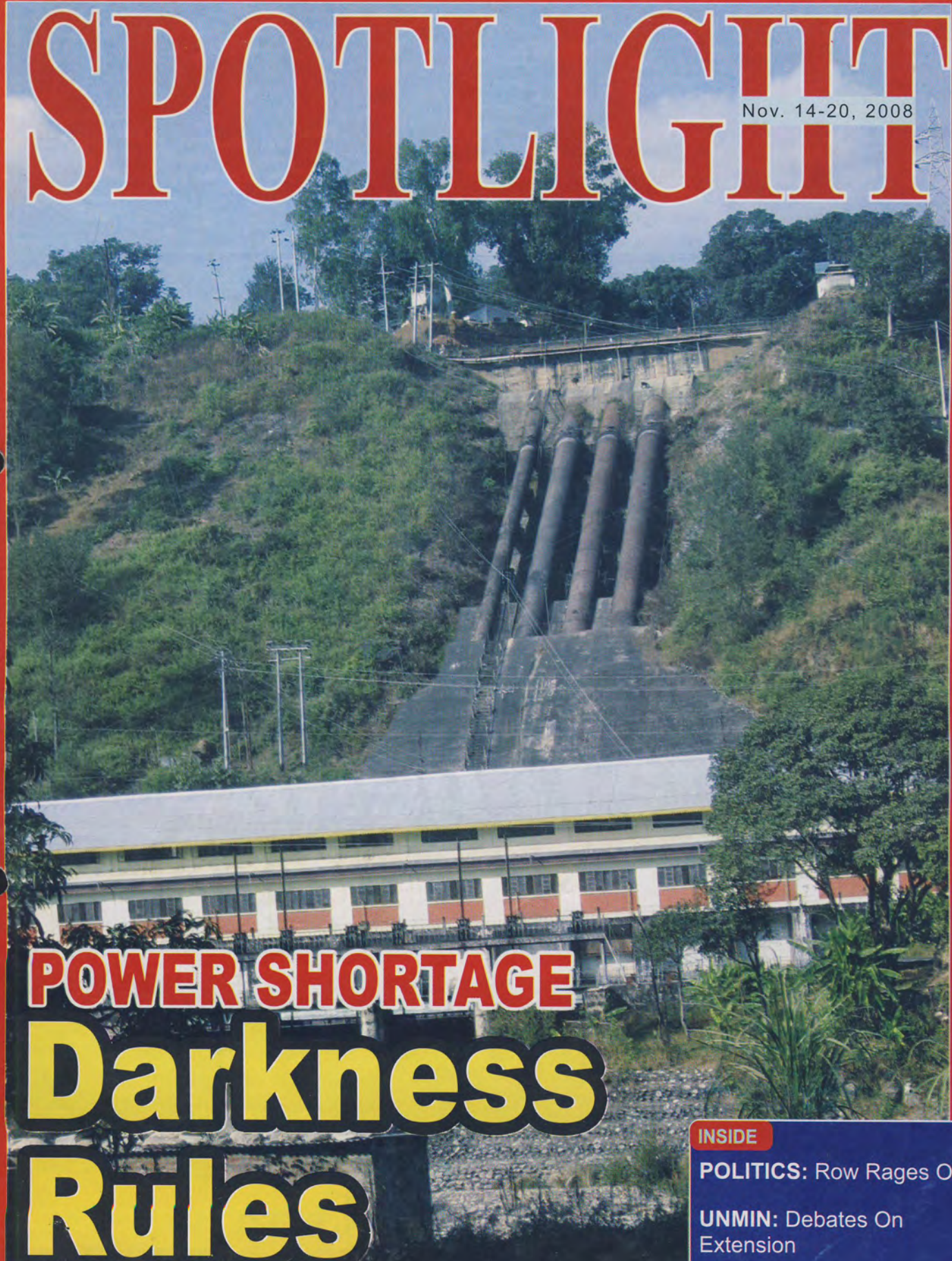


# SPOTLIGHT

Nov. 14-20, 2008



## POWER SHORTAGE Darkness Rules

### INSIDE

**POLITICS:** Row Rages On

**UNMIN:** Debates On  
Extension

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# *Come together* with **San Miguel**

My journey into music and recently into acting, has been one that has been both exciting and fulfilling for me. I know that this journey has been as smooth as it has only because of the trust and support of my friends and listeners – and I am grateful for this.

