement does not clearly mention the commitment of the concerned political parties to *punish* those who have been involved in grave violation of human rights during the conflict. Failure to deliver justice to the people and victims of the conflict may be counterproductive to the democratic development.

Reconciliation is important for building sustainable peace and democracy. However, true reconciliation is not possible without bringing those who have committed grave crimes during the conflict situation into trail in competent courts or tribunals. There are problems among the political parties in their orientation about the Truth and Reconciliation Commission. The language in the Comprehensive Peace Agreement is vague and can be

¹ Point number: 5.2.8. Translation our own.

interpreted that the political orientation is towards general amnesty to the perpetrators of human rights crimes. This may lead the country towards impunity, and will create grave challenges to reconciliation, state restructuring and democratic constitution making.

Certainly, the Comprehensive Peace Agreement is capable of resolving the present armed conflict. However, the vision of conflict transformation and peace-building do not come under the discourse of the Agreement. To be precise, peace-building or conflict transformation may require a vision of nation building with the time frame of 20+ years. Such a vision addresses the root-causes of the armed conflicts as well as imagines state structures capable of addressing any unforeseen conflicts in the future. Therefore, the argument is around structural transformation in the state mechanisms, is state restructuring in a broader term. Unfortunately, but not unsurprisingly, key political actors in the process of nation-building (e.g. the CPN-UML and Sadbhawana Party – Anandidevi) have tabled their note of dissents in the agreements recently signed by the political parties, the government of Nepal and the Maoists.

The ambitious time frame is yet another weak part of the peace agreements. There are already some instances in which the parties in conflict have failed to meet the deadline in implementation of the agreement of Higher Level Summit, notably in monitoring the process of “arms management”, signing of the CPA, promulgation of interim constitution and formation of an interim government.

C) PARTICIPATION IN THE PEACE PROCESS

Nepal's peace process has been less participatory from the beginning. The political parties involved in the peace negotiation have been less reluctant to promote open debates and discussions on major issues to be addressed during the peace process. The negotiation process has not been inclusive as it does not involve representatives from women, *Dalits*, and *Janajati* communities. Similarly, there has been little debate and discussion on the issues of the peace process within the political parties involved in the negotiation. As a result, the peace process has become more and more elite driven rather than inclusive and participatory. Such nature of the peace process may face difficulties in generating ownership over its achievements.

Usually, the elite-driven peace process is narrow and participated by a small number of selected policy makers. However, the peace agreements signed by them should have developed avenues and structures from which a wider population could participate in the broader peace process. Nevertheless, the elections to the constituent assembly can be considered an avenue for broader participation of the Nepalese people in the peace process.

Equally worrying is the reluctance of the major political parties to involve different political forces in the peace process. The case of Tarai Janatantrik Mukti Morcha (JTMM) can serve as an example here. The JTMM has been involved in an armed conflict demanding for the liberation of *Madhesis* living in Nepal's terai region. The peace process could be made more meaningful if the issues of the political forces like

JTMM were incorporated. The other worrying example is the possible uprising of the Limbuwan, an ethnic community in east Nepal. Both instances are example of early warning, if not addressed by the current peace process, may develop into identity-based violent conflict. The consequences of the identity-based conflict can be even more disastrous and out of conflict, in comparison to the political ideology-based conflict.

D) POSSIBLE POLITICAL ALLIANCES AND PROBABLE RISKS

Nepal's peace process requires collective efforts from all political parties for state restructuring, stable democracy and sustainable peace. In order to strengthen such commitment the political parties of Nepal are faced with the responsibility to avoid any breach in their mutual trust and confidence. However, Nepal's current political scenario exhibits some dangers of the formation of political alliances based on different issues. The possibility of communist vs. non-communist alliances and republic vs. non-republic alliances are looming large in the landscape of Nepalese politics.

