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Progress report

Project title: Facilitation in the Constitution Making Process

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1. Key information about the project

Project title:	Facilitation in the constitution making process
Implementing agency:	Human Rights and Democratic Forum (FOHRID)
Funding agency:	ActionAid Nepal
Type of partnership:	Short-term
Execution location:	Kathmandu
Project duration:	01 March 2011 to 31 May 2011

2. Project Summary

2.1 Intervention strategy and relevant issues with action

The political parties have included their diverse concepts in the drafts of the thematic committees of the CA, which are yet to be resolved. This has posed threat that the constitution making process may not end up as expected by the people. This situation, if proved true, may badly affect the ongoing peace process. Hence, a perfect constitution must be formulated in time for institutional development of democracy and to lead the peace

process to a logical end.

Seeking accountability of the senior leaders of major political parties, study of the contentious issues in the draft constitution, discussion and interaction with the stakeholders on such issues, holding Interaction Forums of Constitutional Committee, experts and major political parties as required were the strategies of this project to ensure accountability of the senior political leaders. The drafts prepared by the thematic committees including Constitutional Committee, concepts of political parties, study of the contentious issues, as well as the norms and standards of democracy and constitutionalism developed by the international community have been taken as reference.

Strategy meetings have been selected to identify and determine issues of intervention. Based on this, the project addressed the obstacles seen in the constitution making and peace process to remove those obstacles. For this, coordination and facilitation is made at the highest level. This project was flexible in the context of addressing issues. It has created synergy in the existing actions and initiatives aimed at supporting constitution making process. Through subtle diplomacy, the project has created an environment to ensure common understanding among political parties for constitution making, leading the peace process to a logical end and consensus building in the issues of contention.

Following 3 types of activities were determined to be accomplished for this:

1. Study, compilation, publication and dissemination

- a. Review of preliminary draft of Constitutional Committee. Also to analyze them and suggest measures and alternatives for consensus.
- 2. Secretariat support:** FOHRID shall take the responsibility of Secretariat to forward civic initiative to determine way out on the contentious issues pertaining to writing constitution in time. Coordination and facilitation shall be maintained among key stakeholders.
- 3. Civil society mobilization:** Mobilize civil society to build a common understanding on the issues of disagreement seen during constitution making process through public / subtle diplomacy for timely constitution making and logical conclusion of the peace process.

2.2 Objectives

Overall objectives: The project aimed to attain following overall objectives:

- a. To contribute for common understanding building among major stakeholders to accomplish constitution making process in time and to lead the ongoing peace process to a logical conclusion.
- b. To conduct interaction among major stakeholders to assist in the consensus building by minimizing the controversy seen among political parties from the preliminary draft in the constitution making process.
- c. To exert pressure to political parties for common opinion setting in the constitution making, and conduct advocacy for timely constitution making and to lead the peace process to a logical end.

Specific objectives: To attain the above overall objectives, this project had determined following specific objectives:

1. To conduct inter stakeholder interaction through civil society forums to ensure accountability.
2. Facilitation to ensure clarity in the contentious issues seen during constitution making process.
3. To facilitate organizing expert meetings with the purpose to resolve the contentious issues as required by the Constitutional Committee.

2.3 Quantify output and Expected Results

Quantify output

- Study of contentious issues – 1 time
- Publication – 1000 copies
- Interaction forum to ensure accountability - 2 events
- Expert meetings – 2 events
- Background discussion papers - 3 papers

Expected Results

- A compilation of the contentious issues shall be prepared and it will be published in a simple language to be consumed by general public. This publication shall be utilized by the stakeholders as resource material for advocacy.
- Contribution to the Constitutional Committee and political parties to find meeting points in the contentious issues.
- Political parties shall realize need to ensure accountability, and public pressure shall be exerted to this effect.
- General stakeholders sensitized on the contentious issues.
- Assistance in the activities of the Constitutional Committee.
- Contribution for timely formulation of new constitution.
- This project shall facilitate to develop uniformity out of diversity in the perspectives of political parties on the issue of constitution making.
- Contribution to determine common perspective and agreement among political parties for constitution making.
- Contribution to the constitution making and peace process.
- Obstacles seen in the way of constitution making process removed and the constitution formulated in time.
- Through facilitation, secretariat support and civil society mobilization, pressure exerted to formulate constitution in time.
- By applying the tools such as advocacy public pressure built up.
- Common meeting point explored out of the separate opinions and concepts seen during the constitution making process.

The project has played facilitating role for formulation of new constitution based on democratic values and constitutionalism.

3. Execution status of project activities

Component 1: Study, compilation, publication and dissemination

1.1 Study on contentious issues:

The study has been carried out on the topic of "**New Constitution: points of dispute, solution and political accountability**".¹ This study focused to narrow down the issues left after consensus was developed by the High Level Task Force² formed by the CA on some

¹ CA Member of Nepali Congress Ramesh Lekhak has provided important feedback and cooperation to accomplish this study. Raj Kumar Siwakoti coordinated this task on behalf of FOHRID.

² The High Level Committee was formed by the meeting of the Parliamentary Party leaders of 27 political parties on 2067/6/25. The Task Force was chaired by Pushpa Kamal Dahal 'Prachanda' and Ram Chandra Paudel, Jhalanath Khanal, Upendra Yadav, Narayan Man Bijukshe 'Rohit', Prem Bahadur Singh and Rukmini Chaudhari (Tharu) were the members. To support their work, the Task Force members were allowed to involve one each CA member or party leader in the meetings. Under this provision, Dev Prasad Gurung, Ramesh Lekhak, Bharat Mohan Adhikari, Ratneshwor Lal Kayastha, Sunil Prajapati, Basudev Chaudhari and Hikmat Bahadur Deuba participated the meeting. Similarly, the meeting of the Task Force held on 2067/7/16 had decided to invite Coordinator of the Committee to study report of the concept and preliminary draft Agni Prasad Kharel and members Ekraj Bhandari, Radheshyam Adhikari and Laxman Lal Karna in the Task Force. (Source: Report of the Task Force)

issues of contention reflected in the preliminary drafts and concepts of thematic committees. It has assessed the achievements of the CA committee to finalize preliminary draft of constitution. The study has analyzed the disputed issues in the drafts of major 6 committees. This effort is, thus, designed to assist in the consensus building in the constitution making process. The study reviewed achievements made so far in the constitution making process, controversies in the thematic committees, issues pointed out by the 27 party Task Force and suggested measures to resolve the issues of contention. The constitution provides guidelines about citizen's rights and the governance system to strengthen democracy. It provides mechanism and arrangements for limitations, rights and duties of the government while using its authority. It further provides measures for economic progress of the country. Nepal is now guided by the Interim Constitution after the success of Jana Andolan II. Constituent Assembly has completed 3 years with the promise of state restructuring. Dozens of issues are still unsolved and disputed in the draft constitution.

Following table presents some of the major issues that require to be resolved for a successful new constitution:

Committee to Determine Form of Governance	<ul style="list-style-type: none"> • What will be the future form of governance of the country like? • What will be the method of the formation of cabinet? • Whether the President or the Prime Minister shall be the executive head of the country? How to elect the President and the Prime Minister? • What will be the election system of the legislature? How to ensure inclusive representation?
Committee to Determine Form of Legislative Organ	<ul style="list-style-type: none"> • What shall be the number of house in the Federal parliament and what will be its number of members?
Justice system	<ul style="list-style-type: none"> • Whether or not the Supreme Court should be authorized for final interpretation of the constitution. • Whether the central mechanism should carry out the appointment and transfer of provincial high court, should it be conducted by an institution like Judicial Council or by the legislature?
Committee for Fundamental Rights and Directive Principles	<ul style="list-style-type: none"> • How to criminalize serious crimes of international concern under the right to justice and how to establish the right to remedy against such crimes and right against impunity? • How to incorporate right regarding property?
Committee to Protect National Interest	<ul style="list-style-type: none"> • Whether or not to provide compulsory military training to the Nepali citizens after attaining 18 years of age?
State restructuring	<ul style="list-style-type: none"> • How many provinces should be formed? How to determine their names and boundaries?
Constitutional Committee	<ul style="list-style-type: none"> • How to address the issues such as pluralism, right to self determination, political primary rights, whether or not to accept the principle of fundamental structure (limiting certain issues as unamendable) in the context of amendment of the constitution?

We are facing some technical difficulty to identify measures to resolve the above contentious issues. The political parties should have been clear on these issues in the beginning of the constitution making process. However, they have differences till now. Any recommendation to resolve these issues requires agreeing to a party line and discarding the others. Therefore, arrangement is being made to receive feedback from the representatives of major 3 political parties UCPN-Maoist, Nepali Congress and CPN-UML.

1.2 Background discussion papers:

Background discussion papers were prepared with the analysis of contemporary issues such as pluralism, political accountability, political mega trend, political deadlock, peace process, army reintegration etc. Following 5 papers have been written by experts:

- i. **"One party or pluralism"** - Nutan Thapaliya, senior human rights defender: Thapaliya has analyzed the historical and theoretical issues relating to pluralism and single party system. He has explained the issue of pluralism and people's democracy from several dimensions in the Nepalese context. He has presented the major differences between these two systems in a table.
- ii. **"Democracy, pluralism and multiparty system"** - K.P. Sharma Oli, senior leader of CPN-UML: Mr. Oli has justified the need to institutionalize the achievements of the Jana Andolan II and presented explanation about the need of pluralism in the Nepalese context. This write up sheds light on how and why pluralism is necessary for democracy. The author claims that the people's democracy is irrelevant in the 21st century, and there is no alternate of using the word and principle of pluralism in the new constitution.
- iii. **"Democratic stability in Nepal: Political accountability and trends"** - Prof. Dr. Ram Kumar Dahal, Central Department of Political Science, TU: Positive achievements in the fields of economic, socio-cultural, religious, educational and media sector, increased influence of human rights and civil society have been described by the author as attraction of Nepalese democracy after Jana Andolan II. The issue of political stability and institutionalization of democracy have been described comparatively during the time of King Mahendra, King Birendra, King Gyanendra and the republican era. The author has pointed out role of leadership, internal conflict within parties, impunity, politicization of crime & criminalization of politics as hindrances obstructing institutionalization of democracy. He has further analyzed economic Cause of Political instability in Nepal and preconditions / prerequisites of democracy. Finally, the paper has made some recommendations to the stakeholders including political parties for democratic stability in Nepal.
- iv. **"Constitution making and peace process: Problems and way out"** – Kashiraj Dahal, constitutional expert: Describing about the lack of clarity of thought in the political parties, Dahal sheds light on the obstacles seen in the constitution making and peace process. The paper analyzes the interlink between constitution making and peace process and presents conflict in the Nepalese context between these two. Pointing out the measures for resolving problems, it has recommended some conditions for extension of CA term.
- v. **"Constitution making and peace process"** - Sujit Mainali, Journalist: Describing the obstructions in the constitution making and peace process created by the power game among political parties, Mainali has pointed that the parties are lagging behind to fulfil their responsibilities. He opines that the political parties are unnecessarily engaged in the debate of whether peace or the constitution should be dealt first. He concludes that the political parties cannot run away from the responsibility to fulfil both these obligations simultaneously.

These papers were presented at the interaction sessions of this project. These papers have been included in the publication brought out under this project.

1.3 Publication

The publication entitled "Democracy, constitution making and political accountability" has been divided into three parts. The first part is entitled pluralism, democracy and nationalism. This part has accommodated 5 separate articles on the issues of partyless, single party and pluralism, nationalism and democracy, nationalism and people's democracy, internal and external dimensions of democracy, pluralism, multiparty system and Nepalese nationalism in

the context of constitution making. The second part is entitled peace and constitution making: political accountability. It has accommodated 3 separate articles on new constitution: points of dispute, resolution and political accountability, peace and constitution making: problems and resolution, and constitution making and peace process. The study carried out under this project is also included in this part. The third part is entitled democratic stability in Nepal: political accountability. This part includes research based articles on democratic stability in Nepal: political accountability and trend, political party reform and restructuring for institutionalization of federal democratic republic and political parties and accountability. The publication is being printed 1000 copies for wide dissemination among stakeholders.

A separate book will be published in English language incorporating project execution proceedings, summary of the 4 papers written by experts and summary of study outcome. The publication will be of around 40 pages, and it will be published 500 copies. In this way, this small scale project shall bring out one academic book and a separate Project Execution Report.

Component 2: Secretariat support, coordination and facilitation between key stakeholders

FOHRID played the role of Secretariat to forward civic initiative to give outlet to the issues which remain undecided in the constitution making process. For this, facilitation and coordination is conducted among key stakeholders.

2.1 Interaction Forum to ensure accountability: Total 2 events of Interaction Forum have been organized. Details of the interaction are as follows:

Event I: Interaction program on Context of Constitution Making: People's Democracy or Pluralism, 18 April 2011, Hotel Orchid, Kathmandu

Context/background

Election to the Constituent Assembly (CA) was held in April 2008 to institutionalize achievements of the second Jana Andolan of 2006 succeeded by the overwhelming solidarity of the political parties and the general people. Citizens expect that the new constitution shall fulfil the people's aspirations for new Nepal with restructuring of the state and its governance system. It was expected that the new constitution shall reinstate the

snatched rights of Nepali citizens and ensure economic prosperity through complete political stability. The CA had expressed commitment to formulate inclusive and democratic constitution with federal system and to lead the peace process to a logical end. Unfortunately, the working solidarity of the parties faded away after the success of Jana Andolan



and election to the CA. The unending debate about consensus and pluralism brought number of upheaval in the constitution making and peace process. The CA term has been extended for one year until 28 May 2011 after completion of initial two years term. However, there is no sign of formulating new constitution even within this additional period.

Management of the transitional phase after the success of Jana Andolan II, democratic schooling of the UCPN-Maoist that came to open politics after 10 years of violent people's war, formulation of new constitution and measures to institutionalize democratic stability are inter linked. Democratic forces have to modernize their classical political ideology. It is natural that the power established through armed conflict and the traditional democratic forces have theoretical and philosophical differences. While presenting its ideas in the theoretical and philosophical ways, the Maoist attempts to be in a separate faction and the democratic forces react in a rigid way against such attempts. There was a marriage between these two extreme poles till the CA election. However, these differences emerged as a standard to incorporate certain types of provisions in the new constitution pushing the peace process towards an awkward position.

There are dozens of issues of contention between UCPN-Maoist and Nepali Congress as well as other parties in the course of constitution making. There are debates in the unchangeable provisions and language of preamble including in the form of governance of state, form of legislative organ, state restructuring and division of power, justice system, fundamental rights and directive principles. The words to be used have become issue of contention. Maoist party is insisting that the people's democracy should be mentioned in the constitution as the change was possible through their people's war; however, other parties stress that people's democracy is not established through any philosophy or practice so people's democracy is not acceptable rather democratic society based on pluralism should be maintained as unchangeable provision. There is dispute about the terms including form of governance of the state, form of legislative organ, state restructuring and division of power, justice system, fundamental rights and directive principles, language of the preamble and provisions to be incorporated as unchangeable. There is bitter difference about what types of words to be used in the constitution. The Maoists stress that as the current political change has been possible through people's revolution, the ruling system should be based on people's democracy, and it should be mentioned in the preamble of the constitution. On the other hand, the non-Maoist parties stress that people's democracy is not established by any philosophy or practice of the world and is not acceptable; therefore, democratic society based on pluralism should be incorporated as unchangeable characteristics of the new constitution.

Therefore, this interaction program was organized by FOHRID to discuss whether people's democracy or pluralism should be incorporated in the new constitution and to contribute in resolving this debate.

Program proceedings and participation

In this program organized in the round table interface interaction model, senior human rights defender Nutan Thapaliya presented his paper entitled "One party or pluralism" and senior leader of CPN-UML K.P. Sharma Oli presented his paper "Democracy, pluralism and multiparty system". CA Constitutional Committee President Nilambar Acharya discussed about the complexities seen during the constitution making process. Total 95 participants including representatives of political parties, political scientists, civil society and journalists participated the program. The program was chaired by former election commissioner Prof. Dr. Birendra Mishra and run as Moderator by FOHRID President Birendra Prasad Thapaliya.

Objective

To conduct discussion among stakeholders about whether pluralism or people's democracy should be incorporated as unchangeable provision in the new constitution, and to receive feedback to submit a recommendation to the CA.

Conclusion

Academic discourse is necessary on the philosophical and theoretical ground about whether

pluralism or people's democracy should be incorporated in the new constitution as unchangeable provision. Pluralism is a political system developed by democratic society through the history of almost 2500 years to bring change in the economic and social life of the people. Numerous groups run by society and various communities are dominant in the democratic practice. These groups usually have close link with the ruling system. Pluralism is protected by law in a democratic society. Liberal democratic and social democratic systems believe that democratic practice is not possible without pluralism. However, people's democracy is yet to be established through theory and concept. Maoists claim that pluralism is a component within people's democracy. This claim can be true, but philosophical and academic logic is required to justify this. Some scholars intend to use people's democracy as synonym of absolutism. UCPN-Maoist claims that absolutism does not represent *Janabad*, the people's democracy. However, this concept itself is confusing and it is not logical to claim as democracy. It is a hypothesis that the term *Janabad* can be defined as *democracism*. This is yet to be experimented. Maoists have not been able to justify this concept with academic discourse. If one succeeds to establish people's democracy as equivalent to democracy understood by the westerners, it might represent a revised form and new ideology provoked by the democratic movements of the poor and exploited people of the third world. Otherwise, we will have to understand that the people's democracy proposed by the Maoist is a political system without political pluralism established as totalitarian at the cost of pluralism. In such a system, pluralism is shadowed by a single aim, and the government compels people to follow a single ideology and way.

The people's democracy understood by the contemporary society is somehow near to absolutism. Under absolutism, the leadership rules its cadres and community through undefined limitation and unpredictable way. A single ideology, party or ruler continues to rule. The practice to resolve differences through discussion, interaction and consensus is nullified. The citizens are deprived of the benefits of private life and liberal economy. Therefore, the people's democracy is almost equivalent to absolutism. If the Maoist wants to establish people's democracy as a modern democracy, it has to establish through philosophy and explanation that it is more advanced than pluralism. Otherwise, the logic of Maoist without philosophical or theoretical ground to prove that pluralism is a component or dimension of people's democracy cannot convince other parties during constitution making process. UCPN-Maoist, being the biggest political party in Nepal, has more responsibilities, and it is natural to expect that this party has the responsibility to convince other parties through philosophy, logic and conscience. Such a responsible measure shall prove its accountability as well as good political activism.

Nepal has a rich and unique natural diversity. People from various religion, ethnicity, and occupation have been living in this land together for several centuries. A single party, ideology or leadership cannot lead the genetic, geographical, social and cultural diversity of the land. About political system, there is no choice but to incorporate either pluralism or people's democracy in the new constitution. Pluralism has a relatively longer and more logical history. At the same time, we cannot say that people's democracy cannot offer a wider measure to address the current problems. For a long time in the past, Nepalese people have been expecting a revised framework of political and governing system. We have to watch the Maoists to see whether they can address people's aspirations and fulfil their expectations through people's democracy or vow to the established system of pluralism.

Event II: Interaction on Constitution making and political accountability,
Hotel Pension Vasana,
Kathmandu, 5 May 2011



Background

The second Jana Andolan attained its goal on the ground of the 12 point agreement reached between the then 7 party alliance and the CPN-Maoist. This agreement was reached with the active support of India at a time when the movement of the 7 political parties could not secure adequate public support and the Maoists felt that they would not establish people's rule through people's war. This agreement fuelled the movement and monarchy was eliminated for ever. The Maoist and other political parties maintained collaboration till the CA election and declaration of republic. This made the public hopeful for a bright future. However, after these achievements the political parties engaged themselves in the formation and dissolution of the government with simple majority as in the past. This hindered the constitution making and peace process and posed serious threat to the politics of consensus. The last extension was made by the parties after 3 point agreement but this could not give any encouraging result. So, the one year of extended term of CA elapsed after its original 2 years term.

Currently, the UCPN-Maoist has committed to peace and constitution leaving behind the people's revolt passed by the Palungtar plenum. Some unsatisfied leaders of the CPN-UML have started to express that the current government led by their own party has failed. Participation of the Madhesi Janadhikar Forum Nepal in the government is disputed within their own party. The three factions of the Madhesi Morcha have threatened to launch protest program if new constitution is not promulgated by May 28. The parties have very sharp differences on many issues which are not resolved till now. Even a draft of the constitution is not finalized. Nepali Congress, some leaders of CPN-UML and Madhesi Morcha are not willing to extend the tenure of the CA. This has not only pushed the CA into uncertainty but also made the people suspicious about the uncertain situation after May 28. In this backdrop, FOHRID organized an interaction on the issue of constitution making and political accountability.

Objectives

To hold discussion with the leaders of sister organizations of political parties, various organizations, civil society, intellectuals on constitution making and accountability of political parties as well as whether or not to extend the tenure of the CA again.

Program proceedings and participation

Senior human rights defender Nutan Thapaliya chaired the program organized as round table interaction. After the dignitaries were seated on the dais, Prof. Dr. Ram Kumar Dahal presented his paper entitled "Democratic stability in Nepal: Political accountability and trends" and young journalist Sujit Mainali presented his paper "Constitution making and peace process". About 60 participants including student leaders of various colleges, leaders of sister organizations of political parties, intellectuals, civil society, human rights defenders, representatives of NGOs actively participated in the program. Advocate Raj Kumar Siwakoti facilitated the program.

Conclusion

- The CA formed to promulgate new constitution within two years has not been able to accomplish this in the additional one year also. People are anxious as the May 28 is approaching. We need to create an environment to exert pressure to the leaders who are not accountable to their duty and the people.
- Dissatisfaction of the people on the unchangeable articles of the Constitution of 2047 was reflected in the decade long armed conflict. Jana Andolan was launched to change those unchangeable articles. We must be careful about such provisions in the new constitution so that the nation should not face another armed conflict in the future, and the dream of people for peace shall be fulfilled.

- We need to institutionalize inclusive democracy and ensure civil and political as well as economic, social and cultural rights of the people. We need to learn from the old thoughts and forward new revised voice of youth.
- Nationality is not a system or ism that may change with ruling system. It should be defined with similar words and meaning in the past and future. Before bearing the mentality that *Daura Suruwal* reflects the nationalism of Mahendra, we must not forget the fact that we are living in the country unified by Prithwi Narayan Shah.
- Whichever ruling system adopted, the political parties should pay attention to strengthen the national economy.
- We cannot spend the money paid by people as tax any more for the CA. Preliminary draft of new constitution must be given by 28 May 2011. We must not extend the tenure of CA. If this is not possible, we should allow only no cost extension.

