

Moving on to the Constituent Assembly

This memorandum is written on the assumption that the best way to solve many of the political problems facing Nepal is through the Constituent Assembly (CA). One of the principal objectives around which different political factions and social organisations were able to agree to end conflict and work together for the future stability and prosperity of the country was the establishment of an inclusive CA. That consensus still remains, although it has come under considerable stress due to political developments of the last few months.

There is one fundamental condition for the ability of the Constituent Assembly to resolve political and social problems. It must be inclusive. Many recent disturbances which threaten the June deadline of elections to the CA result from the belief of communities and groups that they have been excluded from any say in decisions on transitional arrangements and that they will be similarly excluded from the CA. They want to achieve their long terms constitutional objectives now, rather than wait until the CA. And they believe that the only way that the government will take their legitimate demands seriously is if they resort to bandhs, violence and other forms of disruption.

It is therefore important to address immediately the question of representation in the CA and the basis on which all communities would be willing to participate in it. Every community must feel that their views on constitutional reform, including state restructuring, will be considered fairly and that they will participate in the decisions in the CA. The function of the CA is not merely to make decisions on specific aspects of state institutions, but to agree in a fundamental way how Nepal will be governed in the future. This concerns issues of national values, objectives, and symbols with which all communities can identify. Indeed the fundamental challenge is the new vision and identity of Nepal. To be enduring, these must be negotiated through a process where all feel they are equal partners.

It is important to establish the principle that all substantive political and constitutional decisions will be made by the CA. For now negotiations must concentrate on representation in the CA. To reach consensus representation, there must be negotiations where all key communities and groups (political parties, women, dalits, janajatis, Madheshis) meet together. Government negotiations separately with each community are unlikely to resolve differences. Concessions to one community may be unacceptable to others, and will lead to demands by others.

Representation

The principal objections to the Interim Constitution (IC) provisions on the composition of the CA are that (a) they will not ensure adequate representation of women, dalits, janajati and madhesis (marginalised groups); (b) and members of these communities who become members of the CA will be subject to party whips and will not be able to pursue their own agenda of reform. The objection to the procedure whereby these provisions were made is that they were done in a non-democratic and non-consultative manner, with no input from the marginalised groups.

The 8 parties have amended the IC to allow greater representation of Madhesis but they have not changed the basis on which members will be elected (meaning the mixed system, in, as I understand, the 'Parallel' rather than the "Mixed Member Proportional' version, and with first past the post in geographical constituencies) and so one of the principal objections to the IC scheme remains.

A number of ideas have been advanced to deal with representation issues, but different groups have not met to thrash out a compromise.

Democratising the process of constitution making

The question of representation in the CA has assumed great importance in part because the process of constitution making is not seen as participatory and democratic. The existing parties, who will have great control over the process, are widely perceived as wanting to monopolise the process. Only the present parliamentary parties are sure of registration to compete in CA elections; others will have to secure 10,000 signatures. Groups which want to form parties to lobby for the interest of their communities may face other legal hurdles.

The 8 parties can change the IC any time, to remove guarantees regarding the process. They will control the procedures of the CA, and the suspicion is that they will not allow participatory processes. The leaders of 8 parties will resolve deadlocks in the CA. The 8 parties have so far refused to set up an independent constitution commission to promote public participation and to make recommendations to the CA.

Attention should therefore be given to ways in which the process can be made more democratic, transparent and participatory. One way is to appoint a truly independent constitution commission with the mandate to promote participation and to seek, record, and submit to the CA, the views of the people. In this way every community, however small, will have opportunities to express its views and make recommendations.

The procedure of the CA itself should promote participation. Every community should have direct access to the CA, to present its views to the members. The recommendations of the CA, perhaps also the draft constitution, should be publicised for public comments before a final decision is made.

Fundamental Constitutional Principles

Another way to allay the fears of the people that the CA will not aim for a constitution fair to all communities and with an effective agenda of social reform is to agree on a set of constitutional principles that will bind the CA. Although the IC has a large number of principles of state policy and directive principles (which capture many issues of social and political reform), nowhere is it specified what would be the fundamental principles of the new constitution (drawn, for example, from the agenda of janaandolan II). It should be easy both to draw up these principles and to get agreement on them.

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11 March 2007