



Dialogue on Constitutional Processes: A Prism for Conflict Management in Nepal

Background

Nepal is in the throes of one of its most grave political and constitutional crises: the king has dismissed his government, sworn in a new cabinet under his direct leadership, declared a state of emergency and imposed a six-month censorship of the media. Several former prime ministers were put under house arrest while detention orders have been handed over to other senior politicians.

A senior minister from the newly appointed cabinet is reported to have said that fresh elections will not be held until the Maoist rebellion has ended and that it may take up to three years before multi-party democracy is restored.

These moves have attracted some of the strongest criticism from various quarters including from Nepal's powerful neighbour, India, the international community, Nepal's political parties and civil society groups from across the world.

They have also been strongly criticised by the Maoists in Nepal who have been waging an armed conflict for nearly a decade in protest against both the monarchy and the government and their combined failure to truly represent Nepal's citizens.

International IDEA's project that began in July 2004, arose in response to a call made by the European Commission for proposals to help address the underlying crises of governance that Nepal has been experiencing over the last few years.

Its main objective has been to garner people's views on the situation and revitalise dialogue amongst key Nepali stakeholders to help promote a more inclusive constitutional process and establish a pluralistic democracy.

As a starting point, the project sought views on the shape and direction that the constitution *should* take by speaking to citizens, political party members, Maoist sympathisers, civil society organisations and supporters of the monarchy. In order to obtain these views, the project carried out surveys on citizens' perceptions of democracy, public debates on democracy and expert assessments of challenges faced by democracy in the region by constitutional specialists and other scholars.

Survey on citizens' perception of democracy

Based on the principle of random sampling, 3,249 people were chosen and interviewed on a range of issues relating to democracy in Nepal. The survey was conducted in 163 polling stations (31 urban, 132 rural areas) spread over 39 (of 2,005) parliamentary constituencies across 38 districts (total 75 districts). With the exception of two areas (Dailekh and Bajhang) where the survey could not be conducted due to Maoist opposition, in most cases, the rebels permitted the survey or turned a blind eye to its proceedings.

This is the first comprehensive random survey of its kind to have taken place in Nepal. (For the full survey see www.lokniti.org) Its main finding was that despite almost ten years of insurgency, disappointment with political parties and widespread corruption, a majority of Nepali citizens still prefer democracy to any other system of governance. Two-third of respondents disapproved of the intervention made by the King in October 2002 (when he dismissed the then prime minister and indefinitely put off elections set for November) and as a solution to the armed conflict, a majority of them proposed the convening of a round-table conference, the formation of an interim government that includes Maoists and the creation of a constituent assembly.

The survey was presented at two public forums in November and continues to generate great interest and debate.

Dialogues on democracy

The dialogues on constitutional processes were convened with the support of several national partners.¹

IDEA also brought in experts with comparable experience in constitutional processes from Sri Lanka, India, South Africa, Kenya, Afghanistan, Thailand and Cambodia. The experts led discussions on their particular experiences of peace negotiations and

¹ These included, the Nepal South Asia Centre (NESAC), the Collective Campaign for Peace (COCAP), (www.cocap.org.np), the Martin Chautari Network (www.martinchautari.org.np), the Enabling State Programme and the Centre for Studies on Democracy and Good Governance.

constitutional reform and also on the role of unique institutions like the monarchy in a democracy, which inspired new thinking on these issues.² The choice of experts was appreciated, especially the use of regional experts who spoke of the challenges of building democracy in largely similar contexts: flush with ethnic and religious differences, caste stratification, poverty and limited national resources.

The discussions took place in Kathmandu and the valley but also in Nepalgunj (East), Jhapa (West) and Chitwan (South). Most meetings were conducted in Nepali and presentations made by the international experts were translated.

The discussions were held on the following themes:

Negotiating a Political Settlement

Experts from Sri Lanka and South Africa led discussions on this theme by summarising the lessons they had learnt from their own experience in negotiating peace between conflicting parties in their respective countries. The main lessons drawn on were the need for patience and trust in the negotiating process by all the main parties in conflict. Participants proposed that political parties discuss with the king, ways of securing a ceasefire with the Maoists. They also said that the onus lies a great deal on the political parties to address existing inequalities and bring about a social transformation so that the current appeal of the extreme left and extreme right to those whom it claims to represent, is made redundant. It was stressed that conflict resolution on its own would not succeed unless linked to social and political reform.

Inclusive and Participatory Constitution-Making

There was a great deal of curiosity about how constitution-making could be brought into the public domain and be advanced by a constituent assembly including how it would be convened, who its members would be and how its agenda would be decided. Through the dialogues it emerged that the participants, while recognising the problems with the way the constitution had been drafted, were keen to not lose out on the gains made in the popular movements of the 1990s. But there was widespread acknowledgement that many issues including accountability and 'representative-ness' had been left unaddressed in the 1990 Constitution and that the time may have come to re-visit these issues. It was also agreed that a good constituent assembly would enable citizens to participate in the

² The experts included: Professor Haysom (former legal advisor to President Mandela, South Africa) and Dr Saravanamuttu (Executive Director, Centre for Policy Alternatives, Sri Lanka) who spoke on 'Negotiating Political Settlements'; Professor Haysom (South Africa), Professor Ghai (Hong Kong / Kenya) and Mr. Rohan Edrisinha (Director, Centre for Policy Alternatives, Sri Lanka) who spoke on 'Inclusive Constitutional Processes'; Mr Sam Rainsy, (MP and Leader of the Opposition, Cambodia) and Mr. Gothom Arya (Former Election Commissioner of Thailand and Director, Forum Asia, Thailand) who spoke on the 'Role of the Monarchy'; Professor D.L.Sheth (Centre for Study of Developing Societies, member of *National Commission for Backward Classes*, 1993-96, India) and Mr Yogendra Yadav (Director of the *Lokniti*: Institute for Comparative Political Studies, India) who spoke on the 'Survey'; Dr Arjuna Parakrama (former conflict advisor to UNDP in Nepal, Sri Lanka) who spoke on 'Affirmative Action and Conflict Transformation'; Mr. Guido Galli, International IDEA, former political affairs officer in United Nations Assistance Mission in Afghanistan, (UNAMA), Kabul/Afghanistan, who assisted in designing IDEA's follow-up programme and spoke about the Guatemalan experience of National Conferences in the process of constitution-making).

process, solicit their views, process them into appropriate constitutional terms and skilfully combine the views of specialists with those of the lay public.

People's Sovereignty and Constitutional Monarchy

This dialogue was held with case-study experiences drawn from Thailand and Cambodia where the monarchy played a crucial role during each country's period of political transition. Participants were open in their criticisms of the role that the monarchy in Nepal has played historically, in reinforcing socio-economic and political inequalities. Many expressed the view that the role of the king was incompatible with democracy. They said the monarchy was inaccessible, inscrutable and unaccountable and the history of power grabs by the monarch, and the palace murders of 2001 had further undermined its reputation. But different sections of Nepalese society had different views of the king: the less radical sections of the population envisaged a more limiting role for the king as a constitutional monarch whose authority would be strictly defined under the terms of the constitution, while the youth, students and the Maoists clearly opposed the very existence of the institution.

Affirmative Action and Electoral System Design

In being a highly stratified society, democracy has not brought benefits to a vast majority of people in Nepal including especially, women and members of lower castes. In order to rectify this situation, discussants at this dialogue, examined the possibility of introducing reservations or positive discrimination. Although admitting that such a shift in representation would threaten the traditional power balance, the discussants said it was crucial for such a change to take place in order to ensure Nepal's long-term political and social stability. An alternative electoral system was also identified as one way of ensuring better representation of the plurality of interests in Nepal. However, it was also noted that electoral systems do not operate in a vacuum and changing the electoral system alone will not have the desired effect of more broad-based representation unless such changes are complemented with legislative changes in party laws and structures.

