



International Peace Research Institute, Oslo
Institutt for fredsforskning

PRIO PAPERS

Post-Conflict Power Sharing: The Case of Nepal

PRIO South Asia Briefing Paper #2

Jason Miklian, *International Peace Research Institute, Oslo (PRIO)*

ISBN 82-7288-310-1 • 2009

Post-Conflict Power Sharing: The Case of Nepal

South Asia Briefing Paper #2

PRIO Paper, 20 July 2008

Jason Miklian

International Peace Research Institute, Oslo (PRIO)

Project funding provided by the Norwegian Ministry of Foreign Affairs. Written by PRIO researcher Jason Miklian (Jason@prio.no).

This paper may be downloaded from <http://www.prio.no>

© International Peace Research Institute, Oslo (PRIO), 2009

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or utilized in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without permission in writing from the copyright holder.

ISBN 82-7288-310-1

Post-Conflict Power Sharing: The Case of Nepal

PRIO briefing to Norwegian Ministry of Foreign Affairs

Executive Summary and Recommendations

A 10-year civil war between the Government of Nepal and Communist Party of Nepal-Maoist formally ended in 2006 with an April ceasefire followed by a November peace agreement. In the post-conflict transitional period, Nepal turned to power sharing as a way to bring all sides of the conflict together, reduce the likelihood of a return to violence, and stabilize the country to create a favorable atmosphere for representative elections. The institutionalization of power-sharing as a means to address the problem of who will decide on the country's present and future had at least one successful outcome, as Nepal held direct elections for the first time in its history on April 10th, 2008.

Power sharing had two distinct phases: formal arrangements during the 18 months between the peace agreement and elections, and a more informal set of agreed-upon principles to complete unfinished reforms after elections. Unresolved issues include integration of the Maoist Army into the Nepal Army, composition of a National Security Council and human rights. Although the first phase of power sharing accomplished some key objectives, it also encouraged political stagnation and gave 'old guard' politicians an excuse to stay in power even after election results proved that citizens wanted otherwise.

These power sharing arrangements should now be allowed to die with dignity. Continued delay of much-needed reforms will erode political progress made since the end of conflict, encouraging partisan spats and undermining faith in the new Constituent Assembly legislature. Further, new 'power sharing' ideas being floated by politicians and the press, including power dividing and decentralization to address the rise of ethnic politics, may irreversibly fracture the country in the name of keeping the peace. To best facilitate the transition, four factors should be considered:

- 1) **Complete the transition from consensus politics to the majority model.** The consensus approach of power sharing facilitated elections but encouraged deadlock, as needed reforms were pushed to the back burner in the interim period because of a failure of leadership and lack of mandate. Allowing majority-rule framework to implement policy will put needed reforms back on track.
- 2) **Institute safeguards to ensure majority-rule success.** The successful transition from war to democracy will be viewed as a failure if the Maoists use power sharing, elections, and the transition period to assume total control of the state. Several different constitutional frameworks can provide similar safeguarding benefits as the universal consensus model, but without the repeated deadlocks.
- 3) **Discourage the temptation of ethnic 'power-dividing'.** Although it is tempting to carve southern Nepal into autonomous zones in order to placate ethnic groups, power-dividing decentralization will create more problems than it solves. Legitimizing territorial ethnic division encourages internal displacement and conflict for the sake of buying off a problem rooted in class discrimination.
- 4) **Finish the job with the Army and National Defence Council.** The difficulties of consensus negotiations are multiplied in the case of sensitive security concerns. In order to tie off the last loose ends of the consensus model, Army integration, composition of the National Defence Council, and security sector reform should be the first issues tackled by the new government.

Introduction

The November 2006 Comprehensive Peace Agreement (CPA) formally ended the ten-year conflict in Nepal between the King Gyanendra's Royal Nepal Army and the Communist Party of Nepal-Maoist.¹ The agreement did not mark a military victory for either side, but was signed in reflection of the fact that the battle had reached a stalemate, and only with the support of an alliance of seven major political parties (SPA) was the King able to be removed from power. The CPA was not a product of negotiations between the victor and vanquished, but instead a division of the spoils between two groups working together to defeat a common enemy. The Maoists and SPA signed the CPA as a promise to end both the war and 250 years of monarchy, replacing it with democracy in the form of a federal republic. To assist in this transition, power sharing measures were introduced to unite political leaders towards a common goal. This goal was realized on April 10th, 2008, as citizens directly elected members to government for the first time in Nepal's history. However, the legacy and institutions of the power sharing framework remain, and their future utility is questionable at best.

Power Sharing and Nepal: Background and History

Power sharing is an arrangement commonly implemented in post-conflict settings whereby parties to a conflict are formally and simultaneously involved in the key decision-making of government. Typically, four components are exhibited: (1) a grand coalition of political parties, (2) a system of mutual veto power, (3) proportional representation of ethnic groups, and (4) segmental autonomy, such as federalism.² These features are designed to work in tandem to alleviate the grievances of potential "spoilers", ensure the representation of a broad range of social interests and guarantee that no group will suffer discriminatory policies detrimental to its interests or existence. Power sharing mechanisms can be implemented in the political, territorial, military, and economic spheres.³ However, whether incorporating more of these variables in power sharing frameworks makes the overall agreement more robust, or if power sharing measures contribute to either a more durable peace or healthy democracy at all, is disputed.⁴

¹ For more on the history of the Maoists and the conflict see, International Crisis Group, *Nepal's Maoists: Their Aims, Structure, and Strategy*, Asia Report #104, 27 October 2005, and International Crisis Group, *Nepal's Maoists: Purists or Pragmatists?* Asia Report #132, 18 May 2007.

² Arend Lijphart's *Democracy in Plural Societies* (1977, New Haven: Yale University Press) is considered the seminal work from which most modern scholars on power sharing begin. Other current works include Ugo M. Amoretti and Nancy Bermeo, 2004. *Federalism and Territorial Cleavages* Baltimore: Johns Hopkins; and Phillip G. Roeder and Donald Rothchild (Eds.), 2005. *Sustainable Peace: Power and Democracy After Civil Wars*. Cornell University Press, Hartzell, Caroline, and Mathew Hoddie, 2003. 'Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management,' *American Journal of Political Science* 47(2):318-332, Hartzell and Hoddie, 2007. *Crafting Peace: Power-Sharing Institutions and the Negotiated Settlement of Civil Wars*. University Park, PA: Pennsylvania State Univ. Press. Hartzell, Caroline, Mathew Hoddie, and Donald Rothchild, 2001. 'Stabilizing the Peace After Civil War: An Investigation of Some Key Variables,' *International Organization* 55(1):183-208, Jarstad, Anna, 2008. "Power sharing: former enemies in joint government." In *From War to Democracy: Dilemmas of Peacebuilding*, eds. Anna K. Jarstad and Timothy D. Sisk. Cambridge: Cambridge University Press, and Dubey, Amitabh, 2002. 'Domestic Institutions and the Duration of Civil War Settlements.' Paper presented at the annual meeting of the International Studies Association, New Orleans, March 24-27, 2002.

³ Hartzell, Caroline and Matthew Hoddie, 2005. "Power Sharing in Peace Settlements." In Roeder and Rothchild, *Sustainable Peace: Power and Democracy After Civil Wars*. Op. cit.

⁴ Although Hartzell and Hoddie find a correlation between a greater number and the durability of peace in post-conflict civil wars, others (Dubey) find the association less robust. Further, the institutionalization of consensus approaches may only put actors in a perpetual stasis of underdevelopment as these measures simply solidify the divisions and stagnation that led to the war. See Donald Rothchild and Philip Roeder,

A significant challenge that power sharing attempts to address is how to convert high levels of post-conflict mutual distrust into cooperation. Political power sharing often takes the form of a consensus model, requiring all parties to agree on a bill or law before it is implemented. This safeguards minority groups who are suspicious of the dominant player's intentions. Previous studies of power sharing have focused on the performance of the power sharing arrangement in terms of stability and conflict management. Yet, the nature of the power sharing arrangement and the prospects for a stable civil peace are themselves products of a bargaining process and reflect the particularities of each conflict. Power sharing agreements can be short- or long-term, and can incorporate other elements better identified as power-dividing, carving up the 'pie' of political power in an effort to placate recalcitrant groups.⁵ But for all of its benefits, one fact remains: "Power sharing limits democracy."⁶ Power sharing favors stabilization over transition; because of this, political competition and maturation can suffer in the name of peace.

Unlike in most other countries that have instituted power sharing arrangements, Nepal's post-conflict negotiation environment did not pit disparate ethnic groups against each other. Horizontal inequality and landlessness played a central part in motivating rebellion in the war, incorporating caste, class, and spatial aspects.⁷ However, it was not landlessness *per se* but corrupt practices associated with land redistribution in the 1960s and the invidious debt-trap nexus that lie at the heart of rural grievances central to the Maoist uprising. Redistributed land ended up in the hands of the non-poor, and the burden of debt servicing rendered the working poor landless once again. The Maoists capitalized on caste and class tensions, aware that citizens from less privileged castes in Nepal often also have different socio-economic backgrounds, and promised universal equality by overthrowing the King.⁸ Although the civil war in Nepal incorporated Maoist ideology by defining political struggle as an extension of class warfare against elite domination of political and economic life, Maoist leaders themselves were from the same elite castes as their 'oppressors'. This fact significantly impacted the style, format, and substance of power sharing negotiations, as grassroots issues like land reform were later abandoned in favor of wrangling over coveted ministerial positions and military control.

Power Sharing After the Peace: November 2006-April 10, 2008

Power sharing arrangements in Nepal were applied in two distinct stages representing the pre- and post-election periods. Although there was not a specific power sharing agreement, power sharing measures were included throughout the November 2006 CPA and subsequent interim constitution signed between the Maoists and Government of Nepal, represented by the Seven Party Alliance of mainstream political parties (SPA).⁹

"Power Sharing as an Impediment to Peace and Democracy," in Phillip G. Roeder and Donald Rothchild (Eds.) *Sustainable Peace: Power and Democracy After Civil Wars*. Cornell University Press.

⁵ This report complements a larger ongoing PRIO power sharing project seeking to better understand the consequences of power sharing vs. other institutions of governance in states prone to civil conflict.

⁶ Rothchild and Roeder, "Power Sharing as an Impediment to Peace and Democracy," *op. cit.*, p. 36.

⁷ For more information, see S. Mansoob Murshed and Scott Gates, 2005. "Spatial-Horizontal Inequality and the Maoist Insurgency in Nepal." *Journal of Development Economics* 9(1):121-134.

⁸ The primary elite groups are the Bahun, Chhetri, and Newari castes. For a brief and accessible introduction on the intersections of the dizzying array of differing ethnic and caste groups, in Nepal, see David Gellner, "Caste, Ethnicity and Inequality in Nepal." *Economic and Political Weekly* 19 May, 2007.

⁹ The exact phrase 'power sharing' is not found in either document. The SPA is comprised of the Nepali Congress (NC), Communist Party of Nepal-United Marxist Leninist (CPN-UML), CPN-Marxist Leninist (CPN-ML), People's Front Nepal (PFN), Nepal Workers Peasants Party (NWPP), Nepal Sadbhava Party-Anandi Devi (NSP-A) and the Communist Party of India-Maoist (Maoists). The parties have divergent

Specifically, the groups agreed to integrate the Maoist People's Liberation Army (PLA) and Nepal Army (NA), make all decisions in a specially-created interim government by universal consensus, and take joint responsibility for security sector, economic, and human rights reforms. Power sharing was designed to serve as a stop-gap solution until an election based upon proportional representation of citizens could be held. Taken together, these measures had two striking characteristics: 1) the absence of formal allocational structures; and 2) the absence of policies designed to address at a fundamental level any of the major grievances that started the war. Despite rhetoric from all sides claiming that these measures would not only be good for the country, but a panacea for the ills of Nepal's poor, few politicians in Nepal internalized the issues of federalism and power sharing beyond a surface level, suggesting limited awareness of the implications of operating within the consensus model.¹⁰

The first round of power sharing was an exercise in top-down political decision-making. Grassroots issues, including land reform and equitable economic policies, were largely left off the table.¹¹ Parties fought over the number and quality of ministerial positions and Ambassadorships, and over control of the security sector. The number of Interim Assembly seats allocated to each of the major parties was also a matter of substantial debate.¹² It took two months to arrive at an agreeable distribution, resolved only when the Maoists were promised additional ministerial positions.¹³ The Maoists coveted in particular the Communication Minister position, both because it opened a level of access to a new section of Nepal's population to the Maoist message, and for the ability to assert greater control over a state-run media that almost exclusively favored the King until 2006, enabling the Maoists to project policy goals and ideology in a public forum.

From the start, the Maoists were less involved than SPA members in the 'nuts and bolts' of the power sharing process. This is partially because the other parties had a significant head start in peace agreement and power sharing proposal experience, with drafts created by political parties as early as 2002 in anticipation of eventual peace.¹⁴ Further, although the CPA was presented as a consensus document, several drafters felt that the Maoists did not have equal representation in the drafting of the document, due as much to a lack of expertise as a lack of interest.¹⁵ Drafters also felt that the Maoists only pressed issues that would cement their political power; land reform, economic redistribution, and other grassroots grievances were secondary, if mentioned at all.¹⁶ However, an independent member of the CPA drafting team noted that even though the Maoists' agenda was not as

agendas and are not a real alliance *per se*, but served as the face of the Government after King Gyanendra (who used his Royal Nepal Army to fight the Maoists) was removed from power.

¹⁰ Author interview, Shrawan Sharma, Director, Center for Economic and Social Development, Kathmandu, April 2008.

¹¹ Author interviews, Iswor Pokharel (CPN-UML representative to CPA drafting team), Dr. P.S. Mahat (Nepali Congress representative to CPA drafting team), Mohan Banjade (independent expert on Law Reform Commission and CPA framer), Kathmandu, April 2008.

¹² Final allocation was relatively uniform among the three major parties, with 83 seats to the Maoists, 85 to the CPN-UML, 85 to the Nepali Congress.

¹³ IRIN News Wire, 17 January 2007. "Nepal Government, Maoists Agree on Power Sharing." Also of prime interest were several Ambassadorship positions throughout the world. The Maoists quit the interim government later in 2007 (rejoining in 2008) over this and other issues.

¹⁴ Author interviews, constitutional framers, April 2008. Framers used the experiences of Sri Lanka, Northern Ireland, South Africa, and other post-conflict agreements as guidelines for the CPA. Several framers flew to these countries to meet directly with their counterparts in an effort to better understand the peace and negotiation processes.

¹⁵ Author interviews, Pokharel, Mahat, and Banjade, Kathmandu, April 2008.

¹⁶ Author interviews, Pokharel, Mahat, and Banjade, Kathmandu, April 2008.

well developed as that of other parties, they did engage on fundamental structural issues, cooperating with the SPA on concerns including republic formation and elections.¹⁷

The power sharing measures outlined in the CPA were largely incorporated into the Interim Constitution, signed in January 2007.¹⁸ The constitution formalized consensus politics, to a point. For example, while several articles of the constitution stress that the selection of important positions such as Prime Minister will be decided ‘by political consensus’ and ‘mutual understanding’, most also have addendums defining how the positions are to be filled if consensus cannot be reached (majority voting).¹⁹ However, other bureaucratic posts are to be appointed directly by the Prime Minister, including State Ministers (Article 39), other Ministers (Article 40), Supreme Court Justices (Article 103), and all members of the National Defense Council (Article 145), among others.²⁰ Further, although article 38 of the constitution requires a ‘political consensus’ to appoint the Prime Minister, this ‘consensus’ itself excluded any actors other than the SPA and Maoists, requiring a 2/3 majority vote if no unanimous accord was reached.²¹

Consensus politics in the interim period contributed to political stasis and a calcification of the status quo at the expense of promised reform. Even though language in both the CPA and Constitution was intentionally vague in order to encourage consensus-building, lack of implementation of several key provisions plagued the government. Efforts to integrate the competing armies gained no traction, and other major CPA initiatives, including security sector reform, human rights, economic programs, and a truth and reconciliation commission were also left undone. The political atmosphere in Kathmandu was punctuated by a ‘wait until elections’ mentality, as the NC, UML and Maoists each privately believed that it would emerge victorious from elections, and then have a mandate to implement their policies without awkward compromises.²² Despite being postponed twice, elections for a new Constituent Assembly were held on April 10th, 2008, providing an opportunity to clear the stagnated political atmosphere.

Power Sharing After Elections: April 11th, 2008 and Beyond

The second (and current) phase of power sharing in Nepal has two significant differences from the pre-election period. The first impact was a shift from the pre-election consensus model to a simple majority (50% plus one vote) framework for decision-making in the new Constituent Assembly (CA) legislative body.²³ This heralded a formal end of the power sharing model of consensus politics and fixed representation in favor of a democratic republic with alternating representation based upon election results. Now, political parties are forced to build a coalition government, as no party achieved 50% of the overall seats in the CA.²⁴

¹⁷ Author interview, Banjade, Kathmandu, April 2008.

¹⁸ Interim Constitution of Nepal, 2007. Nepali original and English translation available at: http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf. Accessed 19 July 2008. For excerpts of key provisions related to power sharing, see Appendix 2. Like the CPA, the signatories to the Constitution were the SPA and Maoists.

¹⁹ Interim Constitution, op. Cit., Article 38.

²⁰ Interim Constitution, op. cit.

²¹ Interim Constitution, op. cit., Amended 14 July 2008. See below.

²² Author interviews, NC and UML leaders, Kathmandu, April 2008.

²³ The Constituent Assembly is the name of the elected body of representatives in Kathmandu. It is a hybrid system, comprised of individuals directly elected and those appointed by the party. Voters in Nepal cast dual ballots in April, one for a candidate, and one for a party.

²⁴ Final tally gave the Maoists 38% of CA seats, the NC 19%, CPN-UML 18% and Madhesi parties 14%.