In my personal as well as professional life I seek smoothness – like **San Miguel**, a drink that reminds me of friendship.

- **Nima Rumba**  
Singer/Actor



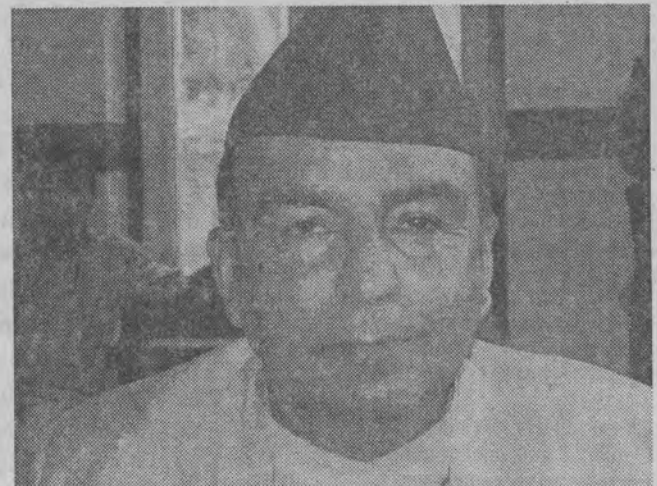
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# CONTENTS

	Page
LETTERS	3
NEWS NOTES	4
BRIEFS	6
OPINION : Dr. A.B. Thapa	7
UNMIN : Extension Debate	10
ARTICLE: Madhav Kumar Rimal	17
VIEWPOINT: Dr. Surya Dhungel	18
VP'S REMARKS: Dramatic Posture	22
QUOTE UNQUOTE / TRANSITION	23
MUSIC	24



**Cover Story POWER SHORTAGE: Darkness Rules** The crippling hours of load shedding have paralyzed the normal life. But efforts are still on to build export-oriented hydro power projects Page-12



**POLITICS: Row Rages On** Even as the major parties have reached agreement to finalize CA rules, the row over army integration rages on Page -9

**INTERVIEW:**  
**Marcela Sandova**  
The president of Democrats Abroad/Nepal, Sandova talked about the victory of democratic nominee Barack Obama in the US election Page-16



**SPOTLIGHT**

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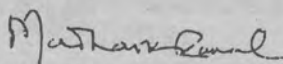
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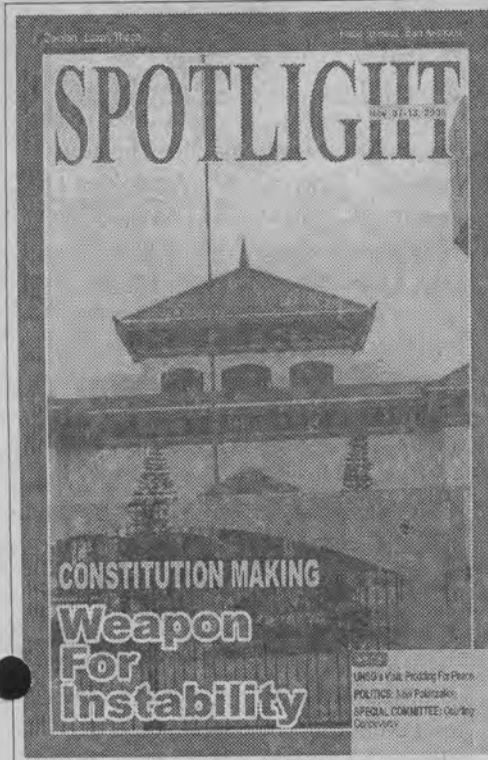
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**T**he wrangling being carried on by the ruling Maoist party and other political parties, in and out of the government, regarding the integration or adjustment of the Maoist combatants is leading the unfortunate country to unnecessary confrontation. It is, indeed, the clear reflection of the impious intentions all the political parties are suffering from. If the Maoist leaders are maneuvering to indoctrinate the Nepali army in their own political ideology, other political parties are scheming to unseat the Maoists from the government. Indeed, the Maoist combatants must be given choices what they would like to do. There are so many alternatives. For those who would like to stay in the armed forces, they must come through the recognized process. Because, the sanctity of the army cannot be defiled to satisfy the whims of a few self-centered politicians. No patriotic Nepali would even think of demeaning the stature of the Nepali army, which is the last resort of defending Nepali sovereignty. Advocating and insisting on the integration of the politically indoctrinated combatants who never had a systematic training and disciplined life and behavior, into the Nepali army without undergoing the centuries old and world accepted prescribed procedures would only reflect anti-nationalism. If the Maoist leaders, who have become a part of the government, are really sincere and want the good of the country and the people, they must listen to reason and not insist on illogical and unreasonable demand, which will never be fulfilled. Many knowledgeable people have started to think that this kind of foolish wrangling could only be a ploy to lengthen the Maoist leadership in the government. The Nepali people are gradually getting disillusioned with the Maoist leadership because of their short sighted policies, nepotism and familism. The Maoist leaders are not that naive not to read the writings on the wall that grave dangers are lurking round the corner. If they are really wise and would like to enjoy the goodies and privileges of being in the government for a longer period, they would think of the country first and not of their party. Else, their obduracy is sure to land them in great peril. We do trust good advice and wisdom will prevail.