Regional Dialogues on Negotiating a Political Settlement, Participatory Constitution-Making and Future Agenda: Jhapa, Nepalgunj and Chittwan

One of the main objectives of these regional dialogues was to take debates on the present crisis beyond Kathmandu. Participants spoke of the terrible effect the ongoing conflict between the state and the Maoists has had on them while conceding that the Maoists raised crucial issues that remain unaddressed by the state. Those directly affected by the conflict proposed a negotiated settlement to end the insurgency while others urged the creation of a new constitution to make it more representative and just.

Approximately 40-60 participants attended each of these meetings with representation from as wide a variety of stakeholders and opinion makers as possible. They included facilitators of the previous peace talks, trade union leaders, women's groups' members, *Dalit* community representatives, royalists, members of ethnic nationalities, religious leaders, human rights activists, political party members, student leaders, the media, academicians and former Maoists or their current proxies.

People's Conference: Agenda for the Future

To conclude the programme and to review the experiences and outcomes of the constitutional dialogues, a 'Peoples Conference' was convened from 6-7 November. The Conference included two public meetings and 24 parallel sessions.³

It was attended by over 800 people who came from Kathmandu and from across the country representing a wide array of the social strata including students, academics, trade union leaders, teachers, lawyers, businessmen, indigenous peoples, political leaders, human rights activists and peace campaigners.

Given the absence of electoral processes at the national and local levels, the conference provided a valuable forum for people to voice their concerns, especially their views on wanting a more inclusive and representative and thereby more legitimate government. Some speakers identified the existence and power of the monarchy as the main obstacle to obtaining a 'full democracy' while others spoke of the need to revive a parliamentary process for resolving the Maoist insurgency.

The objective of these meetings was to develop a plan of action for civil society organisations to advance the process of dialogue on democracy further. It was envisaged that civil society groups would develop a minimum statement of common intent to present to the Palace and the Maoists to urge the resumption of negotiations. Although a formal statement did not emerge from this process, the thrust of the popular demands were clear: that there be a negotiated settlement to the Maoist conflict and that there be an all-party conference leading to a Constituent Assembly that drafts a new constitution based on popular and broad-based consultations.

Political Party Dialogues

'Closed space dialogues' with political parties were also held to discuss the above themes. An important outcome of these dialogues was that the political parties agreed upon a framework document, '*Future Political Agenda for Re-building Peace and Democracy in Nepal*', that draws on the proceedings and addresses the following issues: ways of negotiating a political settlement, designing constitutional processes, defining the role of a constitutional monarch, defining people's sovereignty, delimiting the nature and

³ The themes of the sessions were decided through a consultative process with the participants and the organizers. The themes included: People's Campaign for Peace, Participatory and Inclusive Constitution Making, Restructuring the State, Dalit Rights, Internal Democracy in Political Parties, International Solidarity, Political Economy of Conflict, Youth, Students and Peace Movement, Monarchy, Diversity and Political Issues, Women and Inclusive State, Issues of *Madheshis*, Religion and Religious Freedom, Role of Writers and Artists, Regional Inequalities, Business Initiatives for Peace, Human Rights and Humanitarian Laws, Natural Resources, Media, Conflict and Peace War, Disability and Peace, Sufferings of War and Agenda of the Victims, Democracy Assessment and People's Perception in Nepal, Reorienting Education and Reorienting Health.

scope of minority rights and reservation, the uses of drawing up a suitable 'road-map' and the nature of transitional arrangements.

In this framework document, party representatives also agreed upon the importance of inspiring greater awareness on the need for governance reforms, including political party reform to increase the citizen's trust in political institutions

Democracy Assessments and Position Papers

IDEA commissioned a group of national experts to comment on specific features of the democratic process in Nepal that escapes capture by surveys and legal analyses. The papers will be further edited and a separate volume will be published by autumn 2005.

Outcomes

At the start, it was envisaged that the project would generate greater public access to tools and information on comparative constitutional processes, awareness of citizen expectations with regard to the political process and increased national capacity to launch initiatives that advance debates on constitutional reform.

These objectives were met through:

- The production of a framework document, *Future Political Agenda*, endorsed by Nepal's political parties that will be used as a resource for future debates on constitutional reform and democracy
- Introduction of the concept of constitutional principles into the Nepali discourse on constitution reform
- Successful dissemination of the project's concerns in the media through well attended public lectures and peoples' conferences and the publication of several editorials and reports in the papers
- Recognition of the survey on citizen's political perceptions as an effective tool and catalyst of debate
- Strengthened network of human rights organisations and groups working on democracy nationwide

Impact Assessment

At the time that the project concept was developed, there was great reluctance on the part of the international community to support the project as envisaged by IDEA on the grounds that:

- The political environment was too uncertain and sensitive to conduct a survey
- The value of a survey undertaken in such a context was uncertain
- It was too sensitive to discuss the role of the monarchy
- Citizens lacked the confidence to debate constitutional issues and review the 'big picture'
- The project was over-ambitious and would not be able to deliver on its wide-ranging activities

Nevertheless, the proposed activities were accomplished and the most notable fact was the publicity and interest the project generated among a broad group of actors including senior politicians, peace secretariats, members of the bureaucracy, military, civil society and the international donor community.

Political party members who participated in the closed space dialogues commented on the value of the dialogues and how it helped to bring them together to develop a minimum common position.

Nepal's former peace negotiators and facilitators took heart from the narration of experience of their counterparts from South Africa who spoke of a long protracted process before a breakthrough was achieved and recognised that the peace process in Nepal requires greater commitment and professionalism.

Almost throughout the time in which this project was drafted and developed, Nepal's political context has been in a state of constant flux. The IDEA initiative has turned out to be particularly appropriate to ride the tide. Inspired by the dialogues and the survey of citizens' views, civil society has begun to openly debate and challenge the role of the monarchy, assertively demand a political negotiation with the Maoists and expressed its wish for the formation of a constituent assembly to re-structure the state. It is now increasingly openly recognised that the existing constitutional structures and the processes by which they were developed are not inclusive or adequate to address the social, political and economic inequities that Nepal faces.

Challenges and Limitations

The main drawback has been the project's inability to make direct contact with the Maoists and secure their engagement in the dialogues, although some proxies and former Maoists have attended some of the public meetings. Direct contacts were made only during the survey proceedings. However, all the material has been sent to the electronic address provided by them and they have acknowledged its receipt.

The project was also unable to access influential sources from the Palace beyond that garnered through the media. This has been the other major limitation.

While the project met with senior members of the Royal Nepal Army and discussed the role of the military in supporting ceasefire agreements, its future value would depend entirely on ensuring that such interactions are maintained frequently and at many levels within the military to ensure military compliance with human rights standards.

Another matter of concern is the safety of IDEA's local partners, given the current volatile situation, who have put themselves in a vulnerable position by being extremely vocal and publicly critical of the human rights violations by both the security forces and by the Maoists and in calling openly for the restoration of democracy.

Follow-up

The framework document “*Future Political Agenda for Re-building Peace and Democracy*” in Nepal has already been presented to the Peace Secretariat and the High Level Peace Committee. IDEA is interested in making the document available to a wider audience for further discussion and garnering support for the actual implementation of the proposals enclosed in the document.

The results of the hearings and working-groups that took place at the People’s Conference will be published as a book, ‘People’s Agenda’, and used as a tool for further dialogues.

IDEA had intended to organise a follow-up meeting with its local partners at the beginning of this year (2005) but given the unstable political situation, has not been able to do so as yet. It plans to hold the meeting when the situation stabilises.

IDEA recognises that the key to the long term stabilisation of democracy in Nepal depends on the development of an inclusive constitutional process, strong and credible political parties and an active civil society. To this end IDEA is interested in supporting activities related to an inclusive constitutional review, strengthening political parties through a review of their regulatory frameworks, internal structures and processes and in improving the design of electoral systems with a view to ensuring greater representation of all social forces in the political system. .

As part of IDEA’s global project on strengthening ‘Constitution-Building Processes’, it will support monthly updates and analyses on stakeholders’ positions regarding constitution reform in Nepal for at least a six month period.

Nepal is a key country in the analysis of The ‘State of Democracy in South-Asia’ project, which will continue through to 2005. It is envisaged that a flagship report compiling the survey, dialogues and expert assessments from the five South-Asian countries will be launched in November 2005 stimulating a dialogue on the challenges that individual countries and the region faces in strengthening multi-party democracy, protecting pluralism and ensuring social and economic equality.

Discussions with Partners

Civil society actors, some of who collaborated closely with IDEA in this project, expressed the view that there is insufficient support given to the democracy movement in Nepal by the international community. They were frank in their disdain for the support that the international community gives democracy by way of such projects but that the information generated by such projects do not appear to inform or impact the priorities of donor assistance, especially in the political realm. They also noted that such assistance to projects on democracy exist hand-in-hand with aid commitments to the military and a continued, even uncritical acceptance of the monarchy despite its often unconstitutional and interventionist role.

In order to check this, civil society groups recommended that IDEA give the EU and its member states a policy briefing based on the findings of the survey, the dialogues and the democracy assessments currently underway.

Next Steps

The current situation in Nepal, precipitated by the king assuming executive power, has effectively shut off all space for political dialogue. But this may well be the opportune time for the international community including Nepal's powerful neighbour, India, the monarchy's strongest sponsor, the USA and the donor community as well as spokespeople for the monarchy, political parties and civil society groups in Nepal to come together and develop a strategy and road map to help return country to multi-party democracy.

Media links [Some examples from the English language media]

On Negotiating Political Settlement (June)

Mandela aide says local mediation is the best option

<http://www.kantipuronline.com/kolnews.php?&nid=13735>

UN chief Kahane rules out 'interference'

<http://www.kantipuronline.com/kolnews.php?&nid=13776>

Delayed peace will cost monarchy dear: Expert

<http://thehimalayantimes.com/fullstory.asp?filename=aNPata0sdqzqma5a9a4wa.axamal&folder=aNPataiaoanaaal&Name=National&dtSiteDate=20040629&sImageFileName=>

Expert stress trust among govt. Maoists for peace

<http://thehimalayantimes.com/fullstory.asp?filename=aNPata0sgqzqma6Ta0a8a.axamal&folder=aNPataiaoanaaal&Name=National&dtSiteDate=20040630&sImageFileName=>

Political analyst claims Dhirendra Shah had met Maoists before royal massacre

<http://thehimalayantimes.com/fullstory.asp?filename=aNPata0sgqzqma6Ta5wa.axamal&folder=aNPataiaoanaaal&Name=National&dtSiteDate=20040701&sImageFileName=>

Affirmative Action and Electoral System Design (September)

Kathmandu Post 27 September: Electoral System Comes Under Fire:

<http://www.kantipuronline.com/kolnews.php?&nid=17845>

Kathmandu Post 26 September: Experts Press for Systematized Policy

<http://www.kantipuronline.com/kolnews.php?&nid=17799>

People's Conference (November)

Pressure for Peace Talks Urged (November 7)

<http://www.kantipuronline.com/kolnews.php?&nid=21703>

People's Conference mulls solution to instability (November 6)

<http://www.kantipuronline.com/kolnews.php?&nid=21595>

Businessmen underscore alliance for peace (November 6)

<http://www.kantipuronline.com/kolnews.php?&nid=21609>

Editorial: People's Conference sounds out warning (November 8)

<http://www.kantipuronline.com/kolnews.php?&nid=21734>