Second, new actors have emerged on the political scene who viewed the power sharing discussions in a far more negative light. Madhesi ethnic groups from southern Nepal have used identity politics to grab approximately 15% of CA seats, and find the Constitution's definition of "consensus" simply a new way for elites from the Kathmandu valley to continue their politics of exclusion against marginalized groups in Nepal.²⁵ Madhesi groups were excluded entirely from the first round of bargaining and power sharing despite representing up to 50% of Nepal's total population.²⁶ Madhesi groups have pushed for greater decentralization, as they have less interest in sharing power at the centre as they do in dividing power along new provincial lines that will put them in total control of a vast swath of Nepal's territory. The groups have used political violence to press their demands of representation, culminating in five constitutional amendments.²⁷

The fifth amendment to the constitution is perhaps the most significant, passed in response to demands from Madhesi parties. It stipulates that "the president, vice president, CA chairman, deputy chairman and prime minister will be chosen on the basis of political understanding. And if such understanding is not forthcoming, they can be elected by simple majority. The CA will formulate further procedures for the election of president."²⁸ The amendment officially abolished consensus politics in favor of majority rule as regards forming the government and electing a president, paving the way for true coalition-building politics to begin. However, none of the amendments have addressed larger reform issues; all have been tabled for the new leadership when it is formed.

Despite near-universal acclaim of the elections (United Nations Mission in Nepal head Ian Martin called the elections a success, with "the most inclusive body Nepal has yet known.") both the NC and UML felt misled.²⁹ Leaders felt that good faith gestures to incorporate the Maoists in a post-conflict power sharing framework were exploited as a mere stepping stone to total state control.³⁰ "Using Leninist tactics of deception," the Maoists were accused of being disingenuous in their negotiation, concerned less about development policy and post-conflict peacebuilding than about powerful positions in government and rigging elections.³¹ However, these comments reflect the political realities that the NC and UML find themselves in. These traditional political heavyweights will likely find themselves on the outside looking in at a coalition government composed of parties that until recently did not exist (Maoists and Madhesi).

Maoist Chairman Puspa Kamal Dahal alias Prachanda has expressed his support for moving away from consensus politics to a simple majority,³² but the NC and UML are less eager. NC general secretary Ram Baran Yadav stated: "We are demanding that a non-Maoist take the post of constitutional president so that we can balance power. The

²⁵ For more information on Madhesi groups and the rise of ethnic identity politics in Southern Nepal, see the companion PRIO South Asia Briefing Paper 'Nepal's Terai: Constructing an Ethnic Conflict,' .

²⁶ Madhesi claims to represent all of southern Nepal are highly contested. See *ibid.*

²⁷ Amendments 1-4 included measures to create a Commission to revise electoral construction, increase Madhesi representation at the centre, formalize federalism as the new government structure of Nepal, create the (largely ceremonial) posts of President and Vice-President, and other procedural matters.

²⁸ Nepalnews.com, 14 July 2008. "Fifth Amendment Passed, Coast Clear for Forming Majority Government."

²⁹ UNMIN press release, 28 May 2008.

³⁰ Author interviews, P.S. Mahat (NC) and Iswor Pokharel (UML), Kathmandu, April 2008. For analysis on the elections and post-election fallout, see International Crisis Group, 2008. *Nepal's Election: A Peaceful Revolution?* Asia Report #155, 3 July, International Crisis Group, 2008. *Nepal's Election and Beyond*. Asia Report #149, 3 July.

³¹ Author interview, Mahat, Kathmandu, April 2008.

³² eKantipur, 11 July 2008. "Top Posts No Basis for Power Sharing: Dahal."

Maoists cannot be allowed to rule alone as they have not yet fully made the transition from terrorist outfit to mainstream political actors.”³³ Notably, when the Maoists left the government on 21 June 2008 over ‘power sharing’, as reported by the press and through the statements of Maoist leadership, in actuality it reflected instead frustration with a promised power transition that had not yet taken place as well as the Maoist inability to create a working coalition.³⁴ As the party emerging victorious after elections, the Maoists wanted to be in the driver’s seat to form the government, while NC and UML want someone from the SPA to have a top leadership position for ‘balance’.

Mission Accomplished?

In examining the lessons for Nepal’s power sharing experiment, and assessing the utility of maintaining power sharing measures in the future, the question to ask is: did the power sharing measures in Nepal work? Interestingly, although Nepal exhibited few of the ‘necessary components’ for power sharing to succeed (including elite dominance, a culture of accommodation, sincere commitments from leadership, state strength, economic prosperity and equality, and stable demographics), power sharing to this point can be called a triumph.³⁵ This is due to several factors. **First**, the power sharing arrangement was designed to be temporary, created first and foremost to lead Nepal to elections. **Second**, the war did not cut directly along ethnic lines, making reconciliation and trust easier to rebuild. **Third**, Nepal already had an established framework of democracy, and CPA framers were in many cases the same politicians who had first-hand experience with Nepal’s last experiment with democracy in the 1990s. **Fourth**, Nepal benefited from good assistance and patience from the international community, particularly the United Nations, which was generally highly regarded as an honest broker throughout the transition period. **Fifth**, the percentages of power allocated corresponded to popular support, lending an atmosphere of fairness, at least among political elites. **Sixth**, the negotiating parties were not the warring parties, thus making face to face talks and discussions less divisive. **Seventh** and perhaps most important, the Maoists and SPA were dividing up a power pie that neither had any part of before the CPA was signed, as the King enjoyed absolute power. When power sharing measures are implemented, there are usually winners and losers negotiating together. Neither the SPA nor the Maoists had any real power in 2005, so both parties stood to gain no matter how negotiations fared.

However, significant drawbacks to the power sharing process remain. Primary was the way in which the measures for consensus encouraged stagnation. All parties took a ‘wait until elections’ philosophy, and nothing of consequence aside from the elections themselves was accomplished in the 18 months between the CPA and elections. Most importantly, momentum on security sector reform and Army integration was abandoned at a point when “both the NA and PLA remain at full strength—an unaffordable and inherently unstable situation.”³⁶ Not only are the PLA and NA at loggerheads, but the continued stalemate has further distanced the Nepal Army from the government itself, raising fears of a potential military coup as it is continually ignored and shut out of the negotiation process. Further, there has been no movement on most human rights or

³³ AFP, 4 June 2008. “Deadlock Over Power Sharing in Nepal.”

³⁴ The Maoists left because they felt that current Prime Minister Koirala’s promise to step down after elections was going to go unfulfilled. They have since returned to attempt to lead a coalition government.

³⁵ Rothchild and Roeder, “Power Sharing as an Impediment to Peace and Democracy,” op. cit. Although these criteria refer primarily to political power sharing, and are subject to debate, as a general rule most have been present in successful long-term power sharing agreements.

³⁶ International Crisis Group, *Nepal’s New Political Landscape*, Asia Report #156, 3 July 2008.

economic issues. Politicians in Nepal have found consensus selections for individual positions of power easier to decide upon than consensus policies on reform of any type.

Should power sharing measures continue to constitute an integral part of Nepal's political landscape? The question is complicated, but Nepal would likely benefit if power sharing was not extended beyond the interim period. Consensus politics tend to calcify power in the hands of political elites at the expense of new political groups and younger generations, exactly the issue that many Nepali citizens repeatedly stressed as the primary problem with contemporary Nepal politics.³⁷ The primary losers would be the NC and UML, but as Crisis Group notes, the parties "face years in the political wilderness if they do not face up to their defeat and take urgent steps to reform themselves and their electorate."³⁸ A continuation of consensus politics is their one way out without having to face this harsh reality, maintaining a grip on power in defiance of the Nepali voters who have already handed down their verdicts against this group of octogenarians.

Further, in conflicts drawn along ethnic lines, power sharing arrangements such as permanent coalitions with fixed seats for different parties may aggravate ethnic division instead of creating new crosscutting cleavages. In the case of Nepal, either sharing or dividing power through decentralization may exacerbate problems if Madhesi parties are not made stakeholders in pan-Nepal interests. They currently run as a one-issue party very successfully, and autonomy alone would allow them to keep using identity politics for political gain, further fracturing society along ethnic lines.³⁹ Also, representatives of Tharu minorities in Madhesi areas are reluctant to agree to such an arrangement, assuming that after the power sharing arrangement ends they will be vulnerable to the dictates of Madhesis, which may in turn lead to the renewal of armed conflict.

Advocates press for continuation of power sharing, claiming that it reduces the threat of renewed conflict by giving parties a stake in positive cooperation, and provides mutual guarantees of security to be used as "carrots" to keep parties at the bargaining table. For example, British foreign minister for the UN, Africa, and Asia Lord Mark Malloch-Brown recently stressed that Nepal's politicians continue along the path of consensus politics.⁴⁰ He is supported by several politicians in Nepal who fear their exclusion in a new majority-rule system, including Prime Minister BP Koirala (NC), stating: "I have coined a new phrase: national unity is today's necessity," in arguing that only through consensus politics can Nepal successfully move forward.⁴¹ However, repeated concessions at the bargaining table to ensure consensus may simply hinder the creation of a sustainable civil peace, sowing the seeds instead of an unstable minimal peace. This is known as the "second generational problem" in power sharing, as maintaining and/or increasing political power becomes the primary objective of elite leaders, encouraging radicalism at the expense of democratic compromise.⁴²

Recommendations

Power sharing in Nepal has served its purpose, and now should be allowed to die with dignity. However, moving forward requires actors both within and outside Nepal to trust

³⁷ Author interviews, urban and rural voters, Kathmandu and Biratnagar, April 2008.

³⁸ Crisis Group, "Nepal's New Political Landscape," op. cit., p. 7.

³⁹ For more information, see PRIO report 'Nepal's Terai,' op. cit.

⁴⁰ eKantipur Publications, 19 July, 2008. "Visiting British Minister Stresses on Consensus."

⁴¹ Nepalnews.com, 19 July 2008. "National Unity is Today's Necessity, Says PM Koirala."

⁴² Roeder, Philip G., 1999. "Peoples and States After 1989: The Political Costs of Incomplete National Revolutions." *Slavic Review* 58(4):854-882.

whoever becomes the majority party to abide by the rules of democracy; a trust that many will find hard to give if the Maoists emerge in the driver's seat. Nevertheless, to assume the Maoists guilty of circumventing democracy before a single bill is passed is shortsighted and serves only to encourage reactionary behavior. To best facilitate the transition, four factors should be considered:

- 1) **Complete the transition from consensus politics to the majority model.** The consensus model encouraged deadlock in Nepal, as needed reforms were constantly pushed to the back burner in the interim period due to a failure of leadership and mandate. In this sense, continuing power sharing measures will maintain an environment that gave Nepal only marginal increase of national security at the expense of hindering reform. Further, consensus-based power sharing models are inherently discriminatory against those political actors or groups that coalesce after the power sharing agreement is signed, of which Nepal now has many. There is nothing inherently negative about a majority-rule model, as long as federal institutions (including coalition politics, honoring democratic transference of power through credible elections) are respected by all sides. Allowing majority-rule framework to implement policy will put needed reforms back on track, while at the same time restore the dynamic elements of Nepal's burgeoning democracy that are heretofore missing.
- 2) **Institute safeguards to ensure majority-rule constitutional success.** In 1990, Constitutional Law experts from around the world hailed Nepal's new constitution as one of the best written, but it still failed to protect its citizens or stop a 10 year civil war because implementation was impossible. Likewise, what is now respected as a success will ultimately be viewed as a failure if the Maoists use the power sharing, elections, and the transition period to accomplish the goal that they failed to achieve during the war (total state control). Federal frameworks have several built-in checks and balances that are designed to curb overreach, leaving a majority framework to be as politically safe as the consensus model, but without the repeated deadlocks that consensus models face.
- 3) **Discourage the temptation of ethnic 'power-dividing'.⁴³** Although highly tempting for Nepal's government to carve up southern Nepal into autonomous ethnic zones in order to placate violent political groups in the short term, this type of power-dividing decentralization will likely create more problems than it solves. By legitimating ethnic division through territorial markers, Kathmandu would encourage internal displacement and new conflict for the sake of buying off a problematic subject rooted in longstanding discrimination. Instead, Ethnic groups should be incorporated into pan-Nepal decisions, and civic, rather than ethnic federalism should be the mandate if territorial boundaries are to be redrawn.
- 4) **Finish the job with the Army and Security Council.** The difficulties of consensus negotiations are multiplied in the case of sensitive security concerns. The Maoists have generally been willing to discuss and compromise on all issues, but were stymied by a SPA that was fractured, disagreed over how to negotiate, and made the disastrous political calculation that elections would significantly reduce Maoist bargaining power. In order to tie off the last loose ends of the consensus model, Army integration, composition of the National Defence Council, and security sector reform should be the first issues tackled by the new government.

⁴³ For a more comprehensive analysis of this point, see the companion PRIO brief "Nepal's Terai," op. cit.

Appendix 1

Excerpts of the Comprehensive Peace Agreement held between Government of Nepal and Communist Party of Nepal (Maoist)⁴⁴

This comprehensive peace agreement has been reached between Government of Nepal and CPN (Maoist) with commitment to transform ceasefire between Government of Nepal and CPN (Maoist) into sustainable peace.

3. Political - Economic - Social Transformation and Conflict Management

Both the parties are in agreement to adopt following policy and program for political-economic and social transformation and to affirmatively resolve existing conflict in the country:

- 3.1. To ensure forward moving political economic and social transformation on the basis of decision made in summit meeting between seven political parties and CPN (Maoist) held on Nov. 8, 2006 (Annex-6)
- 3.2. To guarantee sovereignty inherent in Nepalese people in practice by forming interim legislature - parliament according to interim constitution and by holding election to constituent assembly in free and fair manner till the Month of Jeth, 2064 BS by Interim Government.
- 3.3. To not allow any authority regarding affairs of governance of the country to remain with the king. To bring the properties of late King Birendra, late queen Aishworya and their family under Government of Nepal and to make use of the property in the interest of the state by forming a trust. To nationalise all the properties (like palaces situated in different places, forest and parks, heritages with historical and archeological importance) received by King Gyanendra in his capacity as the King. To decide the issue of whether or not to retain the monarchy by simple majority in the first meeting of constituent assembly.
- 3.4. To adopt a political system that complies with universally accepted fundamental human rights, multiparty competitive democratic system, sovereignty inherited in people, supremacy of the people, constitutional check and balance, rule of law, social justice, equality, independent judiciary, periodic election, monitoring by civil society, complete press freedom, people's right to information, transparency and accountability in the activities of political parties, people's participation, impartial, competent, and fair concept of bureaucracy.
- 3.5. To address the problems related to women, Dalit, indigenous people, Janajatis, Madheshi, oppressed, neglected, minorities and the backward by ending discrimination based on class, caste, language, sex, culture, religion, and region and to restructure the state on the basis of inclusiveness, democracy and progression by ending present centralised and unitary structure of the state.
- 3.7. To adopt the policy to implement scientific land reform program by ending feudalistic system of land holding.
- 3.10. To adopt policy to provide land and other economic protection to landless squatters, Kamaiya, Halia, Harwa, Charwa and economically backward section.
- 3.12. To form common development concept for economic and social transformation and justice and to make the country developed and economically prosperous, at the earliest.

Relating to the Maoists' Army-

- 4.1 As per the commitment expressed in the letter sent on behalf of the Government of Nepal and the CPN (Maoist) to the United Nations on August 9, 2006, the Maoists' Army combatants shall remain within the following Cantonments. The UN shall verify and monitor them.
- 4.2. After placing the Maoist combatants within the Cantonments, all the arms and ammunition except those required for providing security to the Cantonments shall be securely stored and the keys to the single lock shall remain with the side concerned. The UN shall monitor the process of placing the weapons under the single lock by keeping records and fitting a device along with siren. In case of need to examine the weapons placed under the single lock, the UN shall do so under the presence of concerned side. All the technical details along with Camera Monitoring shall be prepared under the joint agreement of the UN, CPN (Maoist) and the Government of Nepal.
- 4.3. The government of Nepal shall make all the necessary arrangements including ration needed for the Maoist combatants after placing them within the Cantonments.
- 4.4. The Interim Council of Ministers shall form a special committee in order to inspect, integrate and rehabilitate the Maoist combatants.
- 4.5. The government shall be taking care of security arrangements of the Maoist leaders.

⁴⁴ Government of Nepal, 22 November, 2006. Unofficial Translation.

Relating to the Nepali Army-

4.6. As per the commitment expressed in the letter sent to the UN, the Nepali Army shall be confined within the barracks. Guarantee that the arms shall not be used for or against any side. The Nepali Army shall store the same amount of arms in accordance with that of the Maoists and seal it with single-lock and give the key to the concerned side. In case of need to examine the stored arms, the UN would do so in the presence of the concerned side. Prepare the details of technology including camera for monitoring as per the agreement among the Government of Nepal, the Maoists and the UN.

4.7. The Council of Ministers shall control, mobilise and manage the Nepali Army as per the new Military Act. The Interim Council of Ministers shall prepare and implement the detailed action plan of democratisation of the Nepali Army by taking suggestions from the concerned committee of the Interim Parliament. This shall include tasks such as determining the right number of the Nepali Army, preparing the democratic structure reflecting the national and inclusive character and training them as per the democratic principles and values of the human rights.

4.8. Nepali Army shall be giving continuity to tasks such as border security, security of the conservation areas, protected areas, banks, airport, power house, telephone tower, central secretariat and security of VIPs.

5.2 Situation Normalisation Measures

5.2.9. Both sides agree to take individual and collective responsibility of resolving, with also the support of all political parties, civil society and local institutions, any problems arising in the aforementioned context on the basis of mutual consensus and creating an atmosphere conducive for normalisation of mutual relations and for reconciliation.

7.4. Civil and Political Rights

7.4.2. Both sides respect the right of every citizen to take part directly or through one's selected representative in issues of public concern, to vote, to be elected and equality in joining of public services.

8. Dispute Settlement and Implementation Mechanism

8.1. Both sides agree to become responsible and accountable in a personal and collective way and not to repeat in future mistakes committed in the past and also to correct these mistakes on a gradual basis.

8.2. The National Peace and Rehabilitation Commission can set up mechanism as per the need for making the campaign for peace successful. The composition and working procedures of the Commission would be as determined by the interim Council of Ministers.

8.3. Both sides are committed to settle all kinds of present or possible future mutual differences or problems through mutual talks, understanding, consensus and dialogue.

8.4. Both sides express commitment that the interim Council of Ministers can constitute and determine the working procedures of the National Peace and Rehabilitation Commission, the Truth and Reconciliation Commission, the High-level State Restructuring Recommendation Commission and other mechanisms as per the need to implement this agreement, the Interim Constitution and all the decisions, agreements and understandings reached between the Seven-party Alliance, the Government of Nepal and the CPN (Maoist).

10. Miscellaneous

10.4. If any disputes arise in any interpretation of this agreement, a joint mechanism comprising both sides shall make the interpretation on the basis of the preamble and the documents included in the schedule of this agreement, and this interpretation would be final.

10.5. The concept of 'two sides' as mentioned in this agreement would automatically cease to exist after the constitution of the Interim Legislature -Parliament. Thereafter, all the responsibility of implementing the obligations stated in this agreement shall be as per the arrangements made by the interim Council of Ministers. It would be the duty and responsibility of all the political parties to extend cooperation in the compliance and implementation of the agreement.

Cognizant of the responsibility of the future of the country and the people, and becoming fully committed to this comprehensive peace agreement, we, on behalf of the Government of Nepal and the Communist Party of Nepal (Maoist), hereby make public this comprehensive peace agreement after signing it.

Prachanda
President
Communist Party of Nepal (Maoist)

Girija Prasad Koirala
Prime Minister
Government of Nepal

Signed on November 21, 2006

Appendix 2

Interim Constitution of Nepal, 2007 (Excerpts)⁴⁵

37. Executive Power:

- 1) The executive power of Nepal shall, pursuant to this Constitution and other laws, be vested in the Council of Ministers.
- 2) The responsibility of issuing general directives, controlling and regulating the administration of Nepal shall, subject to this Constitution and other laws, lie in the Council of Ministers.
- 3) The executive functions of Nepal shall be taken in the name of the Government of Nepal.
- 4) Any decision, order or implementation warrant to be issued in the name of the Government of Nepal, pursuant to clause (3) above, shall be authenticated as prescribed by law.

38. Constitution of Council of Ministers:

- 1) The Prime Minister and the Council of Ministers under the chairpersonship of the Prime Minister shall be constituted by political consensus. **Explanation:** For the purpose of this Constitution "political consensus" means the political consensus reached between the seven parties- Nepali Congress, NCPN(UML), Nepali Congress (Democratic), Janamorcha Nepal, Nepal Sadbhawana Party (Anandidevi), Nepal Majdur Kisan Party, Samyukta Bam Morcha Nepal and NCP(Maoist) on 22 Kartik 2063.
- 2) If consensus cannot be reached pursuant to clause (1), the Prime Minister shall be elected by a majority of two-thirds of the members of the Legislature –Parliament.
- 3) The structure and the allocation of business of the Interim Council of Ministers shall be determined by mutual understanding.
- 4) The Council of Ministers shall consist of Deputy Prime Minister and other Ministers as may be required. **Explanation:** For the purpose of this Article the word 'Minister' shall also mean the Minister of State who takes independent responsibility of a Ministry.
- 5) While appointing Ministers, the Prime Minister shall appoint them, on the recommendation of the concerned political party, from amongst the members of the Legislature-Parliament.
- 6) The Prime Minister and other Ministers shall be collectively responsible to the Legislature-Parliament, and the Ministers shall be individually responsible to the work of their respective Ministries to the Prime Minister and the Legislature-Parliament.

39. State Ministers and Assistant Ministers:

- 1) The Prime Minister may, on the recommendation of the concerned political party, appoint the Minister of State from amongst the members of Legislature-Parliament.
- 2) The Prime Minister may, on the recommendation of the concerned political party, appoint Assistant Ministers from amongst the members of Legislature-Parliament to assist any Minister in carrying out his/her responsibility.

40. Appointment of Non-Member of Legislature-Parliament as Minister:

Notwithstanding anything contained in Articles 37 and 38, the Prime Minister may appoint any person, who is not a member of Legislature-Parliament, as Deputy Prime Minister, Minister, State Minister or Assistant-Minister.

43. Conduct of the Business of the Government of Nepal:

- 1) The conduct of business of the Government of Nepal shall be carried out in accordance to the aspiration of the united people's movement, political consensus and culture of collaboration.
- 2) The allocation and transaction of business of the Government of Nepal shall be carried out as set forth in rules approved by the Government of Nepal.
- 3) No question shall be raised in any court as to whether or not rules pursuant to clause (2) above have been observed.

44 The Council of Ministers after the Constitution of Constituent Assembly:

After the constitution of the Constituent Assembly, exercise of the Executive Power, constitution of the Council of Ministers and other matters related thereto shall, *mutatis mutandis*, be under the provisions referred to in this Part.

50. Speaker and Deputy Speaker of the Legislature-Parliament:

⁴⁵ Available at: http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf (English and Nepali versions). Accessed 19 July 2008.

1) The Legislature-Parliament shall elect a Speaker and a Deputy Speaker from among its members on political consensus. If an consensus cannot be reached, a majority of two-thirds of its total members shall elect them. If the office of the Speaker and Deputy Speaker falls vacant, the Legislature-Parliament shall fill up the vacancy through election from among its members.

2) The Speaker and Deputy Speaker of the Legislature-Parliament shall not be the members of the same political party.

3) In the absence of the Speaker of the Legislature-Parliament, the Deputy Speaker shall chair the meeting of the Legislature-Parliament.

4) If the election of the Speaker and Deputy Speaker has not taken place, or if both the positions become vacant, the member who is the senior most by age amongst the members presented, shall preside over the meeting of the Legislature-Parliament.

55. Voting:

Except as otherwise provided for in this Constitution, all questions submitted for decision in the Legislature-Parliament shall be decided by a majority vote of the members present and voting. Normally, the presiding member shall not have the right to vote. Provided that he or she may exercise the casting vote in case of tie.

63. Formation of the Constituent Assembly:

1) There shall be a Constituent Assembly constituted to formulate a new Constitution by the Nepalese people themselves, subject to the provisions of this Constitution.

2) After the commencement of this Constitution, the Election of the Constituent Assembly shall be held on the date as specified by the Government of Nepal.

3) The Constituent Assembly shall consist of the following four hundred twenty five members, out of which four hundred and nine members shall be elected through Mixed Electoral System and sixteen members shall be nominated, as provided for in the law:-

(a) two hundred and five members shall be elected from among the candidates elected on the basis of First-Past-the-Post system from each of the Election Constituencies existed in accordance with the prevailing law before the commencement of this Constitution.

(b) two hundred and four members shall be elected under the proportional electoral system on the basis of the votes to be given to the political parties, considering the whole country as one election constituency.

(c) sixteen members to be nominated by the interim Council of Ministers, on the basis of consensus, from amongst the prominent persons of national life.

4) The principle of inclusiveness shall be taken into consideration while selecting the candidates by the political parties pursuant to sub-clause (a) of clause (3) above, and while making the list of the candidates pursuant to sub-clause (b) above, the political parties shall have to ensure proportional representation of women, Dalit, oppressed tribes/indigenous tribes, backwards, Madhesi and other groups, in accordance as provided for in the law. Notwithstanding anything contained in this clause, in case of women there should be at least one third of total representation obtained by adding the number of candidature pursuant to sub-clause (a) of clause (3) to the proportional representation pursuant to sub-clause (b) of clause (3).

5) The election of the members of the Constituent Assembly shall be held through secret ballots, as provided for in the law.

6) For the purpose of election of the Constituent Assembly, every Nepali citizen who has attained the age of eighteen years by the end of Mangsir, 2063 (15th December 2006) shall be entitled to vote, as provided for in the law.

7) Subject to the provisions of this Article, election for the Constituent Assembly and other matters pertaining thereto shall be regulated as provided for in the law.

64. Term of the Constituent Assembly:

Except otherwise dissolved earlier by a resolution passed by the Constituent Assembly, the term of the Constituent Assembly shall be two years from the date of its first meeting. Provided that the term of the Constituent Assembly may be extended having passed a resolution by the Constituent Assembly, up to an additional six months period in case the task of drafting the Constitution is not completed due to the proclamation of a State of Emergency in the Country.

70. Procedure for Passing of Bill Relating to the Constitution:

1) The Constituent Assembly shall, in order to pass a Bill relating to the Constitution, carry out voting in the Preamble and each Article of such a Bill introduced before it.

2) In order to carrying out the voting pursuant to clause (1) above, at least two-thirds of the total members of the Constituent Assembly existing for the time being should be present and the Bill should be passed unanimously.

3) If unanimous decision pursuant to clause (2) above, regarding the Preamble or any Article of the Bill relating to the Constitution is not attained, the leader of the Parliamentary Party of the political parties representing the Constituent Assembly shall consult each other to achieve consensus in such matters.

4) The consultation to be held pursuant to clause (3) above, should be completed within a maximum of fifteen days from such date wherein the unanimous decision could not be reached.

5) If consultation is carried out pursuant to clause (4) above, revoting for the Preamble or any Article of such a Bill shall be done within seven days from the date of the completion of such consultation.

6) Even after carrying out the voting pursuant to clause (5) above, an unanimous decision is not reached as provided in clause (2) above, there shall be re-voting for such Preamble or Article for which an unanimous decision could not be reached, and in such voting, if at least two-thirds of the total membership of the Constituent Assembly existing for the time being were presented in the meeting, and out of them if at least two-third majority of the members voted in favour, it shall be deemed to have passed such Preamble or Article.

7) For the purpose of this Article, during the voting regarding the Preamble and any Articles of the Bill relating to Constitution, introduced in the Constituent Assembly, if none of the members voted against the Preamble and any of its Articles, it shall be deemed to have reached in a unanimous decision.

75. Voting:

Except as otherwise provided in this Part, all questions submitted for decision in the Constituent Assembly shall be decided by a majority vote of the members present and voting. Normally the member presiding shall not have the right to vote. Provided that he/she shall exercise the casting vote in case of tie.

145. National Defense Council:

1) There shall be a National Defense Council in order to recommend the Council of Ministers for mobilization, operation and use of the Nepal Army Consisting with the following chairman and members:-

- (a) Prime Minister Chairman
- (b) Defense Minister Member
- (c) Home Minister Member
- (d) Three ministers nominated by the Prime Minister Members

2) In case the Prime Minister and the Defense Minister would be the same person, the senior most member of the Council of Ministers shall be the member of the National Defense Council.

3) If the National Defense Council deems necessary, it may invite other persons at the meeting of the Council.

4) The Secretary of the Ministry of Defense shall work as the Secretary of the National Defense Council, and, in his/her absence, the officer designated by the Prime Minister shall carry out such work.

5) Except in the case of mobilization of Nepal Army for the reason of natural calamities, the decision made by the Council of Ministers of the Government of Nepal for the mobilization of the army shall have to be presented to the special committee prescribed by the Legislature-Parliament within a month of the decision, and be approved accordingly.

6) The National Defiance Council may regulate its working procedures on its own.

146. Interim Provision for the Combatants:

The Council of Minister shall form a special committee to supervise, integrate and rehabilitate the combatants of the Maoist Army, and the functions, duties and powers of the committee shall be as determined by the Council of Ministers.



International Peace Research Institute, Oslo
Institutt for fredsforskning

International Peace Research Institute, Oslo (PRIO)
Hausmanns gate 7
NO 0186 Oslo, Norway
E-mail: info@prio.no

www.prio.no