

A stylized world map composed of a grid of grey dots, with several dots highlighted in red to represent specific countries or regions.

# Reflections on Nepal's Peace Process

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- The euphoria of April 2006 political movement is slowly evaporating. Five years down the road, the peace process has shown only very little progress. Intense factionalism within the ruling parties has strained the leaders' ability to resolve key political issues – state restructuring along federal lines, the form of governance, the electoral system, the integration and rehabilitation of Maoist combatants and the establishment of stable democratic rule.
- The proliferation of armed groups, extra-constitutional social movements, economic decline and geopolitical battle have absorbed the capacity of the political leadership to expedite the constitution-drafting process.
- Irrespective of the political spectrum, the Nepali political classes have helped the same moneyed elites to control power and have used the citizens to achieve more power with less accountability and transparency.
- Achieving peace and getting the constitutional process underway largely depend on the implementation of various accords political leaders have signed.

## 1. Introduction

The 12-point agreement signed by the Seven-Party Alliance (SPA) and the Unified Communist Party of Nepal-Maoist (UCPN-Maoist) on November 22, 2005, with Indian mediation and the subsequent mass movement of April 2006 transformed Nepal into a secular, federal democratic republic. The Comprehensive Peace Agreement (CPA) signed on November 21, 2006 formally ended a decade-long armed insurgency and brought Maoists into the political mainstream. It promises<sup>1</sup> to end the conflict and bring about political, economic and social transformation, transitional justice and sustainable peace. The 23-point accord of December 23, 2007 agreed to set up six commissions: Disappeared Persons, Truth and Reconciliation, State Restructuring, Scientific Land Reform, Monitoring Committee for the Effective Implementation of the CPA and other Agreements and High-Level Peace Commission. The election to the 601-member Constituent Assembly (CA) held on April 10, 2008 established UCPN (Maoist) as the single dominant party and changed the political equation. UCPN (Maoist) leader Puspa Kamal Dahal became Prime Minister in August 2008 but had to resign as his decision to fire the Chief of the Army was reverted by the President. Following the rule of two coalition governments led by CPN-UML leaders Madhav K. Nepal and J. N. Khanal respectively, the power equation again shifted in favor of Maoist.

On August 29, 2011 on the basis of a 4-point agreement between UCPN (Maoist) and United Democratic Madhesi Front (UDMF), a coalition of five regional parties, Dr Baburam Bhattarai, Vice-Chairman of UCPN (Maoist), was elected as Prime Minister. He has given top priority to the peace, constitution writing process and relief to the people and promised to complete the peace process within 45 days of his appointment as Prime Minister. He succeeded in ending the double security system to Maoist leaders, handover of keys of Maoist arms in cantonment to Special Committee and classification of Maoist combatants to be integrated and rehabilitated. Similarly, a state restructuring committee has been formed. Still, the Prime Minister is facing a major challenge from the

hard line faction of his own party led by Mohan Baidya on the four-point agreement and seven-point agreement signed between the four major parties on November 1, treaty on Indian investment, return of property seized during the armed conflict, etc thereby prolonging the political transition. The CPA emphasizes the consensual approach in forming a government as each article of the new constitution has to be passed either by a consensus or a two-third majority. But the tension between the political parties over power-sharing and the nature of constitution – democratic or People's Republic are obstructing the process. The domination of discourse by power politics has made both peace-building and the constitution-drafting process an uphill task, widened the trust gap, and reinforced the political culture of negation across the political spectrum. Likewise, the rise of armed non-state actors, assertion of subsidiary identity politics and their demands have threatened the state's capacity to maintain public order and create the stake of all actors in the stable peace.

## 2. The Crux of the Problem: Party Factionalism and the Rise of Armed Non-State Actors

Initially, the constitution was due to be promulgated on May 28, 2010 but it has now been postponed four times.<sup>2</sup> However, the lack of agreement on social and economic questions, political transformation and a firm commitment to democracy, tendency to decide important issues through secret deals with other parties and subsidiary groups without consulting fellow party members undermined the national political will necessary for collective action. All political parties – Nepali Congress (NC), Communist Party of Nepal-United Marxist Leninist (CPN-UML), UCPN-Maoist, *Sadhabhawana* party, and other Madhes-based parties are embroiled in factional fights, split and have increased their number in the CA from 21 to 31. The lines of difference are not over ideologies but over individual personality which subsequently works as a catalyst to form intra-party wings representing opposite approaches to political issues.

