

INFORMAL

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Protracted Peace Process and Intricate Issues



CONGRATULATIONS !

INSEC family congratulates to the prominent Human Rights Defender, former commissioner of National Human Rights Commission and Founding Chairperson of INSEC *Mr Sushil Pyakurel* for winning *2010 Gwangju Prize for Human Rights*, the highly worthwhile and esteemed award conferred on him on 18 May by *The May 18 Memorial Foundation* in Korea for his over two decades' involvement in the protection and promotion of human rights in Nepal.

We are proud to express that the award bestowed upon him has provided international recognition and trust to Nepali human rights movement and, concurrently, has valued the unflinching and indefatigable efforts undertaken by him in the area of protection and promotion of human rights in Nepal from the inception of INSEC.

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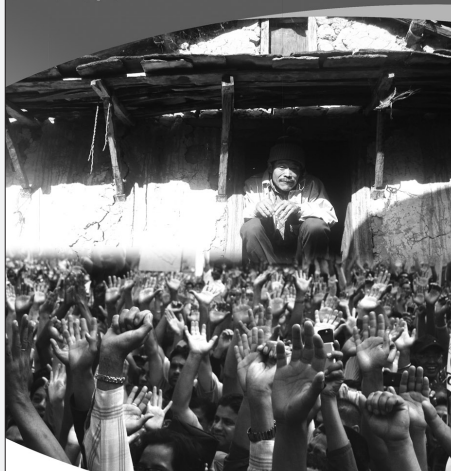
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People Still on Tenterhooks

Complete two years have already elapsed since Nepal held election for the Constituent Assembly (CA) as the key event of restoring lasting-peace and solving all the issues agreed to have been responsible for the political turbulence in the country. Following the election, undeniably, some crucial developments have taken place towards restoring peace amidst grievance among the people that parties couldn't accomplish the consigned job within the stipulated time. This is the situation now that tenure of the CA has been extended by one year and people have rested easier that the ongoing peace process didn't turn into a fiasco.

However, optimism among the people has flagged owing to the disagreements intensified among the political parties indicating that peace process has not been conceived of in terms of human rights concerns and future of Nepali people. In the mean time, such disagreements have placed the process as a whole at a critical juncture. At the hub of the stalemate rest disagreements over integration and rehabilitation of former Maoist combatants, certain key aspects of a new constitution, issues agreed while signing Comprehensive Peace Agreement (CPA) and power-sharing deals. It has become quite visible that present entanglement has been compounded by reciprocal distrust, deficient political determination and weak mechanisms for the implementation of the past agreements.

Issues regarding human rights and the rule of law have been overshadowed by the current political impasse. No responsible key stakeholder has shown interest in fulfilling the understandings and to honestly carry out the responsibility, so, it is highly likely that Nepali people will have to live under protracted transition. Beyond the worry that transitional period will unusually prolong there lies a deep concern for the future, a panic that long-lasting peace and transformative peace will sneak out without yielding any desired outcome due to ineptitude of the political parties to utilize the moment.

Only observance to commitments and negotiated political resolutions will present a reasonable outcome for the future of the country. This only will ensure the people's civil, economic, social and political rights and will honor the significance of the April Apprising which was triggered and propelled by spectrum of human rights concerns in Nepal.

Viewing from the standpoint of constitution making and overall peace process, past two years couldn't be rewarding for Nepal. Outstanding issues related with the process like integration and rehabilitation of combatants, modalities of the integration, formation of commission for the restructuring of the state and regarding truth and reconciliation, issues of Internally Displaced Persons; process of property restitution couldn't be finalized. Candidly, parties, especially the major ones, spent time by spreading their tentacles against each other fearing the possible ideological and political course they would take in future. At a time when *vox populi* is crying for the iron-clad guarantee from the leaders as to drafting of new constitution on time, the leaders now, are bickering over the issues measuring with their own yardsticks.

There is continued internal strife within almost all the parties as to viewing overall peace process and directly and indirectly engaged components in the process. Mounting tremendous pressure against the political parties from the level of people and civil society organizations is the exigency of now; however, civil society too seems to have been visibly divided over the issues.

It is not unnatural that peace processes face setbacks and thinking that previously warring parties will converge together sorting out their differences overnight is also equally unrealistic. But, problem with Nepal's peace process is that given this pace the parties might be unable to keep the process moving and thereby terminating it fruitlessly.

Challenges and Complexities of Supervision, Integration and Rehabilitation of the Combatants of the Maoist Army



» Deepak Prakash Bhatt, Ph.D.¹ «

The differences among the Maoist and other parties lie in three areas: the number of combatants to be integrated into the security forces; the modality of integration either they will follow normal standard of security forces or create new norms dealing as special case and the rehabilitation package that should be offered to the combatants.

1. Introduction

The purpose of integration and rehabilitation of the combatants is to ensure security and stability in post-conflict environments so that recovery and development can gain momentum faster. Integration and rehabilitation of the combatants of the maoist army is a multidimensional process. It has political, security, military, socio-economic and humanitarian dimensions. The success and failure of integration and reintegration programs depends upon the joint

efforts of politicians, key stake holders of peace process, individuals, families and communities². This is the first step in the transition from conflict to peace. To get success in this issue social and cultural capital should be taken into account. At the same time this is the phase for right-sizing of the armed forces and redistribution to human security areas i.e. health, education and environmental security downscaling from defense and other core security areas. Integration and rehabilitation has short term, medium and long term

goals and implications. It is helpful to establish peace, security and stability in short term. Medium term is an extensive and expensive process. Taking some of the combatants into the security forces or particularly into the military sector reduces the problem. However, some view that this act of allowing entry into the military sector should be a long-term solution as most countries need to reduce the overall size of their military after war³. And, achieving sustained socio-economic balance for the stabilization of community should be

1. Dr. Bhatt is member of the Technical Committee for Supervision, Integration and Rehabilitation of Maoist Army Combatants, formed under the Special Committee by Government of Nepal.
2. Duthie, R, *Transitional Justice and Social Reintegration*, Background Studies, Stockholm Initiative on Disarmament Demobilization and Reintegration, Stockholm: Ministry for Foreign Affairs Sweden, 2006, p 41.
3. Licklider, Roy, *Merging Militaries after Civil War: South Africa, Bosnia and a Preliminary Search for Theory*, Massachusetts, 2008, http://www.allacademic.com/meta/p280687_index.html, accessed on 23 May 2010.

the long term goal of reintegration and rehabilitation.

2. Linking DDR and SSR

In principle, international practices in this issue of reintegration and rehabilitation are not free from practical problems. Disarmament Demobilization and Reintegration (DDR) and Security Sector Reform (SSR) formulations have been developed to express a developmental approach, to advance a secure and firm environment enabling recovery, peace-building and development enthusiastically. DDR focuses on specific target groups especially putting the ex-combatants and their dependents at the center and aims to take opportunities for their orderly integration into agreed future defense forces for their disarmament, demobilization and reintegration into peaceful civilian roles. SSR focuses on reforming the security system and its component parts to promote the prospects for effective, legitimate and accountable provision of justice and security services in the country as it emerges from conflict⁴. Thus, although they have distinctive foci and approaches, the aims of SSR and DDR overlap in many key areas i.e. a) sustainable dismantlement of illegitimate or undesirable armed groups and command structure b) appropriate resizing and restructuring of defense forces c) addressing the security and other needs of ex-combatants and associated vulnerable groups, as well as recipient commu-

nities as part of wider peace and security building, and d) military and defense reform. Still, there are many challenges and priorities of coordinating short and long term processes and objectives⁵.

International standards and good practice guidelines for Disarmament, Demobilization and

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Reintegration (DDR) have become relatively highly elaborated in recent years⁶. In many cases DDR was carried out in a fractured way, it lacked adequate coordination among the UN peacekeeping mission, agencies, programs and funds and was compromised by poor

planning and support. Later, Integrated Disarmament Demobilization and Reintegration Standard (IDDRS) was developed by the UN Inter-Agency Working Group on Disarmament, Demobilization and Reintegration (IWAG-DDR) during 2004-06⁷. The debate on DDR and its end goals have advanced significantly in recent years, through process and programs such as the UN led IDDRS, the Stockholm Initiative on DDR (SIDDR) and the Multi-donor Reintegration Program (MDRP). This gives an understanding that DDR is political, social and economic process that has long term development implications. This has to be sustainable rather than simply as explicitly military activity with a primary focus on short term stability and security⁸.

During the early phase of integration and reintegration DDR programs were extremely vague concepts and, in the past, UN mandates on these processes were equally vague. So, these programs were often carried out in a disjointed and disintegrated way due to poor coordination, planning, support, and sometimes due to competition among peacekeeping operations, agencies, funds and programs. As a result, national and international efforts to establish security were not adequately supported thereby weakening the chances of a successful peace process. The Brahimi Report of August 2000 stresses the importance of UN agencies, funds

4. Greene, Owen and Ryan, Simon, *Linking and Coordinating DDR and SSR for Human Security after Conflict: Issues, Experience and Priorities*, Saferworld and University of Bradford, 2008, p 11-12.

5. *ibid*.

6. Greene, Owen and Ryan, Simon, *Linking and Coordinating DDR and SSR for Human Security after Conflict: Issues, Experience and Priorities*, Saferworld and University of Bradford, 2008, p 1.

7. Operational Guide to the Integrated Disarmament, Demobilization and Reintegration Standards, UN, 2006, p 13-14.

8. Bell, Edward and Watson Charlotte, *DDR: Supporting Security and Development*, The EU's added value, September 2006, International Alert, London, p. 3.

and programs in the framework of UN peace operations all working towards the same goal⁹.

In Nepal both the works-integration and reintegration of ex-combatants and the democratization of Nepal Army, as mentioned in the Interim Constitution, must be seen as a part of broader security sector reform (SSR). Also, this must be seen as a de-militarization of the Nepali society because UCPN (Maoist) has set the instance of armed struggle and has made it realize, though it is not correct, that only the violent means can change the political course. Following this many armed groups are mushrooming in eastern Tarai and eastern and mid-hill regions. At the same time, the discourse of inclusive institutions is around so the security forces can take this as an advantage to build an institution of national spirit.

3. Constitutional Provisions and Political Agreements

Seeking international assistance, two letters, one from the government of Nepal and another from CPN (Maoist), have been sent to the UN. Both the letters request for UN assistance in five areas, in particular, for the management of arms and armed personnel. There had reached an agreement among the parties to seek UN assistance in "the management of arms and armed personnel of both sides", deploy qualified civilian personnel to monitor and verify the confinement of CPN-M combatants and their weapons in designated cantonments. It was also agreed that the modalities for all arrangements,

including of arms and ammunitions, would be worked out among the parties and the UN¹⁰.

Comprehensive Peace Agreement signed on November 21, 2006 became the base for the integration and rehabilitation and it was agreed that the Interim Council of Ministers was to form a special committee in order to supervise (inspection or management or monitor), integrate and rehabilitate the Maoist combatants¹¹.

Only those Maoist army combatants who were properly registered at cantonment sites were to be eligible for possible integration into the security forces fulfilling the standard norms. Any discharged personnel were to be ineligible for possible integration.

Other Agreements

Agreement on Monitoring of the Management of Arms and Armies (AMMAA) of December 8, 2006 and its point 4.1.3 agreed that all the Maoist army combatants would be registered at the main cantonment sites. This registration would include the provision of age, name, rank, responsibilities within unit/formations, date of entry into service and would provide the basis

for a complete list of personnel. Only those individuals who were members of the Maoist army before 25 May 2006 were to be eligible to be cantoned. Upon registration, Maoist army combatants, if found to be born after 25 May 1988, were to have been honorably and automatically discharged. Only those Maoist army combatants who were properly registered at cantonment sites were to be eligible for possible integration into the security forces fulfilling the standard norms. Any discharged personnel were to be ineligible for possible integration. And, it was agreed that eligibility for integration into the security forces would be determined by a special committee as agreed in the CPA. This integration process was supposed to be determined in subsequent agreement with the parties¹².

Point 2.2.3 of the agreement reached among the Seven Parties on 25 April, 2008 with regards to those verified Maoist combatants' integration has stated to make a provision whereby only those duly registered at the temporary cantonments mentioned in Point 4.1.3 of the AMMAA, signed between the Government of Nepal and CPN (Maoist) and witnessed by the United Nations, will be deemed eligible for possible integration with the security bodies after fulfilling the standard requirements.

The verified combatants of the Maoist army were also to be offered a choice between an economic package and various other alternatives for rehabilitation¹³.

Understanding among Political Parties on 24th June as to

9. Operational Guide to the Integrated Disarmament, Demobilization and Reintegration Standards, UN, 2006, p 13-14. <http://www.unddr.org>

10. Collection of Understandings, Agreements and CPA. Government of Nepal, MoPR, Singhadarbar, Kathmandu, 2007, p 45.

11. The Interim Constitution of Nepal 2007, including sixth amendment, Makalu Prakasan Griha, Kathmandu, 2007, p 86.

12. The Interim Constitution of Nepal, 2063 (2007)) as amended by the first, second and third amendments, UNDP, Nepal, p 310.

13. Comprehensive Peace Accord, Understandings between Political Parties and related documents, Government of Nepal, Ministry of Peace and Reconstruction (MoPR), Singhadarbar, Kathmandu p. 97.

amending the Interim Constitution and promoting peace process also agreed to form a Special Committee and it was stated that a special committee having the representation of main political parties in the Constitution Assembly would be formed and for this purpose Article 146 of the Interim Constitution will be amended.

It was also agreed that integration and rehabilitation process of verified Maoist army combatants would be completed in the maximum six months' limit. For this purpose, special committee was to be formed by representatives of major political parties in the Constituent Assembly (CA), as directed by the Article 146 of the Interim Constitution. A technical committee of experts under this special committee was also provisioned. Special committee was supposed to be created and was to start its work within 15 days of the formation of cabinet. Government was not to take any responsibility of the combatants after six months who couldn't be integrated despite their verified status¹⁴.

4. International Experiences and Nepali Model

Integration and reintegration is complex combination of political and technical processes. Both are highly politically sensitive in any given circumstances and key local stakeholders must be aware of this. In highly politicized post-conflict contexts, it often becomes important to find ways by discussing on the support planning and implementation of both integration and reintegration. They also

involve substantial technical complexities and procedures.

Globally, 45 integration programs have been implemented during 1945 to 2004, where 23 were in Africa. In all these programs UN had instrumental roles despite the fact that the results were not encouraging in many. Former Soviet Union, China, North Korea, Cuba, Vietnam etc transformed rebellion army into the national army after taking over power by communist party. Some African countries have adopted group integration and that helped to make

Integration now seems as the most challenging step of peace process in Nepal. There are four schools of thought on integration of Maoist combatants into the security forces.

national army inclusive. But, most of the post-conflict countries introduced individual entry into the security forces fulfilling existing norms and practices¹⁵. At the same time, some countries have made flexible standard norms.

a) Integration

Integration means that individuals are brought into the (new) military or security forces in positions similar to the ones they occupied in prior organizations which were in combat with their own¹⁶ or

with adjustment in the ranks. In Nepali context integration is admission of Maoist Army combatants into the national security organizations. The term is understood to mean a process of integration of qualified Maoist army combatants into security sector components such as Nepal Army, Nepal Police, Armed Police Force and National Intelligence Department and possibly newly proposed security bodies, if once decided at political level or at the Special Committee. But, till date Maoist combatants are under the chain of command of the UCPN (Maoist).

Constituent Assembly's tenure has been extended by one year after its two years' ordinary term was completed on 28 May, 2010, however, cross party negotiations, especially among the major three parties- the UCPN (Maoist), the NC and the UML, could not reach to any conclusion. The differences among the Maoist and other parties lie in three areas: the number of combatants to be integrated into the security forces; the modality of integration either they will follow normal standard of security forces or create new norms dealing as special case and the rehabilitation package that should be offered to the combatants.

