

Peace Process in Nepal: Successes and Failures from Jurisprudential Perspective

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Abstract:

Peace building both as a process and goal cannot be isolated from the empirical realities of the given nation. The facts around the issues do have decisive role in both the process and objectives. The political instruments and mechanisms are also decisive elements in this regard. An honest, pragmatic and visionary political leadership of the nation is a pivotal instrument of transforming the conflict. In many nations, the process eventually failed not because there was a lack of potential for pragmatic peace process. However, the peace process miserably failed because the leadership was not unfettered by vested interests or political gimmicks. The transformation of conflict demands 'a true political honesty and sincerity'. Conflicts are not essentially an evil. If they are taken positively, they can be used as important 'energy or driving force to rebuild the society'. This dynamic, however, can play role only in a society where there is a culture of public or national interests outweigh the individual or partisan political interests of leadership. So far, Nepal has not been able to become a nation of leaders where they are inclined to sacrifice their partisan interests for the sake of national or public interests. This paper basically highlights the perspectives of failures of political leadership observed, its causes and consequences along with the peoples' expectation in Nepal.

Key Words: peace process, conflict transformation, sustainable development, political actors, constitution, constituent assembly,

Let me start the discussion by being a critique of the political leadership and information dissemination system in Nepal. I strongly believe that the present crisis facing the nation has largely been an outcome of the failure of the political leadership of Nepal which does not demonstrates adequate will to transform Nepal from an economically poor, educationally backward and politically unstable society to a prosperous, civilized and democratically governed society. The political leadership of Nepal has not only made mistakes repeatedly in envisioning the realistic goal for 'bright future of the nation', but also has made mistakes of being not committed to the national interest. The petty partisan interests beget unending and unlimited political gimmicks of the political leadership of Nepal, which has seriously been affecting the national psyche of democratic political culture. The power-centric culture of politics among political leaders has overlooked the necessity of focusing attention on 'building conditions for gross happiness of the population, with well-spelt out focus on the marginalized people'. The mutual trust between the people and leadership is thus extremely poor in Nepal. This, in turn, establishes a negative perspective to address socio-economic and political problems. The lack of trust between the people and political leadership is mainly

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generated by the political parties' lacking of accountability to the people and their minimal sensitivity to the nation building efforts. This is particularly the cause that the hope of people to the new Nepal generated by the 2006 political change and the end of decade long bloody insurgency has now largely gone into disarray. Candidly speaking, the skepticism of the people on the ability of political actors to achieve goals set forth by the 2006 movement is no longer covered or invisible. The perspective of the peace process is also not unaffected by this skepticism. Of course, the political parties have, in the past, committed serious mistakes in this regard. The major mistakes weaknesses committed by them can be outlined as follows:

- a. **Psyche of Sovereign Entities**: The political parties tended to believe that they were not merely the representatives of the people, but also the sovereign entities. The misconception has encouraged them to commit mistakes in making appropriate decisions in the peace process: they have repeatedly demonstrated a tendency of working as if they were the supreme entities of the State. A host of examples can be given in this regard. The Interim Constitution 2006 (2063), for instance, had been adopted without public debate or having regard to the public opinions. It was promulgated as if a document of 'contract between' the then Seven Party Alliance (SPA) Government and CPN (Maoist). It was to be a 'social contract of the Nepalese' people instead. However, the process of making it a social contract was hijacked by the secret dealing between the representatives of the Government and CPN (Maoist). The Interim Constitution, as a result, suffered from countless deformities, which is evident from series of amendments within a very short period of time. It was prepared by a group of people (mostly lawyers) in utter isolation of people's concerns, opinions and expectations. It was adopted by the political parties through a negotiated dialogue on the basis of their ideological partisan interests: the expectations of people were not the issues of negotiation. The provisions, principles and norms enshrined into the Interim Constitution thus reflected on the terms and references of the compromise agreed between political parties on the basis of the ideological interests rather than the interests of the nation or public. The process applied to adopt and promulgate the Interim Constitution thus implies the reasons why the document did fail to give expressions to the 'voices or expectations of people'. For examples, the Constitution did not consist of space for addressing the issue of corruption and the violation of human rights by the past regimes and some leaders of the parties in the current Government; the Constitution provided no remedy of the massive problem of impunity which had emerged as a culture; and it also failed to address the working patterns and behaviors of the bureaucracy that is largely feudal in functional nature. The goals of the 2006 people's movement have thus been obstructed by the unpreparedness of the political parties to bring desired changes in the national life.
- b. **CPA as an Agreement between Government and CPN (Maoist)**: The CPA 2007 was not an exception. It was worked out as a contract between the government of the SPA and CPN (Maoist). The parties signing the agreement failed to realize that they both were negotiating for the sake of people. It is why the poor and disadvantaged

groups of people could not be the matter of concern for negotiated terms and references of the agreement. The momentum of the agreement was hijacked by the political agenda. Thus, it became a document of 'political contract' between the government and the rebelling party: it could not be a blueprint or roadmap for the transformation of the broken peace into a national trust, ideological co-existence and workable democracy. This document was expected by people to be a 'working guidelines for the Constitution making by the CA' in vain. The nation was not allowed to own the document. Consequently, the tendency of violation and self and prejudiced interpretations of the terms and references of the agreement became obvious soon after its conclusion. The haggling tendencies of the agreement's parties overlooked the people's expectations of rapid changes towards peace and end of the transition. As a result, the CA election could not be held in time and the violence started crippling the civic life. The strikes, demonstrations and disruption of the civic life emerged as a general phenomena. The course of change thus became disoriented.