1. The CPA promises social, economic, and political transformation, conflict management, management of the army and arms, protection of human rights, adherence to humanitarian law and peaceful settlement of disputes, implementation mechanisms and reconstruction and reconciliation measures.

2. Similarly, as the CA failed to promulgate a new constitution on the May 28, 2010 deadline three major parties signed a pact and extended its tenure for one more year. It also failed to promulgate the constitution on May 28, 2011 and again on August 28. It has been extended by three more months.

A number of things are hindering peace, threatening law and order, and promoting a culture of impunity:

- factionalism in big parties;
- personalization of parties by leaders;
- lack of internal party democracy;
- absence of constitutional habits;
- failure to enforce party laws and codes of conduct;
- proliferation of regional parties;
- cross-coalitions of leaders in order to remain in power with the help of factional leaders from other parties or even parties with polar opposite ideologies;
- militarization of parties' sister organizations (especially youth and trade unions);
- rise of armed non-state actors in southern flatlands bordering India and eastern hills;
- parties' and their leaders' reprehensible links with local thugs – who are often used for extortion, demonstration of political power and exertion of influence on both state and non-state agencies and intimidation (criminalization of politics and vice versa); and
- involvement of party leaders in corruption and crime.

The impact of Nepal's culture of impunity and political patronage is pervasive in public life. Parties have promoted »family-friendly« politics which is evident from the existence of 28 families (husband and wives in the CA) rather than truly addressing the issue of social inclusion in different layers of society. They have sustained their power base through patronage, with systems established to reward party clients by granting licenses, awarding contracts, lucrative jobs, and protecting them from punishment for tax evasion and corruption. For example, former finance secretary Rameshwor Khanal had to resign due to a tax row between him and the Finance Minister who was protecting one of the top businessmen of his party. The paternalistic political culture has forced people to become aligned with partisan forces or with interest groups devoid of a sense of national identity. Politics, therefore, has become a barter system – »votes for favors« and »favors for votes« – not a public sphere for the democratization of state, society and economy.

Although Nepalese political parties have grown out of social and political movements they have not yet established stable social constituencies except in the case of *Madhesi*, *Tharus*, and some ethnic groups. Parties seem to have sidelined issues concerning the poor, the pow-

erless and marginalized groups, resulting in tensions between those engaged in social and political movements. Caucuses of women, *Dalits*, *Janjatis*, *Aadibasis* and *Madhesi* across party lines are demanding a new social contract to address issues of power, resource, and recognition. Irrespective of the ideologies they espouse, political class helps the same moneyed class to remain in power and use the people to acquire more power.

### Crisis of Governance

Inter-and intra-party feud led to frequent changes of government, marking a deep crisis of governance. Nepal has already seen five prime ministers since the April Movement and the Interim Constitution 2007 has been amended ten times for various reasons, including extension of the tenure of the CA to cope with political and constitutional crises.

These crises have spawned double effects: governance has failed to achieve its core objectives and the state has lost its »Weberian« legitimacy monopoly on power thereby reducing its outreach in society. In fact, the state did not collapse in Nepal, rather its monopoly on power has shifted to political parties, armed non-state actors, party-wings and their sister organizations, who define the rules of the game on their own terms and share the spoils of office. The weakening of state institutions has led to a security vacuum, eroded the rule of law, undermined human rights, promoted a culture of impunity for the political classes, institutionalized corruption, squeezed developmental space, scared off foreign investors, and constrained economic activities. The division of society along partisan, ethnic and regional lines has further eroded the social fabric of local self-governance. The strong control by a few dominant parties over positions and resources, from village to cabinet in the absence of a local elected government, has squeezed »democratic space« for ordinary citizens. The Local Peace Committees (LPCs) have also fallen victim of patronage politics. The political protection of armed non-state actors and criminals has undermined the state's *raison d'être*. The Nepalese Army and the court – the two state-bearing institutions – are also under tremendous pressure from political parties and human rights organizations that talk only selectively about human rights violations committed by the state agencies but not by non-state actors.

The recent four-point agreement between the Maoists and the UDMF renders redundant some of the major commitments made in the CPA as it spells out to withdraw all cases involving human rights violations pending against Madhesi and Maoist cadres during insurgencies, creation of a separate Madhesi army of 10,000, foreign policy tilt to India, etc. This holds out little hope for the establishment of two commissions – Truth and Reconciliation and Disappeared Persons – aiming to provide transitional justice.