Arguments and counterarguments about integration and reintegration were there and are still going on among the parties highlighting several complexities of the integration process. Integration now seems as the most challenging step of peace process in Nepal. There are four schools of thought on integration of Maoist combat-

14. Ibid.

15. Wagle, Geja Sharma, *Prospects and Challenges: Integration and Reintegration of Maoist Army*, Paper presented at seminar organized by NIPS, Kathmandu, March 18, 2009, p 16.

16. Knight, Mark and Hendrickson, Dylan, *Security Sector Reform: Post-conflict Reform*, Helpdesk Query, Commissioned by the Global Facilitation Network for Security Sector Reform, University of Birmingham, 2009, p 8.

ants into the security forces. First, the UCPN (Maoist) is in favor of formation of new national army after integration of their Peoples Liberation Army (PLA) in Nepal Army. Maoists have claimed many times that they are ready to introduce new security structure like Border Security Force or Industrial Security Force which can function as para-military structure. The party believes that the most practical option is to make national security policy and integrate both the armies in Nepali context and to form a national army. India- China relation is developing from new perspective and both are nuclear power. We are not preparing for any kind of conventional or direct war with any of them. So, the number of future Nepal Army should be limited to 30,000¹⁷.

Secondly, the Nepali Congress, especially a section in the party, is hesitant to integrate Maoist combatants into Nepal Army and other security forces. The third school of thought led by the CPN (UML) is in the middle of both the extremes and put a way forward as partial integration of Maoist combatants into Nepal Army¹⁸. Some of them can be integrated into the armed police force and others could be reintegrated into society. The UML's emphasis is to be bound with agreements rather than describing agreement with party-cadre-sympathizers' convenience with long term strategy. Fourth view is of the regional Tarai-

Madhesh based political parties like Madhesi Janadhikar Forum, Sadbhawana Party and Tarai Madhesh Loktantrik Party which are demanding for group entry of Madhesh-origin people into Nepal Army because of poor representation and also, somehow, as the part of management of the Maoist combatants.

Many say, integration should be based upon the ongoing

Maoists have claimed many times that they are ready to introduce new security structure like Border Security Force or Industrial Security Force which can function as para-military structure. The party believes that the most practical option is to make national security policy and integrate both the armies in Nepali context and to form a national army.

discussion that each and every institution of the country should be

inclusive in line with Kul Chandra Gautam that 'some groups that have been historically marginalized and under-represented in the Nepal Army and other security organs are likely to be given preference over others in the larger national interest of Nepal'¹⁹. Women, Dalit, Madhesi and other historically under-represented sections of the Nepali society can be in this priority. Madhesi people are not represented in Nepal army in the past so this government must implement the previous agreement and introduce proportional and group entry for Madhesi community because the government has accepted that proportional, inclusive and group entry of Madhesi and other communities shall be ensured in order to give the Nepal army a national and inclusive character, as per the agreement between the government and United Democratic Madhesi Front²⁰.

b) Reintegration or Rehabilitation

Reintegration is the process by which ex-combatants acquire civilian status and reintegrate into wider community- hopefully gaining sustainable and useful employment, income and social position²¹. This is seen as a reintegration of Maoist ex-combatants into the society as civilians with social respect. This will include vocational training, micro-enterprise support and education. Provision might also be arranged for selected Maoist army personnel to take up political

17. 30,000 Strong Army Enough: Badal (Former Defense Minister and General Secretary of UCPN-Maoist), Kamat, Ram Kumar, http://www.nayanews.com/news.php?subaction=showfull&id=1208880157&archive=&start_from=&ucat=12&, accessed on 28 June 2010.

18. Pathak, Bishnu and Upreti, Devendra, *The Culture of Militarization in South Asia: Both Army's New Recruitment in Nepal*, Situation Update 81, Crisis Study Centre, Kathmandu, 2009, p 5.

19. Gautam, Kul Chandra, 2009, *Integration of Maoist Combatants in Nepal's Security Forces*, paper presented in seminar organized by Nepal Institute for Policy Studies, Kathmandu, p 3.

20. Ibid.

21. Specht, Irma, and Empel, Carlien van, *A Challenge for Social and Economic Reintegration: Targeting ex-combatants or all War-affected People? The Liberian Experience*, International Labor Organization, Geneva, 1998, p 3.

or administrative function in their mother party UCPN (Maoist). It is appropriate to treat ex-combatants differently from other war affected groups, such as civil returnees, internally displaced persons and conflict affected families.

As per the agreement, the Maoist army combatants were kept in cantonments for six month but they have been staying for more than three years inside transitory sites. Ex-combatants can play a significant role in peace building in the post- conflict situation. Failure to do so will continue the violent activities because post-conflict context is fragile and failure to provide skill, training and employment opportunities to the combatants will develop frustration within them. So that there needs a special attention for the rehabilitation program. Rehabilitation is the most important part of the ongoing peace process. This package must be awarded equally, irrespective of the ranks or the years of service of the Maoist Combatants.

Incentives, skill generating trainings and programs of educational enhancement should be provided to the Maoist combatants while rehabilitating and the ones to be reintegrated and rehabilitated should be categorized as follows with the different types of programs and packages of rehabilitation.

- a. Self-employment seekers.
- b. Those who want rehabilitation willingly but seeking some skills /education from the state.

The above categories basically include those who want integration into security forces but fail to be integrated due to inability to meet the required norms or due to various other reasons.

- c. Disabled combatants.
- d. Lactating/pregnant female com-

batants who do not fall under the first two options.

- e. Seriously ill combatants.

Maoist combatants that fall into the following categories must be discussed in the Special Committee.

- a. Human Rights violators.
- b. Deserters, those who left the existing security forces and joined UCPN (M).
- c. Combatants willing to practice politics.
- d. Those having criminal record and pending cases in the courts.

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5. Rehabilitation Packages

A) Education-Formal and Informal

In this regard education can be offered to the combatants who want to go for education package, as day-scholar for primary, middle, secondary and higher secondary education in government schools and hostel facility can be provided if the desired type of education is not available in the neighborhood place of residence. Bridging courses can be provided for the ex-combatants who want to go to school or college education. If some can't, for various reasons, attend school or college, can be offered informal or open school education package or private examinations system. The area of such formal and informal

education can be like veterinary, teaching, forestry, computer, management and journalism etc.

B) Vocational Trainings

If some of the Maoist combatants want to go for specific vocational trainings, they can be offered one of the following trainings. Each combatant should be given stipend to meet the expenses for lodging, foods and the basic expenses related to education or training. After the completion of training each combatant must be provided with basic tools and the seed money to start business. These trainings can be offered in many fields once agreed at policy level. Skilled trainings should be offered in the areas like-welding, electric wiring, plumbing, brick-laying and carpentry, driving-light vehicles, cuisine, tailoring and mechanical repairs. In the medical field they can be offered trainings for lab technician in pathological laboratory, dental technician in laboratory, community medical assistant, community health workers, and maternity community health workers. Agro- based education like basic agricultural concepts and trainings for the production of off-seasonal vegetables, different kinds of fruits, seeds and cash crops can be offered to them. In the area of animal husbandry- cows/buffalos farming, poultry, goats or sheep farming, pig keeping, fishery, bee keeping, silkworm farming and butchery can be offered to the ex-combatants. In the hotel related area, house-keeping, bartending, hotel boy and chef/cooking options can be offered. Similarly, they can be offered trainings related with cottage and small industry and specific skills generating trainings to work as a barber, beautician, florist etc.

6. Discharge of Disqualified Ex-Combatants

Of the 4,008 Verified Late Recruits and Minors (VLRM) and disqualified Maoist combatants, 2,394 minors and late recruits were released from the temporary cantonments during the formal discharge process in January-February 2010. As per the tripartite agreements between the Nepal Government, United Nations, and CPN (Maoist) it was agreed that the disqualified ex-combatants and minors would be immediately discharged from the cantonments after the verification process, however, the discharging process completed three years after the verification process was completed in December 2007. Of the total discharged ex-combatants more than 1700 have contacted to the toll free number and have shown their interests in few areas of trainings offered to them.

7. Challenges

Maoists are claiming equal positions in all rank and files of the Nepal Army. In fact, they have trained them even during three years' stay in cantonments. With these priorities worries of the non-Maoist parties in general are-

- ▶ Maoist party will try to integrate more numbers of their combatants than agreed upon among senior leaders of the parties.
- ▶ It may try to integrate more numbers of the combatants into Nepal army and might politicize the latter.
- ▶ It may use the uniform to freely intimidate the public if integrated into the Nepal Police.

- ▶ Security forces may face mutiny, insubordinations, disobedience, fight in line, loss of weapons and politicization activities.
- ▶ Maoist party may still retain its influence over the integrated forces.
- ▶ Maoist party may try to send as many officers as possible into security forces.
- ▶ Security forces may loose professionalism due to integration.

Whereas, there are such worries with the Maoist side-

- ▶ Promises given to combatants may not be fulfilled and leadership will lose credibility.

Of the total discharged ex-combatants more than 1700 have contacted to the toll free number and have shown their interests in few areas of trainings offered to them.

- ▶ Combatants may not be fully integrated. They may be treated like second class citizen.
- ▶ Maoist party may be forced to accept the existing norms of security forces.
- ▶ Maoist party may loose its influence over the integrated combatants.
- ▶ Maoist party may feel that the combatants may be ill-treated by the security forces.
- ▶ If asked to accept the existing norms of security forces, the

number for integration may drastically reduce.

8. Actors of the Integration and Rehabilitation

Major political parties, government, civil society and international community are the key actors to complete this process. In the post-conflict countries oft there are political and societal divisions, weak or damaged institutions and limited expertise. So, the national government institutions need to develop the capacity to assess opportunity and map accordingly and there needs involvement of the concerned ministry and commissions in overall process. Since the agreements related to integration are essentially political, it will be necessary for the political parties to forge consensus as to planning integration and reintegration.

9. Few Arrangements for Policy Making

a) Management Mechanism

Burgess highlighted that 'one of the most significant factors in the success or failure of army integration was the management of the process. This is significantly enhanced if all parties are represented in a flexible and adoptable process'²². So the management mechanism is the first requirement of the process.

b) Inclusive Integration

Inclusive integration process that is planned and managed by bodies comprising representation of all parties to the conflict is more likely to be successful²³. At the same time this process must be inclusive in terms of social and eco-

22. Burgess, S.F, 'Fashioning Integrated Security Forces after Conflict', *African Security*, Vol. 1, No. 2, 2008, p 69.

23. Knight, Mark and Hendrickson, Dylan, *Security Sector Reform: Post-conflict Reform*, Helpdesk Query, Commissioned by the Global Facilitation Network for Security Sector Reform, (University of Birmingham, 2009), p 20.

conomic marginalization based on caste, region and gender. Underprivileged community like Dalit, Madhesi and women should be given priority while integrating. It will give more inclusive nature to security forces. Women participation in security forces will help to make Nepal's security forces gender balanced and gender sensitive institutions. It'll also help to enable Nepal to respond to UN Security Council resolution 1325, under which the UN is encouraging all Member States to provide more women officers in its peace-keeping missions.

c) Community Stabilization

Integration and reintegration process is not just about integration of ex-combatants and assisting them back into normal life²⁴. It is crucial to know how communities deal with the ex-combatants and manage social and economic challenges and conflicts that may result from assisting them.

d) Role of Private Sector in Rehabilitation

For most entrepreneurs, job creation for ex-combatants is the first and foremost responsibility of the state as it was responsible for the insurgency. The state should identify economic sectors into which the ex-combatants can be adjusted. But, at the same time, the most affected area by the insurgency is private sector so they also should contribute for sustainable peace. The state should also work with the donors and should try to establish programs in which ex-combatants' salaries are subsidized, partly as an incentive for private entrepreneurs to take them on

board and help them train.

e) Active Monitoring and Evaluation

Good practice guidelines for the successful integration and rehabilitation program emphasize the importance of monitoring and evaluation of progress and program at milestone points or as they come to

This program will be the key mechanism for assisting in the return of ex-combatants to a civilian life and society. So, there is need of special attention and a focused program must be developed in relation with ex-combatants primarily because they pose the highest risk in destabilizing peace.

an end. Usual review of the program during the implementation is very much needed in order to identify and address emerging problems or opportunities in a timely way. 'Monitoring is the process of regularly examining a project's actual outputs and impacts during implementation'²⁵.

10. Conclusions and Recommendations

It is clear from the above analysis that there are many impor-

tant and potential issues that have to be taken into account by the policy makers in relation with combatants' integration, reintegration and rehabilitation in Nepal. Some direct and indirect implications of integration and rehabilitation process will be seen in the general life of Nepali post-conflict society. At this stage there are opportunities for pooling resources, internationally and nationally, to mobilize national capacity with broader framework towards a profound management in post conflict context. This program will be the key mechanism for assisting in the return of ex-combatants to a civilian life and society. So, there is need of special attention and a focused program must be developed in relation with ex-combatants primarily because they pose the highest risk in destabilizing peace. Integration and Rehabilitation program, if rightly implemented, can be used to deliver visible peace dividends and sustainable peace. However, there hasn't been made any substantial progress in this core area of national problem.

Since this process is understood as complex, sensitive and vague issue, political leaderships must develop a coherent and flexible view to look at Maoist combatants. Whole international community is optimistic and ready to help to support integration and especially rehabilitation program so the model of integration and rehabilitation should be in line with internationally acclaimed principles of democracy, practices and the international human rights covenants and protocols.

24. Leff, Jonah, The Nexus between Social Capital and Reintegration of Ex-combatants: A Case for Sierra Leone, *African Journal of Conflict Resolution*, Vol. 8, No. 1, 2008, p 9.

25. *Conflict-Sensitive Monitoring and Evaluation*

Protracted Peace Process in Nepal: A Window through IDPs



» Padma Prasad Khatriwada Ph.D. 1 «

Abstract

Nepal's solution for conflict induced IDPs is mainly connected with political stability because unstable politics has been one of the main responsible factors for the displacement of huge number of people. It has been stated that many conflict induced IDPs have returned home. However, we haven't been concentrated on what has happened after they returned to their homes and what is happening to those who have not been able to return yet or to those who do not want to return. The public discourse warns everybody on the fact that the major political parties do not want to give the peace process a lasting track through new constitution and a policy of state restructuring. Critical position of civil society is also equally responsible for the political impasse. The role of the civil society seems to have been abated; however, it's uniform instance is imperative for the future political direction of Nepal and also for keeping enthusiasm and voices of the people in tact for the changes and progress.

Issues of Discussion

It has been stated that many conflict induced Internally Displaced Persons (IDPs) have returned home. However, we haven't paid proper attention towards what has happened after they returned to their homes. Have their issues in connection with the political,

social, economic and cultural ones been solved or are in the process of getting solved? After returning, have they been able to restore their former positions in their own societies and communities? Have they been able to resume their regular works, social work, cultural and conventional rituals? And what happens to those who have not yet

been able to return homes or the third places? What happens to those who want neither to return homes nor to settle in the third places? And finally, how can political parties really address the protracted issues of internal displacement? And what contribution must the civil society members do for this? These crucial questions are the

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major points for discussion in this article.

The Context

The world has recorded 27.1 million people displaced internally (IDMC, 2009), which is almost Nepal's population size. So far 54 countries have been identified as affected by conflict, disaster

number of IDPs has continued growing and in 2010 it is estimated to be ever highest. Growing conflicts, effects of the climate change and development activities without giving much care about people are the main factors for displacement. Although more than one-third of the IDPs- prevalent countries including Nepal have made legisla-

This means 50-70 thousands, i.e. 11%, have still remained in the destination (IDMC, 2009).