The formation of such alliances may divert Nepal's political parties from the most essential issues to bi-partisan rivalry, and will create significant dangers to the constituent assembly elections and to the process of state restructuring. On the one hand, the political parties are faced with the challenge of conducting the elections to the constituent assembly, while, on the other, they have also the challenges to protect the interest of individual political parties in the electoral competition. As stated above, there are challenges to the elections to the constituent assembly. If the elections are failed under any pretext, it can be considered the failure of peace process in the country.

CONCLUSION

Transforming a protracted armed conflict into democratic peace and non-violent politics is a challenging business. In order to overcome the risks and challenges of a peace process it should be subject to review, analysis and timely adjustments. This can be possible when people recognize the weaknesses of a peace process and get involved in debates and discussions about the measures to correct them. The political actors need to accept such character of a peace process and they have to perform interest and enthusiasm to revisit their past acts and agreements. This will lead to wider participation and real success of Nepal's peace process.

During the historic people's movement the people of Nepal expressed their strong desire for democratic peace in the country. As a result, the autocratic rule of the king came to an end paving the way for a meaningful peace process. However, this does not mean that the possibility of autocracy has been avoided for ever. The people of Nepal have a long way to go to eliminate all forms of autocracy. This will require a firm commitment to transfer power from handful of ruling elites to the people.

DEADLOCK IN NEPAL'S PEACE PROCESS: A Pause in the Summit Meeting

16 October 2006

The much expected 'summit' talks between the senior leaders of Nepal's seven political parties and the Maoist rebels have ended without any conclusion. Despite popular expectations, the leaders have failed to reach an agreement on the issues of monarchy and the disarmament of Maoist rebels. According to the media reports, Prime Minister Girija Prasad Koirala has been given the responsibility of calling the next meeting the date of which has not been specified.

Difficulties in peace process are not unnatural. Despite ordinary people's expectation of quick and steady progress, the road to peace is often long, bumpy and full of risks. From this perspective, the breakdown of the summit talks can be considered normal. However, the issues which have been creating the obstacles and the positions held by the political parties on those issues suggest that Nepal's journey towards peace is going to be more difficult, if not impossible. In the following lines we look into the crucial issues hindering Nepal's peace process vis-à-vis the position of different political parties on the issues.

Monarchy

The differences among the political parties over the issue of monarchy have been a grave obstacle to Nepal's peace negotiations. The Maoists' have demanded for republicanism, and have said that they are ready to accept a referendum during the constituent assembly election to decide on the fate of Nepal's monarchy. The Maoists have also said that they are ready to lock their arms if the negotiating parties reach an agreement to give an end to Nepal's monarchy. In this way, the Maoists have sought a political commitment of all seven political parties to overthrow monarchy which they have identified as the major impediment to Nepal's progress and prosperity.

Five political parties within the alliance of seven parties (SPA) have also stood for overthrowing monarchy before or during the constituent assembly. But the Nepali Congress, which is the largest political party within the SPA, is against declaring Nepal a republican state at the present moment. Prime Minister Koirala who is also the president of Nepali Congress has expressed that making king devoid of powers at the present stage can be a better option. Leaders of Nepali Congress have also stood against holding a referendum to decide on the future of Nepalese monarchy, which they think will only create political atmosphere in favour of monarchy.

Some media reports, which have not yet been authenticated, have claimed that the negotiating parties have already reached an agreement over the issue of monarchy. According to these reports, the Maoists have agreed to leave this issue to the constituent assembly. The negotiating leaders have reportedly agreed to snatch all forms of power and positions away from the king and to keep monarchy under suspension until the CA election. If such reports were real, a big hurdle would be avoided. However, we cannot rule out the fact that the issue of monarchy has harmed confidence building among the negotiating parties, and this issue will remain a major obstacle in Nepal's peace process during or after the constituent assembly

Arms Management

The SPA has demanded a full disarmament of the Maoist rebels. The parties within the SPA have expressed that total disarmament of Maoist rebels is a precondition for the CA election and the inclusion of Maoists in the interim government. Nepali Congress seems even more stubborn over the issue of disarmament. The leaders of Nepali Congress have argued that the weapons held by the Maoist guerrillas rather than monarchy is a matter of concern in today's political context. They have also said that the denial of the Maoists to disarm their rebels has been creating chaos and confusion in Nepal, which can be detrimental to Nepal's journey towards democracy and peace.