- c. **CA Election not a Platform of Consensus**: The CA election failed to be a people's 'platform' to forge out meaningful and genuine consensus for the forthcoming structure of "New Nepal". Rather, the election was fought as if it was a 'parliamentary contest'. The concerns of the political parties to grab the Government constituted motivating factors for the election. Instead of building a consensus for the 'future structure of the State', the political parties sharply divided the people on dreams sold out by them. They drew sharp lines between the people ideologically, and sold out their agenda for propaganda. They did not fight election based on issues to be addressed by the forthcoming Constitution. Indeed, they projected personalities, glamour and development myths to the people as agenda of election. Candidly speaking, the political parties indulged in a game to steal votes of people by all possible means of political tricks.
- d. **Glorification of Violence**: All forms of violence were obviously glorified throughout the CA election. The political parties seemed not prepared to develop democratic practices for ideological competition. They seemed also not prepared to realize the negative impact of the violence and the fact that its 'glorification' could accustom people to use violence as a legitimate means of getting things done. Obviously, the post election period appeared with situation of implausibly painful disorder and rampant anarchy. The Nepalese society got virtually plunged into a mess of anarchy. In spite of the introspecting their roles promoting violence, the political parties began arming their youths. The politics thus started becoming criminalized as no law could prevent youths backed by political parties to commit crimes. The state of impunity thus flourished as a culture.
- e. In the wake of these messes, the task of Constitution making could not be a priority agenda for the political parties. The most infamous parliamentary political gimmicks practiced by the political parties in the post 1990 House of Representatives continued to be the feature of the post 2006 politics also. The faith on 'consensus politics' warranted by Article 43 of the Interim Constitution was fully ignored. The Nepali

Congress isolated itself from the 'Constitutional commitment' of the consensus politics by declining to a part of the first elected Government after 2006 change. The CPN (Maoist), mesmerized by overwhelming votes of people and sense of pride of being inducted into the power of Government, forgot to emphasize the necessity of 'consensus of all parties to frame the Constitution'. It indulged in a fight with the military chief in a war footing thereby finally bringing its own government to collapse before completing one year period. The CPN (UML), who was expected by people to be an efficient mediator for peace process and Constitution making between two poles of politics represented by the Nepali Congress and CPN (Maoist), remained ideal and indecisive, and failed its role to stop constantly evolving polarization of the politics and the two poles going far from each other. The rapidly breaking trust and consensus among the three major political parties made the Constitution making process a 'hostage' gossiping and political nasty gimmicks.

The media could be an effective role player to caution the wrong attitudes and performances of the political actors and the civil society. The role of media, however, could not be neutral, nor did it play a role of problem shooter. The media was largely propagating the partisan interests. The media's failure to play impartial role in analysis of the political events and attitudes of the political parties intensified the polarization and antagonistic attitudes among the political parties. One of the biggest failures of the media was to warn the civil society for its indolence to become a watchdog of the Constitution making process. Moreover, the controversies and events of violence became target of dissemination for media. The media largely projected an attitude of 'gossiping and building controversies' as a mission. The right of people to have fair and impartial information was seriously overlooked. The media thus implicitly played a role in 'fueling the controversies between different political parties'. In the other hand, the civil society failed to reflect on genuine aspirations of the people. It could not come out of a psyche of 'parochial' NGO attitude. The so-called civil society converted Constitution making and peace building from a mission into a 'donor funded projects'. The easy acceptability of funding by Nepalese NGOs from donor agencies was a gateway for extraneous influence to inter in easy way. The donor funded projects utilized the expatriates and minimized the roles of native experts to counsel the CA members. The Constitution making advocacy thus ended in talking about experiences of some European and African countries but not the practical expectations of people regarding consolidation of the democratic system. With all these unwanted events and phenomena, the Constitution making and peace processes were exposed to face a danger of being pushed back. The perspectives definitely do not convey a positive message. However, the reality cannot be different simply because we don't see it. Both the process of Constitution making and peace building has come to a very crucial point, a crossroad. Any more mistakes may fully jeopardize the entire process of change in Nepal. The deadline for Constitution making is not far to reach and the progress is still in impasse. While some leaders have started opining to extend the deadline by amendment of the Constitution, the Government's opinion seems to be different. In amidst these controversies, the Nepalese

people have to work hard to accelerate the processes for constitution making and peace building, if their nation should not go to direction of a failed state.