After 10 years of armed conflict, that caused almost 300,000 people to be displaced, Nepal proceeded for peace process in 2006. And, still, we are talking about the peace process, which has been the rhetoric of almost all political party

Table 1: Facts and figures on Internal Displacement

Facts	Figures
Number of people internally displaced by conflict or violence as of December 2009	27.1 million
Number of countries identified as major cases relating to internal displacement	54
Most affected region	Africa (11.6 million IDPs in 21 countries)
Region with the largest relative increase in number of IDPs in 2009	South and South-East Asia (with a 23 per cent year-on-year increase from 3.5 million to 4.3 million)
Countries with over a million people identified as IDPs	6 (Sudan, Colombia, Iraq, Democratic Republic of the Congo, Somalia, Pakistan)
Countries with at least 200,000 people newly displaced in 2009 (in order of scale)	8 (Pakistan, DRC, Sudan, the Philippines, Somalia, Colombia, Sri Lanka, Ethiopia),
Countries with at least 200,000 people returning during 2009 (in order of scale)	6 (Pakistan, DRC, Uganda, Sudan, Kenya, the Philippines)
Countries with new internal displacement in 2009	23
Countries with a significant proportion of IDPs living in protracted displacement	At least 34
Countries in which almost all IDPs lived in identified sites	3 (Burundi, Chad, Uganda)
Countries with IDPs in urban environments	At least 48
Countries with legislation or policies specifically addressing internal displacement	16

Source: IDMC, 2009.

and environmental problems causing internal displacement and many of them (21 countries) are in the African region. In six countries (Sudan, Colombia, Iraq, Democratic Republic of the Congo, Somalia and Pakistan), the number of IDPs is over one million and in eight countries (Pakistan, DRC, Sudan, the Philippines, Somalia, Colombia, Sri Lanka, Ethiopia), at least 200,000 people have turned as newly displaced in 2009. In 34 countries, significant proportions of IDPs have been living in protracted displacement (Table 1). The

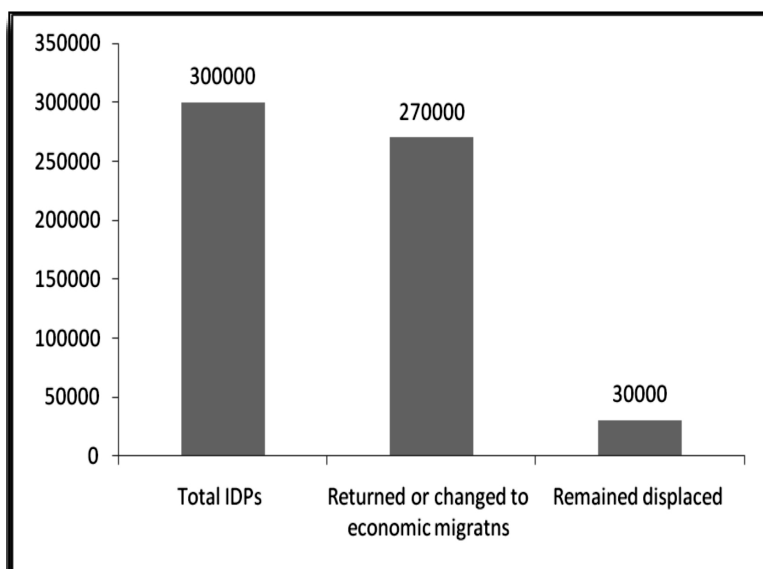
tion or policies on internal displacement, the issues of IDPs have been observed as being more and more challenging.

Facts and figures of internal displacement in Nepal due to ten-year long armed conflict are not uniform. The available facts and figures show that 2-3 hundred thousands of people were internally displaced. After the peace process initiated in 2006, an estimated 230,000–250,000 IDPs are reported either to have returned to their places of origin or have been changed into economic migrants.

leaders and stakeholders. Political developments haven't taken place as per people's expectations. This sluggish political scenario suggests that problems of conflict affected people including the Internally Displaced Persons (IDPs) have not been resolved. A number of facts and figures have been made public for and against the ongoing peace process and its consequence over the victims of conflict including IDPs.

First and foremost, everybody knows that Nepal's peace process wouldn't be slow but has been made so. The public discourse

Figure 1: Number of IDPs in Nepal in Connection with Armed Conflict, 1996-2009



on Nepal's peace process warns everybody with the fact that the major political parties here in Nepal do not want to give the peace process a lasting track through the new constitution. Among them, the Unified Communist Party of Nepal (Maoist), the one that had demanded formation of the Constituent Assembly (CA) while struggling under 'people's war,' sees 'a lot of flaws' in it. Now, since it 'does not see the scope of the CA in the party line', lingering issues are getting priority in Maoists' day to day proceedings of the CA.

The Nepali Congress which claims itself to have been 'the first advocate' of the CA in the history of Nepal had remained dormant during thirty-years' autocratic Panchayat regime and the issue of holding Constituent Assembly election was not any issue for the party even at times when the party was in rule for several times after the restoration of democracy in 1990. During 2006 People's Movement, Nepali Congress supported the idea

of CA, but is still reluctant to abide by the CA's mandate. The party is further reluctant to track its party

Especially, after the people's movement (2006), the civil society's free and fair identities have been diluted and political identities of the society have come to the front. The role of the civil society for the first time in the history of Nepal has been divided and, to some extent, made defunct.

visions and missions whereas it has already acknowledged, under the pressure of the people's movement

2006, that the major bases for state restructuring are federal republican system, secularism, and alternative approaches to the west minister system of rule. The party's level of dissatisfactions has surfaced on the ground and frequent public statements of the party leaders clearly insinuate at the fact that party still has reservations and remorse towards the political decisions taken by the party following the People's Movement 2006. Their sentiments and speeches suggest that the party leaders and cadres are not satisfied with the major political decisions made earlier, such as the end of monarchy, discussions on federal structure, and the overall state restructuring issues.

The Communist Party of Nepal – Unified Marxist and Leninist (CPN-UML) which often claims to be a facilitator of these two parties observes itself that the 'middle path' is the best option in the present political transition but it has always failed to come up with any alternative thoughts to end the existing impasse. Disputes and disagreements, so, are getting priority in Nepal's political developments.

Secondly, the peoples of Nepal are losing the visionary minds of the civil society. Especially, after the people's movement (2006), the civil society's free and fair identities have been diluted and political identities of the society have come to the front. The role of the civil society for the first time in the history of Nepal has been divided and, to some extent, made defunct.

During the People's Movement 2006, civil society in Nepal had played crucial roles for the accomplishment of mission by right tracking the political parties.

In several places and occasions, especially at the time of moral pressure of the vibrant and neutral civil society, different leaders of the political parties have confessed their weaknesses and wrongdoings and have expressed their commitments to right track the political developments in Nepal. With the split voices and visions of the political parties, the civil society's stance also seems to have been divided and politically subjective. The spirits and solidarity appeared among the leaders of the civil society especially during and immediately after the people's movement 2006 has suffered from several lapses.

The emerging regional forces especially in the mid-hill and Madhesh /Tarai areas of Nepal have caused many ups and downs in the political front. Although the emergence of these forces is erratic and they are ephemerally active, they are getting much less support from the people. These forces are being involved in violent activities, but without understanding the fact that people have always shunned and disapproved the idea of politics through violent means.

As a consequence of these major political conflicts in Nepal, dozens of issues connected with people have been sidelined and in some contexts have been shadowed due to the tripartite conflicts of political parties, the civil society and the emerging regional forces without political foundation. As a result of the severe lacking of the collaborative mentality, the sufferers of the previous conflicts – the IDPs, the disappeared people and their families, the injured and wounded, the single and helpless and so many other victims are compelled to live with further deteriora-

tion and hardships.

As a result, an estimated 50,000 to 70,000 people displaced due to the ten years of civil war, have remained unable to return to their homes (IDMC, 2009). Additional number of new IDPs has been seen especially from 2007 onward, after the Madhesi groups in the Tarai region started to protest over the lack of progress in the

Unfortunately, the ongoing peace process could not be satisfactory for the IDPs and the victims of conflict. Those who returned did not get opportunity to claim their all physical properties. They did not get opportunity of being treated as equal citizens of Nepal. They were rather forced to donate further to the parties and the regional forces.

implementation of the peace process and the lack of opportunities for political and social integration. The violence forced 6,000 to 8,000 people to be displaced where most of the displaced people were people of hill origin. Of the displaced, 4,000 were sheltered in IDP camps, while the rest stayed with family members (OHCHR, 2008; IDMC, 2008, Khatiwada, 2009).

Onset of Peace Process: A Ray of Hope for IDPs

The peace process that began in 2006 was itself a ray of hope for every victim of conflict in Nepal including the IDPs. They had thought that the peace process at least would help in their eagerly awaited dream of returning home. However, the issue at hand is not only returning home. Equally important in their lives is to get sustainable happy environment. Those who could not return had expected that they would be resettled and their dignified life would revive. Those who were staying in the destination and were slowly changing into voluntary/economic migrants had also thought that they would take part in their own political activities or would adopt some other occupations. Unfortunately, the ongoing peace process could not be satisfactory for the IDPs and the victims of conflict. Those who returned did not get opportunity to claim their all physical properties. They did not get opportunity of being treated as equal citizens of Nepal. They were rather forced to donate further to the parties and the regional forces.

Provisions for IDPs in the Peace Process

The question what are the provisions made so far to address the problems of IDPs is a matter of interest to everyone. Provisions on the IDPs have been included in almost every peace agreement including the first Seven Party Alliance (SPA) - Maoist 12 Point Agreement of 22 November 2005. Point 5 of the 12-Point Agreement between the then Seven Party Alliance and the CPN –Maoist stressed to:

“Create conducive atmosphere to allow all ..., who were displaced from home during the conflict, to return to their respective places with full respect.” (Nepal Research, n.d.)

The then CPN- Maoist further agreed to “return the houses and physical properties of the people and the party cadres seized unjustifiably.” The then Maoist showed commitment to create an environment for all the people to “take part in political activities without any hindrance” (ibid).

After “the 19-day peaceful and non-violent movement [in 2006] turned successful and democracy was restored with the sovereignty of Nepal inherent to the people and reinstatement of the then House of Representative” (MoPR, n.d.), several dialogues were held between the parliamentary political parties and the UCPN- Maoist to strengthen the peace process. In these dialogues, the issue of IDPs was raised with prime focus. The Comprehensive Peace Accord signed between the then CPN-Maoist and the parliamentary political parties representing the state on 21 November 2006 has been the major basis for proceeding to peace process till now. Based on this agreement, several political decisions have been made. The Point No. 5.2.4 of the CPA document highlights thus:

“Both sides [Maoist and Government] agree to maintain the peace in the society normalizing adverse situation occurred by the reason of the armed conflict and to carry out relief work for, and to rehabilitate people victimized and displaced by the war to constitute a National Peace and

Rehabilitation Commission to perform the business related to it” (MoPR, n.d.).

In 2007, National Policies on Internally Displaced Persons, 2063 (2007) was made and finalized which was in fact the updated and revised version of the 2006 IDP policy document. The former policy document had not recognized the IDPs caused due to mainly the

In 2007, National Policies on Internally Displaced Persons, 2063 (2007) was made and finalized which was in fact the updated and revised version of the 2006 IDP policy document. The former policy document had not recognized the IDPs caused due to mainly the state controlled security forces.

state controlled security forces. This updated version has defined the conflict induced IDPs as:

“a person or family who is displaced internally by compulsion owing to creation of such a situation where it is not possible to live in one's home or place of habitual residence due mainly to armed conflict or situation of violence or the conditions of gross violation of human rights” (MoPR, n.d.).

Policy Intervention: A Knotty Problem

Nepal's peace process has faced number of ups and downs. Rounds of discussions have been held and from time to time almost equal numbers of decisions have also been made. However, the implementation part with strict monitoring and evaluation mechanism is the major problem faced by the Nepali people. This hard fact is also applied in the IDPs' situation. Proper implementation of several policies has not been made possible by playing a crucial role between or among the political parties and their stakeholders. For example, the IDP Policy document of 2007 states:

“...to rehabilitate the internally displaced persons or families with respect, safety and voluntary basis and assist in reconstruction of physical infrastructure and adopt preventive as well as sustainable measures with re-socialization in order to prevent the reemergence of such situations in future” (Government of Nepal, 2007).

This policy has not been implemented with keen desire. Apart from this policy, dozens other including the formation of Truth and Reconciliation Commission, implementation of Rayamajhi Commission's report, and establishing the base for state restructuring under federal system are not getting priorities in the current political discourse in Nepal. Peoples of Nepal are fed up with the hollow reiteration of the leaders as to formation, dissolution and reshuffling of the government which has nothing to do with IDPs.

Conclusion

Nepal's solution of IDPs' problem is mainly connected with political stability because political cause is the main factor for forcing a huge number of people to be displaced. Although disasters like floods and landslide are also responsible for the displacement their stories of suffering and the plight are less protracted than those of the conflict induced IDPs.

Rather than working together being guided by the mandate of the People's Movement 2006 and the CA election 2008, parties are striving for lingering the ongoing peace process. The public discourse here in Nepal warns everybody with the fact that the major political parties do not want to give the peace process a lasting track through the new constitution. The first and foremost role of the parties should be to work with con-

sensus putting their differences aside.

The role of civil society should not abate because for the future political direction of Nepal and for representing people's enthusiasm and voice only civil society is the medium now.

Although there have been noticed violent regional forces especially in the eastern- hill and Madhesh/Tarai areas of Nepal, they are getting much less support from the people. These forces are being involved in violent activities, but without understanding the fundamental principle of the people who have always rejected the idea of politics through violent means.

The ongoing peace process initiated in 2006 was itself a ray of hope for every victim of conflict in Nepal including the IDPs. Despite victims' eagerness, the political situation of Nepal has not been able to

give justice to a number of victims of conflict including the IDPs. Both the political parties and the civil society may claim that they have been involved in addressing the issues of the victims of conflict but believing the claims without understanding IDPs is meaningless. Despite the fact that the IDP provisions have been included in almost every peace agreement including in the first SPA-Maoist 12 Point Agreement of 22 November 2005, major problems of IDPs have not been resolved with categorized agenda for solutions. Victims' dignified life after rescue and rehabilitation have not been given the first priority in these agreements. Only by saying that 'victims' problems are and will be sorted out through mutual understanding of conflicting parties' does not give any sense when we are talking about dignified life of the people.

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Post-conflict Nepal and the Issue of Land and Property Return and Restitution



» Prem Chandra Rai¹«

The Maoists should be convinced on the fact that snatching property without due process from one citizen and handing it over to another does not, in reality, transfer the ownership of that property to receiver. This is not the system developed in a civilized world about how to create an equitable society.

1. Introduction

Land and other properties seized during conflict and at the time of transition is one of the most challenging issues in post-conflict societies. Property in this context does not generally cover those in cash and other movable property e.g. vehicle, food ingredients, jewellery etc, but necessarily the freehold land and private homes. There are some obvious reasons as to why people are generally reluctant to claim their movable properties which were confiscated or destroyed during the armed con-

flict. To make an effective property claim the statement of seized property should be established, and secondly there should be someone against whom a claim could be filed. But, due to weak war-torn administrative mechanism it is almost impossible to establish the fact that movable property such as some valuable jewellery had been looted, and also, it is equally difficult to find a specific culprit against whom a compensation claim can be lodged. Yet, when a question regarding their land and houses arises, the victims always seem sensitive and come to the forefront to

place their claim readily to fight for their ownership on the land or houses. The claim in relation to immovable property is feasible as the claimant still holds the legitimate title over the disputed property and also the plunderer who grabbed the land still occupies it.

In the post-conflict society the property dispute normally arises when the secondary occupation of homes and lands, often by those who had fought on the winning side² in the country's civil war and who considered their new acquisitions to be rewarded for their victory.³ Though, the victim or internal-

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2. In Nepali context, though Maoist cannot be regarded as the winning side, they had, during the insurgency, de facto control over the majority part of the countryside of Nepal.

3. Bagshaw S, 'Property Restitution and the Development of a Normative Framework for the Internally Displaced', (2002), 19, 3 *Refugee Survey Quarterly* (UNHCR). p. 209

ly displaced persons (IDPs) helplessly maintain capitulation during the insurgency period, they will start placing their property claim or the displaced persons start returning to their place of origin or resettle in a new area as soon as normalcy returns to the country, and will still be confronted by people laying claim to the same land. This type of phenomena pushes the whole society under a highly volatile situation that a new cycle of violence based on the land disputes may erupt and sustain. The main question here is how a country like Nepal which is seized by property dispute selects the strategies so that victims or all people affected by the conflict feel relieved, where impunity will end, justice prevails and the possibility of further conflict will be averted.

Nepal has experienced a decade-long armed insurgency that claimed 13,000 lives and witnessed massive infrastructure destruction and property damage. An estimated 100,000 to 200,000 people were displaced internally⁴, and after the Comprehensive Peace Accord (CPA) was signed, up to 70,000 people still remain unable or unwilling to return home.⁵ During this insurgency period, thousands of *bighas* of land in Terai, hundreds of *ropanies* in Hills and Mountains were seized, and private homes were locked up, occupied or not allowed to be used by the insurgents of the Communist Party of Nepal (Maoist).⁶ In November 2006, the

armed conflict formally came to an end after the CPA was signed by the Maoists and the then Seven-Party Alliance. The issue of property return became hot and highly debatable during negotiation, and at the end both parties reached an agreement that all land seized during the conflict would be returned while steps would be taken to develop policies for scientific land reform. Subsequent four years have been elapsed but the commitments made by both parties are yet to be fulfilled. Further, the incessant trend of grabbing lands and property seizure has become post-conflict common phenomena⁷ seriously threatening the whole peace process of Nepal.

This paper gives a quick background of the land conflict in Nepal, and an overview of the contemporary Nepali situation regarding land and property dispute. In doing so, special attention shall be paid toward the general tendency of land and property grabbing during the armed conflict and post-conflict period. Discussion shall also be centered on how to deal with property return and restitution issue efficiently and in such a way that the process won't have any devastating consequences to the extent of derailing the country from the whole ongoing peace process. An analogy of various countries' experiences regarding property seizure and return in post-conflict society shall also be drawn to show what

lessons from these experiences can be of use. At the same time international standards related to this issue as well will be taken into references. This paper aims to identify and scrutiny the ideas that might be used in designing post-conflict property restitution mechanisms to ensure both fairness and efficiency. For this, better situation analysis is needed and appropriate short term as well as long term policy should be adopted; but of what kind? This article will try to deal the situation relating Nepali context with various theories, international experiences and legal regime.

2. A Glimpse at History

Historically, cleavage between aboriginal racial stock and other neighbors arose not primarily out of racial and cultural differences between them but rather of confrontation over land.⁸ Traditionally, land-tenure policy was based on the custom that land belongs to the person who reclaims and cultivates it.⁹ As time progressed, the concept of property right in the land, divorced from the requirements of personal use, emerges only through the sovereign powers of government and is based on law and documentary evidence.¹⁰ The land started to be considered as the property of the state in the name of *raikar* which then was redistributed in the name of *Birta* and *Jagir* as grant or reward by the state in favour of individuals from few selected classes in the

4. IDMC (Internal Displaced Monitoring Centre), *Nepal: sustainability of IDP returns undermined by lack of assistance*, (Norwegian Refugee Council, 2008), p. 5. This report further clarifies that this figure is just a rough estimation settled by most of the international organizations.

5. IDMC, *Failed implementation of IDP policy leaves many unassisted*, (Norwegian Refugee Council, 2010), p. 1

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7. The Carter Center, 'Land Commitments in Nepal's Peace Process only Partially Fulfilled', *News* (Atlanta, 2010), p. 20

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10. Kenneth H. Parsons, "Agrarian Reform Policy as a Field of Research," *Agrarian Reform and Economic Growth in Developing Countries* (Washington: U.S. government Printing Office, 1962, p.18 as cited in Regmi MC above n. 8.

INFORMAL had collected representative views from across the country from the professionals, intellectuals and social workers on what they have to say about the ongoing peace process, constitution drafting and political developments in the country. Abridged Versions:



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Achham**

Peace process in Nepal was accelerated being guided by the 12 –point understanding reached between Seven Party-Alliance and the then rebellion UCPN Maoist. The agreement had been able to hold election of the Constituent Assembly in 2008. However, following the election political parties in Nepal have been involved in blaming each other, rather than clinging to the constitution writing process, in such a way that there has developed distrust among them resulting in political deadlock.

Although the parties, either in the governance or in opposition, express that they are there in the CA for easing the everyday life of the people through state restructuring, the Constituent Assembly has not been utilized by them for the purpose. To work as per the mandate of People's Movement II for drafting constitution by putting the temptation of power and position behind is to understand people's trials and tribulations, however, the parties have failed to do so.

No sense of repentance is seen on the political parties even when they couldn't accomplish entrusted job of constitution writing on time and there has started to surface public frustration that people have been brought into play as the ladder. So, one can't be assured that constitution will be drafted. It is too crucial for the parties to work honestly remaining detached from personal and party interest by showing heightened sense of responsibility towards the country. The parties have to be able to acknowledge their commitments and have to have high opinion towards people and nationality. The party having war at its background has to be able to transform itself as per the popular will and democratic way, this will be helpful in avoiding disbeliefs seen among the parties and will enable them to reach to the destination.

Rather than abiding by the agreements and accord signed earlier, parties have measured those agreements and accord with their own yardsticks. Obsessive preoccupation towards post and power, failure to incorporate politics with socio-economic and geographical situation of the country, lack of willingness and knowledge as to drafting constitution and restructuring state are primarily responsible for the standstill seen at present in the country.

The issues like restructuring of the state, combatants' integration and management have been shadowed portending that instability will continue in the country. At a time when the country is under transitional phase, rules and regulations are difficult to be operational and a country is in the phase of constitution drafting, consensus and collaboration is a must but parties have opted for arithmetic solution of the present problems. This will further deteriorate the problems of the country. Formation and dissolution of governments in an unnatural way will distance the people from the leaders.

It has been expressed by the concerned oftentimes that almost seventy percentage of work of constitution writing has been over. However, primary and sensitive issues like state restructuring, determin-

ing the form of the state, integration of the Maoist combatants have not made any headway so far. So, my view is that seventy percentages of works is yet to be accomplished



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Nepal had taken the course of conflict due to inability of the state to address people's grievance and problems. When right approaches were not adopted in solving the induced conflict; country had undergone an escalated violence for long. But, when Nepali society couldn't agree to killings and violence of conflict, it had taken the course of peace and reconstruction again following the Comprehensive Peace Agreement (CPA).

Peace is requisite for stability and economic progress of a country. Though not to the level of people's expectation, there has been some progress towards restoring peace following the signing of the CPA.

Almost two months have slipped away even after the extension of the tenure of the Constituent Assembly. However, tug of war among the political parties and leaders as to who will be the Prime Minister is still going on digressing from the important issues. Contrary to the purport of many, stalemate has continued even after the PM Madhav Kumar Nepal resigned. Major three parties have claimed premiership under majoritarian system and such tendencies have further obstructed the ongoing peace process. So, it can't be assured that constitution will be made within the given time.

Rather than accomplishing constitution writing task within the stipulated time by agreeing on the issues like integration of the combatants, determination of the forms of the governance, restructuring of the state and solving similar other tasks as mentioned in the CPA and other agreements, government has been unable to carry out even the regular functions effectively. It is also heard that present stalemate in the country has emerged due to conflict between the forces that want constitution and the other who don't, but, if all the responsible parties show high political will power, constitution can be written within given time. It seems that parties have been unable to safeguard the achievements of the People's Movement II and have also failed to abide by the agreements and accords signed by them earlier. There are ample grounds to be cynical- whether such accords and agreements were deceptions only!

Whatever has been achieved so far is due to consensus forged among the political parties. Now, consensual politics has not been adopted so overall peace process has been stalled. It is the consensus that brings diverse political parties having contrary policies, programs and modus operandi together.



**Padamsaran Regmi, Associate Professor
Kaski**

The principal political parties are incessantly striving to mold and transform state mechanism as per their corresponding political beliefs, philosophies and principles. Primarily, Maoist party is seen centered on utilizing the overall peace process as its strategy to implement its political principle of war time- single-party authoritarianism.

Reluctance of Maoist party to relinquish this strategy has further intensified the fear on the other political parties. Maoist couldn't be guided democratically whether it was in the governance or in opposition. Dilly-dallying in integrating its combatants, reluctance to return the captured properties, land and buildings, denial to acknowledge pluralism, intention to curb the independent judicial system and

many other behaviors and incidents have made the other political parties view the Maoists cynically.

The on-going peace process in Nepal has been put on the line due to behavior and principle of the Maoist party that has been clinging to old ways of using force rather than abiding by the signed accords and agreements. However, accomplishment of Constituent Assembly election, emergence of rebelling party as the largest party in the Constituent Assembly agreeing to adopt democratic norms for the transformation, discharge of the disqualified Maoist combatants from the cantonments are some of the markers that make us optimistic.

Following the election of the Constituent Assembly the activities of the political parties have centered on power politics and it seems that prime agenda of the country, constitution making process, has been put to oblivion. Parties haven't felt any sense of compunction, rather; the parties are split over the issues in such a way that they haven't been able to find out a common ground for the formation of consensus based government.

Problem lies with the UCPN Maoist. It hasn't been able to acknowledge democracy and its fundamental elements that are acceptable universally. Expression of some of the senior leaders of the UCPN maoist shows that they have paid only lip service to democracy. If the political parties remain divided over the crucial issues of constitution making like form of the governance, state restructuring, federalism and democracy, parties won't be able to forge consensus. Popular expectation is that at least on the aforesaid basic issues parties representing in the Constituent Assembly should be able to forge consensus.

It seems, some forces including the UCPN Maoist party are trying their utmost for making constitution making process a failure thereby inviting instability in the country.

One can express agreement and disagreement under democracy. Urgency of the time is that parties have to be able to put aside their agendas and differences for the sake of constitution drafting process, whereas, the concerned parties haven't been able to do so. Country can't be the victim of indecision. Primary focus of the parties should be on developing the culture of consensus.



Sunil Shrestha, President, Appellate Court Bar Association Banke

It seems that the on-going peace process in Nepal is heading towards its destination positively. At this moment in time party leaders bearing responsibility for succeeding the peace process are expressing their commitments and are seen striving for the purpose. However, even after the extension of the term of the Constituent Assembly parties are divided rather than working together for the out-let of existing deadlock. It is not unnatural that parties are divided in course of their attempts for the consensus, collaboration and formation of joint government. But, it is sure that prolongation of such division among the parties on the issues won't be helpful for finding political out let in the country.

Problem started from the time when parties failed to form a consensus based national government at the time of forming government right after receiving the result of the Constituent Assembly election and couldn't keep their party- interests behind. Giving continuity to consensus based politics would certainly ease the constitution making process and could provide constitution on time. Nepal has undergone a sea change, however, political culture on the part of the parties couldn't be developed as per the changing situation. Rather than working together acknowledging the peace process as the central agenda parties are involved in a tug of war for the post and power by consolidating a culture of

undue competition and they have not been able to converge for the way out.

Despite the arguments of some that present situation is the result of conflict between those who want constitution and who don't, every party is in need of new constitution. However, it is likely that some persons and parties are keen to push back the constitution making process. Such tendency will ultimately be detrimental for them. Present delay in the formation of government following the election of Constituent Assembly and the formation of majority government are equally responsible for not achieving on time what we expected. Optimistically, we have achieved many things as per our expectations. Submission of reports by different thematic committees of the CA, extension of the tenure of the CA, regular discussions among the parties for the integration and management of the combatants are the main achievements. Similarly, the unanimous decision of the CA members for the declaration of Federal Democratic Republic of Nepal and its implementation are very important achievements. Of course, constitution writing process couldn't be finished on time; however, it has not been delayed to the extent that one has to be desperate.

Whatever has been achieved so far were possible due to the practice of consensus and collaboration. Consensus among the political parties at present is a must.



**Dinesh Shrestha, General Secretary
Elite Club Biratnagar, Morang**

Prime concern of today is to succeed the ongoing peace process and to write constitution. However, peace process hasn't been able to gain momentum due to distrusts among the political parties, their shortsightedness, incompetence and excessive desire of post and power. These are the factors for creating present stalemate in Nepali politics. Nepal at present is undergoing a horrendous political position. Belief of people on the political parties has been plummeted to negative point, parties have budged ideologically, have construed the things in a self-centric way and leaders have developed consumerism in their lives remaining insensate towards national problems. Above all, parties have failed to manage and execute political authority properly.

It seems that despite their acquiescence over the issues like Constituent Assembly, federalism and republican set up, democratic forces in the country are seen reluctant to acknowledge such changes. In the mean time, inability of the UCPN Maoist to fully relinquish violence and to subsume itself into the democratic mainstream is a challenge at this moment in time. Bitter reality is that even after the defeat of the center of feudalism, remains of it are still in effect. Because people at the lowest rung of political structures of all political parties and many of the political leaders at the top level are still striving for the new constitution, it can be hoped that we will get new constitution. Declaration of secular and republican set up, election for Constituent Assembly, provisions of inclusive and federal structure and beginning of serious debate at the grassroots level on state restructuring are great achievements so far. Challenge now is how to institutionalize and consolidate them.

National consensus for the formation of government is indispensable and we have pleasing experience of adopting consensus in the past. This is high time that we shouldn't be enmeshed over majority and minority provisions as to forming government.

The problems with us at hand are not indomitable. Political honesty, managerial proficiency and strong political will power, are needed to do away with the problems.

- Views expressed here were collected from the districts through Regional Offices.

community from Indo-Aryan origin to the exclusion of aboriginal group.¹¹ This was how unequal land distribution system was introduced.

The inequality in land distribution in Nepal continues to show a very disappointing picture. The bottom 40 percent of agricultural households use only 9 percent of the total agricultural land, while the top six percent occupies more than 33 percent of the total.¹² In another research, an extraordinary 75% of rural households still hold less than one hectare of land, at the other extreme, 3% of households own 17.3% of the total arable area.¹³ This inequality which has been rooted in the historical unfair tenure system of land, became one of the main reasons to start decade long armed insurgency in Nepal.

In February 1996, before actual embarking on the armed struggle, the Maoist party declared, "Those who cultivate the land should own it. The land of rich landlords should be confiscated and distributed to the homeless and others who have no land."¹⁴ In this background, they further appealed to people to raise the banner of just war against this unjust war.¹⁵ In 2000, when the armed struggle had been at its highest point, Maoist Chairman Prachanda said that they were carrying out an 'agrarian revo-

lution' involving land seizure from the landlords.¹⁶

These facts clearly demonstrate that the seed of armed rebellion was planted on the historically embedded inequitable distribution of land. The Maoist has just cashed it in favor of their ideological achievement in which they became successful and garnered a significant support from the peasants and other impoverished classes. During this period, Maoist unilaterally

The Hill and Mountain areas as well were affected by Maoist land seizing drive during the conflict, but it was, however, not as serious as it was in the Tarai.

implemented their commitment of grabbing private land and homes, and confiscated personal properties. After CPA the Maoist insurgency formally came to an end in 2006, but, the practice of seizing personal property, grabbing private land and illegal occupation of private homes still continues heralding another cycle of land-based conflict.

3. Illegal Seizure of Land and Private Properties:

The trend of land and property seizure by Maoists can be divided into two phases: conflict-period and post-conflict period. Land seizure, occupation of private home and confiscation of personal property especially land-based products had been common phenomena during the period of armed conflict. Maoists were active in seizing land in the Tarai during the conflict. Thousands of *bighas* of land were reportedly seized in districts of Far and Mid Western Tarai having the highest number of conflict-era seizures.¹⁷ However, eastern-Tarai was also not spared from such an activity. Morang and Dhanusa as well were heavily affected by such a practice. Further, it was not just land that was captured by Maoist cadre, but other properties as well were occupied or confiscated.¹⁸ The Hill and Mountain areas as well were affected by Maoist land seizing drive during the conflict, but it was, however, not as serious as it was in the Tarai.

In November 2006, when CPA was signed the Maoist party became ready to return all the properties seized during conflict and made commitments not to seize or control any more properties.¹⁹ However, these commitments were just partially fulfilled and the

11. Above, n. 8, p. 27

12. Upreti BR, Dynamics of Resource Governance, Resource Scarcity and Conflict in Nepal, in *Journal of Forest and Livelihood* 4(1) July, 2004, p.13,15

13. Dr. Wily LA, Dr. Chapagain D, and Dr. Sharma S, *Land Reform in Nepal: Where is it coming from and where is it Going?* Published by DFID, 2009. p. 123

14. Point 27 of the Memorandum. On behalf of the Central Committee of United People's Front, Nepal (the then political wing of newly formed Communist Party of Nepal - Maoist) the Chairman Dr. Baburam Bhattarai presented the Nepali Congress-led coalition government of Sher Bahadur Deuba with points of 40 demands on 4 February 1996.

15. Leaflet distributed across the country by the Maoist party to join the People's War on February 13, 1996; the day the war was started. available at: <http://www.ucpnm.org/english/doc4.php> accessed on 23 June 2010

16. Interview taken on 20 February 2000 by Onesto L, at Thapa D ed., *Understanding the Maoist Movement of Nepal*, (Centre for Social Research and Development, 2003)p. 202.

17. Above, n. 6, p. 11

18. For detail see, above n. 6

19. See, Clauses 5.2.1, 5.1.8, 7.5.5 of the Comprehensive Peace Accord (CPA) Concluded Between the Government of Nepal and the Communist Party of Nepal (Maoist) on 21 November 2006.

Maoist cadres kept holding many of the properties seized during the conflict. An obvious acknowledgment of which can be seen when the Maoist Chairman Pushpa Kamal Dahal, while in Prime Minister's Post, expressed commitment in January 2009 to return all the seized properties within three months and in the same month the Supreme Court of Nepal issued an order against the government to return all lands and properties seized by Maoists to the rightful owners within three months. Again, it is not just that the commitment remained unfulfilled and the court order was defied; the Maoist cadres further escalated the practice of property seizure across the country. At this stage they used different political wings affiliated to the Maoist party, for example the All Nepal Peasants' Association-Revolutionary captured 34 hectares land at Karma VDC in Kapilbastu in Nov. 2009,²⁰ In December, thousands of hectares in the Western Terai districts of Banke, Bardia, Kailali, Kanchanpur and Dang was captured in the name of All Nepal Landless Association²¹; In May 2010 All Nepal Squatters' Association (ANSA) seized the property belonging to Bhudhwoj Katuwal in Jhapa²²; and, in the same month All Nepal Freed Kamaiyas Association (ANFKA) seized an additional 154 *bighas* of land in Bardia district.²³

4. Property Return and Restitution

4.1 Current Situation

It is not just difficult but almost impossible to specify precisely the amount of land confiscated by Maoist during the armed conflict. It is equally not easy to say the amount of property returned to its rightful owner after the signature

It is not just difficult but almost impossible to specify precisely the amount of land confiscated by Maoist during the armed conflict. It is equally not easy to say the amount of property returned to its rightful owner after the signature of the peace accord.

of the peace accord. As one report has just mentioned, no comprehensive credible and impartial records exist, making it nearly impossible to accurately estimate the total amount of seized land, how much has been returned and how much has yet to be returned.²⁴ However, various sources indicate that some

of the seized lands and homes had been returned.²⁵ In some Terai districts, most of the lands seized by the Maoists during the conflict appear to have been returned. However, this is not in the case of mid and far-western Terai.²⁶ The situation of property return can also be examined from another angle. One recent report has mentioned that within more than three years after CPA, up to 70,000 people displaced by the war remain unable or unwilling to return home.²⁷ By inference, it is echoing in another way, the fact that their property has not been returned or they are still prone to snatching more properties or are vulnerable to exposing themselves in another set of violence, perhaps, hasn't eliminated the chances of direct confrontation with those who occupied their properties in the past.

4.2 Land and Property Dispute, and Peace Process

In any post-conflict society that undergoes transitional phase, the question of land and property return, and restitution always comes in the forefront. The same issue has been the most delicate part of the peace process in various post-conflict societies across the world. For example, by the time East Timor was taking a new shape after receiving independence in 2000, most of the homes in its capital city were occupied by people

20. *The Kathmandu Post*, 'Maoists seize land', 14 Nov. 2009

21. *The Kathmandu Post*, 'Land-grab drive goes unabated', 16 Dec. 2009

22. *The Kathmandu Post*, 'Unions seize private property', 15 May 2010

23. *Republica*, Maoist land grab drive on, 23 May 2010

24. Above, n. 6, p. 9

25. For example, *The Kathmandu Post* on 4 February 2009 reported that 'Maoist cadres have returned land belonging to Former Prime Minister Surya Bahadur Thapa in Dhankuta, Former Prime Minister Lokendra Bahadur Chand in Baitadi, CPN-UML leader Amrit Kumar Bohana in Sindhupalchowk and Late Sachhit Shumsher Rana's resort in Gorkha', by citing the Home Secretary source.

26. Above, n. 6, p. 9

27. IDCM, 'NEPAL Failed implementation of IDP policy leaves many unassisted', (Norwegian Refugee Council, 2010), p.1. available at: [http://www.nrc.ch/8025708F004BE3B1/\(httpInfoFiles\)/FFF5958EB13C0AF8C12576B900395E1D/\\$file/Nepal_Overview_Jan10.pdf](http://www.nrc.ch/8025708F004BE3B1/(httpInfoFiles)/FFF5958EB13C0AF8C12576B900395E1D/$file/Nepal_Overview_Jan10.pdf) accessed on 23 June 2010

other than their former owners and problem surfaced.²⁸ The same was the most nerve-racking issue in the transitional phase of post-apartheid South Africa²⁹ as well as in post-conflict Kosovo.³⁰ The disintegration of property rights occurs during armed conflict, and post-war claim, re-claim and re-establishment of ownership, use, and access rights to properties, lands and land-based resources by a significant proportion of the affected population will create a very complicated and problematic situation on peace process.

Before embarking on the answer to the question at hand, as to how the lands and other properties can be returned or how to compensate the victims with proper restitution, it would be more prudent to discuss on the question as to why it is crucial to deal on the land and property issue as an integral part of ongoing peace process in Nepal. At this point answer should be more specific:

Politically: the CPA is the foundation of the peace process in Nepal and seized land and property

return is the integral part of this instrument.³¹ All political parties are morally bound by this political commitment, violation of which will end up with total failure of peace process.

Legally: The Nepali Constitution protects all citizens' right to property, and further ensures restitution for the victims.³² Continuous seizure of land and not providing protection from such activities to the victim can only create a situation of total lawlessness. At the same time the right to property is well protected by international laws and Nepal has obliged to abide by them.³³

Theoretically: Property rights have been regarded as the natural rights.³⁴ Today, right to property has been identified with human rights which is inalienable, therefore cannot be taken away from anybody.

Practically: No one, who is deprived of one's own property, readily gives up an effort to get back that property which they feel was unfairly snatched away. This view if linked with the current land issue in

Nepal, the victims will sooner or later start re-claiming their land or if the problem is not solved in a lawful manner, they will start counter attacking to the unlawful occupants. This horrifying scenario, when public themselves will be fighting with each-other, can have even more devastating consequences than the armed conflict itself in the past.

The aforementioned points simply depict the fact that the land and property issue in post-conflict society is perhaps the most challenging as well as crucial subject, upon which the future of whole peace process depends.

4.3 Land and Property Return, and Restitution

Though post-conflict property issue in Nepal does not seem as alarming as has been in international scenario,³⁵ it will be an unforgivable mistake if one misjudges the potential threat it has. So, this issue is inextricably connected with the peace process of Nepal. Addressing the issue of land return and restitution requires the design and imple-

28. It was mainly the result of the atrocities perpetrated by Indonesian Military before the independence and the militia backed by Indonesian army afterward. See generally: Carson AO, 'East Timor's Land Tenure Problems: A Consideration of Land Reform Programs in South Africa and Zimbabwe', (2007) 17 *Indiana International & Comparative Law Review* 395,

29. See generally: Boyle H, 'The Land Problem: What Does the Future Hold for South Africa's Land Reform Program?' (2001) 11 *Indiana International & Comparative Law Review*, 665

30. COHRE (Centre for Housing Rights and Eviction), *Property Return and Restitution: Kosovo*, Prepared for Review of Covenant Law Issues in Kosovo by the UN Committee on Economic, Social and Cultural Rights, 2008. available at: <http://www2.ohchr.org/english/bodies/cescr/docs/infogngos/COHREUNMIK.pdf> accessed on 20 June 2010

31. See, Clauses 5.1.8 and 7.5.5 of the CPA

32. Articles 19 & 33, Interim Constitution of Nepal 2007.

33. Within the Universal Declaration of Human Rights (UDHR), and the two binding Covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), a number of articles are directly connected to rights to property and land.

34. Especially John Locke advanced the theory of property that, 'Every man has a property in his own person. This nobody has any right to but himself' (Second treatise, 27) 'Natural reason, which tells us, that all men have a right to their preservation, and consequently to such thing, as nature affords for their subsistence' (Second Treatise, 25). See, Lowe EJ, *Locke*, (London and New York: Routledge, 2005), pp 179,180

35. For example, in Guatemala, the 36 year civil war (1960-96) left one million persons internally displaced and 151,000 exiled as refugees, resulted a tremendous post-conflict land claim cases. See generally, below n. 36; as a consequence of the Kosovo conflict (1998-9) 120,000 houses were damaged, 800,000 persons displaced from their home, land and property claim case amounted to 27,000. See, Arraiza JM & Moratti M, 'Getting the Property Questions Right: Legal Policy Dilemmas in Post-Conflict Property Restitution in Kosovo (1999 – 2009)', (2009) 21 *International Journal of Refugee Law*, 424,25,31; In East Timor, as a result of the militia violence after independence over 450,000 people were internally displaced and a further 300,000 fled or were forcibly transported to West Timor. Over 10,000 land claims were filed by 2004. See above n. 27, p.401,422; In Nepal, internally displaced persons are estimated 50,000 to 70,000, and private land capture amounts to 2,000 cases overall. See above n. 12, p. 164

mentation of special legal and institutional machinery including setting up of a procedure to address property claims that would significantly affect the desired outcome. Certainly, political commitment will always come to the forefront to address every socio-economic and political issue. Needless to say, Nepali people have heard time and again from political leaders that the seized land and property will immediately be returned, however, people haven't got any positive results from the leaders as committed by them. Now, it became clear that the commitment itself is not so expedient unless it is corroborated by determination and honesty.

There should be immediate action and comprehensive policy to address this issue effectively.

4.3.1 Immediate Action

This measure will be mainly of political nature depending on the decision of major political parties. There will be three main objectives of this stage: first, easy-way-property-return; second, give the all unlawful occupants the message that sooner or later the land and property should be returned to the rightful owner; and third, to give the message that there will be no further political backing in favor of unlawful occupants. However, following main actions will be pertinent in this connection:

(1) *Keep the situation in status quo*: Maoist party and government should make a simultaneous announcement for the immediate halt of unlawful practice of land seizure. Maoist party should stop giving moral support to those who unlawfully captured the land and other property, and also should internally circulate the message that

no party cadres shall involve in such activity.

(2) *Return to the Past*: this is mainly the restoration of situation before the conflict. After maintaining status quo there should be another announcement that all the land and properties whoever occupied unlawfully should return to its rightful owner. Again, there would be multilayered effort on this ranging from central level announcement to local level dialogue and conciliation. At this, all party cadres can play an active role of being a mediator.

Obviously, immediate actions will not solve all the problems as the multidimensional socio-economic matters would have been entangled with this issue. The question as to how effective would this tactic be is also connected with the further question that who actually is occupying or holding the land. For example, if political cadres or other peoples in individual base are capturing the land then perhaps they will be ready to return it. But, if the unlawful occupants are landless, are squatters or other poverty stricken peoples occupying the land with mass presence then it will not be easy to remove them. However, this tactic would have some positive outcome in meeting its objective, and ease the way for further action. After certain period of time the comprehensive policy should be adopted.

Comprehensive Policy:

This policy will mainly be of legal nature and will be divided into two phases: Short-term policy and Long-term policy.

(1) *Short-term policy*:

Short-term policy is neces-

sary to address the claim of the victims, and also for the temporary resettlement of the evicted occupants and other IDPs. Since regular court system or existing Land Reform Office will not be able to deal with this special situation of land and property claim, a new legislation should be introduced establishing an independent and powerful, *land and property claim commission* and a *land and property claim tribunal*. These bodies will not just deal with the property claim, return and restitution but also with resettlement of the IDPs and evicted peoples.

Land and Property Claim Commission (LPCC) and procedural mechanisms

All the office holders of this commission should be independent of political partisanship and should have expertise in different field with high moral background. This commission should be charged with specific mandate with fixed working criteria, which will exclusively deal with the land and property disputes that have emerged as a result of armed conflict. It should have clear and explicit substantive and procedural provisions, for example: whether an individual from victim's behalf can file a claim; if mass claim can be allowed; specific deadline for property claim etc. Every single term in this relation should have clear definition.

Credibility and integrity of the commission should be maintained at all cost which is profoundly crucial to make its decision effective. To maintain these values: Staffs should not be taken from government civil servant as they will be accused of being biased towards claimant who is also a gov-

ernment office holder.³⁶ There should be open recruitment system with free competition among experts from various field such as engineer, lawyer, sociologist, anthropologist, academics etc.³⁷

To prevent corruption, enough funds should be allocated for the remuneration of its officers and other staffs with sufficient equipments and transparent mechanism;

As to the size and overall structure: there should be number of branches across the country with one central office. The size and its number will depend on the estimation of the prospective cases as well as on geographical situation.

As to the mechanism: there should be separate but coordinated mechanisms with highly trained staffs within the commission. Effectiveness and efficiency will be its main motto. The following internal mechanisms within the commission are desirable here:

Conciliation and decision making section (CDMS): This will be the body to have an initial examination of the claim after its registration. After initial examination both parties will be invited for initial hearing and effort will be made to solve the dispute through conciliation.

Investigation Section: If conciliation is failed, the file will be transferred to this section for detail investigation to find facts in detail figure. The outcome will be handed

over to CDMS.

[In this phase the CDMS will proceed for the second hearing, and will give decision as to whether property should be returned].

Value Assessment Section: If question of property return becomes irrelevant (for instance the owners are not willing to go back to their land or they are agreed in sell-purchase deal and need to fix price or if claim is not for property-return but for restitution of damaged/destroyed house) and problem emerged as to what would be the price for that particular land or property, the file will be transferred to this section for exact assessment of the property value. It will come up with exact value based on the existing market price. The outcome will be transferred to the CDMS.

This will be the final stage to give the decision on that particular dispute. After final hearing, the CDMS will render final decision which will be regarded as the decision of the LPCC. The decision will lay down the exact price of the land, amount of the restitution in form of money or in kind e.g. building materials etc., and if relevant, recommendations for the temporary resettlement of the IDPs or forcefully evicted people.

Monitoring Section: It will check the implementation situation of the decision and provide regular reports.

Land and Property Claim Tribunal (LPCT)

There should be a land and property claim tribunal to take an appeal from those who are not satisfied with the decision given by the LPCC. In order to save time and avoid repetition, this tribunal will only adjudicate those cases which have been decided by LPCC, and will determine only two substantive matters: the legitimacy of the claim, and the merit of the decision including fairness of the restitution.³⁸ The decision given by this tribunal will be final.³⁹

Introducing Temporary Resettlement Scheme:

Chris Huggins stated that despite the increasing awareness of the legal responsibilities of governments to address land and property claims and the thorny issue of secondary occupation of property in particular, there needs *ad hoc* measures.⁴⁰ Further elaborating this experience other scholars say that many of these *ad hoc* measures avoid expropriation of the new occupants.⁴¹ They are indicating the fact that regular administrative mechanism and court system cannot deal with special problem such as post-conflict land and property claim and restitution. Many political leaders are saying that if Maoist party just makes an announcement to return, the problem will be

36. Same type of incident had happened in Namibia, where the accusation was, many government officials conveniently were the first to be benefited from land redistribution. See, Shriver D, 'Rectifying Land Ownership Disparities Through Expropriation: Why Recent Land Reform Measures in Namibia are Unconstitutional and Unnecessary', (2005) 15 *Transnational Law & Contemporary Problems*, 419, 429

37. In Guatemala: anthropologists, lawyers, agricultural engineers, sociologists etc. were included. See, Bailliet C, 'Preventing Internal Displacement: Conciliating Land Conflicts in Guatemala', (2000), 19 *Refugee Survey Quarterly* (UNHCR), 187, 200

38. The mandate of the Land Claim Court of South Africa is relevant in this context. See, above n. 28, p.678

39. If further appeal to regular court is allowed, on the one hand the regular court will be paralyzed by the flood of the number of cases, but does not necessarily yield a different result on the other.

40. Huggins C, 'Linking Broad Constellations of Ideas: Transitional Justice, Land Tenure Reform, and Development,' in *Transitional Justice and Development: Making Connections*, ed. Greiff P and Duthie R (New York: Social Science Research Council, 2009) p. 348.

41. Meertens D & Zambrano M, 'Citizenship Deferred: The Politics of Victimhood, Land Restitution and Gender Justice in the Colombian (Post?) Conflict' (2010) 4 *The International Journal of Transitional Justice*, Vol., 189, 205

solved over night.⁴² However, if these well experienced scholars' view is taken into consideration, it is not that easy to remove the unlawful occupants from the land they are still occupying. There are some practical reasons behind this argument. Many of these new occupants might be landless or indigent or so poor for whom there is nowhere to go. On the one hand their forceful evacuation can precipitate the site into violent clash; on the other, it is the responsibility of a state to protect the right to life, food, and housing of its citizens.

Therefore, an *ad hoc* temporary resettlement scheme should be introduced by the government. For this, public land and other resources should be arranged. Upon the recommendation of LPCC two types of people can be benefited through this scheme: those IDPs who, due to special circumstances cannot return to home and those who, after the LPCC decision, have just been evicted and have no place to go. These people can remain there until permanent settlement can be arranged under long-term policy.

Establishing Restitution and Resettlement Fund (RRF):

For the purpose of providing restitution to the victim whose properties, due to special circumstances cannot be returned, and also for the purpose of arranging resettlement under resettlement scheme for the people who are just evicted by the decision of LPCC, a restitution and resettlement fund should

be established. As a financial source, it will be either funded by or be part of Nepal Peace Trust Fund and UN Peace Fund for Nepal. Alternatively, direct international donations will also be the source of RRF.

4.3.2 Long-term policy

The long-term policy should be oriented towards redressing the discriminatory land tenure system in Nepal. There are two viable approaches:

Addressing This Issue through the New Constitution of Nepal

The new constitution of Nepal should address this problem with a skillfully crafted language. Unlike, the recommended 'constitutional text' of the report provided by a CA thematic committee,⁴³ the language should be unambiguous bearing legal sense rather than political one. It should guarantee that, all citizens shall have equal opportunity to own, use and dispose land, and for this, state shall introduce new land reform scheme through acquisition of land with appropriate compensation from any person exceeding ceiling, and redistributing it to the landless citizen. This can be a golden opportunity for this country to have a permanent solution on this problem.

Introducing New Land Reform Policy;

Under this policy a new land reform scheme should be introduced with the establishment of new independent land reform commission and again a land tribunal. This commission will be totally

different; in terms of efficiency, power and working style; from the previous land reform commissions.⁴⁴ This entity will be created not by government, but under a law duly adopted by the parliament. It will be independent not only from all branches of state power but also from the political parties. Since this policy will be applied only after the promulgation of the new constitution, it is not relevant here to go in its internal mechanism, function, and other details. It is worth mentioning, however, that eliminating all land based conflicts and ensuring social justice would be ultimate goal of this new land reform commission. In this respect, following aspects can be crucial:

There should be scientific detail survey over all cultivable, uncultivable, grassland, forest and other land;

There should be general survey about how many families are landless without means of subsistence. It will give general picture of the size of land for the settlement of this indigent people.

Having general picture of the size of the land necessary for the redistribution, upper ceiling of land should be determined.

Compensation Provision:
Two Approaches: -

In expropriating the land from feudal landowners who has owned it as an inheritance and exceeds ceiling, the compensation will be minimal.

42. For example, the same opinion was expressed by a leader of Nepali Congress in recent TV programme. See, below n. 45

43. For example: it says *scientific* land reform program but doesn't say what does it means by the term 'scientific' and in *dissenting opinion*, the term 'revolutionary' is added. These terms seem to be more political in nature than legal one. See, Article 5(2) and its *dissenting opinion*, Constituent Assembly, Committee on Natural Resources, Economic Rights and Revenue Allocation, *Report of the Preliminary Draft of the Constitution (with Concept Paper)*, 2066, pp. 3, 57

44. For example: past three Land Reform Commissions headed by Keshav Badal, Haribol Gajurel and Ghanendra Basnet all were commissions established by a government, and represented the view of particular political party seriously lacking the independence and efficiency. Again establishing the same kind of commission would be mere waste of effort, resource and time.

In expropriating the land from other landowners who owned after purchasing it by their earning, and now exceed the ceiling, should be compensated with market price.

Some political party and individuals seem to have idea of not paying any compensation for the state appropriated land. In fact, this idea will be counterproductive in the long run. There are two main justifications behind this logic: first, theoretically, it will not be fair practice from the social justice and human rights perspective; and second - though, due to unfavorable situation, they will for the time being maintain acquiesce, they may express their discontentment in different way and may recourse to violence for retaliation.

5. Concluding Remarks

Peace process in Nepal has entered into a very complex phase with hot debate in three major issues being land and property return and restitution one among them.⁴⁵ Historically embedded discriminatory land distribution practice cannot be attributed as being major cause for the armed-conflict in Nepal but it probably has the major contribution causing it to gain momentum. Land and property seizure became phenomenal during the armed conflict which was the open policy pursued by Maoists, and was understandable at the time of war. But, what is totally unacceptable for a reasonable person is: even after the CPA was signed and Maoists purportedly changed their policy with property return commitments, the unlawful

practice of land and property seizure continued unabated. And, it is clear that it has been executed under the Maoist party's direct instruction.⁴⁶ This type of practice cannot be justified merely by pointing toward the mistakes done in the history nor can be tolerated by verbal rhetoric of creating an egalitarian society. At this point Maoist as a biggest political party in Nepal should realize the historical responsibility bestowed upon it by Nepali people to lead the peace process in logical conclusion.

Deliberation on the process of land and property return, and providing restitution to the victim will only have some meaning if the practice of unlawful land grabbing comes to a close first. And, even before that, the Maoists should be convinced on the fact that snatching property without due process from one citizen and handing it over to another does not, in reality, transfer the ownership of that property to receiver. This is not the system developed in a civilized world about how to create an equitable society. And also, Maoist party should realize that this kind of practice will not give justice to anybody even to the category of people who are temporarily benefited from the possession of other's property, as it will be merely a mirage for them. Unlawful land grabbing and redistribution will tear down the social harmony on the one hand and will create another vicious cycle of land based conflict on the other. Zimbabwe can be a perfect example that the unlawful grabbing of pri-

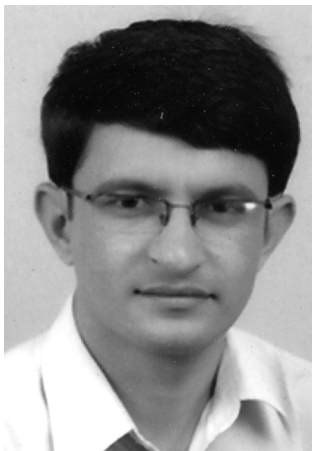
vate land and redistributing it to landless without due process, even under the clandestine support of government, can have devastating result.⁴⁷

Process of land and property return and restitution takes an onerous effort and sometimes a serpentine route. As has just been mentioned, the multifaceted socio-economic situation can be a decisive factor as to what mechanism regarding land return and restitution should be adopted. In designing the mechanism, remedies need to address the concrete economic and social needs of victims. Some time, as seen in the case of Kosovo, repossession does not, in fact, seem to be what the claimants wanted: the majority of them have opted for transferring their property rights through a sale. At the same time, it is the responsibility of a state to also address the plight of the secondary occupants who still possess it or have just evicted. Reestablishment of the property ownership can be one solution, but addressing the need of impoverished is equally crucial. Providing restitution to those who lost their property is important, and as is the establishment of harmonious and just society where people can live a dignified life. Forced eviction from unlawful occupancy can be one idea, and preventing sporadic resurrection of the land seizure can be other. These are the major dynamics which should be taken into account while dealing with the issue of land and property return, and restitution in the post-conflict Nepal.

45. Management of former combatant and demolition of semi-military structure of YCL are other two issues.

46. A latest example: In a recent television debate the Maoist politburo members Haribol Gajurel, steadfastly said that, "*there will be more land seizure in future if current situation of unequal land holding remain persistent*", the Kantipur television, '*Debate on New Constitution Making Process*', (12 May 2010). This author and Nepali Congress party leader Binaya Dhoj Chand were other two resource persons at the debate programme. Mr. Gajurel is also the chief of Land Reforms Department of Maoist party, and was Chairman of the high-level Land Reform Commission at the time of Maoist-led government.

47. See, *Florida Journal of International Law*



» Dipendra Prasad Pant «

Demarcating Federations in Nepal Amidst Hope and Despair

History has it that in many of the countries federalism is opted with the belief that it fosters peace, prevents wars and fear of possible wars. In many cases federations are created to become powerful jointly to dissuade external aggressors. But Nepal's efforts towards this end are concerned solely with political stability, economic growth and social justice.

Introduction

Restructuring Nepal has something to do with political reorganization of the state being guided by needs and demands of the time and it is a part of democratic practice. This process, primarily, hinges on reorganizing internal political demarcation and the three organs of the state- judiciary, legislature and the executive body. Politically, legally and constitutionally Nepal has agreed to restructure the state in a federal system and process towards this end is afoot¹. State restructuring, of course, is more than discussed here. However, what follows is a discussion on federal restructuring of Nepal representing assertive, cynical and ideal views of

Nepali people regarding it. Intention of this write-up is not to prescribe, proscribe, persuade and dissuade. It just describes.

Optimistically,

The end of restructuring Nepal should be to make it more representative, absorbing the citizens in the country in such a way that no group, religion, ethnicity, caste, sex will be left out from enjoying rights, benefits and opportunities. It has to guarantee that all the societal forces of Nepal will be brought into the institutional life of the state. Bureaucracy and its network should reach to every nook and corner of national geography of the country from Kathmandu so that vertical power sharing between

central governing authority and federal units thereby will make it convenient for the mobilization of resources putting the local people at the forefront in terms of development priorities. It is also hoped that welfare schemes and delivery management will be further eased. In the mean time, together with the restructured position this process entails inclusive political culture in the ruling classes of Nepal.

Secularism and federalism is not the issue of Nepal. Many asserted this way when the debate regarding these issues was budding. But, this is the situation now that almost all the parties have agreed or acquiesced on it. It seems that those who acquiesced on the issues have tried to recoil but already signed agree-

1. Comprehensive Peace Agreement (CPA) and The Interim Constitution of Nepal have agreed on it and thematic committee formed and has deliberated for this.

ments; accords and promulgated constitution have compelled them to stick on. Similarly, vote politics and apprehension created by it has required the parties to act reluctantly towards this process. Certainly globalization, internet, communication and increasing individualism could be seen as major social trends that are undermining the primacy of people's political and ethnic affiliations². If this thought is taken into consideration significance of federalizing can be undermined, however, present debate on federalism in Nepal is spurred by the provision especially in the Interim Constitution, coupled with optimism among the people that federal practice of rule might be a basis for stability and faster economic growth here.

History has it that in many countries federalism has been opted with the belief that it fosters peace, prevents wars and fear of possible wars. In many cases federations are created to become powerful jointly to dissuade external aggressors. But Nepal's efforts towards this end are concerned solely with political stability, economic growth and social justice. Drafting constitution in Nepal by federalizing it is expected to culminate in a new social contract that will protect principles of multi-party democracy, inclusiveness, equality, justice and fairness.

Desperately,

To many, federalism is often laboratory of experimentation. Different regions try and test different public policies often more than

the center³. Some see ethnic dimension during transition from a unitary to a federal system very strong⁴. The ethnicity based federal system was practiced strategically by the Maoist during war time and it benefited them a lot in attracting ethnic communities especially the combatants. And they were benefit-

But Nepal's efforts towards this end are concerned solely with political stability, economic growth and social justice. Drafting constitution in Nepal by federalizing it is expected to culminate in a new social contract that will protect principles of multi-party democracy, inclusiveness, equality, justice and fairness.

ed even through ethnic polity during Constituent Assembly election. Now, to fulfill the promises and to keep ethnic voters intact the party has been an advocate of self-determination. In the face of increasing pressure of the ethnic groups and given the situation that the ethnic communities in Nepal have signifi-

cant position in vote politics, other parties also needed to opt for the same tactics following Maoists, at least for the vote concerns. This situation and the uprising in Tarai following the promulgation of the Interim Constitution had further established the concept of federalizing Nepal.

Equal numbers of Nepali people are there who are skeptical towards this process expressing their worry that the way we are going to restructure the state posits more questions and disputes than it answers. They see this process as an identity politics articulating that this has very little to do with democratization of the state mechanism. They also opine that restructuring Nepal is a tactical move towards sustaining and proliferating conflict by giving communal color to it. They doubt⁵ whether or not the debate on state restructuring really holds water to keep the Nepali state moving ahead without any further cycles of violence. For them these are some but pertinent questions that have remained unanswered and the debate on federalism and state re-structuring is lopsided that all the participants in the debate haven't been given interstice so decision taken regarding it is tantamount to destroying the unity of the nation, its sovereignty and territorial intactness.

Opponents of ethnicity based federal restructuring put forth international literature to debunk that federalism always works. For them danger of national disintegration is the most impor-

2. Malcolm M Feeley and Edward Rubin in their book 'Federalism: Political identity and Tragic Compromise on page 11.

3. Mac Mahon (1972) quoted by Mahendra Lawati in Towards a Democratic Nepal: Inclusive Political Institutions for a ... Sage Publication, New Delhi 2005.

4. Bishnu Raj Upreti Ethnic Federalism and Potential Conflict, My Republica 2010-2-20

5. To take an example see the article of C D Bhatta published in The Rising Nepal, 1 September 2006.

tant and appalling one while adopting federal set up. Somalia, Russia, Congo, Nigeria, and Yugoslavia, among others, are put forth as the example of the countries that failed in federal practice. In many of these states there had occurred ethnic violence, chaos, and finally they had disintegrated. Not having a national majority of any ethnic or linguistic group and the imposition of ethnic federalism was perhaps the major cause of Yugoslavia's eventual disintegration. Taking this as an instance, there is space not to take federalism for granted because Nepal too doesn't have any such ethnic group in majority that can apparently coordinate and balance other groups by working as the bellwether at the time of national crisis. Some who don't want federal restructuring put forth small size of Nepal and maintain that it is not necessary to divide this nation for efficiency in governance or other reasons, especially in this age of inclusiveness, globalization, information technology, and communication.⁶

Poor economic growth, though many other immediate causes were there, has always been the prime cause of political unrest, upheavals and revolt in Nepal. However, pointing towards unitary set up for the plight can't be just because we have highly developed countries under unitary set up and many countries with federal set up haven't been able to meet the minimal economic expectation of the people. It is remarkable to observe our neighboring countries India and China for their political structures and recent economic develop-

ment. These countries are with different political structures still they have booming economy trying to emerge as the global hubs of science and technology. What is the common underlying factor between the

Poor economic growth, though many other immediate causes were there, has always been the prime cause of political unrest, upheavals and revolt in Nepal. However, pointing towards unitary set up for the plight can't be just because we have highly developed countries under unitary set up and many countries with federal set up haven't been able to meet the minimal economic expectation of the people.

two nations that has caused both to successfully achieve magnificent economic growth? Certainly, it is not federalism or political structure. These countries have always put globalization, development, economic growth, generation of employment and political stability

at the foreground.

It is not unjust to doubt that federalism might turn into feudalism if the country is divided based on ethnicity and the ethnic elites and the leaders couldn't strengthen internal democracy within the ruling mechanisms. So, racial and ethnic federalism seems to be efficacious there where democratic norms is *modus Vivendi* at personal life of individuals, national institutions and ruling process. Federalizing country is embedded with many intricacies so it is imperative for the stakeholders to reflect on prior to taking decisions and should act cautiously so country won't have to realize later that federalizing alone was not an elixir and end in itself.

Absence of democratic norms and values in daily life is one of the attributes of Nepali society. Present Nepali society has conflict between democratization and constitution making. It is difficult to realize but a concurrent transition to constitutionalism and democracy creates unbelievable problems. Nepal's focus is on constitutionalism only whereas absence of democratization, especially in lifestyle, will be an obstacle for proper functioning of federal system. 'The more you put in the constitution, the more you will limit democracy in the future because democracy is essentially about having discussions and conflicts on public policy goals. If every thing is predetermined in the constitution there is not much room to quarrel. And then people quarrel about the stains in the president's gown, they quarrel about religion and about

6. article by Dr Durga D Paudel at www.nepalnews.com/.../727-federalism-in-nepal-issues-and-concerns-.html accessed on 21 July 2010

some other abstract things because too many issues of rational conflict, such as resources or rights and other things are precluded.⁷ The problem with Nepal is whether Nepal has reached this point where there is some commonality in fellow-feeling, despite being divided along lines of caste ethnicity, language, religion and political ideology. If this is not the case it might polarize society and precipitate civil unrest jeopardizing federal set up.

Ideally,

Given the current demands of marginal groups such as religious minorities or Dalits for fair arrangement, whose concerns have been before sidelined or otherwise continuously marginalized and who are placed in lopsided power relations in relation to the central groups in society, proviso must be made for a more plural composition of the legislative body. As Thio-Li-Ann says- 'Unity without diversity through coercive and homogenizing assimilation degenerates into authoritarianism, diversity without unity devolves into fissiparous chaos which thwarts sustainable peace by eroding a robust conception of the common good and the shared life⁸. Coercive and homogenizing political structure in Nepal especially in times of kings' rule had induced so many problems but the entanglements surfaced in Nepal especially after holding Constituent Assembly election and the never ending debates seen recently regarding state restructuring are hinged on the fact

that we haven't been able to establish uniting mechanism among diversities. So, ideal would be to establish uniting mechanism.

The difficulty is that where there are nationalities or groups which are about equal in strength with each other and are able to maintain equal struggle with 'others' in the refusal to be assimilated, federalism will be troublesome. This almost-equal-in-strength ethnicity in Nepal will be the main threat to ethnicity based federal structure. Federalism can be both a source of conflicts and a means of resolving them. Nepal's restructuring should be for achieving speedy economic progress and peace and justice keeping social harmony and popular amity intact. But, it can't be denied that possibilities of proliferating conflicts and national disintegration are always there under federal structure.

If Nepal can nonviolently shift national governance towards inclusive pluralism and federalism in a real sense, as hoped by Nepali people, political parties and even the ethnic community especially the ethnic leaders have to gear their efforts towards economic boom, communal harmony and against the possible secession. However, it is blamed that the current so-called marginalized ethnic leaders haven't been able to become the true representatives of their people, there lack democratic process and political structure in their leadership. Federation should be based on integration where the focus is on the

individuals rather than on the group and the members of minority groups are brought into mainstream of society, gaining full access to the opportunities, rights and services available to members of mainstream society.

How federations were formed world- wide varies a good deal. Some emerged from former colonies or separate units coming together to form a federal country. Others are the products of the devolutionary process from a formerly unitary regime. There are a few cases which mix these two histories. It is clear in the case of Nepal that it has tired to devolve into provinces where boundaries and their nature is still not agreed on, as per Ann⁹, in other countries which have devolved towards federalism this issue has not been taken on the same dimension as it has in Nepal. So, it will be a very tough matter for the political parties to agree on this matter.

It seems that Nepal has become unswerving to federalism without actually having a large consensus on what this means in practice. Some have doubted whether we have deliberated towards this end forcefully. However, being a very broad concept in itself, federalism has to be adapted to very different ways as per the needs and context of Nepal. If we can do so our present efforts towards this end will be rewarding in the long run. But, federalism shouldn't be perceived of as the ebb and flow with the demands of some groups only.

7. See Wiktor Osiatyanski's article in 'Nepal: Design Options for the New Constitution' edited by Bipin Adhikari

8. See Thio Li-Ann's article in the book mentioned in footnote 7.

9. Ibid.

There's No Option but to Move Ahead Based on Consensus

Peace process in Nepal has been undesirably protracted. Writing constitution has also been slowed down being intermingled with several other key issues of overall peace process and, lately, being hooked up with the formation of the government. Amidst the situation that people have been cynical and unconvinced as to the matter that the ongoing peace process will fructify as expected and the people will get constitution within the extended tenure of the Constituent Assembly, INFORMAL had talked with the Chairperson of the Constituent Assembly, Subhash Chandra Nemwang on the issues.



INFORMAL: Even after one year extension of the tenure of the Constituent Assembly (CA), current political stalemate has not been broken and political parties are still divided. How do you analyze the present situation?

Chairperson Nemwang: The differences of opinion among the political parties, especially the acridities and politically connected disputes seen among the parties lately have totally obstructed the constitution making process taking us back to the situation before 28 May. There have also been many attempts to beat such obstructions; however, problems haven't been solved. Recently, the long existing disputes among the political parties have been manifested differently coming to be connected with formation of the government. Viewing from the angle of succeeding the ongoing peace process and writing constitution on time, this is not a desired situation in the country.

INFORMAL: What do you think are the main factors for creating present stalemate?

Chairperson Nemwang: I had talked in detail on this issue in the meeting of the Constituent Assembly on 18 July. Incongruities seen among the parties are of political nature. For instance, the issue of combatants' integration and other issues embedded with peace process and formation of the government are the disputes among the political parties. These have been central issues for the parties to dispute and have also been the causes to obstruct constitution writing process.

INFORMAL: You just said that parties have disagreements over several issues including the integration of the combatants. Are these issues too disputable and complicated ones or vested interest of the parties have made them so?

Chairperson Nemwang: I think that these problems are mainly

connected with distrust among the parties especially between the major ones. In the past, when the parties trusted each other well, the leaders at that time would instantly find solutions even of the huge problems. Now parties distrust each other. They reach some agreements, but start to construe the agreed issues subjectively at the time of implementing them. Parties have to reflect on this matter. Now, congenial relations among the parties have turned into so acrimonious and they distrust each other. Such situation has been responsible for the disagreements.

INFORMAL: Many have started to argue that present situation is the result of conflict between those who want constitution and who don't. How do you assess this view?

Chairperson Nemwang: No parties, while speaking publicly and talking with me and also at the time of formal and informal meetings, have put forth their views the way this

question has been raised here. This shouldn't be understood that present situation is the result of conflict between those who want constitution and who don't. All the parties have expressed their full commitments as to writing constitution. But, problem is that their commitments haven't been experienced by the people through implementation and it is also true that there lack realistic attempts among the parties towards this end. Such reality has allowed space to the cynics to raise such questions.

INFORMAL: What has been your role as the Chairperson of the CA in coordinating and dealing with these complicated issues?

Chairperson Nemwang: These issues are intimately connected with overall peace process and are politically linked with constitution writing process. However, peace process doesn't fall under the responsibility of the Constituent Assembly. This is the responsibility of the government. So far as the issue of constitution writing process is concerned, we are in need of high-level understanding among the parties to write constitution on time. I have been reiterating this view and this is the reality as well. By this point of time so many key jobs have been carried out, however, constitution couldn't be made within the given time. This is the urgency now to complete constitution writing within the remaining time. On the one hand, we have huge achievements and on the other equal challenges are there with us. Institutionalizing the achievements is also a challenge now. Despite such difficulties we have been able to come to this phase of constitution writing achieving many things significant and accommodating diverse views and parties in this process. Positively, we have been able to keep the foundations for proceeding ahead intact. Negatively, we couldn't accomplish all the consigned jobs in time. Regarding what we failed to achieve within the given time we have expressed our self-reproach addressing to the Nepali peo-

ple through the meeting of the Constituent Assembly on 18 July. The foundations we have kept intact if are used as the medium of moving ahead, I am sure, we can make peace process a success and can write constitution within the extended time.

INFORMAL: You have been expressing that it doesn't take total extended one year's time to accomplish the task of constitution writing. Isn't it a too optimistic view?

Chairperson Nemwang: On the night when the tenure of the Constitutional Assembly was extended, I had spoken to the media to make my views public. Though the tenure of the CA has been extended by one additional year, it doesn't mean that we have to exhaust total time. It is wise to complete constitution writing process as early as possible. I discussed this view with the political parties and they agreed on this. Then, the parties agreed to complete writing constitution within 13 April 2011 and constitution drafting schedule was also issued accordingly. It was quite encouraging and pleasing. However, following 28 May political parties couldn't be able to move ahead abiding by the agreements reached on that night and there still exist disputes and disagreements among the political parties.

Amidst negativity and distressing situation we have come to a positive result as the result of my frequent meetings with the top level leadership of the parties after 28 May. The positive result is that all the parties have agreed not to disrupt the constitution writing process in any pretext and also agreed to put forth no pre-conditions in relation with writing constitution. The parties have also agreed and expressed their commitments with me that they will have attempts to forward constitution writing process unimpeded. Hopefully, the parties will keep their promises and amidst the existing political differences among the parties, constitution writing process will gain momentum.

INFORMAL: Technically speaking, what did we accomplish so far regarding constitution writing process?

Chairperson Nemwang: As to drafting constitution we established a process and mechanism. For the first time in Nepali history directly and indirectly, we collected and accepted the views and suggestions from the people as to constitution writing process. We got hundreds of thousands of suggestions from abroad as well personally and institutionally. We reached to the peoples across the country, down to the village level, making 40 groups. And the study, analysis and synopsis of the suggestions were included in every reports based on which concepts and preliminary drafts were designed by all the thematic committees of the CA.

Deliberation on the issues raised by the committees has also been completed by the meetings in the CA and it was quite fruitful to identify the differences among the parties over the issues. Then continuous formal and informal discussions were held among the parties to iron out the differences so that all the parties could reach to a common conclusion. I myself was involved in the discussions. The discussions could pass three drafts and was sent to the Constitutional Committee for the integrated draft. The Constitutional Committee is ready now with the bases for the integrated draft. And, the committee formed for the collection of people's view has made a work plan. However, in course of passing reports there appeared disputes among the political parties in eight of the reports. Afterwards, combatants' integration issue was raised connecting with the formation of the government then the disputes got intensified and soared thereby disrupting the constitution making process.

About 75-80 percent work has been completed. To complete the rest political parties have to sort out the differences seen among them regarding constitution writing. On this background and hope I have been

expressing my optimism that we can write constitution within extended time.

INFORMAL: Some experts now have started to repent that we committed mistake by not forming Legislative Parliament and Constituent Assembly represented by different persons. Have you felt any such difficulties due to the provision that the same persons are the members of CA and the Legislative Parliament?

Chairperson Nemwang: In course of analyzing over all issues in the Constituent Assembly meeting on 18 July this facet of our experience was also discussed. Legislative Parliament has opposition as well whereas it is not in the case of Constituent Assembly. Being too cautious we made separate regulations for the legislative parliament and the Constituent Assembly. We incessantly endeavored that Constituent Assembly shouldn't be influenced by politics and, tellingly, the Constituent Assembly has not been obstructed even a single day whereas Legislative Parliament was obstructed more than five months. The same political parties have representatives in the Legislative Parliament and in the Constituent Assembly as well and the representatives are also of the very parties. This is our experience that proceedings in the legislative parliament certainly, though indirectly, affected the proceedings in the Constituent Assembly.

Though Constituent Assembly is for writing constitution it has to work responsibly also as the Legislative Parliament as provisioned in our constitution. Certainly, complications seen in the Legislative Parliament have indirectly affected the constitution writing process

INFORMAL: It is likely that again consensus based government is not going to be formed whereas we have the experience that we accomplished more at the time when we had consensus based government. Don't you

think that in the absence of consensus based government problems will remain as they are today?

Chairperson Nemwang: It is crucial that we have to move ahead based on consensus among the parties. I have been raising and reiterating this issue from before we held election for the Constituent Assembly. I even had expressed that parties needed to go for election together for the Constituent Assembly. Parties agreed on this theoretically, however, they couldn't translate into implementation. If that we were able to do so we wouldn't face the present situation, I still believe that at least by another election under the new constitution parties have to work together with heightened sense of consensus. There is no option but to move ahead based on consensus.

Given the situation that we have already experienced two majoritarian governments, I have maintained we have to opt for consensus. So, even after the ending of consensus based process I urged the parties to form national consensus based government by establishing foundations for it and by totally abiding by the agreement reached among the parties on 28 May. I also urged, even when majoritarian process started, the parties to have only one candidate through political understanding so that we could forge consensus among the parties for the consensus based national government. I still maintain this. If this is not possible, who ever is elected as the Prime Minister in a democratic way s/he should be the Prime Minister of all and all the parties have to join the government under him/her. Emphatically, politics has to move ahead based on consensus for peace and timely constitution drafting.

INFORMAL: How do you view the role of the civil society these days?

Chairperson Nemwang: Civil society has been incessantly rendering positive role at the time of movements, transitions and in this process of constitution writing. It is necessary that civil society has to be

more active for the purpose of bringing political parties to consensus. It has been commented that civil society has not been as active as they had to be. I urge the civil society to remain always on the go.

INFORMAL: Also as a senior lawyer and an active promoter of Human Rights, how do you ensure us that the new constitution will be Human Rights- friendly?

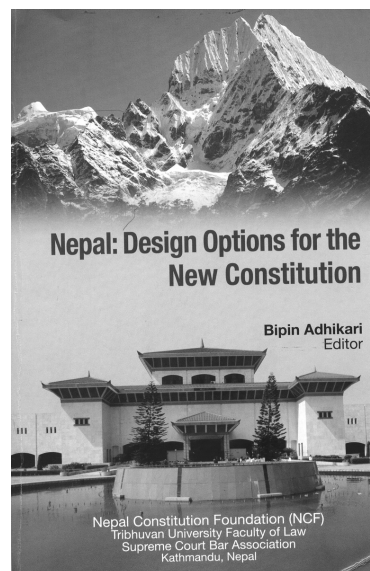
Chairperson Nemwang: Personally I am committed that there should be foundations to translate the theoretical norms and values of human rights into practice. I have been sharing this view with all and I am pleased and encouraged that parties and the leaders there have been found committed on this issue. I don't see any differences among the parties regarding establishing bases as to guaranteeing human rights through the forthcoming constitution. So, I am sure that new constitution will be human rights-friendly.

INFORMAL: How do you envisage the future in terms of constitution writing process, over all peace process and formation of the government as well?

Chairperson Nemwang: Parties and their leaders know well what the main difficulties and challenges of the time are. The country has reached to this phase passing through difficulties and challenges. Some days ago I used to ask to myself- whether this country is heading towards perilous path. We are here through that danger. Parties have experienced it and know it well. I am hopeful that the parties will converge for the constitution keeping the experiences of the past in mind. Parties, at the time of meetings and gatherings initiated by me, have expressed very clearly their commitments that they would not disrupt the constitution writing process in any name and pretext. So, I am hopeful, things will go as expected.

- As interviewed by Dipendra Prasad Pant and Geeta Gautam

Nepal: Design Options for the New Constitution



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The book 'Nepal: Design Options for the New Constitution' consists of reviews of papers based on preliminary drafts presented by respective thematic committees of the Constituent Assembly presented at the International Conference on January 15-17, 2010, in Katmandu. The review papers were presented by various national and international constitution experts, the law makers, academicians, the experts with strong human rights orientations, the resource persons having special expertise in the area of federalism and devolution of powers and the leading politicians of various countries. These review papers on various modalities and options are meant to be the foundation for new constitution of Nepal.

The papers presented by such personalities having special know-how in the corresponding areas were edited and compiled as a book. Prologue of the book writes

'all these papers were presented in Katmandu at a high profile international conference on *The Dynamics of Constitution Making in Nepal in Post-Conflict Scenario*' held from January 15-17, 2010. The conference which was organized by Nepal Constitution Foundation in cooperation with Tribhuvan University Faculty of law and the Supreme Court Bar Association was inaugurated by the President of Nepal and the inaugural key note speeches were delivered by Nepal's Constituent Assembly Chairman and the Minister for Federal Affairs, Parliamentary Affairs, Constituent Assembly and Culture.

This book has been brought into being with an endeavor to revisit the drafts presented by different thematic committees in the Constituent Assembly through the experts' suggestions. Preliminary thematic drafts of the CA have been extensively reviewed by the international independent experts. This book has also aimed at improving

constitutional drafts through the inputs of national and international experts by providing comparative experiences of constitution drafting, by enhancing theoretical foundation for drafting constitution being guided by democratic norms, by informing about the post-conflict situation of Nepal to the international communities especially about the developments that have taken place regarding adoption of

This book has been brought into being with an endeavor to revisit the drafts presented by different thematic committees in the Constituent Assembly through the experts' suggestions. Preliminary thematic drafts of the CA have been extensively reviewed by the international independent experts.

Similarly, detailing on the judicial independence and impartiality of Europe (European Convention on Human Rights) Steven Greer suggests through his discussion that to make the judiciary independent and impartial the provisions regarding judiciary in the new constitution should comply with the international human rights.

democratic mechanism within the constitutional framework.

In the book, Bob Rae, the foreign affairs critic for the Liberal Party of Canada and politician has dealt about presidential form of government in Nepal with some suggestions. Cheryl Saunders, a laureate professor at the university of Melbourne, after evaluating the principal options of the form of the government in a lengthy way, has come to the conclusion that there is no perfect form of government, to a degree, each system relies for its success on the quality and integrity of the persons consigned with public power and the vigilance of civil society. Focusing that appreciation of context, the history, culture, religion, stage of economic development and ideology is a key while designing legislative body, Thio-Li-Ann, an expert of public and human rights international law of Singapore elaborates on representation and accountability issue with reference to Nepal by also refining the legislative provisions in Singapore and Malaysia.

Rohan Erisinha of the University of Colombo, citing many examples and experiences from Srilanka, provides with flaws and shortcomings of presidential form of government and suggests not opting for such form of government in Nepal. Similarly, detailing on the judicial independence and impartiality of Europe (European

Convention on Human Rights) Steven Greer suggests through his discussion that to make the judiciary independent and impartial the provisions regarding judiciary in the new constitution should comply with the international human rights. Jie Cheng an associate professor of law at Tsinghua University Law School argues that constitutional review on the basis of compromises and concessions is necessary to avoid possible dictatorship, manipulation of government powers and violation of human rights under the name of people's war.

Pekka Hallberg, the president of the Supreme Administrative Court of Finland shares about the Finnish constitution in relation with its prospects of the rule of law and implications in Nepal. George R M Anderson of Canada has dealt about the forms of federations practiced worldwide and has discussed descriptively as to what will be the suitable form of federation for Nepal. Alexander Wegener has articlewise commented on the report of the preliminary draft of the constitution committee of Natural Resources, Economic Powers and Revenue Allocation whereas Hashim M Tewfik shares the Ethiopian experience of ethnicity based federalism with pros and cons elaborately. In his discussion Yash Pal Ghai has raised the issue of minorities and indigenous communities in Nepal linking with history,

past constitutions, collective rights, citizenship and autonomy, among other issues.

Issues like self- governance, local power sharing, women's issues, and enforceability of the economic and social rights provisioned in the preliminary drafts, the issues of social justice and human rights, integration of combatants and democratization of national army and similar other issues associated with constitution drafting process are dealt in the book by other prominent critics and writers.

Being born out of the conference, this book, content wise, has been structured in such a way that following prologue, messages, foreword and acknowledgement five keynote speeches delivered by different personalities including the president of Nepal have been included and under Design Options twenty five papers presented in the conference are there and finally seven wrap up notes and closing remarks are included as the last part of the book.

This book can be considerably useful to all the stakeholders to use as the reference materials in relation with writing new constitution for Nepal as per the aspirations of the Nepali people and it can also be hoped that the book will be of immediate use to the framers of the constitution.

- Dipendra Pd. Pant

Memorandum Submission

Kathmandu Declaration of the First Sub-Regional Workshop on South Asian Human Rights Mechanism officially submitted to the Rt. Hon'ble Prime Minister of Federal Democratic Republic of Nepal, Mr. Madhav Kumar Nepal on 26th March 2010 on behalf of the South Asian Human Rights Defenders. The Workshop was jointly organized by Informal Sector Service Center (INSEC) and Asian Forum for Human Rights and Development (FORUM-ASIA) on 25 March 2010 in Kathmandu

We, the seventy representatives of non-governmental organizations and people's movements from Bangladesh, Bhutan, India, Indonesia, Malaysia, Nepal, Pakistan and Sri Lanka at the first Sub-Regional Workshop on "South Asia Human Rights Mechanism", gathered together in Kathmandu, Nepal from 24 – 25 March, 2010, with the participation of representatives from OHCHR, to critically discuss the prospects and strategies of advancing human rights promotion and protection through regional cooperation towards the establishment of South Asian human rights mechanisms.

Reaffirming the long tradition and history of the people's movements and non-governmental organizations in South Asia struggling for democracy, human rights, justice and peace, including various initiatives under the People's

SAARC process in holding governments of SAARC accountable;

Taking note that the SAARC Charter adopted on 8th December 1985, expresses in Article 1 the vision of promoting peace, stability, amity and progress in the region; and in Article 3 awareness of the common problems, interests and aspirations of the peoples of South Asia and the need for joint action and enhanced cooperation within their respective political and economic systems;

Taking note that Article 4 of the SAARC Charter stipulates as one of the objectives of the SAARC promotion of the welfare of the peoples of South Asia and the improvement of their quality of life;

Welcoming the promotion of universal respect for observance and protection of human rights and fundamental freedoms for all, in particular the right to development, gender equality, welfare and interest

of children and youth, promotion of social integration and strengthening of civil society as stipulated in Article 2.xii. of the Social Charter of SAARC adopted on 4th January 2004;

Recalling the adoption of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, SAARC Convention on Regional Arrangement for the Promotion of Child Welfare in South Asia, Agreement on Establishing the SAARC Food Security Reserve;

Recalling the UNGA Resolution 32/127(1977) and Commission on Human Rights Resolution 24 (XXXIV) (1978) on the appeals to States in areas where regional arrangements in the field of human rights do not yet exist to consider agreements with a view towards the establishment within their respective regions of suitable regional machinery for the promo-

tion and protection of human rights;

Recalling the Vienna Declaration and Plan of Action (1993) which SAARC member states endorsed, reiterated the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist;

Taking note that the SAARC governments will be meeting for the 16th SAARC Summit to be hosted by the Bhutanese government in Thimpu, on the 28th and 29th April 2010;

Taking note that the next inter-governmental meeting of the Asia Pacific Framework on Regional Arrangement on the Promotion and Protection of Human Rights will be organized by the Office of the High Commissioner for Human Rights, and to be hosted by Thailand government in Bangkok on 21-23 April 2010;

Expressing grave concerns that widespread and systematic human rights violations, inter-state and intra-state conflicts continue to plague the region and hinder the enjoyment of peace, justice, democracy and a better quality of life by the peoples in the region;

Welcoming initiatives of Nepali Human Rights NGOs through the Magna Meet held on 10 December 2009 for the establishment of regional human rights mechanism in South Asia;

Recalling that SAARC countries continue to affirm the universal principles and values of

human rights in a number of international instruments and in SAARC summit declarations and are obliged to respect those principles, including the right to health, education, food, water, development, and to be free from trafficking with specific reference to women, children, youth, and migrant workers.

Recognizing the need for SAARC to adopt a rights-based and gender-sensitive approach to the elimination of all forms of discrimination, including religious intolerance.

Noting that SAARC must address pressing multilateral issues that includes hunger, unemployment, and violence against women and children.

Resolve in the meeting:

- ▶ for the need to further strengthen the cooperation and solidarity among human rights organizations, non-governmental organizations and people's movement of South Asian countries on shared vision for the protection and promotion of human rights in the region;
- ▶ to support peoples' processes in the region in strengthening people to people solidarity in order to make SAARC governments accountable and to work in cooperation with these peoples' processes;
- ▶ to continue the work towards the establishment of an effective regional human rights network among the civil society and an independent and effective regional human rights mechanism to address human rights

challenges faced by the countries in the region;

- ▶ to establish a working group to develop common strategies and effective cooperation among non-governmental organizations and people's movements on capacity building, collective advocacy, lobby and joint strategies towards the establishment of a regional human rights mechanism in the region and to continue encourage more groups, including marginalized communities, to participate in the process;
- ▶ to call on the governments of South Asia to establish an independent, effective and accountable regional human rights mechanism with an explicit mandates of promoting, protecting and fulfilling human rights, through a process of wide consultation with non-governmental organizations, people movements at national and regional level;
- ▶ to call on the national human rights institutions in Bangladesh, India, Nepal, Sri Lanka, Maldives and Afghanistan to forge closer and more systematic cooperation among themselves to address cross border human rights violations and support the development of regional human rights mechanism in South Asia;
- ▶ to call on Pakistan and Bhutan to form as soon as possible national human rights institutions in conformity with the Paris Principles.

APPEAL

Four Years of House of Representatives' Direction For the Accession to Rome Statute of the ICC

We are concerned towards the fact that no steps have been taken by the government towards acceding to the Rome Statute of ICC even after four years of passage of the unanimous parliamentary motion adopted by the then House of Representatives on 25 July 2006 directing the Government to accede to the Statute. There was a sense of optimism among the people that after the then Minister for Foreign Affairs Upendra Yadav tabled the proposal for accession to the Statute on 11 February 2009, the government would take steps towards this end. However, no indication towards implementing the direction of the House of Representatives is seen, this has proved that the government is not serious enough to establish rule of law by ending impunity in the country. We urge the government to ensure the rule of law by immediately acceding to the Rome Statute for ending rampant impunity in the country and to protect human rights of the people from possible armed conflict in the future.

**National Coalition for the International Criminal Court (NCICC)
Secretariat**



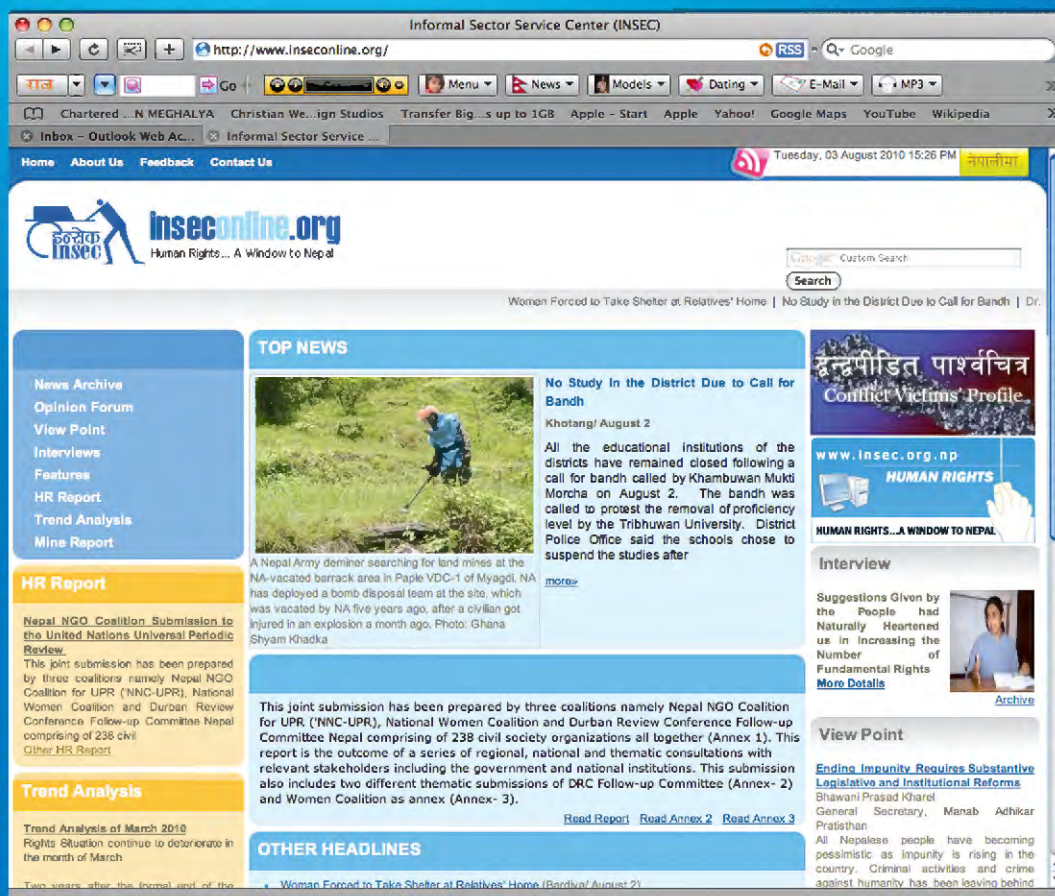
Informal Sector Service Centre (INSEC)

Syuchatar, Kalanki, Kathmandu, Tel: 01 4278770 Fax: 01 427055

email: insec@insec.org.np, web-site: www.icc.inseconline.org

National Coalition for the International Criminal Court has been organizing various campaigns for the accession to the Rome Statute since 2001.

www.inseconline.org



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- immediate reports on human rights violation
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For Human Rights & Social Justice

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