The Maoists, on the other hand, have requested the leaders of the SPA not to consider their weapons as a threat to peace process and constituent assembly. From the Maoists' perspective, the monarchy and Nepal Army are greater threats to Nepal's democracy and peace, and the weapons of the Maoist guerrillas are necessary to protect the Nepalese people from the difficulties the Nepal Army may create in future. The Maoists have insisted that they are ready to put their combatants in camps or to abandon their weapons altogether if their other demands are fulfilled. The first of them is a political commitment from all seven political parties to go for a republican state. The second is simultaneous disarmament of the Nepal Army.

The issue of arms management is, thus, linked with several other issues such as monarchy. Nepali Congress and some other parties in the SPA are adamant on solving the arms management issue first. This has created fear and suspicion among the Maoists about the probable implicit strategy of the SPA in general and Nepali Congress in particular. Building confidence on this difficult issue is quite a task, and the success of peace negotiations is based on resolution of this issue.

Composition of Interim Government and Interim Legislative

The peace negotiation between the SPA and the Maoists was reportedly deadlocked over the issue of how many seats are a political party given in the future interim government and interim legislative. The Maoists had initially demanded for one third of the total seats in the interim parliament. In their view, the political parties within the SPA will have to share one third of the total seats, and the people from civil society and other walks of life will be given one third.

The Maoists seem to be willing to secure one third seats in the interim government as well. Some media have claimed that they have also demanded for important ministries such as Local Development, Education, Land Reform, etc. The Maoists have been trying to justify their claims by arguing that they represent the revolutionary voice/movement of Nepal which was a major thrust of the recent people's movement.

Other political parties, however, are at odds with the rebel's demand. The Nepali Congress and Communist Party of Nepal (UML) have described it as unrealistic and impractical. In their view, the Maoists need to be considered a political party and they should be given the same number of seats other big political parties receive.

The Maoists' demands for their position in interim government and interim legislative have reportedly changed in the later period of negotiation. In spite of this, the distribution of seats is said to have remained as a major obstacle to the negotiation meetings.

The role of the International Community

The international community has chosen to remain silent rather than being proactive in the peace negotiations. No foreign country has publicly expressed about what it expects from the ongoing peace negotiations. Amidst this, the United Nations, which has been chosen by both SPA and Maoists as a monitoring organization in Nepal's peace process, has insisted for specific and elaborate political understanding over the issue of arms management. The United Nation's expectation has been seen by a majority of Nepalese people as a constructive suggestion to the negotiating parties.

However, the role played by United States and India remain vague. Many people in Nepal including the media believe that the United States is putting pressure on the SPA to stick to the demand of total disarmament of Maoist rebels before bringing them in the interim government. The remarks of the United States' ambassador to Nepal a few weeks ago strongly corroborate this belief. India is also said to have tried to convince the SPA leaders not to provide any concession to the rebels over the issue of disarmament. Some people even believe that the United States and India would prefer 'ceremonial monarchy' to the Maoists coming to power. Although most of these beliefs remain as mere speculation till date, we cannot ignore the possibility of the intervention of these powerful countries in Nepal's peace process.

The Road Ahead

Nepal has no alternative to making the peace negotiations successful. The Maoists and the SPA clearly understand this reality. However, some technical issues (such as the composition of the future legislative) and ideological issues (such as monarchy) continue to create differences among the negotiating parties. The next summit talk to be called by Prime Minister Koirala will have to deal with each of them and develop a comprehensive political understanding for making a new constitution.

The only way to success of peace negotiation, as we see it, is peaceful dialogue based on the needs of the people. If negotiating parties succeed in developing understanding on all or most of the above mentioned issues considering their own needs and the needs of the people, Nepal's journey to peace can become more credible. The exertion of international pressure and tendency of giving continuity to past political structure may lead us towards chaos and conflict. At this moment, we can only expect a need-based political understanding for the peaceful resolution of armed conflict.

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ON THE BRINK OF DISASTER?

A Brief Review of the Current Crisis Facing Nepal's Peace Process

September 05, 2006

The hopes for democracy and peace expressed by the Nepalese people in the historic people's revolution are turning into despair. Today, Nepal's peace process is facing a serious crisis. The recent news reports suggest that the government is mobilizing its security forces for the first time after the political change, which is probably aimed at deterring the Maoist rebels. The rebel leaders, on the other hand, are expressing their doubts on the government's intention and its commitment to the peace talks. The political situation seems to be rapidly heading towards mistrust and political conflict which has cost thousands of lives, huge economic losses, and grave social disorder in the past.

The controversy over the status of monarchy and the disarmament of the rebels are explained as the major factors underlying the crisis. However, given the ambiguity in the expressions and actions of the political parties and their leaders, the circumstances leading to the current crisis are difficult to analyze. It is in fact difficult to explain why and how such situation emerged and who is responsible for this. We shall try to analyze the possible reasons underlying today's crisis on the basis of our own observation of the roles played by the major actors so far.

THE GOVERNMENT

A significant number of Nepalese people vis-à-vis the civil society leaders had a deeply rooted suspicion that the multi-party government headed by Mr. Girija Prasad Koirala would not be able to lead the peace process towards success. The suspicion may have been caused by Mr. Koirala's strong aversion to communists; his ineptitude as a prime minister after 1991; and his dubious relationship with some powerful countries of the world such as United States and India. However, he was given the responsibility to implement the peace process because he had expressed his firm commitment to end the violent conflict through peaceful negotiation with the Maoist rebels.

Today, the same characters inherent in Mr. Koirala seem to create obstacles to the peace process. The first and the most important of such obstacles is that Mr. Koirala is reluctant to accept the rebels' demand for the total restructuring of the state. His understanding is that the total restructuring would mean republicanism and communist dominance which would reduce the 'space' being utilized by the king, the Nepal Army which is traditionally loyal to the king; and some powerful foreign nations. Prime Minister Koirala's conviction is that the king, Nepal Army and some foreign nations are the foundations of Nepali Congress -- the political party which he represents.

Secondly, Nepal's current prime minister does not believe in 'process' and he lacks democratic political culture. His remarks about Nepal's peace process suggest that the agreement between two individuals (i.e. himself and the rebel leader Prachanda) would

solve all existing problems. Such conviction of the prime minister seems to have been taken for granted as the talk teams, the leaders of political parties and the Nepalese press relentlessly talk about 'summit talk' between Mr. Koirala and Prachanda –two individuals. There are no supporting layers beneath the understanding between them which could sustain the process at the time of crisis. As a result, the issue of comprehensive peace agreement has been set aside and the peace process has become ambiguous and tricky.

Thirdly, Mr. Koirala's government has no concrete plans for creating conducive environment for the peace talks. It seems that the government is entangled in petty day-to-day activities such as reform in the civil service, participation in international seminars, infrastructure development and so on. The crucial issues such as holding peace talks and doing preparatory works for the peace agreement have been neglected. The government's weakness has been amply demonstrated by its failure to build a political understanding for the interim constitution.

THE MAOISTS

In spite of their firm commitment to the success of the peace process, the Maoist leadership seems unable to gain a control over its armed cadre. The cases of murder, abduction, forceful collection of funds, public demonstration of weapons, public hearings at the 'people's court', etc. are reported in the media on a daily basis. The Maoist leaders do not seem to have taken these incidents seriously. Due to their involvement in such activities, the Maoist leaders have not been able to sufficiently convince the general public about their commitment to accepting the result of the constituent assembly. On the other hand, the Maoists are losing whatever support and sympathy they had gained from the international community.

More importantly, the Maoist leaders seem to be reluctant to building a comprehensive peace agreement. Like Prime Minister Girija Prasad Koirala, the Maoist leaders believe in the individual-centered peace process. The much publicized 'summit talk' between the prime minister and the Maoist supreme commander Prachanda has been explained by the Maoists as the panacea for all political problems, which illustrates their lack of faith in the 'process'.

THE SEVEN PARTY ALLIANCE

The alliance of seven political parties, which played prominent role during the people's movement, seems inactive at this difficult juncture. It is not unnatural to expect a constructive role of the alliance in the whole peace process. In fact, the 12-point understanding gives an authority to the seven party alliance to intervene if and when political stalemate arises. However, the alliance seems less active in performing its roles. It has taken few initiatives for building an environment of mutual trust which are extremely necessary for the success of the peace talks.

THE ISSUES OF MONARCHY

The issue of monarchy is a central question linked to the restructuring of the state. Nepalese monarchy has been the icon of traditional state structure, conservative thoughts, and autocratic polity. With the help of a standing army and religious dogma, it has served the interest of its own and a few elites at the cost of comfortable life of the millions of ordinary people. The monarchy has historically deprived the people of Nepal from their basic human rights and human security.

Therefore, a majority of the Nepalese people long for a democratic Nepal with little or no 'space' for monarchy in future. Realizing this popular desire, Nepal's all major political parties seem to have identified monarchy as an obstacle to democracy and peace. However, there is a division of interest among the political parties not only about when and how but also about to what extent the traditional institution will be abolished from Nepal. The Maoists want to declare Nepal a republican state during the interim period; the Communist Party of Nepal (UML) wants a referendum to allow people decide on the future of monarchy; and Nepali Congress has said that the issue of monarchy will be settled by the constituent assembly which writes the new constitution.

Had there been a full commitment to democratic values among all political parties and a strong confidence among them, such controversy would not have created any obstacles to the peace process. The political parties lack mutual trust and confidence which has led them to utilize the question of monarchy as a means to strengthen their positions.

THE ISSUE OF DISARMAMENT

The government and some political parties within the seven party alliance are insisting for the total disarmament of the Maoist rebels before the constituent assembly election is held. The international community, too, seems in favor of the government's firm stand on disarmament. However, the Maoists have strongly denied the disarmament of their army let alone separation of weapons from the rebels. They have proposed disarmament only after the election for the constituent assembly.

The government's firm stance on disarmament reflects its reluctance in the political settlement of the armed conflict. It has failed to understand that disarmament is a necessary but not a sufficient condition for the success of a peace process. It is important to disarm the Maoist rebels. However, their disarmament without a concrete political agreement and a specific plan of action would produce no positive result. Examples from many parts of the world suggest that disarmament without political agreement cannot be sustainable. It is important to eliminate the grievances which lead people to carry weapons, which is possible only through dialogue aimed at eliminating grievances.

CONCLUSION

Nepal's peace process currently suffers a major setback. The principle reason is the lack of faith in 'process' among the political leaders. The necessity of a process has been ignored, and the peace is being brokered among a few individuals. Similarly, political parties and the government have paid little or no attention to settling major political

issues through dialogue. What ordinary Nepalese people receive daily from the news media are allegations, menaces, criticisms, and hollow assurances.

Due to this weakness, the anti-communist and anti-democratic forces have received an opportunity to spoil Nepal's peace process. The issue of monarchy and disarmament are being used as weapons to incite the political parties, and to bar the Maoist rebels from gaining any political space. This is of course not a welcome scenario for a majority of the Nepalese people who are tired of violent conflict and an autocratic rule of the past.

Nepal Today Towards Democracy and Peace?

June 07, 2006

The structure of Nepalese polity has remained unchanged over a long period of the country's history. The structure has mostly been dominated by the elite classes including the royal palace. Due to the domination of the elite classes in politics, bureaucracy, judiciary, etc. the poor, the underprivileged, and the minorities have little opportunities for participation in the political and decision-making processes. Consequently, a majority of the Nepalese people have been the victims of economic inequalities, social injustices, human rights abuse, and lack of freedom and democracy. Many social scientists and political analysts blame this situation for the emergence and growth of the violent armed conflict in Nepal which has already claimed the lives of more than 13000 individuals.

Today, however, this situation seems to be moving towards an end. As a result of the success achieved by the 19-day long peaceful movement, people of Nepal are currently witnessing a historic upheaval in the political scenario of the country. The king's autocracy has ended; political parties have come to power; civil liberty and press freedom have been restored; the Maoist rebels have been recognized as a political force and have been encouraged by the state to participate in peaceful dialogue; and both the major political parties and the Maoist rebels have expressed their commitment to democracy and peace. Many consider that these changes will lead the country towards restructuring of the Nepalese polity- the process which can ensure real democracy and sustainable peace in this small nation.

However, the challenges are huge. It is justified to argue that restructuring 237-year long state structure and ensuring the inclusion of all sections and communities in the state structure is not an easy task. Equally challenging is the task of transforming violent armed conflict into a peaceful political process. Socio-cultural diversity, economic inequality, geographical complexities, and low level of political awareness among ordinary people may create further difficulties. Therefore, the people of today's Nepal carry a huge responsibility of identifying and dealing with the major obstacles which may appear on the road to democracy and peace. In this context, this essay analyzes some of the major current challenges associated with the restructuring of the polity, which is central to the strengthening of democracy and peace in Nepal.

Transformation of the Armed Conflict

Undoubtedly, Nepal has received a unique and historic opportunity today for the transformation of the 10-year-long violent armed conflict into a peaceful political activity. The ground for this opportunity was laid by the 12-point understanding between the Maoist rebels and seven parliamentary parties, which they made in November 2005. The third of the twelve points clearly mentions the commitment of the Maoists to give an end to the armed conflict by establishing full democracy through the election of the constituent assembly. After the fall of autocratic monarchy, which they had identified as

the major obstacle to democracy, the government (of the seven parties) and the Maoist rebels have started their talks targeted at bringing the Maoists in the peaceful political process. This is, of course, a momentous step towards the transformation of Nepal's armed conflict and consolidation of its convalescent democracy.

Needless to say, peaceful transformation of Nepal's armed conflict is extremely challenging, and it demands a lot of caution, commitment, and deliberation. Firstly, the political forces will have to build an elaborate strategy for the demobilization of the armed forces. The transformation is not possible unless the armed forces are disbanded and the number of combatants in both Nepal Army and the Maoist army are reduced. Secondly, the weapons used by the combatants of both sides must be handed over to the authorities. Finally, there needs to be a plan for giving civilian status to the ex-combatants ensuring them of civilian rights and economic opportunities. The political parties and the Maoist rebels will have to work together with mutual trust in order to solve these problems, which are easy said, but difficult to implement.

In addition to building strategy for demobilization, disarmament and reintegration (DDR) of the armed forces, the seven parliamentary parties and the Maoist rebels must foresee the possible dangers involved in the whole process. We cannot completely rule out the possibility of a conflict within the armed forces about the acceptance of a political agreement between the state and the Maoists. Disagreement may develop on the issue of international supervision of the armed forces, which is another crucial part of the 12-point understanding. Similarly, the seven political parties and the Maoists may disagree on the timing of the disarmament such as before or after the election of the constituent assembly. It is widely expected that the ongoing talks between the government and the Maoists will help build an understanding between both parties on these crucial issues.

The Constituent Assembly

Breaking a long and dangerous political stalemate, the parliamentary political parties and the Maoist rebels had agreed in October 2005 to make a new constitution through the election of the constitutional assembly. This agreement, which is the most crucial of the 12-point understanding between the seven political parties and the Maoists, provided a hope for many Nepalese people about their future and the future of the country at large. In fact, the constituent assembly was a motivating force behind people's participation during the 19-day long historic people's movement. After the success of the movement, the restored parliament unanimously passed the proposal to hold the election for the constitutional assembly. The seven party alliance and the Maoists have expressed their full commitment to the process, and have also expressed their commitment to accept the people's mandate expressed through the election for the constitutional assembly.

The prospect of ending the conflict and consolidating Nepal's democracy through the election of constitutional assembly cannot be denied. However, this process entails huge challenges. The most important of these challenges is the probability of the use of force during the constituent assembly election. Conducting free and fair constituent assembly election after a long armed conflict is indeed a difficult task. Secondly, the political

parties and the Maoists need to prepare an elaborate plan concerning the selection of the constituencies and their representatives. Such selection has to ensure the participation and/or inclusion of diverse sections of Nepalese society which are so far marginalized by the state system. Thirdly, making a new constitution through the election of constitutional assembly is full of difficulties in a country in which a majority of the people lack proper education and political awareness. These crucial issues must be identified, adequately discussed, and peacefully settled before going any further towards constituent assembly.

The debate over ‘unconditional’ constituent assembly election is widespread in the politics of today’s Nepal. Some communist parties within and outside the seven party alliance and the Maoists are demanding for the unconditional election of the constituent assembly. This demand reflects the fear of these political parties about the future political strategy of some political forces [especially Nepali Congress and Nepali Congress (Democratic)] as many people tend to think that they would try to protect the palace by securing the king’s position as the constitutional/ceremonial monarch. The demand also reflects the hope of the communist parties that the people of Nepal will give a mandate for the establishment of a republican state in the election of the constituent assembly.

In spite of the popularity gained by the demand of ‘unconditional’ constituent assembly election, it is important to understand that constitutional assembly election can never be unconditional. As the constitution-making practices in many parts of world suggest, the political forces must envision the structure of future polity before the constitutional assembly election takes place so that people’s fundamental rights are protected in the future constitution. In other words, the political forces must sketch a broader framework of the future constitution through political dialogues and conferences. Such act can protect the immutable principles of a democratic constitution which must be incorporated in the future democratic constitution.

Talks of Peace

The Maoist rebels and the government are now engaged in talks for the transformation of the armed conflict. The first round of talk between the government and the rebels was conducted recently in a ‘cordial’ manner, which also finalized a code of conduct to be followed by both sides. The commitment from both the government and the Maoists to participate in the peace talk honestly and openly has created optimism in the general public about its success. As both of the parties have already reached an agreement to hold the election of constituent assembly for making a new constitution, the people of Nepal have every reason to expect that the talks will lead the peace process towards success.

In spite of the expectation of the general public, the peace talk seems to have riddled with many weaknesses. The past peace talk showed that it was poorly planned and it lacked necessary preparations. The peace talks are not directed towards building a peace agreement which is vital at this juncture to solve many of the current problems. In addition to this, the government and the Maoist rebels have shown no interest in making the talks more inclusive and participatory. The lessons learnt from the peace processes in different parts of the world suggest that peace talks need to have elaborate plan to engage

different stakeholders in the talks. The former peace talks between the Maoists and the government suffered from the same problem. This time, too, the government and the Maoist rebels seem less interested in involving the concerned stakeholders in the talks. Therefore, it can be safely argued that the ongoing peace talk has an inherent threat of being doomed to stalemate.

Emerging Differences between the Government and the Rebels

Differences between rebels and the state may not always be considered unnatural. However, it is important to deal with such differences in time and with caution. For instance, we have seen differences in some issues between the Maoists and the alliance of seven political parties from the time they signed the 12-point understanding. In the present context, the same differences seem to be consolidating. They need to be properly dealt with before they create threats to the peace process. Some of the major areas of differences between the Maoist rebels and the seven party alliance are mentioned below:

1. life of the restored parliament
2. need of the broad political round table conference
3. restructuring of the Nepal Army
4. weapons handover of the Maoist rebels
5. collection of money by the Maoist rebels from ordinary people, etc.

The Maoists' demand to dissolve the restored parliament and to hold a "broad political round table conference" can be understood as their desire to create a political structure/institution in which they too have a stake. Obviously, the Maoist rebels have no ownership over the restored parliament. Besides, the Maoist rebels want to see the demise of the existing political structures and institutions against which they had been fighting until recently. The political parties, on the other hand, want the restored parliament to function until the election of the constituent assembly. The seven political parties probably consider the parliament as the only legitimate body authorized to make decision at the time of crisis. Therefore, they seem to be reluctant in dissolving the parliament and holding the broad political conference as demanded by the Maoists. The interest of the seven party alliance in giving continuity to the restored parliament is reflected by some crucial declarations made by the parliament in the recent days. The difference over this issue seems to be growing in intensity, and it may create serious obstacles to the future peace talks.

The government of Nepal has expressed its commitment to the restructuring of the Nepal Army. In the historic proclamation of the parliament made on 18th May, the seven party alliance has changed the name of the army and outlined its policy of restructuring the army; breaking its relationship with the palace; and making it loyal to the democratically elected government. The Maoists, however, do not seem to be satisfied with the name change. The rebels want the government to hold the Chief of the Army Staff and some other members of the top brass of the Nepal Army responsible for the suppression during the people's movement. For reasons which are still unknown to the general public, Government of Nepal seems to be reluctant to bring any significant changes within the

army organization. This may create suspicion and mistrust among the Maoists about the true intention of the current government, which may eventually harm the peace process.

Peaceful environment is crucial for the free and fair election of the constituent assembly. Therefore, the use of weapons by the combatants must be banned not only during the election process, but also during the process of writing the new constitution. The Maoists have repeatedly claimed that they will not use weapons during the election, and that they are ready to put their army under the supervision of an international organization. However, the seven party alliance, or at least some members of it, do not seem to be assured by the Maoists' commitment. Therefore, the issue of weapons handover of the Maoist rebels is being raised by some leaders of the parliamentary parties as the necessary pre-condition for the election of the constituent assembly. This emerging difference can be resolved through dialogue and a confidence building process.

Finally, the seven party alliance is critical of the Maoists on their forceful collection of money from the ordinary people in the name of donation or 'tax'. While the Maoists claim that they collect only voluntary donations, a number of cases of forceful collection of money are reported in the media. Such activity of the Maoist rebels undoubtedly jeopardizes the peace talks as it fuels the suspicion and fear inherent in the parliamentary parties against the rebels. However, it becomes a responsibility of the state to consider the financial needs of the rebel's army during the time of peace. Although the government seems to have understood such need of the rebels, no significant steps have been taken to solve this problem. Thus, the issue of collection of money by the Maoist rebels remains as a topic for polemic rather than a problem to be solved through dialogue and negotiation.

Conclusion: Is Nepal Moving Towards Democracy and Peace?

Re-establishment of a democratic environment (if not the structure); improved relationship between the state and the rebels; popular sentiment in favor of democracy and peace; and significant cooperation from the international community to resolve the ongoing political conflict lead us to consider that Nepal has received a unique opportunity for strengthening democracy and peace in the nation. Therefore, it seems fairly reasonable to expect that the future constitution will transfer power from the traditional political institutions to the people, and will ensure rights of the people to be included in the democratic political process. It is widely believed that Nepal has already entered a process of resolving the violent armed conflict through the process of making a new constitution.

However, we cannot undermine the risks involved in this whole process. Transforming a violent and protracted armed conflict in a peaceful manner is a difficult task which demands a lot of patience, deliberation and commitment. The task of making a new constitution through the election of the constituent assembly is no less difficult. The political forces of the country will have to go through this ordeal in order to give a peaceful way out of the existing political crisis.

While being optimistic about the success of the peace process, it is important to foresee the effects which can result from its failure. If the current peace process fails, the people will have to face a more violent and pervasive armed conflict in the form of a civil war that may result in the death of thousands of innocent people. As feared by many, military dictatorship may replace the remaining democratic institutions, and the people will lose their democratic and human rights. Nepal may lose the chances of holding to its identity of a sovereign nation. The people may lose the chances of establishing democracy and peace for many, many years to come.

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