1. EXPECTATIONS OF PEOPLE AND RESPONSIBILITIES OF THE POLITICAL ACTORS FOR SUSTAINABLE PEACE AND DEVELOPMENT IN NEPAL

While the perspectives discussed above do not give a good picture of the ongoing peace process, the problems and challenges cannot be viewed as the 'end of the world'. They are facts and realities, and thus they are also source of experiences and learning process. The setbacks witnessed in the Constitutional making process and peace building in the twenty months have definitely casted a shadow on the hope of people nationally and internationally. However, the hope has not been ended at this point. Still it is possible to go ahead.

The decade long violent conflict has far reaching impacts on socio-economic conventional paradigms of the Nepalese society. It has been a turning point in the history of Nepal in many respects. The conflict has consequently resulted in ways out for overall changes in conventional psyche and values of the Nepalese people. The 2006 popular movement against authoritarian regime of the king has ended the insurgency as well as the over two century long monarchy. Thus, it has been a herald for new roadmap of the nation. This has opened the way for the voiceless people: the dalit, women and minority marginalized groups are assertively demanding their equity in all aspects of socio-economic and political lives of the nation. The restructuring of the state institutions and policies are major concerns of the change. It is hoped that with the mammoth change in the national lives by the 2006 movement, the Nepalese society would be able to transform the conflict into a new vigor of people for modern socio-economic development and welfare of the people. The people sincerely believe that the change brought about by the 2006 movement will not only address the decade long conflict, but it will also intervene positively to the conventional outlooks, the traditional system of governance, including the governmental institutions and their psyche, the power-imbalanced and stereotypical structure of the society and the countless of forms of latent conflict. The new Constitution has, therefore, been viewed by the people as an end to the painful and extended transition.

1.1. Where are the problems of Constitution making and management of the combatants?

As discussed above, the instruments, the Interim Constitution and the CPA, developed to guide the Constitution making and fostering the peace process have not fully been able to address the exigencies or expediencies associated with. They are vague and less candid in guiding the processes out of complexity of political ideologies and diverse interests and concerns of varying sections of population. The Constitution and CPA contain the following lapses that are largely responsible for the present situation of 'impasse', if not total deadlock.

The CPA and Interim Constitution provide for an instrument (Combatants Management of Rehabilitation Committee) in order to work out a solution for management or rehabilitation of the combatants. However, the instruments and the mechanisms devised for the purpose ostensibly fail to outline the detail processes. They fail to (a) fix the deadline of the management (when to complete the process), (b) determine the steps of procedures (how to complete the process), (c) identify the modality (whether it is a process of infusion of combatants in Nepal Army, or diffusion of the Nepal Army and combatants or conflation of the two forces), and (d) declare the position of the two before any of the process has come to an end (who controls the combatants). The two instruments (Constitution and Agreement) advertently overlooked to consider such issues as (a) how the government could manage the national army and combatants should the CPN (Maoist) happens to form the government after CA election, (b) what would be the relation between combatants and CPN (Maoist) after the CA election?, and (c) what would be the position of CA with regard to the national army and the combatants? These issues could never be the matter of concern for political parties when the documents of Constitution and Agreement were being negotiated. The CPN (Maoist) obtained domineering position in CA and legislative assembly by CA election and had apparently been in a position to lead the government. It sounds that the Nepali Congress and CPN (UML) did not expect this result. Consequently, the result of CA presented a pretty tricky situation, particularly to the Nepali Congress. Hence, the clandestine game to prevent CPN (Maoist) to hold the position of president started. On the other hand, the swollen ambition of the CPN (Maoist) by the result provoked it to capture the 'presidency'. The point of departure from existing 'consensuses thus started rapidly. The CPN (UML) helped Congress to get the post of president, who was to be the ex-officio 'supreme commander of the Nepal army'. It was why the Nepali Congress did not want CPN (Maoist) to hold this position.

Owing to loss of presidency by having not assisted by UML, the CPN (Maoist) agreed to form a coalition with the later. The Government was thus formed under leadership of the CPN (Maoist). Immediately, the lapses in the Constitution and Agreement started being visible as serious factors to widen the 'emerging distrust between three major political parties'. The Government headed by the CPN (Maoist) controlled the Nepal Army through Defense Ministry as well as effectively held the combatants under its full control. It created a perplexity in situation that CPN (Maoist) became a party to hold its own private army as well as the master of the national army. The failure of the Nepali Congress and CPN (UML) in their political foresightedness in this regard surfaced as a serious problem. The situation thus gave emergence to the following effects:

- The Nepali Congress's suspicion to the government of the CPN (Maoist) in support of another major leftist party deepened immediately after the later held the defense ministry in its portfolio. This suspicion became visible by its critical comments about the CPN (Maoist) activities from the very beginning. While the issue of the management of combatants was yet to be resolved and the CPN (Maoist) was still holding the combatants under its effective control, the holding

of the command of defense ministry by itself was a political error. It was rather a mistake on the part of the coalition partners, the CPN (UML) in particular.

- The lack of experiences on the part of the CPN (Maoist) to run the government as a leading partner contributed to the escalation of tension between the Government and other parties. The Maoist's assertion of 'democratization' of the Nepal Army further deepened the tension within Nepal Army and the Congress. This move ultimately emerged into a 'debacle between the Army and the Government'. The CPN (UML) demonstrated divided position in this issue. A group of UML leadership went vocally against the Government on issue of conflict between the army and the government. This position invited controversy within the ruling partners themselves.
- Government presented its adamant position with regard to Army Chief's removal, while the Nepali Congress and a section of UML stood firmly against Government's move. Eventually, the Government collapsed in this issue by creating a debacle between the political parties. The pre-election situation of consensus was then fully shattered with a serious vulnerability of polarization of the politics.
- The involvement of the president in a constitutionally controversial act of reinstating the deposed Army Chief left no position of State out of controversy. The UML divided categorically in this issue, and withdrew its support to the government. However, a section of the UML leadership on the other hand condemned the president's move as unconstitutional. Upon dissolution of the government, the CPN (Maoist) declared nationwide strikes against the president's move. Amidst opposition of the CPN (Maoist), the UML led government was formed in support of the Congress. The agreement between Maoists and UML was virtually broken, an enmity being resulted at times. While the act of CPN (Maoist) to remove the Army Chief posited a serious controversy in the transitional political spectrum, the act of the president was also not uncontroversial. The act of 18 political parties who not only inspired the president to confront with the government allegedly violated the Constitution. Those who challenged the act of the president argued that act of the political parties to instigate the president to revoke the government's decision had hijacked the authority of the legislative assembly. Their opinion was that Article 37 of the Interim Constitution had vested the executive powers of the State on the Council of Ministers thus disabling the president to intervene under any circumstances and excuses against any decision of the Council of Ministers. Of course, unlike Article 53 of the Indian Constitution, the president of Nepal does not have any executive authority to exercise.

The result in the political spectrum of Nepal by these events was absolutely unfortunate. The emerging culture of political consensus was shattered thus negatively affecting the process of Constitution making and peace building. The snag posited by the CPN (Maoist) in affairs of

the legislative assembly almost for a period of four months in order to correct the president's act had made the political situation immensely frustrating. The nation even failed to have its budget passed in time due to continuous opposition and strikes in the legislative assembly. The previously nurtured consensus politics was thus transformed into a 'political confrontation'. The situation is still going on without much change.

The broken relations among political parties seriously hampered the Constitution making process. The situation is terribly frustrating. Article 64 of the Constitution specifically warrants that the new Constitution should be declared within two years from the date of the first meeting the CA, i.e. 14 of Jestha, 2067. Under given circumstance, the deadline seems to be fully unrealistic. There are many issues which need consensus of all political parties for adoption by the CA. For instance,

- The federal modality requires full consensus of the three major political parties in the given situation, in which every ethnic or linguistic group is claiming for a separate state. In order to ensure that the new Constitution will work effectively, the mechanism and institutions created by it must be unconditionally backed by the three major parties and they must be prepared to treat the dissident voices properly. The transformation of nation into a federal structure is simply not possible without consensus of the three major parties. The consensus, on the other hand, is not possible by ignoring the CPN (Maoist). If the present government fails to obtain the support of the CPN (Maoist), the completion and declaration of new Constitution would be totally jeopardized. In the given context of the power equation, the success of the peace building process by overlooking the role and participation of the CPN (Maoist) is not only unrealistic, but also impossible.
- The failure to adopt the Constitution by the deadline will posit serious consequences. The vagueness and lapses posited by the framers of the Interim Constitution are apparently threatening the prospect of peace building and Constitution making processes. The expiry of the deadline for adoption of the Constitution, without its making, will result in catastrophic political vacuum in the nation. The expiry of the deadline or immature dissolution of the CA will result in expiry of the legislative assembly too, which functions as a complementary institution. Independent existence of the legislative assembly is not envisioned by the Interim Constitution. In turn, the expiry of the legislative assembly will end the tenure of the members of the legislative assembly, and consequently the prime minister will have to vacate the post simply because he/she cannot hold the position without being a member of the legislative assembly. With vacation of the Prime Minister's post, the Council of Ministers will retire. Unfortunately, the Interim Constitution does not have a mechanism to recruit a 'temporary government'. The country will then be pushed in a condition of vacuum of the Council of Ministers. The continuity of tenure of the President by Article 36 has been made contingent upon adoption and promulgation the new Constitution. The provision says that the President will continue holding the post until the new Constitution is promulgated duly. The dissolution of the CA, however, will leave

nothing to wait for promulgate, as there is no Constitution at all. Obviously, if the CA dissolves without adopting the new Constitution, the Presidents' post will automatically get vacated immediately. The Constitutional 'zero' position will thus emerge. The Interim Constitution will virtually become illegitimate by having no authority to enforce it. The CPA will then be void in absence of the functional legitimacy of the Interim Constitution. The ceasefire between the government force and combatants will also become defunct. The country may then return to the previous condition of insurgency.