2.2 Expert meetings:

Event I: Brief Report of the interaction on **Extension of the term of CA and clear roadmap for the country**, Kathmandu, 22 May 2011 (2068 Jestha 4)

Context

After failure to formulate new constitution in the extended duration of one year, the government registered a proposal to the parliament to extend CA term by one more year.

The proposal has triggered intensive polarization among political parties. Similarly, the peace process has not reached a logical end. However, as commitment for constitution making and peace process has been forwarded as condition for the extension, we can hope that the parties will be honest to this. It is necessary to reach conclusion on what should be the clear roadmap of Nepal for the future and how we can ensure consensus on the issues of constitution making and peace process.



In this context, FOHRID organized an interaction program entitled **Extension of the term of CA and clear roadmap for the country**. Consultation was held with Constitutional Committee President Nilambar Acharya and members to determine subject matters and date for the program.

Objectives

To conduct interaction with the stakeholders to determine a clear roadmap to succeed constitution making and peace process in the backdrop of need to extend the CA term as there is no possibility of promulgating a new constitution within 28 May 2011.

Program proceeding and participation

Senior human rights defender Nutan Thapaliya chaired the program organized in the roundtable method. The program commenced with the seating in the dais by the chair, key speakers and other participants. Constitution expert Kashiraj Dahal presented his paper entitled "Constitution making and peace process: Problems and way out" and Advocate Raj Kumar Siwakoti presented his paper on behalf of FOHRID entitled "Extension of CA term and clear roadmap of the nation". Constitutional Committee President Nilambar Acharya was Chief Speaker in the program and about 50 people including constitutional experts, lawyers, intellectuals, representatives of civil society, human rights community, NGO representatives, and journalists participated the program. Advocate Birendra Thapaliya facilitated the program.

Conclusion

- a. The 12 point agreement reached between the then 7 political parties and CPN Maoist led to a glorious victory for democracy in April 2006. This opened door for fulfilling the desire of the people to formulate a constitution to rule them by themselves. Nepal started constitution making process after election to the CA. Three years have been passed after Nepalese people got this opportunity. The initial two years of the tenure of the CA could not address the people's expectations properly. The constitution making process was hampered by the issues of fulfilling transitional management, democratic stability and peace process. One year additional term of the CA was approved in the midnight of 28 May 2010 to conclude the remaining tasks of the initial two years and to promulgate new constitution. Though a new constitution could not be promulgated in the past three years, the Constitutional Committee, ten thematic committees³ and 3 procedural committees⁴ have finalized their preliminary drafts. The Committee for State Restructuring and Division of State Power could not finalize its draft and the other drafts were also not unanimous. In this way, the journey to the new constitution has started, but it is still incomplete.
- b. We are short of time for successful constitution making. The political situation has compelled to seek alternate and we have the challenge to institutionalize achievements of the Jana Andolan II and frame a new Nepal through a new constitution. We must accept that the politics of prohibition and the practice of majority instead of consensus have badly affected our journey towards democratic system. To go forward with the assessment of lack of vision and irresponsibility seen in the past 3 years, we must link extension of CA with the democratic constitution making and institutionalizing democracy. We must make an action plan keeping the issues of democratic stability, constitution making and peace process at the centerstage. Extending the term with a clear action plan, we must be accountable to fulfil them. These commitments must be made and incorporated in the annex of the Interim Constitution through its amendment.

The agenda and action plan for the formulation of new constitution can be listed as follows:

- i. **Formation of new government of national consensus and democratic stability:** There is no alternate of formation of a national consensus government for constitution making, concluding peace process to a logical end and stable democracy. Once the consensus government is formed, the parties should not seek next government till fresh mandate is sought under a new constitution. It is unfortunate in our democratic practice that none of the governments have remained in the office for a complete term. The political parties must be ready to allow the majority government to work for its full term without any problem and the opposition party should behave as responsible opposition.
- ii. **Trust the new generation:** It is a common trend that no one retires from the political life even when he is unable to fulfil his responsibility and accountability. Nepalese citizens are seeking answer from the political parties whether or not the political leaders should retire from political and public life if they cannot fulfil their responsibility. The relevance and existence of the political leaders and CA members shall not be important anymore if they fail to formulate constitution in time, conclude peace process, and give way out from transitional phase and show the practice and

³ Thematic Committees in the CA are 1. Committee for Fundamental Rights and Directive Principle, 2. Committee for Protection of the Rights and Interest of the minority and Marginalized Communities, 3. Committee for State Restructuring and Division of State Power, 4. Committee to Determine form of legislative Organ, 5. Committee to Determine Form of Governance of the State, 6. Committee on Justice System, 7. Committee to Determine Structure of Constitutional Bodies, 8. Committee to Divide Natural Resources, Economic rights and Revenue, 9. Committee to determine ground for Cultural and social Solidarity, 10. Committee for Protection of National Interest, 11. Committee for State Restructuring and Division of State Power.

⁴ The three procedural committees include: 1. Committee for Citizens' Relations, 2. Collection of Opinion and Coordination Committee, 3. Capacity building and Resource management Committee.

- result of political stability. The major actors still have the opportunity to fulfil this, but it would be unfortunate if they delay this process again.
- iii. **Peace process and army reintegration and rehabilitation:** The exact number of the combatants and the funding provided by the government and external sources are not transparent. The political parties have not been able to develop consensus on the number, framework and method of reintegration and rehabilitation. They are not clear whether the reintegration and rehabilitation should take place before or after the constitution making. They have not determined the agenda to bring the combatants under the purview of the Special Committee and remove, destroy or hand over the weapons stored in the cantonment to the government. The government has failed to guarantee return of the individual and public property captured illegally and forcibly.
 - iv. **Duration of the term of CA for next extension:** It would be appropriate to extend the CA term by 3 months to conclude the peace process and form a government of national consensus. After completion of these responsibilities, the term of the CA can be extended for 3 months more to promulgate a new constitution. If the political parties fail to fulfil these responsibilities, there is no alternative to go for a fresh mandate through democratic elections. Currently, the people are against extension of the CA term. The credibility of the political parties shall be enhanced if they agree to minimum remuneration or no cost extension as the CA is inevitable now. The term can be extended for maximum 6 months which can be divided as first 2 months to prepare preliminary consolidated draft, next two months for consultation at the people's level and final two months for discussion and promulgation through the CA.
 - v. **Resolve the controversial issues and determine basic features:** Nepalese political forces failed to determine basic features while entering into the CA. The debates seen in the thematic committees are directly related to the basic features of democratic constitution. It derailed the peace process; however we have the opportunity to learn from the past. Therefore, agreement on those issues is the agreement on the features of constitution based on the basic features of the constitutionalism. We can determine the features through the issues being discussed in the CA. Therefore, the CA should be extended only after determining solutions in the controversial issues of the thematic committees and the basic features of the new constitution. The basic features of the new constitution can be determined if we resolve differences seen in the constitution making process. How to structure the federal states and how many states? How to name and determine boundary of the states? These are the challenging questions before us. If these cannot be resolved, we can leave aside the issue of federalism for the next 10 years and adopt the decentralization policy. We can determine and implement the form of federalism within these 10 years. If this is not possible, the stakeholders have pointed out that we can hold referendum to decide whether or not to go for federalism.
 - vi. **Addressing transitional justice issues:** To address the transitional justice issues, we need to formulate effective law for TRC and Commission on Investigation of Disappearance. These commissions need to be formed immediately. We must not forget the responsibility to adopt the international criminal justice system by acceding to the Rome Statute of ICC.
 - vii. **No more inaction:** The history of inaction of the past three years shall repeat if the CA term is extended without a clear agenda and action plan. We are still in the departure point of three years ago as we did not frame a clear roadmap in the past. There is no alternate of implementing the agenda if we want to give a way out to the country and institutionalize democracy. We cannot ignore this responsibility. This is the expectation of the people with the political parties and senior leaders.
 - viii. **Monitoring the political commitments:** The civil society and international community should continue to monitor application of the agenda determined for extension of the CA term by the political parties and senior leaders.

Event II: Brief report of expert meeting on Need of clear action plan for CA term

extension, Kathmandu, 24 May 2011

Context

The Constituent Assembly (CA) could not formulate a new constitution within its original duration of two years. Its one year term was extended for the first time in 28 May 2010. However, this additional time was concluded in the power game by the political parties as they focused formation and dissolution of the government rather than the constitution making and peace process. Consequently, there is almost consensus among political parties to extend the term of CA for one more time. It seems that those who oppose the extension have only raised this issue as bargaining point. In this backdrop, FOHRID organized a meeting of constitutional experts and civil society leaders on "**Need of clear action plan for CA term extension**".



Objective

To discuss about need of a clear action plan for CA term extension and to submit the outcome to the CA members.

Program proceedings and methodology

The program was conducted with an interactive methodology. In the beginning, Advocate Raj Kumar Siwakoti, Secretary General of FOHRID presented a study document entitled "Conditions for extending the CA term again". Then the participants intensively discussed on the issue and provided their feedback to finalize the draft document. FOHRID President Advocate Birendra Thapaliya conducted the program as moderator in which leaders of human rights and civil society including senior Advocate and former Speaker Damannath Dhungana, civil society leader Padhma Ratna Tuladhar, senior human rights defender Charan Prasai actively participated.

Conclusion

The meeting finalized the document presented on behalf of FOHRID. It was circulated widely among stakeholders through electronic media. The outcome of the meeting was printed and disseminated to all the existing CA members by dropping the hard copy to the pigeon holes. Conclusion of the program is as follows:

- The new constitution could not be drafted in the extended term due to inaction of the political parties and lack of accountability.
- The CA term should be extended for the last time for 6 months by making public a clear action plan to complete remaining obligations of peace process and constitution making. The political parties must go for fresh mandate if the constitution drafting process cannot be completed after fresh extension also. They should prioritize management and rehabilitation of the Maoist combatants in the next extended term. It is necessary to determine the number of combatants to be integrated, detach the combatants from the UCPN-Maoist before 28 May 2011 and to destroy or hand over to the government weapons of the combatants stored in the containers.
- As national consensus is required to succeed constitution making and peace process, the parties should immediately form a government of national consensus. They must express commitment to ensure that the new constitution shall be based

on the universal democratic standard and the past incidents of human rights violation shall be addressed immediately.

- The CA should finalize preliminary draft of new constitution and start discussion on it within first month of extended term, revise the draft through public consultation and submit in the CA for discussion within 4th month. The draft of constitution should be finalized in the fifth month and promulgated it in the sixth month.

4. Assessment of results

- Through this project, FOHRID played the role of coordinator and facilitator among human rights and civil society to exert pressure for timely formulation of new constitution. FOHRID has been providing Secretariat support to mobilize civil society for constitution building.
- Intervention was made in the complex issues of constitution building process. Attention of the general stakeholders is drawn towards resolving differences through discussion on the basis of working papers on the issues such as pluralism, people's democracy and political accountability.
- The publication brought out by compilation of the study outcome, discussion papers and research based articles is a reliable resource material to understand the dimensions of current constitution making process. It transfers knowledge on democracy, constitution making and political accountability to the general readers and stakeholders.
- The project has identified the disputed issues seen in the constitution making process. The project played the role of mediator to identify measures to resolve the contentious issues for the Constitutional Committee and CA members. The CA members who participate in the project activities opine that the consultative role played by the project has contributed to narrow down the differences and reach a consensus.
- There is a sharp difference among key political parties about whether to choose pluralism or people's democracy. The project initiated interaction on this issue. It made the CA members informed about the differences between these two systems.
- The project was successful to establish that the new constitution must be formulated according to the democratic norms and values. It initiated academic discourse among stakeholders on the fact that the internal dimensions of the constitution based on constitutionalism are different from political stand.
- The issue raised by the project was highly appreciated by CA members and other stakeholders. They have opined that continuous activism and intervention is necessary on behalf of human rights and civil society until new constitution is promulgated in Nepal.

5. Collaboration and partnership

FOHRID implemented this project in active collaboration with human rights and civil society. The political parties and their sister organizations, constitutional experts, lawyers, journalists were actively involved in the project events. Citizen's Task Force to Combat Impunity was mobilized for effective implementation of the project.

6. Analysis of Risks and Assumptions

Even after extension of the CA term by three months from May 28, 2011, there is risk that the new full fledged constitution shall be formulated within August 2011. The political parties have expressed affirmative attitude towards constitution building and peace process. However, the past experience shows that they are not accountable to their own commitments.

7. Lesson learned

Intensive advocacy from the civil society to seek the accountability of the CA and political parties through discussion on constitution making and peace process is contextual. These issues are very much pertinent in the transitional phase of Nepal. The debate of whether the peace process or constitution first is useless, both of these are important and should be forwarded together. Political solution is impossible without accountability of the key actors.

Erosion of accountability is the major problem in the political parties in the current Nepal. The dirty game of grabbing power has deviated the parties from their responsibility. Continuous pressure is required from the human rights and civil society to succeed the constitution making and peace process by making the major actors accountable.

The activities such as advocacy and lobbying on behalf of civil society are effective tools to succeed the peace process and timely constitution making. Bringing the political parties and the experts face to face for discussion contributes positively to share ideas and develop common understanding. However, role of the political parties is most imperative in this process. Our efforts yield expected outcome if we make them accountable.