### Constitutional Process

There are other unresolved issues: form of government, nature of federalism, integration and management of the People's Liberation Army (PLA), electoral system, and land reform. With regard to the electoral system, parties are inching closer towards and likely to strike a deal on a mixed system (involving elements of first-past-the-post and proportional representation). There is no consensus on the form of government. NC favors a parliamentary system of government and CPN-UML an executive prime minister directly elected by voters and a constitutional head of state (President), while UCPN (Maoist) advocates the French model, with a President, directly elected by the people, who will serve both as head of state and head of government, while a Prime Minister elected from Parliament will look after day-to-day affairs. Parliamentary parties have accepted the Maoists demand for a Constitutional Court in return for judicial autonomy.

### Federalism

The CPA emphasizes a state restructuring commission to address class, gender, caste and ethnic disparities through inclusive measures. Accordingly, the CA Committee on Restructuring of the State and Distribution of Power (CRSDP) submitted a report recommending that Nepal should have 14 autonomous provinces with the right of self-determination. These states were formed on the basis of ethnicity, language and territoriality which, in principle, contradict the notion of secularism and protection of minorities. Given the state of its economy, experts argue that Nepal cannot sustain so many federal states. Those who are against the idea of federalism are increasing in number as time goes by. In fact, it was the job of

the recently set up State Restructuring Commission to recommend both the number and the nature of the federal states. The Chhetris, the largest Hindu caste group with 18 percent of the national population, the Dalits, the second largest group with 13 percent, and the Bahuns, the third largest population group with 12.74 percent, do not have provinces specifically for them and, therefore, they oppose ethnic-based federalism. None of the ethnic communities enjoy a majority in the proposed states.

Rastriya Prajatantra Party-Nepal, Rastriya Jana Morcha Nepal, and others either want a referendum on federalism or reject the idea outright. Differences exist between NC, CPN-UML, UCPN (Maoist), and Madhes-based parties on the modality of federal state. UCPN (Maoist) has demanded an ethnicity-based federal structure with autonomy. The Madhes-based parties are in favor of »one Madhes, one Pradesh« with full autonomy and a right to self-determination. But Tharus (another dominant group) living in Madhes oppose this. There was a tacit understanding between Maoist and ethnic/indigenous groups on this issue and Maoists used ethnic and regional issues during the »people's war«, promising the formation of mostly »ethnic provinces« for local government. The Nepal Federation of Indigenous Nationalities (NEFIN) has demanded the right of self-determination, which is also endorsed by the Maoist party. NC wants federalism based on geography, CPN-UML wants it on the basis of identity and viability, while the Rastriya Jana Morcha Nepal and a number of smaller parties prefer decentralization of power, fearing that federalism will fragment the nation. Moreover, the following are still strongly contested:

- the basis of federalism;
- the number<sup>3</sup> and names of provinces;
- special structures;
- the right of self-determination;
- agradhikar (a special right meaning that only persons belonging to the dominant community would be Chief Executive for the first two consecutive terms);
- prior use rights on land, rivers and forests and special rights for marginalized/minorities.

The degree of autonomy provinces will enjoy – that is, the powers of the center over the provinces – remains contested. Experts fear that without mutually satisfying

3. The NC is in favor of seven federal states, while UCPN (Maoist) and CPN-UML are undecided.

political bargains, the emotive issues of federalism, language and ethnicity might weaken the capacity of the state to hold society together.

### Peace Process

Nepalese parties had understood the peace process as a power-sharing agreement between them who collectively removed the King and reestablished democracy. But they are now more interested in power monopoly which is now passing between the leaders of different parties, one after another, like in a syndicate system. Both democracy and the peace process have become secondary considerations. In the course of power sharing, the whole peace process was hijacked by the few powerful leaders who since then have been deciding on all matters in their own interests. This happened, at the outset, because there was no provision to monitor the CPA and the CA had a dual role, legislative as well as executive. Moreover, some of the important issues such as federalism,<sup>4</sup> a republic, and secularism were decided without consulting the people and were not even demands of the April movement. These issues should have been decided either by the CA or by a referendum. This is one reason the peace process has become a winners' game. The failure to establish post-conflict measures have stoked dissenting voices.