The major problem of Constitution making and peace building is thus lying on the fact of 'broken political consensus. Having a government without desired effectiveness to accelerate the process of Constitution making and management of the combatants is meaningless. The prime objective of that transitional government is to bring the transition at end as soon as possible. The government failing to materialize this objective would imply a government without effective political caliber and vision to guide the Constitution making process and peace building, and as such it would be a problem in itself. A government in transition would be effective in political sense if it is capable of facilitating consensus among political parties with varying ideologies and programs. Particularly, the management of the combatants seems virtually impossible without Maoist's cooperation. In this context, only the government that is capable of taking Maoist together in the process of Constitution making and management of the combatants can be viewed as an effective government. The present government should therefore make all possible efforts to obtain support of the CPN (Maoist). It has only two options available to address the present impasse:

- (a) Rebuild the political amity between major political parties, including CPN (Maoist) and work under a consensus scheme to address the crisis. In other words, the Government must, with support of the high level political mechanism, make a fresh start of taking the country ahead by consensus among the political parties and must ensure them to abide by 'the words and spirit of Article 43 of the Constitution, which explicitly warrants them to address state's affairs by consensus. The act of ensuring government's existence on the strength of numerical confidence is meaningless. The best way of securing cooperation from the CPN (Maoist) is to induct it into the government. An effective government in this sense is a government that can practically reinstate the consensus among political parties that had existed prior to the CA election.
- (b) Declare nullity of the CPA and adopt a policy of the 'fight' is other option. This option is a way to nowhere. Any game for such scheme will throw the nation into a bloody conflict. A prudent will definitely not allow itself to choose this option. Hence, this option is simply not possible. Thus, the only way out from the crisis is to forge out a new atmosphere for inter-party collaboration to rescue the nation from extended transition.

1.2. What would be the consequence if the CA fails to declare Constitution in stipulated time?

This question is now worrying the people as well as heightening the level of frustration. Some hypotheses available in the political market are that:

- a. Constitution making is not a serious plan of all the political parties. It is merely a hoax. The political parties have silently agreed to accept a Constitution designed by an alien country. Hence, they, at the last moment, will disclose a draft and will agree on it. The entire CA process is therefore a hoax. The Constitution is already ready and will come into notice of people in due time. This theory suggests that there will be new Constitution in time, so nobody need to worry about Constitution. This theory also suggests that the Nepalese people are not independent to determine their own future.
- b. Though political parties are fighting terribly they know that they have to come to an agreement at some point. They will bargain and agree like in Interim Constitution finally. They will negotiate about the Constitution out of CA. The CA will then silently adopt it. The present crisis is nothing but a game to possess political power. This theory suggests that the political parties are not truly accountable to people in realistic sense.
- c. The Constitution will never be made. The entire process is nothing but a game to buy the time and to divide political forces. The forces intending to continue the same system as in the past is stronger enough to influence all the parties. The CPN (Maoist) is a serious security threat to India. The massive growth of Maoist movement in some states of India has posed a serious threat to the Indian security, and thus India will never allow a system to take place that may bring the Maoist in the position of government. The merger of the combatants is a scheme not likely to be supported by the Indian government. Thus the prospect of the adoption of the new Constitution likely to take place against the design of the Indian government, particularly its intelligence agency, namely the RAW. India is not any case prepared to compromise a deal which will ultimately clear the way for leftist government in India. Hence, the instability and division of the people is what the fate of Nepal. This theory suggests that many more bad days are yet to come in Nepal.
- d. The Congress and CPN (UML) are afraid of Maoist. They think that the new Constitution will give the way for Maoist to electoral victory and the government. Hence, Congress and UML are playing game designedly to delay the Constitution making process, and extend it until they feel comfortable to secure safe fight. The elimination of the prospect of Maoist using the combatants as its force is the bottom-line security they are looking for. The time for making Constitution is thus knowingly delayed. This theory suggests that the present UML led government will not be ready to accommodate the claims of CPN (Maoist).

- e. CPN (Maoist) is not prepared to finish the task of Constitution in time. Firstly, the combatants are good source of its revenue as large part of the salaries and other support paid to them is collected by the party. Secondly, they will not be happy to give up the combatants until they have a reasonable belief that they are going to be undefeatable force. The current situation is occurred due to massive dislike of India is not favorable for them to induct in government. The CPN (Maoist) will engage in the Constitution making process when it will be confident that the situation is appropriate for its electoral victory.

Many more such theories are under discussion. Many of these hypotheses may be 'political' gossips. However, the following facts do not totally reject some truth beneath these 'political gossips'.

- a. No political party is unaware about a fact that the 'failure to meet the deadline of the Constitution making will pose a vacuum of the government'. The political parties are very much clearly aware that 'no extension of the deadline would be possible if there is a situation in which the emergency has not affected the Constitution making process. The situation created by the emergency with adverse effect to the Constitution making process may allow an extension of the deadline for a period of six months. However, the declaration of the emergency is almost an impossible event under the present Constitution. It demands for several stringent pre-conditions for declaration of the emergency. Hence, the two year period is a mandatory rule. If the CA is aborted before the task of making the Constitution is completed or the CA fails to adopt the Constitution within a stipulated time, the following Constitutional consequences will arise:

- The legislative assembly will be terminated *ab-initio*, along with the CA. The legislative assembly is a regular parliamentary version of the CA; hence, it cannot independently exist. The legislative branch of the government will be eliminated by dissolution of the CA.
- The Council of Ministers will be vacated immediately as the 'Prime Minister', who has to be the member of the assembly as per the Constitution, will have to give up the post. With removal of the Prime Minister, the Council of Ministers will be fully vacated. The executive branch of the government is thus eliminated automatically.
- The tenure of the President is fixed by the Constitution until the new Constitution is promulgated. However, the new Constitution cannot be there provided that the CA dissolved or it fails to make the Constitution within stipulated deadline. In such a situation, there would be no Constitution to be promulgated, and the post of president will automatically be eliminated.
- Constitutional council will thus be defunct. In absence of legislative assembly, the state officials' appointment would be affected as there is no institution to conduct

public hearing. The judicial branch and Constitutional commissions are thus adversely affected too.

Interestingly enough, the Interim Constitution has not envisioned of a 'care taker government', nor has it provision to allow any institution to use the executive powers of the State. Some people, however, do argue that the president will remain until a new Constitution is promulgated. Even if someone subscribes to this argument, the problem is still at large. The present Constitution does not invest the executive powers on president. The president is thus not allowed to act like a council of ministers. The type of catastrophe to be resulted in failure of making the Constitution is thus obvious. The event will virtually allow an authoritarian regime to emerge from the grave of this failure.

The Interim Constitution will thus be virtually defunct, leading to the state of termination of the Comprehensive Peace Agreement. The consequence is then disastrous to the peace process. The termination of the peace agreement will obviously abort the 'ceasefire' and the code of conducts that disables the two armies to come out of the barracks and fight with each other. Two militaries will then be able to confront by giving way to a 'civil war' again. The peace process is thus visibly dependent on making and promulgation of the Constitution. The Constitution, however, cannot be made in absence of the 'political consensus. Hence, the consensus of political parties is a pre-condition to the success of the peace process. The ongoing peace process has thus become a hostage of the 'imprudent, power-centric, irresponsible and unaccountable culture densely grown within the major political parties of Nepal'. The today's situation is nothing but a by-product of the 'lack of democratic political culture among the political parties'. They have miserably failed to

- Inhibit external forces to disturb or influence the smooth political transition of Nepal.
- Realize that the economy is gradually collapsing due to lack of national vision and mission of development.
- Shorten the transition so that the nation could run with changed perspectives to a new direction of development.
- Develop a trust and democratic culture to 'be accountable to the people'.

1.3. What are the Options or Alternatives to complete Constitution making and management of the combatants?

Frankly speaking, the processes of conflict transformation and Constitution making are mutually interdependent affairs. Interestingly, both are mutually processes and consequences. The progress towards Constitution automatically concludes in the conclusion of conflict transformation process and *vice versa*. Both the peace and Constitution are essential for socio-economic transformation of the Nepalese people. The restructuring of the state institutions is one of the 'agreed instruments of conflict transformation'. This mission is to be addressed by the new Constitution. The Interim

Constitution has promised for 'the federalization of the State' as one of the modalities of the restructuring. There are few snags, however, looming large in this mission. Some sections of the population is 'demanding exclusive privileges' in the governance of provinces. These privileges are claimed on the basis of ethnicity (*jatiya rajya*). No state, however, can be restructured by granting a special privilege or exclusive power for a group to rule, simply because the group has larger population in the given territory or some other reasons. The claim of 'ethnic state with special privilege (*agradhikar*) in the system of governance is democratically unacceptable proposal. No restructuring of the State can be had by sacrificing the 'democratic values'. The political plurality, secularism, devolution of powers, socio-economic justice and meritocracy are the fundamental values of the modern inclusive democracy. No compromise can be had in these regards. The special privileges for someone in the system of governance will deprive the liberty of participation of others. With these fundamental values in mind, the Constitution can be expeditiously formulated to achieve logical conclusion of the conflict. There are several options available to complete the mission of Constitution making, as outlined below:

- a. Adoption of the new Constitution within the given deadline is the best option. The deadline constitutes one of the normative provisions of the 'social contract' expressed through the Constituent Assembly election. People have voted the political parties empowering them to finish the given task in the given time. Hence, the political parties have no moral authority to amend the Constitution to allow more time for CA to linger the Constitution making process. To fail in making Constitution in the given deadline would be an utter violation of the 'social contract', and any trick to linger the process will morally deprive the political parties of authority to represent the people. Of course, the CA has to finish the work in stipulated time. Due to expediency, however, the legislative assembly under Article 148 can amend the Interim Constitution with an effect to extend the time. From the pragmatic point of view, the extension can be justified provided that the political parties have been able to evolve a consensus plan of the 'state restructuring' and other pending issues.
- b. The other option is to finish the task of Constitution making by (a) forming a national government inclusive of all major political parties, and (b) extending some time to pragmatically finish the Constitution making and getting it promulgated sooner so that the way out for a democratically elected government would be expedited. The option of extending the deadline for Constitution making is, however not very desired and welcomed alternative, at least from moral point of view. Anyway, failure to achieve Constitution making by any of these two options, the peace process would be in great crisis.
- c. The third option, in case of the adoption of Constitution is not likely within the deadline and extension is also not possible, is to adopt the basic laws on 'structure of the central government and hold the election of the central

parliament' in order to provide a fresh mandate of the people to the political parties. The Constitution would then be formulated by the popularly elected parliament with fresh mandate. This option is an alternative to the 'consensus politics' enshrined into by the interim Constitution. No state can be a prisoner of 'indecisiveness'. Hence, the political parties have right to go to the people for fresh mandate.

The other pressing issue of the Constitutional deadline is the 'management of the combatants'. In this regard, there are few principles already agreed by the past government and the CPN (Maoist). Particularly, the CPA provides for the rehabilitation and management of the combatants as agreed by the committee headed by the Prime Minister. It implicitly agrees to a proposal that the 'eligible combatants' will be included within the national security forces. The reversal from the commitment made in the agreement would be an act of dishonesty. However, the government and the political parties have made fatal mistakes in dealing with the issue of combatants' management. The following notes will make this assertion clear precisely:

- No political party can have a private military, when it becomes the regular part of the state machinery. Through the CPA, the CPN (Maoist) became constitutionally established legitimate state machinery. It participated in the government by renouncing the war. The combatants it mobilized in the past thus became the responsibility of the State. By the CA election, the CPN (Maoist) became the leading political party of Nepal and engaged in running the government under its leadership. The national army thus came under its control too. Therefore, it is obviously not pertinent and democratic practice to allow a party in multi party system to hold its own politically trained private army along with the command of the national army. The combatants were to be fully transformed under State's ownership. However, the CPN (UML) and Nepali Congress ignored this necessity. The psyche they mistakenly influenced was that the combatants were 'Maoists'. It was a serious setback in the peace process.
- The Constituent Assembly, as a sovereign body of the Nepalese people, had to take control of the both militaries until the issue of the combatants' management was fully resolved by the Government. However, the CA tended to be too technical in outlooks from very beginning and thus took no initiatives on issues other than the technicalities of the Constitution making. The CA should have formed an "Armed Forces Management Committee" and transfer the control of the both the armies under it. It was too risky to let the Government the control over the national army which had its own political army. The committee would then form a technical team to work for the appropriate solution in this regard.
- The technical team could consider either the strategies of (a) infusion, or (b) diffusion, or conflation of the two armies. The modality of infusion implies a process and consequence in which the two armies are amalgamated under the

rules and regulations of the main one, i.e. the national army. However, it is always not safe and sustainable to do so as they are trained under different psychological approaches and purposes. Why we need 90,000 + 20000 (approximately) army personnel in Nepal? Do we want to defend our territory by strength of military? Can we really defend our territory against India and China on strength of military? These are the vital questions to be addressed by the national security policy. The infusion modality would thus be a wrong solution in the lack of precise national security policy.

- Nepal has never been able to think of its security policy and strategy in the past. The infusion modality is, however, virtually guided by the national security or defense policy of the nation. The modality of diffusion, on the other hand, calls for the cut off or downsizing strategy. Nepal as a small country between China and India can hardly survive on the strength of military strategic scheme. It means that we cannot fight with these two giant powers. As a matter of fact, the diffusion modality could be an option. The suggestions could be like (a) the down-sizing of the Nepal Army to a small contingent of 25000 personnel for special mission as an when so was required; (b) the rest could be transformed into armed police force and civilian force; and (c) the combatants could proportionately distributed, with emphasis of inclusion not in military. Nepal in the changed context may need over 55000 armed police personnel and over 80000 civilian police personnel. The reintegration under the army diffusion scheme would not be a serious problem to reach out. The combatants could also be included in border security force to be established under new scheme. The modality of conflation calls for the merger of two armies with their respective characters kept intact. They stay separately and commanded by their respective commanders. This modality is too risky practice. The experience of Congo is an example of dire failure of the conflation.

The political parties could involve in negotiation for the diffusion scheme and could be able to clear the way out for complete transformation of the conflict. However, these modalities could neither be the matter of discussion in the CA nor in the political platforms of the parties. It was in fact a tragic failure of the CA as well as the leadership of Nepal.

If we see the current scenario of the Constitution making conflict transformation and the analysis presented herein before, the situation of peace process is hardly making a progress. Indeed, the danger of it meeting a fiasco is not very unpredictable. The prospect of an acceptable solution in many different pending issues is far from being reached. The consistent snag of legislative assembly created by the political parties, an insensible attitude of the political parties and interest groups to address the critically pressing issues such as management of combatants, and the horse-trading type of game of the political parties for being in government or ousting it are virtually pushing the peace process back in the corner. The issue of state restructuring has come to a very perplexed state, but the government has taken it not in a very seriously. Both the previous and present governments could not be serious to

constitute the State Restructuring Commission which was envisaged to develop modalities for 'federal units or structures'. The workable modality of the state's structure with federal form is one of the instruments of conflict transformation. Unfortunately, the issue of restructuring has become a matter of serious contention among different sections of population. The population is divided in favor and against the federal structure. The mounting claim of 'special ethnic privilege' in the government of proposed provinces is worrying the reasonable people. It is thus fueling the skepticism of the people to federalism.

The Constituent Assembly could be an effective forum to forge out consensus on critical issues. Its efficiency was, however, negatively affected by the mounting controversies among the political parties in an outside the CA. Thus, the assembly could not be a forum to influence the national politics; rather the controversies among political parties affected the performance of the assembly itself. Since the political parties failed to build a movement for debates and dialogues on Constitutional issues, the creative thinking and negotiating potentials of members were not harnessed. They were rather made instruments of importing respective party's opinion in the assembly. From the very beginning, the role of native intellectuals in conducting research and helping members to clarify position on many pressing issues was fully overlooked. The expatriate experts and donor agencies driven organizations made exclusive access to the CA members. The issues on other countries were the primary matters of discussion in such forums. The romanticism of Constitution making was sold out in these forums. The assembly was not provoked to discuss on issues such as criteria of federal restructuring, mechanisms of participation by minorities, *dalit* and women in governance system, economic and social transformation of the poor, disadvantaged, marginalized and excluded and safeguards against national security and co-existence of all. It is therefore earnestly urged that the native experts should take lead of debates on such issues. The donor agencies driven projects should not be able or allowed to influence the Constitution making process.

The Constitution making process must seriously consider the issues of national interests and security as pre-requisites while designing the mechanisms, instruments and institutions to foster democracy in Nepal. For this the CA must constitute a core body of native intellectuals and entrust the task of defining the national interests and security concerns. A well defined mechanism should be established in the CA for conducting research and organizing inputs. The CA must organize interactions between intellectuals and members on pressing issues on regular basis. The normative or philosophical feedbacks on such issues should be adequately floated among the members.

The issue of rehabilitation or management of the combatants is one of the most pressing issues for successful completion of the Constitution making process and peace building. This issue has been seriously disturbed by uncontrolled controversies posited by the media and divergent views of the civil society. Hence, the CA must issue a working code of conducts for political parties, the media workers and the civil

society with effects to (a) make all political parties liable with censor and other consequences who violates the Interim Constitution, Comprehensive Peace Agreement and all those agreements signed between the previous interim government and CPN (Maoist); (b) make the members of political parties and the media workers liable for irresponsible public talk or speeches and producing controversial and unfounded stories that contradict with or pose a negative atmosphere in the implementation of the agreed terms and reference ; (c) make the media liable for creating controversies and encouraging tendencies of violating the agreement; (d) stop agencies or civil society organizations to intervene in the process of Constitution making disrupting the consensus and negatively affecting the national interests. The issue of management of the two armies in any way and by any method or modality is a matter of concerns of the Nepalese people. No foreign agency or institution can interfere in this process.

The economy of Nepal is at the verge of serious breaking. The lacking of a confident and committed government is destroying all prospects of advancement of the development efforts and reinforcement of the economic boost-up. In a poor economy like Nepal, the unproductive spheres of investment of the national exchequer should be reduced. Hence, the management of the combatants should not encourage a package which results in a project keeping many more youths as unproductive. The management modality of the combatants should be clearly driven by the 'concretely agreed national security policy'. Since Nepal has neither prospect of war with its neighbors nor has it the capacity to defend its territory and integrity by military strength, the maintenance of a huge military is totally irrelevant approach. The diffusion modality is thus an appropriate approach to the management. The nation should be allowed to adequately debate on this issue. The Constitution can be promulgated letting the issues to be settled by the future legislative assembly, provided that both the armies are put under effective control of the CA and the legislative assembly. It does not mean that the management cannot be done immediately. If the management has to be completed before the Constitution is promulgated, the political parties must come to a written agreement regarding national security policy and the same has to be endorsed by the CA as a basic law on national security.

The permanent or sustainable peace in Nepal presupposes a properly devised scheme of 'devolution of powers' or adoption of a governance policy of encouraging the notion of 'shared government'. The federal structure should therefore be based on 'precisely worked out roster of governance powers of the Central, Provincial and Local governments. Out of three governments, the vast rights of governance must be devolved to the local government as it can truly represent the people and provide an enhanced prospect of functionality of the democracy at the grassroots. The federal structure based on ethnicity and exclusive powers to certain ethnic groups will eventually foster causes and factors for conflicts. The conflict transformation should not only be understood as the 'ending the vestiges of Maoist insurgency'. The peace

process or peace building should necessarily imply an elimination of all those instruments and mechanisms that latently foster conflicts among the Nepalese people. The primary goal of the restructuring of the state should be the economic and social transformation of the poor, deprived, disenfranchised, disadvantaged and marginalized population.

The consensus government is thus the necessity of the time. The formation of the national government with precise agenda of Constitution making and management of the armies are the immediate pre-requisites for sustainable peace, as no Constitution can be made without such a consensus. The political gimmick plaguing the Constitution making process should therefore be immediately ended up. The political parties must learn to act democratically for the national interests. The CA should not be a place for their rivalry to achieve lordship; rather it is a platform to 'write a future of Nepal'.