  
**Madhav K. Rimal**  
Chief Editor & Publisher



### No Fault

The cover story Constitution Making: Weapon for Instability was interesting to read as it exposes the intention of politicians of Nepal (November -07-13 Constitution Making: Weapon for Instability). I agree with you that no politician is bothered about the constitution. What they want is just to grab power at any cost. I don't think they will make constitution. Whether one likes it or not, it is the politician not the constitution which is responsible for the present state. In the last fifty five years, Nepalese politicians have scrapped five different constitutions. I don't think writing new constitution through the CA will make any change.

*Janardan K.C  
Via Email*

### No Guarantee

It is very unfortunate to know that Nepal has changed half a dozen constitution in the last five decades. After reading your article, I have realized that politicians are just interested in the power game. They have nothing to do with the constitution. Of course, there are many countries of the world where democracy is perfectly functioning without constitution. There is no guarantee in Nepal that making new constitution will bring democracy. I doubt that Nepalese politicians will ever allow to function democratic constitution in Nepal. I agree with you that the politicians have been destabilizing Nepal in the name of making new constitution.

*Mohammad Rashid  
Nepalgunj Via Email*

### True Tragedy

You raised a very fundamental question regarding the constitution making process in Nepal. It is true that the tragedy of Nepal is that politicians

use populist slogan of constitution making as a weapon to go to power and destabilize the whole political process. I don't know about the past but I have seen scrapping of two constitutions in the recent years. In 1990 when Panchayat was in the process of reform, NC-Left front alliance called Janandolan and forced then king to scrap the constitution of Nepal 1961. Similarly, the parties scrapped the constitution of Kingdom of Nepal 1990 in 2006 after calling Janandolan II. One can understand the reason behind pressing king to scrap Constitution of Nepal 1961 since it was promulgated after suspension of democratic process in Nepal. I don't understand why the politicians agreed to scrap the Constitution of Kingdom of Nepal 1990 which guarantees all fundamentals of democracy. It is frustrating to know that Nepalese politicians don't care much about the constitution and constitutional process.

*Junu Lama  
Via email*

### Blame Game

I don't see any reason to discuss the constitution and constitution making process in Nepal. You cannot blame it on politicians only. Don't you see any role of intellectuals and lawyers who provoked the politicians to bring the present state of uncertainty? The time has come for us to realize our mistakes of past and make some efforts to bring the country back to track. Of course, Maoists destroyed valuable properties and killed thousands of people inhumanly. Since they are trying to adjust with new situation, we must encourage them to join the mainstream. The task ahead is not easy but we have to chart our future course. We have done enough harm to our country and people. The time has come for us to do some soul searching. The best way now for all us is not to play the blame game but to do something better for future by bringing the new constitution on stipulated time of two years.

*Suman Dhungel  
Via email*

### Avert Crisis

You have rightly pointed out the need to take steps to avert the major financial crisis. It is almost certain that the global recession will hit Nepalese economy (Global Financial Crisis: Cascading Effect

(Spotlight October 24-November 26). As the global recession has already started to hit remittances, it will bring negative consequences to Nepalese economy. Since our economy is completely dependent upon the foreign employment and carpet export to USA and Europe, any effect on these areas will inevitably disturb the whole process.

*Archana Shrestha  
Min Bhwan Campus*



### Ration Card On Cards

Minister for Commerce and Supplies, Rajendra Mahato, said that the government would soon introduce ration cards for the needy. