

# Changing Political context, New Power Relations and Hydro-conflict in Nepal<sup>1</sup>

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## 1. The changing political context

The 'people's war' waged by the Communist Party of Nepal (Maoist) (February 1996-April 2006) and the people's movement of April 6-24, 2006 not only seriously questioned the relevance of the nearly 400 year-old royal dynasty, but it also paved the way for a fundamental socio-political transformation of the country. The April movement was a collective effort of the Nepalese people to end the 10-year old armed insurgency and to restore peace and democracy; in so doing overthrowing the autocratic rule of the king and leading the way to the abolishment of a centuries-old feudalistic, centralized and exclusionary system. The April movement was a response to the 1<sup>st</sup> February 2005 royal takeover and the arrogance of the king to rule the country by use of military power, suppressing media, civil society, politicians, and the voice of citizens, ignoring human rights and consistently denying the international pleas to respect human rights and democratic values. Further, it was also a response to the Maoists insurgency and the failure of the mainstream political parties to govern the country.

Since April 2006 (when the king was forced to surrender and declare a ceasefire and enter into a peaceful negotiation process with the new government), feudalistic, centralized and exclusionary state structures – so designed to strengthen the supremacy of the monarchy – are fast being dismantled. Consequently, Nepal is at the crossroads of a fundamental socio-political transformation and so a new beginning. Facilitating and sustaining such transformation requires a new vision, a new constitutional framework, new institutional arrangements, new instruments and new commitment. The conduct, action and behavior of the fundamental institutions, such as the political parties, judiciary, security and bureaucracy, will determine the success or failure of transformation.

The water resource sub-sector is one of the major areas where a change in governing system, legal arrangements, bureaucratic reorientation and institutional reframing is essential in order to address the associated growing scarcity and conflict. This paper discusses the dynamics of hydro-conflict in the changing political context and outlines the conditions and ways to address it in the 'new' Nepal<sup>3</sup>.

The king used the ongoing armed insurgency as a reason for his takeover (expecting that he would get support from the international community under the banner of the 'war on terror') and as a means for consolidating autocratic rule. He had suspended peoples' rights and brutally suppressed political parties, which had in fact acted as a buffer between the king and the Maoists. As a result, the mainstream political parties had no option left other than to collaborate with the Maoists and collectively fight against the king. However, they were so unpopular at that time that people were not even prepared to show up in the mass meetings organized by them. Civil society was powerful and trusted by the general public and therefore civil society leaders organized a series of mass meetings and invited political leaders as either co-speakers or the audiences. Civil society often organized huge mass meetings to protest against the royal takeover where senior leaders of all political parties attended as audience members. Civil society leaders had consistently forced them to collaborate with the Maoists to overthrow the king. Finally, it was the strong pressure from civil society, the facilitation of Indian political leaders and the realization of their weaknesses in the past and assessing the action and behavior of the king, that brought the main seven parties together to form an alliance (popularly called the Seven Party Alliance = SPA) and to collaborate with the Maoists. Consequently, the

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<sup>3</sup> New Nepal is the phrase frequently used in Nepal after the successful April movement mainly to reflect the expectation of people in terms of changes in the state's governing structures (e.g., federal governing system), process (meaningful participation of people in decision making of governing system) and outcomes (ensuring access of poor, marginalized and excluded people in economic, political and social security).

SPA and the Maoists reached a 12 point understanding (see Annex 1) to fight against the autocratic rule of the king. This all finally resulted in the political change of April 2006.

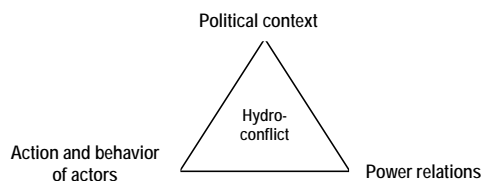
Since the political change of April 2006, the existing dominant power relations in the country have been altered and the palace, as the 'nucleus' of power relations, has changed now that the role of the king is completely suspended. After the signing of the comprehensive Peace Agreement between the government of SPA and the Communist Party of Nepal (Maoist) on 21 November 2006 (See Annex 2 for details), the Maoists emerged as one of the main power centers in the politics of Nepal. Consequently, the actions and behaviors of key players in Nepal's politics are now influenced and shaped by the changing power relations of the country. This has also been amply reflected in the water politics of Nepal. Now that the king has been suspended from the political process, people who enjoyed the protection and support of the king, and who were previously active in politics, now find themselves out of the mainstream politics and consequently not able to directly use state power and resources for their benefit from exploiting water resources (for example granting licenses, selecting particular companies for the construction, etc.).

Together with the changing political context, new institutional and legal provisions are emerging. The Comprehensive Peace Agreement (CPA) signed by the Government of Nepal and the CPN (M) on 21 November 2006 has made some vague forward-moving proposals that relate to natural resources, including water. Article 3.1 of Section 3 'Political, social, economic transformation and conflict management' of the CPA states: 'Adopt policies for protection and promotion of national industries and resources'. Similarly, article 3.1 also states: 'Prepare a common development concept that will help in the socio-economic transformation of the country and will also assist in ensuring the country's economic prosperity in a short period of time'. These provisions are further reflected in the Interim Constitution, which will have some implications in future water resource-related policy. These implications would be more investment from domestic sectors in water resource development, national consensus in taking decision about mega hydro projects, etc. However, at present all bio-physical, geopolitical and socio-economic aspects of water issues do not constitute the explicit priority of the new political actors; though they have vaguely voiced their opinions on how water resources should be developed in the new context Nepal find itself in.

## 2. Conceptual basis of analysis

Though some scholars argue that water conflict is neither strategically rational, hydrologically effective nor economically viable (Wolf, 2004), the argument of rationality, effectiveness and viability often do not shape politically vested interest-based behavior and the actions of major actors. Rather, special power relations shape the course of behavior and actions leading to conflict. As far as Nepal is concerned at least, Nepalese hydro-politics and related conflicts mainly derive from vested political interest-based behavior and the actions framed within the special power relations of main actors. Hence, the complexity of hydro-conflict cannot be reduced to the logic of strategic rationality, hydrological effectiveness, and economic viability; and, in so doing, ignoring the context of specific power relations and political dynamics.

The political system and subsystems of any nation not only frame policy, strategies and practices but also largely shape behavior and the actions of its citizens. Similarly, the behavior and actions of citizens influences national politics. Hence, the politics and behavior of citizens are interrelated and reflected in various forms of power relations. Nepal's hydro-conflict has to be examined from this conceptual framework.



Politics can also be a source of mistrust, suspicion, injustice, exclusion, marginalisation, discrimination and hate, as well as a means of harmony, unity, cooperation and collective action – these all determine the course of action in conflict (both in resolving and escalating it). Hence, like all other areas, politics is influential in shaping and reshaping the destiny of sustainable water resource management and resolving hydro-conflict and addressing water scarcity (Upreti, 2006). Critical examination of the political negotiations and renegotiations between different political actors (at both national and regional levels) provides a better understanding of how highly contested issues such as hydro-conflict and water scarcity are dealt with at national and regional levels.

### 3. Water conflict in Nepal: an overview

Water conflict is not a new phenomenon in the world. The trans-boundary fresh water dispute database of Oregon State University has documented 1200 cases from 1948 to 1999 (Wolf, 2004). Several studies (Ohlsson, 1995; Panos Institute South Asia, 2004; Phillips, *et al.*, 2006; Swain, 1996; Upreti, 1999; 2001 and 2002) have amply demonstrated that water conflict and cooperation is an integral part of the social and political life of society. Environmental crises and hydro-conflict are major challenges of the 21<sup>st</sup> century. Nepal is no exception and is experiencing large numbers of hydro-conflicts influenced by vested interests, trade-offs, power relations, norms, values and perceptions.

The growing population plus the factories and farms in Nepal all need more water and other natural resources. Therefore, competition between domestic consumption, industries and farms is increasing and turning into disputes. Water pollution is another strategic issue of conflict. We can see examples in Kathmandu Valley where all the river systems (Bagmati, Bishnumati and Manohara river systems) are almost collapsing because the river water is no longer useable. Conflict between the needs of populations living upstream of river basins and those dwelling downstream is mounting. Natural resources in Nepal are now becoming a highly sensitive political issue and a source of conflict. The Melamchi Megha Drinking Water Project is a prime example of such a conflict. Once the Melamchi Megha Drinking Water Project was started local people affiliated with different political parties started to make several demands such as employment of local people, development of infrastructures and the project did not agree to fulfill all the demands of the local public and that virtually lead to tension and conflict between the project and people. Consequently, they have to temporarily close the construction work on the site.

Different kinds of water-related conflicts have been reported in Nepal (Upreti, 2004). Source disputes, the sharing of water for different purposes (for example, use for drinking water, irrigation, water turbines), and the payment of compensation for damage caused while constructing canals and laying drinking-water pipes have frequently been reported. Similarly, conflict over contributions to the maintenance of irrigation and drinking water systems, the ambiguous roles and responsibilities of watchmen and their payments, and disputes among water users' associations/committees on their roles and responsibilities were other common water-related conflicts frequently reported in Nepal. In addition, damage caused by the overflow of water from canals and conflict, due to the ambiguous roles of water technicians and officials, were also common occurrences. Earlier studies (Upreti, 2001; IMC, 1990; Pradhan *et al.*, 1997) have shown that water conflict is a normal phenomenon – in the absence of a clear provision of water rights – if the same source is used for more than one purpose. The occurrence and intensity of such a conflict is especially high when water becomes scarce in the dry season. Inequitable and unreliable water distribution and the excessive use of water in the head section limits the supply (in terms of time and quantity) in the tail section and often causes frequent conflict concerning the irrigation system. This is particularly serious when several irrigation systems operate upstream and downstream with limited water availability. The demand for irrigation water is increasing in the study area due to the introduction of improved varieties of rice, winter crops and changes in the cropping systems. The cropping intensity and cropping patterns are also changing together with technological innovations and the process of globalization. In periods of water scarcity, the frequency as well as the intensity of conflict is high. It was also noticed that conflict resolution over the two irrigation systems was easy if the same farmer is user (having land in the command areas of these canals) of both irrigation systems. It is reported that the frequency and intensity of conflict is greater in joint managed irrigation systems than in ones fully managed by farmers (Gautam, Agrawal and Subedi., 1992; IIMI, 1990; IMC, 1990). The main cause of conflict in such systems

was an unreliable water supply to tail-end farmers during the winter and spring crop seasons, due to an inability to implement proper water scheduling (IMC, 1990; Upreti, 2002).

Some studies have shown that agency intervention in existing irrigation and drinking water systems worsens the water supply and gives rise to numerous conflicts (Pradhan *et al.*, 1997; IMC, 1990; Upreti, 2001). The improper design of structural work and the quality of the construction result not only in the inefficient delivery of water but can also lead to several conflicts (IMC, 1990). Technical matters, such as steep gradients of canals and laid pipelines, caused an excess of water in a particular area and an inequitable supply. Flat gradients also caused silt deposits and a reduction in water flow. Such technical difficulties also contributed to the occurrence of conflict. In the agency-developed systems constructed under contract arrangement, contractors are the major cause of conflict not only in new systems but also in the operation and maintenance of existing irrigation and drinking-water systems (Pradhan *et al.*, 2000).

In Nepal, most of the farmers managed irrigation systems (FMIS) practice some form of distribution rules and rotational water sharing, particularly in the peak water demand period. Therefore, they are effective in minimizing potential conflicts. Community coherence among the water users is high in the FMIS and community managed drinking water systems, and therefore, community-managed systems are more effective in monitoring water distribution, maintenance and operation and in resolving conflicts, should they occur (Upreti, 2002; Pradhan *et al.*, 1997). In the case of agency-developed systems, users are generally unwilling to contribute to operation and maintenance (IMC, 1990; IIMI, 1990) because of the lack of any feeling of ownership and accountability. Within the particular irrigation or drinking water system, conflict is frequently observed between the tail-section and head-section users in sharing water, particularly concerning the amount used and the time period. Basically, water availability determines the occurrence and frequency of conflicts. Generally, conflicts in the head-section – unlike those in the tail-section – were not a result of the lack of water; on the other hand, conflicts in the tail-section, in winter and spring, were mainly due to water shortages. The magnitude of a conflict grows as the gap between the demand and supply of water increases. Unequal water distribution is generally linked to inadequate monitoring that allows greater access to head-section farmers. This is one of the major determinants of conflict concerning irrigation and drinking water (IMC, 1990; Upreti, 2001).

In general, socio-economic, agricultural, organizational and technical factors contribute to the emergence of conflicts at the local level, whereas political interference and interests are responsible more for political conflict. Availability, reliability, equity and seasonality of water supply determine the occurrence and intensity of conflicts. Earlier research (Upreti, 2002; IMC, 1990) shows that there is a clear relationship between irrigation conflict and crop yields. Conflicts and cropping intensities are also positively related as both are affected by the availability of water (IMC, 1990). Nevertheless, it is not always predictable. In some cases, farmers changed their existing cropping patterns due to the scarcity of water and increased benefits, whereas in other cases their yields were decreased.

Local people use specific rules to determine the use of water. For example, if the water source is located on an individual's land, then they have full autonomy to use it themselves, but they have no authority to dictate who can use it for irrigation and how much to use within the community. One of the respondents of the research (Upreti, 2001) explained that: *"A source owner uses a perennial water source located in his land whenever he likes. Only after he finishes his rice transplanting, then we get the chance to use this water source. But all community members share water from a common stream on a rotational basis"*. However, in the case of stream water, which is common to all members of the community, there is a rule that all community members have equal rights to use it on a rotational basis.

In several externally funded drinking-water projects, conflicts have erupted after a few years due to the scarcity of water and also because of the increase of population in the village. While designing these systems, technicians

generally ignore the potential future need for water<sup>4</sup> citing financial and technical reasons. Another major conflict in externally funded drinking water projects is the location of the tap stands. Due to the influence of politicians, or for their own hidden interests, technicians locate the tap-stand close to the houses of particular people (mainly rich and powerful – sometimes negotiated with a bribe), disregarding other people's protests. Similarly, sharing the source is another problem in such projects, as they are decided on the basis of technical justifications, thus ignoring the existing use patterns and the social context. Once the projects are built only based on the technical ground without considering the people's opinion and need, local people may damage structures built in the source and cause the conflict to escalate.

There is also a growing debate about the hydrological effectiveness, economic viability and the managerial appropriateness of big versus small hydropower development projects, external investment in hydropower developments (who benefits and who loses), the risk factors involved and how to meet the nation's growing requirement of power. A group of scholars working in water issues such as Dipak Gyawali, Ajaya Dixit (2001), Bikash Pandey (1994), and others strongly argue for the development of less risky hydropower projects and consistently question the development of export-led large hydropower projects. On the other hand, some conventional hydropower engineers, water policy experts, planners and developers prefer the option of developing big hydropower projects in order to export power to India. Some influential economists and politicians advocate the 'World Bank approach' of hydropower development (bigger projects) as the best solution to the economic development of the nation (Mahat, 2005). However, many others differ with this view (Pandey, 1994). In Nepal, construction of bigger water related projects are often linked with corruption and malpractices. Latest examples of such malpractices are reported in recommending the external power development companies to construct big hydropower project in Nepal. Government announced to construct 402 MW Arun III and 300 MW Upper Karnali Hydro Electricity Projects and formed High Level Committee to recommend the suitable hydro-power developers from among the 9 applicant companies for Arun III and 14 applicant companies for Upper Karnali. However, The High Level Committee recommended to grant both the projects to EMR Energy Company Limited (India). Hence, media covered the story of possible kick-back and ill-intention of the Committee. Hence, Parliamentary Natural Resource Committee is investigating the decision of the High Level Committee<sup>5</sup>. The issue of corruption and malpractice in Nepal's water resource development (Upreti, 2001) is not different from the findings of the Robert Wade in administrative and political corruption in irrigation projects in South India (Wade, 1982). For example, details about the prevalence of corruption in the Asian Development Bank funded Irrigation Sector Support Project (ISSP) was documented widely in the past decades. The author has documented the detail of corruption practices of the Asian Development Bank funded 6 KM long irrigation development project called the Upper Andherikhola Irrigation System (UAIS) in Dolakha district with the total budget of 8 million. There was already existed farmers managed irrigation system but the irrigation technician changed the alignment in some sections of the existing canal and abused the allocated fund. The corruption case was filed in the District Administrative Office (Upreti, 2001).

Several factors contributed to hydro-conflict in Nepal. But they can be summarized in the following groups:

- Environmental concern versus economic concerns
- Water as basic rights (and every person has the right to access safe water) versus water as tradable commodity (subsequent water privatization debate)
- Interest in the construction of big, risky export-led projects versus focus on small domestic consumption-oriented and less risky hydropower development
- External (vested political and economic) interests versus internal need and interests
- Internal politics and power relations.

<sup>4</sup> Engineers from the District Water Supply Office explained that they provide for future needs in their designs and estimates. However, in practice such provisions were not observed. Local people say that overseers refuse to consider the future water requirements of the community while constructing drinking-water projects in the village basing them on budgetary limitations.

<sup>5</sup> See The Himalayan Times of 9 May 2007 for detail story.A

These factors are not mutually exclusive and complement each other in igniting hydro-conflict. The degree and the intensity of influence in igniting hydro-conflict depends upon the combination of various factors as well as spatial and temporal situation.

In cases of conflict related to water resource development, Nepal finds itself in a state of 'paradigm confusion' (confusion on ontology, epistemology and methodology). Consequently, the political economy of hydro-politics in Nepal is very much oriented towards the conventional wisdom of international development politics (Millennium Development Goals, Sustainable Livelihoods, empowerment, etc.) without critically analyzing them (merits, limitations, potentials, relevance, vested interests, inherent weaknesses, implementation capability of the state, etc.). Such 'confusion' is one of the main causes of the failure of planned development in Nepal (Pandey, 1999; Shrestha, 1997) and a perennial source of conflict (Upreti, 2001; 2002; 2004).

### 3. South Asian Fresh Water Conflict: A Regional dimension for Nepal's hydro-politics

Several previous studies have amply demonstrated that India is at the centre of South Asian hydro-conflict (Swain, 1996; Panos South Asia, 2004; Begam, 1987; Ohlsson, 1995; Crow and Lindquist, 1990; Islam, 1987), be it with Nepal, Bangladesh or Pakistan. Hydro-tension between India and Pakistan in sharing the water of the Ravi, Sutlej and Beas rivers of Pakistan and the Indus, Jhelum and Chenab of India was reflected by the Indus Water Treaty of 1990; controversy over water sharing of the Koshi, Gandak, Tanakpur and Mahakali rivers between India and Nepal and the disputes between India and Bangladesh on lower riparian rights are the precise reflections of power relations and political interests (Baillat, 2004; Swain, 1996; Wolf, 2004; Dixit and Gyawali, 2003).

Although some research findings have shown that transboundary water resources can serve as means of cooperation (Wolf, 2004), Nepalese experiences of international water basins, especially with India because of its geo-position is full of controversy, tension and political trade-offs. Nepal, surrounded as it is by India to the East, West and South, and the fact that most of the rivers flow from North to South (and given virtually closed access to the Northern border with China due to topography) has made Nepal totally reliant on India in terms of transport and market access, thus making Nepal's position extremely weak in negotiations over water and other issues. The compulsory reliance of Nepal on India is often used by India for its own strategic interests, which are not necessarily advantageous to Nepal.

For Nepalese people, India's interests in dealing with Nepal, and with water resources in particular, are often equated with a 'Big Brother Attitude' or with 'hegemonic interests'. For example, the continued insistence of India to construct the Sapta Koshi High Dam in Baraha Area, irrespective of the constant objection and resistance of local people of more than 11 villages of Nepal, is cited as one of several examples of India's hegemonic attitude. Other prominent examples of inundation problems faced by Nepalese people, because of dams constructed by India in the border regions, include Laxmanpur, Lotan Rasiawal Khurda and Mahalisager (Dixit *et al.*, 2004). The Laxmanpur barrage is only 300 meters away from the Nepal-India border (pillar no 19) and inundates 3376 bigha (2247 hectares) of land, affecting more than 2600 houses and a population of more than 15000174. Similarly, Lotan Rasiawal Khurda dam is located 200 meters away from the border (pillar no 31 and inundates 33000 hectares agricultural lands and 13km<sup>2</sup> of land and affects 100 thousand people. Third, the Mahali Sagar dam built by India on the border with Nepal (25 meters away from border pillar 50) inundates 460 hectares of land and 1000 families are affected (Ibid: 175, Table 3). These problems have long been raised by the government of Nepal with India at the very highest levels (e.g., the then King Birendra raised this problem with the then Indian Prime Minister Rajiv Gandhi in 1985 during the Dhaka SAARC Summit). As a result, a joint Standing Committee on Inundation Problems was formed to address this problem (Ibid). However, people affected continued to suffer from inundation problem despite the formation of the standing committee. This is one of the main discontents fuelling the Nepalese people's perception of India's 'big brother' attitude.

Nepalese water diplomacy with India is said to be the product of shadow of short-sighted politics. In all the major political changes of Nepal has gone through (1950, 1990 and 2006), India has played a crucial role; it has also

bargained hard on several occasions concerning Nepal's water resources. For example, after the political change of 1950, India and Nepal signed two treaties (Koshi in 1954 and Gandak in 1959) and then again two treaties after the political change in 1990 (Tanakpur in 1991 and Mahakali-Pancheshwor in 1996); all the treaties<sup>6</sup> on sharing water between India and Nepal are largely said to have been framed to India's benefit. There is widely held opinion among the Nepalese people that the role of India in dealing with water resources of Nepal is deliberately orchestrated to serve its vested interests. Some Nepalese scholars even see India as a perennial source of water-related problems<sup>7</sup> for Nepal. Madan Regmi, representing this view, argues that Nepalese water diplomacy with India lies within the shadow of India's domination in all major political changes of Nepal (1951, 1990, and 2006). Unlike the Nepalese views, some Indian scholars argue that India is part of solution<sup>8</sup> of Nepal's water problem. Ashok Mehata, representing this view argues that India is not mainly the problem but largely the solution of Nepal's water disputes.

It is increasingly argued by 'rights activists' and 'critical analysts' in Nepal that the conventional paradigm of development adapted by Nepal considers water as a 'commodity' instead of as a basic right of people; this therefore is becoming a fundamental source of hydro-conflict.

#### **4. Causes of hydro-conflict in Nepal**

In reviewing the on-going debate of water issues in South Asia and Nepal, the following can be cited as some of the main sources of water conflict.

##### **4.1 Policy and institutional issues**

My conclusions stemming from ten years of study of the interrelationship between resource conflict and political conflict and the political economy of resource conflict in centralistic, unequal, hierarchical social settings and exclusionary governing systems, confirms that the reductionist policy and institutional approaches of hydropower management, shaped and guided by technocratic engineering and economic interests, is the major cause of hydro-conflict (Upreti, 1999, 2001; 2002; 2004). Similar observations have also been made by some Indian scholars (Mallik and Jayanta Bandyopadhyay, 2004). Water resource policy of Nepal is full of confusion and inconsistency, highly politicized, bureaucratically orchestrated and technocratically manipulated to justify these contradictions and confusions. There is no consistent, coherent and long term priority on how to effectively utilize available water resource for the economic development of the country. It is operating on an ad-hoc basis, depending upon the interests of the governing political party or even invisibly controlled by the nexus of individual influential political leaders and external forces. Water resource institutions in Nepal are undermined by political trade-offs, corruption, overstaffing, incompetence and inadequacy in providing services to people. Several glaring examples include the 6 hours of load-shading and power cut, controversy in Melamchi drinking water project, and the grand failure of the Arun II hydro-power project, to name just two.

Professionalism of bureaucracy is almost absent in Nepal. For example, the government of Nepal frequently transfers officers dealing with India on water issues and brings in people with a lack of experience. This all means that knowledge, experience-based competency and insights are not built-up and/or go wasted. This is in contrast to their Indian counterparts, who have often worked in the same water-related issues for decades. This creates not only a knowledge vacuum and lack of institutional memory on the part of the Nepal, but it also weakens its hand in negotiations with India.

##### **4.2 India factor**

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<sup>6</sup> The major water related treaties with India were the Mahakali Treaty (signed in 1996 which includes also the agreements of two other dams already constructed by India: the Sarada barrage and the Tanakpur barrage, both on the Mahakali River), The Kosi River Treaty (1954) and the Gandak River Treaty (1959).

<sup>7</sup> Madan Regmi from China Study Centre argued in this line in the interview with BBC Nepali Service on 10 February 2007

<sup>8</sup> General Ashok Mehata said in an interview with BBC Nepali Service on 10 February 2007.

India uses water as a 'means of political negotiation' and, therefore, trade-off in water resources is one of the main bases for this purpose. The discussion presented in section 3 clearly demonstrates the factor of India in Nepal's hydro-conflict. The power asymmetry with India and even surrounded in all three borders (and northern side is being geographically nearly inaccessible at the present context) places Nepal in an extremely difficult position and it is further constrained by the mentality of Nepalese politicians. Despite the strong reiteration of heavy rhetoric, almost all political parties so far are failing to deal with India on a more equitable basis.

When there is a power crisis in Nepal many Indian companies not only show their interest but also offer their commitment to provide electricity. For example, in December 2006, when Nepal had experienced power shortages and the Nepal Electricity Authority offered a solution of the crisis as routine electricity power cut, a private Indian energy company called Power Trading Corporation offered to provide 50 megawatts of hydro-power to Nepal within a month<sup>9</sup> but promise was not fulfilled. However, many such offers have a strong element of interest in engaging in hydro-power development in Nepal. The recent selection of EMR Energy Limited to develop both Upper Karnali and Arun III Hydropower Projects of Nepal by the High Level Committee as an outcome of the nexus between them is an example of such interest (See The Himalayan Times, 9 May 2007).

#### 4.3 Choice of scale of development in water sector

Another major area of hydro-conflict concerns the scale of infrastructure in water resources development. There is a continuous conceptual as well as operational tension between a) the preference for classical-large-scale export-oriented and externally-led water hydro-power development, and the construction of large -scale irrigation and drinking water projects and b) domestically-led-small scale hydropower and other water-related infrastructure development, which are more sustainable, manageable, quick and effective. Several overt and covert factors have contributed to this choice of scale of water resource development debate. They are not only linked with conceptual orientation, conviction and value systems but are also, and more importantly, shaped by vested interests. The ongoing debate over the Melamchi mega drinking water project is one of the clear examples of the debate over scale. Some people argue that instead of opting for this mega project, the government should have rectified the issue of leakage in the existing water supply system of Kathmandu. Similarly, the government should facilitate conserving small sources and maximize their use, explore small sources and spouts, protect many dying sources, go for rain-water harvest. It has to explore all these possible options rather than going for extremely large projects which are financially external-dependent, technically too complicated, operationally too risky and managerially exclusionary (to be managed by external experts and technologists instead of consumers and users).

#### 4.4 Diversity of interests

The overt and covert interests in water resource development (be it hydropower development or the construction of irrigation systems or drinking water systems) often shape decisions. Ample evidence has demonstrated that such interests are not only sources of conflict and cooperation, but also a means of political negotiation and trade-off. In his study related to corruption, citing a vivid case of canal irrigation in South India, Robert Wade argues that administrative and political corruption is one of the major factors in pursuing bigger irrigation development (Wade, 1982). Similarly, several research findings and media reports have documented many cases of corruption in water resource development in Nepal (Thapa, 2002; Upreti, 2001). This is one of the main sources of conflict in Nepal. There are several actors engaged in water resources with their own vested interests in addition to the expressed or stated formal objectives. The following are the main actors engaged in water resource development with their own interests:

- Businessmen and traders with the main hidden interest of equipment sales and obtaining higher profits margins (which is mainly linked with manipulation and opaque and invisible negotiations with bureaucrats and politicians),

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<sup>9</sup> The Himalayan Times, 6 December 2006.



- Water resource bureaucrats (bureaucratic control of the projects, process and outcomes, collection of bribes and corruption<sup>10</sup>)
- Environmentalists, who argue from the environmental perspective, which often ignore economic importance of the development of water resource infrastructures. Unlike in many cases in other (mainly western) parts of the world, Nepalese environmental activists often make their arguments based on their perceptions instead of findings of research. Hence credibility of their argument is often low. However, they are often able to create larger interests in general public and in some cases stopping construction of bigger projects or at least altering their original approach.
- Donors and international investors. International investors and donors often heavily influence the development of water resources in Nepal. These influences are either related to direct involvement in construction and development, sale of equipment and services, control decision making such as scrapping subsidies, the privatization of water services offered by the government or public company or through directly controlling politics.
- Political actors, (party politics and conceptual confusion about the long-term development of water resources).

## 5. Addressing hydro-conflict in New Nepal

As this beautiful country is in the process of transformation from war to peace, hopelessness and helplessness are also being transformed into expressions of optimism and ambitions for a prosperous new Nepal. The immense potential of water resources in the country forms a basis for such optimism and ambition. However, the logical question is whether Nepal can utilize the potential of water resources for economic development that benefit poor, marginalized, socially excluded, powerless and voiceless people. Can water-led economic development ensure social justice, equity and address those structural inequalities that exist in Nepalese society that constitute a perennial source of conflict and insecurity? Answers to these questions depend upon the following issues.

### 5.1 Public engagement

The events of April 2006 clearly demonstrated that Nepalese people are capable of determining their own destiny and addressing the ever-growing issues of water scarcity and water conflict. In the past, one of the main sources of conflict and crisis in the water sector was mainly derived from the autocratic, top down, techno-centric and exclusionary decision-making and the elite-centric, power-focused and selective benefit- capturing culture. As long as this culture exists in the water sector, crisis will exist side-by-side. Therefore, it is absolutely essential to re-examine a few fundamental questions such as who makes the choice, who makes decisions, who benefits and who suffers, and so move beyond the classical top-down exclusionary approach.

The ongoing state restructuring process and particularly the much anticipated federal political structure of the country will have great implications in changing the existing almost dysfunctional water bureaucracy and its exclusionary structures. Hopefully, this state restructuring will abolish the centrally controlled decision- making process and ensure public engagement in making any important water related decisions and action.

### 5.2 New foreign policy and international relations

As discussed in the above sections, Nepal's water resource management and hydro-conflict exhibits a very strong international dimension. Nepal's existing foreign policy is neither shaped by national strategic interests nor economic opportunities. Rather, it has traditionally been orchestrated, negotiated, manipulated, refined and reshaped by the

<sup>10</sup> It is an open secret in Nepal that bureaucrats have to pay huge amounts to be posted in big infrastructure projects, customs and immigration offices, and even forest offices. Hence, their very first objective is to compensate what they paid for the senior bureaucrats and politicians and therefore corruption (rent seeking and bribe) is the first priority of their job. They can easily escape even from corruption charges if they have collected enough money to influence the mechanisms investigating corruption. Nepal's strange record of wining of corruption cases by almost all the alleged corrupt officials (politicians and bureaucrats) from course??? is a single most evidence of how powerful is corruption.

vested interests of the palace and that of a few political elites. Hence, serious trade-offs, negotiations and bargaining over water resources have resulted in tension and conflict. Therefore, addressing water crisis and conflict in Nepal needs a wider vision as well as a conducive foreign policy and non-conventional ways of building relations, based on a more equitable and just basis. This, however, is not easy in a country where real actions have been diluted by rhetoric and false promises.

Nepal's foreign policy should be shifted towards economic diplomacy, targeting the promotion of economic collaboration, harnessing and promoting development of potential sectors such as water resources, tourism and information technology.

### **5.3 New economic development policy and institutional arrangements**

Challenges faced by the water resource sector in Nepal cannot be handled by the existing institutional arrangement and policy framework, simply because they are obsolete in addressing what are complicated issues. The water resource development policy needs to be integrated with foreign policy into a holistic vision. A new policy requires new institutional arrangements. One of the major institutional issues is the restructuring of the existing non-responsive and classical set-up of the Ministry of Water Resources and its related departments and offices. However, it is not possible to restructure the ministry in isolation and it has to be done as an integral part of a holistic bureaucratic restructuring. Redefining the existing governing system, ministerial and departmental arrangements, size, responsibility and accountability of the staff, their evaluation, rewards and punishment and placing them under the oversight of taxpayers of the country is necessary. Such reorientation is strongly related to the federal political structure of the country.

### **5.4 Human security as new orientation, thinking and perspective**

Nepal needs new thinking and perspectives in regard to the development of the water resource sector. The conceptual orientation and broader framework has to be guided by the human security perspective. Human security is a holistic perspective which goes beyond conventional notions of poverty alleviation or livelihood improvement at the individual level. It focuses on all aspects of security beyond the individual level and links with the all aspects of livelihood of people. The following are integral parts of human security:

#### **5.4.1 Energy security**

New water resource management and development should be focus on addressing the energy needs of the country. Nepal is suffering from a lack of energy which is negatively affecting all sectors (from industries to health to services). Lack of enough energy is also negatively affecting economic growth and generation of employment. Hence, the priority of the state should be to ensure reliable supply of energy essential for domestic and industrial requirement.

#### **5.4.2 Environmental security**

Another important condition for water resource development and improving the overall development of the nation is to give due consideration to environmental security, which is often neglected in the development discourse. Environmental security implies not only the security of the surrounding environment but also the security of people staying in and around a particular area. New water resource development policy should acknowledge the necessity of the concept of environmental security in future water resource development.

#### **5.4.3 Livelihood security**

Livelihood security is another concept that needs to be brought into the mainstream in terms of Nepal's water resource development. Key actors need to understand the inter-relationship between livelihood security and water resource management, as they are closely inter-linked. If water-related development projects and programs are not

able to contribute to the livelihood security of people, they will not get public support and they will fail simply on the grounds of public resistance, mistrust or the lack of ownership.

#### 5.4.4 Rights, equity and social justice

The discourse on water resources now needs to focus on rights, equity and social justice. Rights-based and holistic approaches of water resource management and development, framed in terms of equity and social justice, is fundamentally important. Riparian rights, rights over usage (for example, prior rights for drinking water over irrigation or industrial use), and especially the rights of the indigenous community, including traditional or customary rights over water, are some of the common issues that are not only influencing the water debate (Pradhan and Pradhan, 1996; Benda-Beckmann *et al.*, 1997) but also becoming sources of conflict and tension once they are violated by external interventions (Upreti, 2001). New rights-related issues, such as water as a basic right of people, are becoming increasingly important and, therefore, water should not be treated simply as a tradable commodity. Proponents of this school of thought argue that access, use, management and the control of water must be guided by equity and social justice. Hence, this issue must be sufficiently considered in any new water resource development policy and practice in order to overcome potential hydro-conflict.

#### 5.5 Bureaucratic reorientation, political commitment and action

The existing bureaucracy is too ineffective, irresponsible, corrupt, politicized and is, therefore, not able to tackle the challenges faced by Nepal, particularly in regard to water resource management. The main political actors including the ministers are heavily engaged in spoiling the bureaucracy. They have abused their power and authority in damaging the bureaucracy. Hence, bureaucratic reorganization and reorientation is a precondition to effectively and efficiently managing available water resources in Nepal. This requires political commitment and sincere action.

#### 5.6 Constructive international engagement

The role of the international community is crucial in water resource development, particularly in regards to the development of hydropower in Nepal. Multinational companies, mainly backed up either by the government of their native origins or multilateral financial institutions such as the World Bank, have shown interest in developing hydropower in Nepal. Once powerful countries are engaged in promoting particular multinational companies, they exert an unbearably high pressure on the Nepalese government. In such a situation, role and negotiation capacity of users and the communities go beyond their access and consequently hydropower development does not address their problems and only serves interests of international investors. The Nepalese history of water resource development is characterized by unfair international pressure and trade-offs. Continuity of such practices will implant conflict and tension in the water sector. Therefore the strategy of the international community, particularly the bilateral governments and the multilateral financial institutions like the World Bank, International Monetary Fund and the Asian Development Bank needs to be shifted from pressure and condition to facilitation/harmonization to support economic development of Nepal through the utilization of available water resources. Nepal needs international actors to play a more constructive and supportive role in developing water resources that ensures the concerns of people are met, and one that minimizes potential conflict and provides mutual benefits to all concerned actors. So far, role of influential international actors such as Asian Development Bank (ADB), World Bank, International Monetary Fund and some bilateral donors in water resource development are seriously questioned in Nepal, particularly for their conditionality associated with assistance. For example, when the conditions posed by ADB to provide contract of distributing drinking water in Kathmandu valley to a London based private company was questioned by the newly appointed Housing and Physical Planning Minister (who was representing the CPN-Maoist party in the government), the ADB in 1<sup>st</sup> week of May 2007 threatened to cancel the loan assistance for the Melamchi Drinking Water Project<sup>11</sup>. This case has clearly demonstrated the clash of corporate interests and the public interests. In this case Bhandari

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<sup>11</sup> See the Himalayan Times of 9 May 2007 for detail.

(2007) writes, *"But still water supply services for Kathmandu Valley are being privatized as per ADB's loan conditionalities" with the intention that "water should be allocated and used by those who can best afford it".*

International funding agencies often see private sector as the solution of chronic drinking water problems in cities and seriously undermine the crucial role played by public sector and therefore pose different conditions to pursue privatization of drinking water (infrastructure development, operation, processing, distributions, etc.). The conditions posed in Melamchi Drinking Water Project are the vivid example of this attitude of international actors. Pressuring to pursue corporate interests often cause several economic, social and environmental negative impacts. Bhandari (2007) argues that the experiences of privatization of drinking water in Argentina, Hungary, Czech Republic, Philippines (Manila), Indonesia (Jakarta) sponsored by World Bank and other international financial institutions demonstrate that they are not able to improve performance and meet the public needs. Rather facing several problems. Instead, drinking water managed by public institutions in Cambodia, India, Thailand, Bangladesh, Pakistan etc. are performing better than the drinking water managed by private sector in Manila and Jakarta (Bhandari, 2007). Hence, the role of international community, particularly the financial institutions should not be to pose conditions in developing water resources in Nepal but to assist this country to meet the growing energy and drinking water need.

### 5.7 Linking water resource management with social research

Water resource development and management in Nepal is not well grounded in social research and almost entirely dominated by engineering and technical discourse. This approach to water resource management – that relegates social issues – has created enormous tensions and conflict during the planning and implementation of projects. Numerous examples can be cited from the history of bigger hydropower development or drinking water projects. There is lack of systematic engagement in examining social, historical, cultural and economic aspects of local areas where bigger water-related projects are constructed. The sociological exploration of potential complications and consequent conflict are largely ignored in bigger water-related projects. Even if some social studies are made, they are often ad hoc, superficial and not able to bring future possible complications to light and offer ways to resolve them. Hence, a focus on social research –with especial emphasis on 'Conflict Impact Assessment' – should be an integral part of water discourse in Nepal.

## 6. Conclusion

The changing political context and the emerging new power relations in Nepal will have huge impacts on water resource management in general and in dealing with hydro-conflict. The interim government is a coalition of political parties with diverse interests, political orientations and objectives. In the past, water resource management and mismanagement was largely dominated by the policy and strategy of the Nepali Congress Party – this is not the case anymore. One of the main actors in the government are the Maoists, whose strategy has yet to be tested, but who argue a different approach from what has been done in the past. In the past, water resource development was mainly shaped by vested interests and corruption; but to some degree this is likely to improve given the increased scrutiny from the population, civil society and difference in interests among the major political parties. This situation will continue in the long term too.

The new situation Nepal finds itself in will alter the existing approach of water resource management and hydro-conflict in the country. However, it depends upon a) the transformation of thinking, behavior and attitude of the major actors; b) the transformation of the political context (stability factor); c) the transformation of rules, policy and institutional arrangements; d) dynamic, robust and organic negotiations, e) stable, progressive and people-centric power relations (which is possible).

The changing political context and altered power relations has brought tremendous opportunities and serious challenges for addressing water-related problems and conflict in Nepal. If the emerging new political and social actors are able to use the opportunities brought about by political change, the water resource sector can greatly

contribute to the economic development of the country. This will open-up avenues for new forms of water-based relations with India and contribute to addressing tensions over water in the wider region of South Asia. But if the political actors of Nepal fail to use wisely the opportunities afforded to them and get entangled in vested interests and narrow party politics, as they did in the past, then they will fall into the new challenges and more difficulties.

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#### Annex 1 12-Point Understanding Between Seven Parties ad the Maoists Kathmandu, 22 Nov. 2005.

1. Today, democracy, peace, prosperity, social advancement and a free and sovereign Nepal is the chief wish of all Nepalese. We completely agree that autocratic monarchy is the main hurdle in (realising) this. It is our clear view that without establishing absolute democracy by ending autocratic monarchy, there is no possibility of peace, progress and prosperity in the country. Therefore, an understanding has been reached to establish absolute democracy by ending autocratic monarchy, with all forces against the autocratic monarchy centralizing their assault against autocratic monarchy from their respective positions, thereby creating a nationwide storm of democratic protests.
2. The seven agitating parties are fully committed to the fact that only by establishing absolute democracy through the restoration of the Parliament with the force of agitation, forming an all-party government with complete authority, holding elections to a constituent assembly through dialogue and understanding with the Maoists, can the existing conflict in the country be resolved and sovereignty and state power completely transferred to the people. It is the view and commitment of the CPN (Maoist) that the above mentioned goal can be achieved by holding a national political conference of the agitating democratic forces, and through its decision, forming an interim government to hold constituent assembly elections. An understanding has been reached between the agitating seven parties and the CPN (Maoist) to continue dialogue on this procedural work-list and find a common understanding. It has been agreed that the force of people's movement is the only alternative to achieve this.

3. Today, the country has demanded the establishment of permanent peace along with a positive solution to the armed conflict. Therefore, we are committed to ending autocratic monarchy and the existing armed conflict, and establishing permanent peace in the country through constituent assembly elections and forward-looking political outlet. The CPN (Maoist) expresses its commitment to move along the new peaceful political stream through this process. In this very context, an understanding has been reached to keep, during the holding of constituent assembly elections after ending autocratic monarchy, the armed Maoist force and the royal army under the supervision of the United Nations or any other reliable international supervision, to conclude the elections in a free and fair manner and accept the result of the elections. We expect reliable international mediation even during the dialogue process.
4. Expressing clearly and making public institutional commitment to the democratic norms and values like the competitive multiparty system of governance, civil liberties, human rights, the concept of the rule of law, fundamental rights etc, the CPN (Maoist) has expressed commitment to move forward its activities accordingly.
5. The CPN (Maoist) has expressed its commitment to create an environment allowing the political activists of other democratic parties displaced during the course of the armed conflict to return to their former localities and live there with dignity, return their home, land and property seized in an unjust manner and carry out their activities without let or hindrance.
6. Undertaking self criticism and self evaluation of past mistakes, the CPN (Maoist) has expressed commitment not to repeat such mistakes in future.
7. The seven political parties, undertaking self evaluation, have expressed commitment not to repeat the mistakes of the past which were committed while in parliament and in government.
8. In the context of moving the peace process forward, commitment has been expressed to fully respect the norms and values of human rights and press freedom and move ahead accordingly.
9. As the announcement of municipal polls pushed forward with the ill-motive of deluding the people and the international community and giving continuity to the autocratic and illegitimate rule of the King, and the talk of elections to Parliament are a crafty ploy, we announce to actively boycott them and call upon the general public to make such elections a failure.
10. The people and their representative political parties are the real guardians of nationality. Therefore, we are firmly committed to protecting the independence, sovereignty, geographical integrity of the country and national unity. Based on the principle of peaceful co-existence, it is our common obligation to maintain friendly relations with all countries of the world and good-neighbour relationship with neighbouring countries, especially India and China. But we request the patriotic masses to be cautious against the false attempt by the King and (his) loyalists to prolong his autocratic and illegitimate rule and delude the patriotic people by projecting the illusory "Mandale" nationalism and questioning the patriotism of the political parties, and appeal to the international powers and the people to support, in every possible way, the democratic movement against autocratic monarchy in Nepal.
11. We call upon the civil society, professional organizations, various wings of parties, people of all communities and regions, press and intellectuals to actively participate in the peaceful movement launched on the basis of these understandings centered on democracy, peace, prosperity, forward-looking social change and the country's independence, sovereignty, and pride.
12. Regarding the inappropriate conducts that took place between the parties in the past, a common commitment has been expressed to investigate any objection raised by any party over such incidents, take action if found guilty, and to make the action public. An understanding has been reached to settle any problem emerging between the parties through peaceful dialogue at the concerned level or at the leadership level.

**Annex 2. Comprehensive Peace Agreement** [Signed by the Nepal Government and the CPN (M) on 22 November 2006, 8.29 PM, (Unofficial translation)]

**Preamble:**

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,

Reiterating commitments to competitive multiparty democratic system, civil liberties, fundamental rights, human rights, complete press freedom, rule of law and all other norms and values of democratic system,

Pledging commitments to Universal Declaration of Human Rights 1948 and other international humanitarian laws and values and principles of the human rights,

Guaranteeing the fundamental rights of the Nepalese people to cast their votes in the constituent assembly polls without any kind of fear,

By putting democracy, peace, prosperity, progressive social and economic transformation, independence, integrity, sovereignty and prestige of the state in the centre-stage, implement the commitments made by both the sides to hold the election to constituent assembly by mid June 2007 in a free and fair manner,

Declaring the end of armed conflict prevailing in the country since 1996 and beginning the new era of peace and co-operation as per the understanding reached between both the sides for guaranteeing the sovereignty of the Nepalese people, progressive political solution, democratic restructuring of the state and social, economic and cultural transformation of Nepalese society through the constituent assembly,

Committing to transforming the ceasefire between the Nepal government and the Maoists into permanent peace, the following comprehensive peace agreement has been reached between the Nepal government and the Communist Party of Nepal (Maoist).

## **1. Preliminary**

- 1.1. This agreement shall be called 'Comprehensive Peace Agreement, 2006'. In short this shall be called peace agreement.
- 1.2. This agreement shall come into effect through public announcement by both the government and the Maoists.
- 1.3. Both the sides shall issue directives to all the agencies under them to follow and implement this agreement immediately and shall implement it.
- 1.4. All agreements, understandings, code of conduct and decision taken by the Government, the Maoists and the seven parties enlisted in the appendix shall be inseparable part of this agreement.
- 1.5. The agreements and understanding to be signed later to implement this agreement shall also be regarded as part of this agreement

## **2. Unless the subject or context otherwise requires, in this agreement:**

- a. Ceasefire shall mean restriction of all kinds of attacks, abduction, disappearance, imprisonment, mobilisation and strengthening of the armed force, attacking or armed actions targeted against each other between the Nepal government and the Maoists and any form of destructive, provoking or inciting activities in the society.



- b. 'Interim constitution' shall mean the 'Interim Constitution of Nepal 2006' to be promulgated and exercised until a new constitution is written through Constituent Assembly.
- c. 'Interim cabinet' shall mean the council of minister formed as per the interim constitution.
- d. 'Both Parties' shall mean Nepal government and the Communist Party of Nepal (Maoist).
- e. 'Prevailing laws' shall mean the interim constitution and other existing Nepalese laws that are not inconsistent with this constitution. However, this definition shall not affect the existing legal system in the country before the announcement of the interim constitution.
- f. 'Verification' would mean the preparation of the detailed situation of the army, combatants and arms by the United Nations after verification.

### **3. Political, social, economic transformation and conflict management**

Both parties have agreed to formulate following programmes and policies for political, social and economic transformation and management of the existing conflict through positive means:

- 3.1 Based on the decision taken by the meeting of the top leaders of the seven parties and the Maoists (schedule 6) on November 8, guarantee progressive political, economic and social transformation.
- 3.2 Form the interim legislative – parliament, as per the interim constitution, the interim government shall hold election to constituent assembly elections by mid-June 2007 in free and fair manner and make the Nepalese people feel their inherent sovereign right.
- 3.3 No rights of state administration shall remain with the King. Bring the properties of late King Birendra, late Queen Aishwarya and their family members under the control of the Nepal government and use it for the welfare purposes through a trust. 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 nationalised. Determine the fate of the institution of monarchy by the first meeting of the Constituent Assembly through simple majority vote.
- 3.4 Promulgate the political system that fully comprehends with the concepts of universally adopted principles of fundamental human rights, multiparty competitive democratic system, sovereign rights inherent in the people and supremacy of the citizens, constitutional balance and control, rule of law, social justice and equality, independent judiciary, periodic elections, monitoring by the civil society, complete press freedom, right to information of the citizens, transparency and accountability of the activities of the political parties, people's participation, fair, able and uncorrupted administrative mechanism.
- 3.5 End the existing centralised and unitary state system and restructure it into an inclusive, democratic progressive system to address various problems including that of women, Dalits, indigenous community, Madhesis, oppressed, ignored and minority communities, backward regions by ending prevailing class, ethnic, linguistic, gender, cultural, religious and regional discrimination.
- 3.6 End all forms of feudalism and prepare and implement a minimum common programme of socio-economic transformation on mutual understanding.
- 3.7 End feudal land ownership and formulate the policies for scientific land reforms.

- 3.8 Adopt policies for protection and promotion of national industries and resources.
- 3.9 Adopt policies for establishment of civil rights in education, health, shelter, employment and food security.
- 3.10 Adopt policies to provide land and socio-economic security to backward groups like landless, bonded labourers, tillers, Haruwa-charuwa and other such groups, which are socio-economically backward.
- 3.11 Adopt policies to take strict actions against the people who have worked in government positions and have amassed huge amount of properties through corruption.
- 3.12 Prepare a common development concept that will help in socio-economic transformation of the country and will also assist in ensuring the country's economic prosperity in a short period of time.
- 3.13 Follow policies ascertaining the professional rights of workers and increase investment on sectors like promoting industries, trade and export and increase employment and income generating opportunities.

#### 4. Management of armies and arms

To hold the election of constituent assembly in free, fair and peaceful environment and democratisation and restructuring of the army, the following works shall be done as per the 12-point and 8-point agreements, and 25-point code of conduct, 5-point letter sent to the United Nations and decisions taken during the meeting of the top leaders on November 8:

##### Relating to Maoist army –

- 4.1 As per the commitments expressed in the joint letter sent to the United Nations by the Nepal government and the Maoists on August 9, the combatants of the Maoists would remain in the following temporary camps. United Nations would do their verification and monitoring.

1. Kailali,
2. Surkhet,
3. Rolpa,
4. Nawalparasi,
5. Chitwan,
6. Sindhuli
7. Ilam.

There would be three smaller camps located in the periphery of each of these main camps

- 4.2 All the arms and ammunitions would be securely stored in the camps except those needed for providing security of the camp after the Maoist combatants are sent to the cantonments. They will be put under a single lock system and the concerned side would keep the key of this lock. For the UN to monitor it, a device with siren as well as recording facility will be installed. When there is 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 Nepal government, the Maoists and the United Nations.
- 4.3 On completion of cantonment of the Maoist combatants, Nepal government would take up the responsibility for providing ration and other facilities to them.

4.4 The interim cabinet shall form a special committee to carry out monitoring, integration and rehabilitation of the Maoist combatants.

4.5 Make arrangement for the security of the Maoist leaders as per the agreement with the Nepal government.

#### **Relating to the Nepali Army**

4.6 The Nepali Army would be confined to the barracks as per the commitments expressed in the letter sent to the United Nations. Guarantee that its arms would not be used for or against any side. Keep similar quantity of arms of the Nepali Army in the store, seal it with single-lock system and give the key to the concerned side. For the UN to monitor it, a device with siren as well as recording facility will be installed. When there is need to examine the stored arms, the UN would do so in the presence of the concerned side. Prepare the details of technological arrangement including camera for monitoring as per the agreement among the Nepal government, the Maoists and the United Nations.

4.7 The cabinet would control, mobilise and manage the Nepali Army as per the new Military Act. The interim cabinet would 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 includes works like determination of the right number of the Nepali Army, prepare the democratic structure reflecting the national and inclusive character, and train them on democratic principles and human rights values

4.8 Continue the works of the Nepali Army such as border security, security of the conservation areas, protected areas, banks, airport, power house, telephone tower, central secretariat and security of VIPs.

#### **5. Ceasefire**

##### *5.1. End of armed rebellion and mobilisation of armed forces:-*

5.1.1. Both parties commit not to carry out the following activities:-

- a. Acts of attacking or using arms directly or indirectly against each other
- b. Seizing or raiding places where the arms of other side has been stored as per the mutual understanding, with or without arms,
- c. Acts that would cause mental pressure or loss to any individual person
- d. Acts to place ambush targeting each other
- e. Actions involving killing or violence
- f. Acts of abduction, arrest, imprisonment, disappearance
- g. Destruction of public, private, governmental or military properties
- h. Aerial attacks or bombarding
- i. Mining or sabotaging
- j. Acts of spying each other's military activities

5.1.2 Both parties shall not carry on further recruitments, shall not transport the arms and ammunition or pose difficulties militarily against each other. But the interim cabinet shall mobilise the security forces for search and patrol to stop the acts like illegal transportation of arms, explosives or their parts or raw material in borders or customs points.

5.1.3 No individuals or groups shall travel with arms, ammunition or explosives

5.1.4 Both parties shall inform each other about the demarcation and storage of ambush or mines planted during the war period within 30 days and help each other to diffuse or dispose them off within 60 days.

- 5.1.5 Armies of both parties shall not appear with arms or combat dresses in any civil meeting, political gathering or public programmes.
- 5.1.6 Nepal Police and Armed Police force shall continue to work for maintaining peace and investigation into the criminal activities as per the spirit and content of the peace agreement and prevailing laws.
- 5.1.7 Both parties shall instruct their armed forces directing them to stop telling or behaving with the other side's armed personnel as 'enemy'.
- 5.1.8 Both parties agree to prepare the details of the governmental, public, private building, land or other properties captured, locked or restricted from being used during the period of armed conflict and return these things immediately

*5.2. Ways of normalising the situation:*

- 5.2.1 There won't be cash or kind collection or tax collection against anyone's will or existing laws.
- 5.2.2 Both parties agree to publicise and release all the person kept under detention within 15 days.
- 5.2.3 Prepare the details of the disappeared persons or those killed in the conflict with their real name, surname and residential address and publicise it within 60 days from the day of signing this agreement and inform the family members of concerned persons.
- 5.2.4 Both parties agree to form a national peace and rehabilitation commission to initiate process of rehabilitation and providing relief support to the persons victimised by the conflict and normalise the difficult situation created due to the armed conflict.
- 5.2.5 Both parties agree to form a high level Truth and Reconciliation Commission on mutual understanding 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.
- 5.2.6 Both parties vow to renounce all forms of war, attacks, counter-attacks, violence and counter violence existing in the country and commit to guarantee the democracy, peace and progressive changes in the Nepali society. It has been agreed that both parties shall help each other for maintaining peaceful situation.
- 5.2.7 Both parties guarantee to withdraw accusations, claims, complaints and under-consideration cases leveled against various individuals due to political reasons and immediately publicise the status of those imprisoned and immediately release them.
- 5.2.8 Both parties express the commitment to allow without any political prejudice the people displaced due to the armed conflict to return back voluntarily to their respective ancestral or former residence, reconstruct the infrastructure destroyed during the conflict and rehabilitate and socialise the displaced people into the society.
- 5.2.9 Both parties agree to take individual and collective responsibility of resolving, with the support of all the 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.

- 5.2.10 Both parties express the commitment not to discriminate against or exert any kind of pressure on any member of the family of either side on the basis of them being related to one or the other side.
- 5.2.11 Both parties agree not to create any kind of obstacle and allow any kind of obstruction to be created in the independent travelling, assuming of duties and executing of work by the Government of Nepal and public bodies' employees and assist them in their work.
- 5.2.12 Both parties agree to allow unrestricted travelling as per the law within the state of Nepal to the personnel of the United Nations, international donors agencies and diplomatic missions working in Nepal, national and international non-government organisations, press, human rights activists, election observers and foreign visitors.
- 5.2.13 Both parties commit to operate publicity campaigns in a decent and respectable manner.

## **6. The end of war**

- 6.1 On the basis of the historic agreement between the seven political parties and the Maoists on November 8th, giving permanency to the ongoing ceasefire between the government and the Maoists, we declare the end of the war that has been going on since 1996.
- 6.2 The decisions made by the meeting of the senior leaders of the seven political parties and the Maoists on November 8 will be the principal basis for the establishment of permanent peace.
- 6.3 After the Nepali Army is placed in the barracks and the Maoists' combatants are contained in the cantonments, possession of arms, display of arms, creating terror, use of weapons or such acts against the agreement or law will be punishable by the law.
- 6.4 The army on both sides shall not be allowed to campaign in favour of any group or shall not be allowed to express their support towards any of the sides but they shall not be deprived from their rights to vote.

## **7. Human rights, fundamental rights and following humanitarian laws**

Both parties express their commitment towards universal declaration of human rights 1948 and international humanitarian law and basic principle and values of human rights.

### *7.1 Human Rights*

- 7.1.1 Both parties reaffirm their commitment to respect and protect human rights and international humanitarian law and accept that no individual shall be discriminated on the basis of caste, gender, language, religion, age, ethnic groups, national or social origin, property, disability, birth or any other status, thoughts or conscience.
- 7.1.2 Both parties have agreed to create an environment where the Nepali people can utilize their civic, political, economical, social and cultural rights and are committed to create an environment in which these rights will not be violated in the future under any circumstances.
- 7.1.3 Both parties express their commitment and state that necessary investigation will be undertaken against any individual involved in violating the rights mentioned in the agreement and action will be taken against ones that are found guilty. Both parties also ascertain that they will not protect impunity and along with it, the rights of the people affected by the conflict and torture and the families of the people who have been disappeared will be safeguarded.

7.1.4 Both parties shall not be involved in activities like torturing civilians, abducting, forcing them to work and shall take necessary action to discourage such activities.

7.1.5 On the basis of secularism, both the sides shall respect social, cultural and religious sensitivity, and shall respect the religious conscience of a religious place or an individual.

#### *7.2 Right to live*

7.2.1 Both parties shall respect and protect the right of an individual to live. No one shall be deprived of this basic right and no law including capital punishment shall be formulated.

#### *7.3 Individual prestige, freedom and freedom of movement*

7.3.1 Both parties shall respect the right of individual prestige and freedom. In this context, even the people who have been legally deprived from enjoying their freedom shall also not be subjected to torture or punished with inhumane behaviour or disrespectful behaviour. The right of privacy of an individual shall be protected legally.

7.3.2 Both parties, respecting the individual's freedom and right to security shall not place anyone under whimsical or illegal detention and shall not abduct or imprison any individual. Both parties shall release the details of the condition of the people who have been disappeared or have been kept captives and an agreement has also been reached to inform about their status to their family members, legal consultant or any other authorized person.

7.3.3 Both parties shall respect and protect the individual's freedom to move freely and right to choose a place to reside within the legal periphery and also expresses commitment to respect the right of the people who have been displaced to return home or to live in any other place they choose.

#### *7.4 Civil and political rights*

7.4.1 Both parties express their commitment to respect and protect an individual's freedom of opinion and expression, freedom to form unions and associations, freedom to assemble peacefully and shall work against exploitation.

7.4.2 Both parties shall respect the right of every individual to participate in public matters directly or through representatives, right to vote and be elected and the right of equality to enter public service.

7.4.3 Both parties are committed to respect the right of the people to be informed.

#### *7.5 Socio-economic rights*

7.5.1 Both parties are committed to respect and protect an individual's freedom to practice any profession.

7.5.2 Both parties are committed to respect and guarantee the people's right to food security. It also ascertains that the issues like food, food production, utilisation of food, its transportation and distribution shall not be interfered with.

7.5.3 Both parties accept the need to respect and protect the health rights of the people. Both parties shall not disrupt the supply of medicines, assistance and health campaigns and also express its commitment towards treatment of the people who have been injured due to the conflict and shall also initiate rehabilitation process.

7.5.4 Both parties accept the need to respect and guarantee the right of education to all and express commitment to maintain adequate educational environment in educational institution. Both parties have agreed to ascertain

that the right to education is not violated. An agreement has been reached whereby, incidents like capturing educational institution, using these institutions, abducting, detaining or disappearing teachers and students shall be stopped immediately and military barracks shall not be constructed near schools and hospitals.

7.5.5 Both parties have agreed not to illegally seize or capture anyone's private property.

7.5.6 Both parties believe in not disrupting the industrial environment of the country and to continue production, protect the right of group bargaining in industrial institution and respecting social security intends to encourage resolving the disputes between the labour and the industrial institution peacefully and respects the right to work determined by the International Labour Organisation (ILO).

#### *7.6 Rights of women and children*

7.6.1 Both parties completely agree on the need to specially protect the rights of women and children and the need to stop all forms of sexual exploitation and other forms of misbehaviour on women and child labour and other violent act against children and not to include children below the age of 18 in any form of military force. The children who have already been affected shall be rescued immediately and adequate provisions shall be made for their rehabilitation.

#### *7.7. Right of Individual Liberty*

7.7.1. Both parties agree to the freedom of opinion and expression; freedom to assemble peaceably and without arms; freedom of movement; freedom to practice any profession, or to carry on any occupation, industry or trade; press and publication rights; the freedom to take part in peaceful political activities; the right of equality before the law; and to implement and have a tolerable system of justice implemented.

#### *7.7. Right of Individual Liberty*

7.7.1. Both parties agree to the freedom of opinion and expression; freedom to assemble peaceably and without arms; freedom of movement; freedom to practice any profession, or to carry on any occupation, industry or trade; press and publication rights; the freedom to take part in peaceful political activities; the right of equality before the law; and to implement and have a tolerable system of justice implemented.

### **8. Dispute Settlement and Implementation Mechanism**

8.1. Both parties agree to become responsible and accountable in an individual and collective manner and not repeat in future mistakes committed in the past and also correct these mistakes on a gradual basis.

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

8.3. Both parties 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 parties express commitment that the interim Council of Ministers shall 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).

### **9. Implementation and Follow-up**

Both parties have agreed to make the following arrangements for the implementation of the understandings mentioned in this agreement and for their follow-up –

- 9.1. Both parties agree to give continuity to the task of monitoring of the human rights provisions mentioned in this agreement by the United Nations Office of the High Commissioner for Human Rights, Nepal.
- 9.2. Both parties agree for the monitoring of the management of arms and the armies by the United Nations Mission in Nepal as mentioned in the five-point letter send to the UN earlier and in the present agreement.
- 9.3. Both parties agree to get the United Nations supervise the election to the Constituent Assembly.
- 9.4. The National Human Rights Commission shall also carry out works related to the monitoring of human rights as mentioned in this agreement together with the responsibility assigned to it as per the laws. In connection with carrying out its works, the Commission can take the help of national and international human rights organizations after maintaining necessary coordination with them.
- 9.5. Both parties agree to accept the reports submitted by the above-mentioned bodies, to provide the information requested by them, and to implement the suggestions and recommendations given by them on the basis of consensus and dialogue.

#### **10. Miscellaneous**

- 10.1. Both parties agree not to operate parallel or any form of structure in any areas of the state or government structure as per the letter of the decisions of November 8 and the spirit of the peace agreement.
- 10.2. Both parties accept to sign any complementary agreements, as necessitated, for the implementation of the present agreement.
- 10.3. This agreement can be revised any time with the consent of both parties. Both parties agree to provide to each other prior written information if they wish to make any change. The amendments could be made to the agreement with the consent of both parties after receiving the information. The provisions to be made by such an amendment would not be below the minimum standards of the accepted international human rights and humanitarian laws.
- 10.4. If any disputes arise in any interpretation of this agreement, a joint mechanism comprising both parties 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 parties' 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.
- 10.6. We heartily appeal to one and all to extend cooperation for resolving their problems and demands through talks and dialogue and for holding the election to the constituent assembly and maintaining the law and order, at a time when the entire country is focused on the main campaign of the election of the Constituent Assembly.
- 10.7. We heartily appeal to the civil society, the professional groups, the class organisations, the media, the intellectual community and all the Nepali people to actively participate in this historic campaign of building a



new Nepal and establishing lasting peace through the election of the Constituent Assembly by ending the armed conflict.

10.8. We heartily urge all the friendly countries and the United Nations, as well as the International Community to extend support to Nepal in this campaign of establishing full democracy and lasting peace.

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  
Chairman  
Communist Party of  
Nepal (Maoist)  
Signed on November 21, 2006

Girija Prasad Koirala  
Prime Minister  
Government of Nepal