Nepal’s Pathway for Peaceful Transformation and Challenges Ahead

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1. Introduction

At 20:29 hours of 22 November 2006, more than 10 years of the armed conflict was officially ended once the Nepal Government and the Communist Party of Nepal (Maoist) signed a Comprehensive Peace Accord (CPA). It was praised by historic, fundamental and remarkable by most of Nepalese and feebly denounced by some people, particularly by the regressive forces who were benefited from the civil war in this nation.

Reaching to the CPA was Herculean task to the leaders having far leftist, leftist, centralist and rightist and far rightist thinking and orientation grouped into Seven Party Alliance (SPA) and the CPN (M) who believed in arms and violence to transform this semi-feudal and centralized state into a modern nation. But they made it. Though, not as inclusive as many people believing on right process would like to see, they made it with rigorous efforts, commitment and hard work.

Global experiences of armed conflict, civil war, conflict transformation and peace process have amply demonstrated that success or failure of any peace accords and agreements depend upon their sincere implementation into action, commitment of the parties signing such accords and finally support of international communities. The success of the CPA of Nepal will also be evaluated in these criteria. However, anatomy of the CPA in terms of its content, process and proposed implementation structures or mechanisms provide basis of evaluation. Hence, in the following sections the CPA is examined in term of Content, process and structures and mechanisms:

2. An analysis of the Comprehensive Peace Accord

2.1 Content of the CPA

While examining the content of the peace accord, one of the issues scrutinized is its preamble. The preamble of CPA is very powerful. It writes, ‘Respecting people’s mandate for democracy, peace and progress expressed through repeated historic people’s movement and struggles since 1951; Reaffirming commitments to the 12-point and 8-point agreements, and 25-point code of conduct between the seven parties and the Maoists; decisions taken during the meeting of the top leaders of the seven parties and the Maoist on November 8 along with other agreements, understandings, code of conducts and letter sent to the United Nations stating identical viewpoints by the Maoists and the Nepal government; Pledging for progressive restructuring of the state by resolving prevailing problems related with class, ethnicity, regional and gender differences…’. The signatories have reiterated their commitments to competitive multiparty democratic system, civil liberties, fundamental rights, Universal Declaration of Human Rights 1948 and other international humanitarian laws and values and principles of the human rights, complete press freedom, rule of law and all other norms and values of democratic system. It is one of the most remarkable achievements especially because the CPN (M), believer of the authoritarian and unitary political

1 Published in the development Journal Readings on Governance and Development VIII: 18-25, 2007 by Institute of Governance and Development.
system and violence for political change has agreed to follow multi-party politics, respecting human rights and press freedom and rules of law.

The preamble also clearly states about guaranteeing the voting rights of the Nepalese people in the constituent assembly election without any kind of fear and threat. Another strength of the preamble is its heavy commitment on “...democracy, peace, prosperity, progressive social and economic transformation, independence, integrity, sovereignty and prestige of the state in the centre-stage...”.

Since the first peace talk (2001), election of the constituent assembly was the single most demand of the CPN (M) to resolve the crisis. However, neither the palace nor the democratic parties accepted this demand until 2004. Only after the 1st February 2005 Royal takeover, political parties realized the importance of the constituent assembly election. They accepted it only after the youth, students, professionals, intellectuals and academics, human rights activists and ordinary people vehemently argued for the constituent assembly election and pressurized political parties. The CPA has made clear commitment to hold the election to constituent assembly. Even the preamble of the CPA specified the date of election (by mid June 2007).

Declaration of the end of the 10 years of armed conflict paved the way to begin a new era of Nepal. The CPA has recognized the full sovereignty of the Nepalese people and committed to democratic restructuring of the state’s political, social, economic and cultural systems existed since long time. It would not be possible to transform Nepalese society without fundamental transformation of the state structures and governing system. The CPA has provided basis for such transformation if the political parties committed.

As observed in many peace agreements, they fail while implementation irrespective of how comprehensive their contents may be mainly because of the weak commitment of the signatories. In the CPA, the signatories committed to issue directives to all the agencies under them to follow and implement this agreement immediately including all agreements, understandings, code of conduct.

The provision of ceasefire has been clearly illustrated in CPA by making provision of restriction of all kinds of attacks, abduction, disappearance, imprisonment, mobilization and strengthening of the armed force, attacking or armed actions of any form of destructive, provoking or inciting activities in the society.

The SPA and the CPN (M) have committed respecting and protecting human rights and international humanitarian law which prevent discrimination based on caste, gender, language, religion, age, ethnic groups, national or social origin, property, disability, birth or any other status. This is an important provision to modernize the feudal nation. Furthermore, the CPA has clear provision of guaranteeing the right of education of all Nepalese people. If honestly translated into practice, it will pave the foundation for modern and prosperous nation.

The provision of political, social and economic transformation stated in the CPA is its sole strength. Many peace agreements around the world have failed to comprehensively articulate the social and economic transformation. Many such agreements focus more on political power sharing, some on economic provisions and very little on social and cultural transformation. Compared to many of
such agreements, Nepalese CPA is relatively strong in all there components. However, its economic transformation agenda are weak in comparison to other two components. Guatemalan peace agreement was strong in economic transformation but relatively weak in political and social change. Hence, its effectiveness is in question. There is strong argument in conflict transformation related academic and scholar circle that without strong provisions of economic transformation package, it is virtually impossible to achieve durable and just peace in war-torn societies (Fiesher et al., 2000). The experiences of other war-torn countries of Africa, Asia, Eastern Europe and South America ((Armon and Carl, 1996; Armon and Philipson, 1998; Barnes, 2002; 2004; Lucima, 2002; Galtung, 2000 and 2004; Crandall, 2004; Hendrikson, 1998; Misra, 2002; Armon, et al., 1997; McCartney, 1999; Armon, et al., 1998; Stankovitch, 1999 and Bloomfield and Reilly 1998) have demonstrated that successful conflict transformation requires strong economic provisions and fair power sharing arrangements.

In the social and political fronts the CPA has comprehended the concepts of universal principles of fundamental human rights; recognizes competitive multiparty democratic political system, acknowledges sovereign rights inherent in the people, makes the provision of balance of power and control, rule of law, social justice and equality; recognizes independence of judiciary and periodic elections, freedom of press and right to information.

Political strength of CPA is its provision of dismantling the existing centralized and unitary state restructure and transform it into an inclusive, democratic political system that address structural problems of women, Dalits, indigenous community, Madhesis, oppressed, marginalized communities. It has also envisioned the ending of discrimination based on class, ethnicity, language, gender, culture, religion and geographical isolation.

Violent conflicts in Philippines, Guatemala, Zimbabwe and many other countries were originated from the land disputes particularly because of highly skewed land ownership and control. One of the major structural causes of the Nepal’s arm conflict was the unequal distribution of land and land based exploitation. Considering this very fact, the government and the Maoists clearly articulated to end the feudal land ownership and formulate the policies for scientific land reforms.

In almost all peace agreements and accords, issue of food security has been ignored. The strength of this accord is the recognition o need for protection and promotion of national industries and resources as well adopting policies for establishment of civil rights in education, health, shelter and employment and food security. Both parties expressed their commitment to respect and guarantee the people’s right to food. If it is not rhetoric, the commitment to provide land and socio-economic security to backward groups like landless, bonded labourers, tillers, Haruwa-charuwa and other marginalized and backward groups.

2.2 Structures and mechanisms proposed in the CPA

One of the determinants of success or failure of any peace accords is provisions of appropriate structures and mechanisms. The major weakness of the CPA is its failure to envision suitable structures and mechanisms and over reliance on the existing exclusionary and dysfunctional structures. The existing structures and mechanisms can not fulfill the tasks envisioned in the CPA. SPA and Maoist leaders failed to realize the need of new and effective structures and institutional mechanisms to perform the overly ambitious contents of the CPA.
One of the fundamental structural mechanisms of CPA is the ‘interim constitution’. However, because of the exclusionary and controversial process adapted while preparing the interim constitution and the subsequent trade-off between the SPA and Maoists in some of the fundamental issues such as proportional representation system, referendum to decide the contentious issues by involving all people were sidelines and that has ultimately undermined the sovereignty of people. The tension and differences observed during the finalization of the interim constitution has clearly demonstrated that translating the provisions made in the constitution into action will be extremely difficult and even more contentious. Even during the formation of interim government, the tensions and competition in leading particular ministries will mount. One of the major difficulties can be anticipate in forming council of minister according to the provision of the interim constitution.

Legal experts, constitutional lawyers and political scientists and analysts are frequently arguing that the interim constitution is only an interim arrangement and it has limited scope to run the nation instead of making more comprehensive. In many conflict ridden countries, peace agreements provide frameworks for making interim constitutions and the content of the interim constitutions should come form the content of the peace accords. In other conflict ridden countries, peace accords are superficial and many provisions in interim constitution are far wider than the content of the peace agreements. But our case is none of them.

Another mechanism of comprehensive peace accord is the management of arms and armies by the Mission of the United Nations. The Mission of the United Nations has assigned the ‘verification’. This means the UN Mission prepares the detailed situation of the army, combatants and arms after verification. UN mission monitors the management of the arms and armies of both sides by the deployment of qualified UN civilian personnel to monitor according to international norms. This organisation is also asked to monitor the confinement of Maoist army combatants and their weapons within designated cantonment areas and monitor the Nepal Army (NA) to ensure that it remains in its barracks and its weapons are not used against any side. As the combatants of the Maoists should stay in the cantonment and the United Nations has to do their verification and monitoring. Same conditions apply to equal numbers of the Nepal Army. Further, formation of a special committee to carry out monitoring, integration and rehabilitation of the Maoist combatants has been proposed. Similarly, provisions have been made in the CPA to control, mobilize and manage the Nepali Army as per the new Military Act. This is the weakest link in managing the transition. A fundamental weakness in this CPA is its failure to clearly articulate the modernizing and restructuring of the security sector. Instead, it has proposed a very superficial arrangement to prepare and implement the detailed action plan of democratization of the Nepali Army. The interim government is supposed to modernize Nepal army with the suggestions of the concerned committee of the interim parliament especially the issues such as determination of the right size of the Nepali Army, prepare a democratic structure reflecting the national and inclusive character, and train them on democratic principles and human rights values. However, to do this need a specialized professional competence and commitment which is seriously lacking in the high level decision making process.

Another important structure proposed in the CPA is to form a national peace and rehabilitation commission to initiate process of rehabilitation and providing relief support to the persons victimized by the conflict and normalizes the difficult situation created due to the armed conflict. However, this arrangement is proposed without properly envisioning the nature and scope of this structure. Achieving lasting peace requires systematic efforts in a more structural area, long term
engagement and borders issues. Whereas rehabilitation is a short term, specific, technical and narrow focused area. Combining these two different but complementary concepts into one commission creates confusions, contradictions virtually ineffective. But the leaders did not visualize this complication.

Another important structure envisioned by the accord is the formation of a high level Truth and Reconciliation Commission to conduct investigation about those who were involved in gross violation of human rights at the time of the conflict and those who committed crime against humanity and to create the situation of reconciliation in the society. This is crucially important conventional structure existed in many of the post-war countries with mixed result. However its effective implementation is very much doubtful at the grim reality of the existing political culture of employing political cadres instead of professionally competent people, as it is highly sensitive and technical issue.

High level commission on restructuring of the state is yet another structure specifically proposed in the CPA. It is crucially important in the context of changing political situation. How it works depend upon the genuine commitment and willingness of the political leaders.

In terms of mechanisms, CPA is silent in many crucial issues such as restructuring of the state bureaucracy, security sector, financial sector and social sector. The assumptions behind the CPA seem that the existing structures and mechanisms can be used to achieve the objectives by implementing the proposed contents of the accord. However, this is potentially danger assumption. The existing structures and mechanisms are inherently ineffective and incapable to fulfill the tasks demanded by the CPA.

2.3 Process of reaching to CPA

Nepal’s peace process is unique, fast, largely home grown and relatively successful. Compared to all other peace process, it has unique characteristics in terms of settling contentious issues, taking forward the agreed points, settling differences, exploring options. Nepal’s peace process is hence said to be another model for the world and new theories and approaches can be developed from the Nepalese experiences. Nevertheless, this peace process has also inherent weaknesses in terms of inclusion of people. One of the basis principles of sustaining peace in the war-torn and conflict-ridden countries is the inclusion of people in the peace process. Developing ownership of the peace accord is crucially important to make it successful.

History of war and peace history has shown that general public have tremendous potentiality and firm ability, far more than any one else, to enhance peace process. Unquestionable reality is that creating and maintaining peace require an active engagement of all actors of society, from ordinary citizens, security actors to politicians. However, civic engagement in peace making and peacekeeping in Nepal is not getting enough attention. People from all walks of life such as women, marginalized groups, ethnic communities, disabled, youth, children students, housewives, labourers, peasants, workers, street-vendors, business people, retailers, peace and human rights activists, journalists, lawyers, scholars and researchers, poets, writers, school teachers, university professors, doctors, nurses, shoe makers, tailors, government employees, technicians, artists, film actors and actresses were participated in the popular people’s movement in April 23006. However, their contribution in the peace process was largely ignored. The process of making CPA was not inclusive and all the
decisions were taken without proper consultation with the people. The main reason of success of the South African peace process was its inclusive nature of participation (Barnes, 2002).

International experiences (Armon, and Carl, 1996; Armon and Philipson, 1998; Armon et al., 1998; Armon et al., 1997; Bercovitch and Rubin, 1992; BHCT, 2003; Bloomfield, 1997; Bloomfield and Reilly, 1998; Crandall, 2004; Galtung, 2000; Hendrickson, 1998; Lucima, 2002; McCarrick, 1999; Misra, 2002; Stankovitch, 1999; Uperti, 2006), Uperti and Nepal, 2006; Uperti, 2005a, b & c; Uperti, 2002; Uperti, 2004 a & b) of peace making and peace keeping have amply demonstrated that if and when public engagement in peace process is ignored, the success is rare or even if, by any chance, success is achieved, it is temporary. General public may not own elite-guided peace negotiation, if people are not actively participated. If the peace talk is brought into public sphere it promotes transparency and accountability, enhance constructive dialogue and gets public support and ownership. African examples in war and peace sufficiently tell us that peace in war torn society is seldom permanent when real civic engagement is not promoted. Achievement of viable and lasting peace is only possible when capacity of local people are utilised and complemented to the efforts of government, human right organisations, media and other peace actors. Regrettably, SPA and Maoist leaders did not recognised this reality and they felt that their decision is the decision of people.

In South Africa, conflict transformation and peace building was the outcome of genuine collaboration between religious people (churches), businessmen, politicians, and civil society. The resolution of conflict in Guatemala was the outcome of sincere efforts of Citizen Assembly composed of several civic organisations, churches, indigenous unions, women's groups, and business people. The Citizen Assembly was able to offer agenda for negotiation between the guerrillas and the government. In Northern Ireland women from different community formed a strong 'Northern Ireland Women's Coalition', which had greatly contributed to achieve the 1998 Belfast Agreement (popularly known as Good Friday Agreement). UK, one of the power centres of the world, was not able to solve the Northern Ireland conflict without engaging local people. One of the elements of John Major's 'Triple Lock' was people's approval of the agreement through referendum. This indicates that even 'western', 'democratic' government cannot resolve conflict and maintain peace if they ignore civic engagement. In Philippines indigenous people, churches and local community made marvellous efforts to build peace (Aditya et al.; 2006). They have declared some territories as peace zone where citizen rights were respected. Local communities made similar efforts in Columbia. Our leaders must have learnt lessons from these experiences, but not.

Nepalese political leaders have bluntly misperceived that durable peace will be achieved once they signed peace agreement. But this is not the case. There are numerous obstacles to implement the agreement. Peace cannot be built and maintained without creating and promoting social infrastructures of peace, people's ownership in peace process and abolishing obstacles. So the recent CPA is only a beginning for the durable and lasting peace in Nepal and therefore it is only a minimum condition. Restoring political tolerance and coexistence, indispensable elements of peace, will be a major unsolved challenge in Nepalese peace process. Unless people own the peace process and be ready to develop feeling of tolerance and coexistence it will be meaningless optimism to restore lasting peace. This dimension is weak in the CPA.

2.4 Weaknesses and challenges

The very existence of the king was in serious question in the April 2006 People's Movement. However, the SPA coalition government strengthened the position of the king by allocating budget for the palace in a normal way. The suspension of some of the activities of the king by the parliamentary declaration instead of taking bolder step in accordance of the spirit and desire of the popular movement was another step in institutionalizing ceremonial monarchy. Hence, a big
challenge particularly for the CPN (M) was to further weakening the position of the king in CPA. They became partly successful to include provisions that include ‘no rights of state administration shall remain with the King, bringing the properties of the late King Birendra and his family members under the control of the government and create a welfare trust. The CPA further states that ‘all properties acquired by King Gyanendra by the virtue of him being the King (like palaces of various places, forests and conservation areas, heritage having historical and archaeological importance) shall be nationalized’. The highly contentious issue and the most resisted by some of the SPA members was the fate of the existence of four hundred years old monarchy. The CPA makes very weak provision to determine the institution of monarchy by the first meeting of the Constituent Assembly through simple majority vote. This is quite complicated in terms of process and outcome (buying constituent assembly members against and in favour; authenticity of the decision as it is not directly decided by people form popular vote). Refusing to decide the fate of the monarchy by the popular people’s verdict (referendum) was fundamental weakness of the CPA. It is also contradictory with the recognized people’s sovereignty in CPA as people are not allowed to decide the fate of monarchy by referendum.

Another major weakness of this CPA is the domination of UN guided highly technical process of managing arms and armies instead of managing it through political framework. Un involvement in conflict resolution and disarmament, demobilization and reintegration (DDR) around the world show that its action is highly technical, slow, bureaucratic, lengthy and even exclusionary. The current timeframe envisioned in the CPA and the work style of UN mission does not match and consequently it will potentially cause delay and lingering to accomplish the important task of holding election of constituent assembly, which political leaders unrealistically reiterating.

SPA leaders are overtly relying on the existing administrative and security structures to accomplish the crucial task during the transition, which is grave mistake. These structures are neither competent nor willing to make the transition smooth and successful, to accomplish the constituent assembly election and transform the existing state because it is related to their very existence. If there is modernization of the state these structures will not exist in the current forms and no one wants to dismantle own-self for the benefit of others.

Reference


About the author
Bishnu Raj Upreti holds a PhD in conflict management (2001) from Wageningen University, the Netherlands. He is actively engaged in conflict transformation and peace research as a researcher in South Asia. During 26 years of professional career, he has engaged in teaching and research at University of London and University of Surrey in the UK and Kathmandu University. He worked in different international organizations in the capacity of professional staff, resource person and consultant. He has also spent some years in government service as an assistant agricultural economist selected from the Public Service Commission. He has eight books to his credit on conflict management and many articles in different national and international journals, magazines and edited books. Currently, he is Regional Coordinator, South Asia Coordination Office of Swiss National Centre of Competence in Research (NCCR)-North-South, based in Kathmandu.