For almost five years political parties were divided on whether the peace process or the constitutional process should take precedence. The mainstream political parties take the view that the peace process should come first. This includes the return of seized property, dismantling of the Young Communist League, and integration and rehabilitation of Maoist combatants. The Maoists, however, wanted the contents of the Constitution to be decided on first. It appears that the Maoists are clear about their goals<sup>5</sup> and are hell-bent on attaining them. They initiated the peace process only after their government had come to the power. The Maoists have been floating one proposal after another as a tactical move, to which the other mainstream political parties have reacted passively. To build trust, they have now handed the keys

of the weapons they have stored away and asked their cadres to return the property seized during the insurgency. The modalities of integration, the numbers to be integrated, rank harmonization, and rehabilitation and voluntary retirement packages are settled by the seven-point agreement of four major parties on November 1, 2011. Parties agreed to integrate 6,500 fighters into the newly-created Special Directorate under the Nepal Army (NA). The Directorate, comprising 65 percent personnel from the security agencies of the state and 35 percent from PLA, will be responsible for infrastructure development, industrial and forest security and disaster relief. The agreement offers a package of \$6,300 to \$10,000 for PLA opting for voluntary retirement and cash package of \$7,600 to \$11,400 depending on their rank for those who prefer rehabilitation. Their money will be paid within two years. Combatants will be integrated on an individual basis and will have to meet the norms of the security force. But there will be some flexibility on age, marital status and educational qualification.

### Foreign Affairs

Nepal's strategic location, fragile state institutions and unstable politics have invited competitive geopolitical pressures affecting its internal peace. India's strategic interest is to reduce external influence especially of the Chinese, the European Union and the US. The United States had earlier supported the NA to prevent the collapse of the state. These very political forces are today polarized along geopolitical lines. The absence of a national center has caused a security vacuum. Given this state of affairs it appears that India will continue to cultivate pro-Indian leaders in the mainstream parties, support Madhesis and engage with armed non-state actors hiding in India. Political analysts view it as an attempt to shift Nepal's political heartland from the hills to the Terai-Madhes.

China has expressed security concerns owing to the rise of pro-Tibet activities organized by Tibetan communities, human rights NGOs and a few leaders of political parties. It has expressed its desire to help strengthen the capacity of Nepalese army and police and granted US dollar 20 million in aid to them. China has increased the frequency of its high-level visits and upscaling investment in infrastructure developments and hydropower generation. Its immediate interest is to neutralize

4. Federalism was included after amendments were made in the constitution. Secularism and the republic were decided on in haste by the transitional government of G. P. Koirala.

5. In fact, the Constituent Assembly, federalism, inclusive democracy and the republic were Maoist agendas.

the converging interests of India, the EU, and the United States on Tibet. The EU is also helping Nepal to bring about a successful transformation to constitutional democracy, human rights, social justice, and peace but some of its projects have been heavily criticized for supporting ethnic and regional forces. The US foreign policy differs from that of China and India but emphasizes the need for constructive engagement with both. There is a great deal of confusion concerning how to deal with this increased geopolitical activity in Kathmandu.

### 3. Donors, Civil Society, and Peace-building

Both donors and civil society are divided on peace-building. Some donors have even been blamed for brewing up ethnic tensions and inciting violence in society. Civil society groups are divided along partisan lines and have failed to function as a mediator between the state and society. The relationship between the private sector and civil society is marked by a lack of cooperation. These trends have weakened the institutional basis of democracy and undermined the writ of the state. Community-based social organizations are also suffering from the culture of dependency, unable to operate without external aid and knowhow and are seen to be promoting decontextualized agendas.

Some large donors are circumventing the state and its institutions promoting within civil society clients to sell their agendas. Other donor countries – Germany, Finland, and Japan – are operating at the grassroots level

with a mandate from the government. They are supporting efforts to establish the authority of the state. German development organizations are seldom criticized because of their engagement at the grassroots level and aligning with national priorities.

### 4. The Way Forward

The state-centric UCPN (Maoist) conflict has now spread into society and people's trust in politics is at its lowest ebb as the CA is extending its own tenure under the doctrine of necessity. Almost all the political parties are losing legitimacy due to the lack of effective public action. Frustration is running high in the middle-level cadres of Maoists because of its radical promises and the underachievement of its governance. The ongoing progress in peace process should be expedited to build confidence of parties for drafting the constitution and introducing structural reforms. Problems related to the peace and constitutional processes can be addressed provided that political parties rise above their partisan interests, create common ground based on national perspectives, resolve all constitutional issues and engage in reconciliation. Donors for their part should engage in strengthening the capacity of state institutions rather than promoting clientelism and non-state agencies so that the citizens can focus on developing their national identity. In fact, donors' involvement in infrastructural development, good governance and job creation might help to win the trust of the Nepalese people instilling in them a feeling that they have a shared stake in democracy, development, and peace.



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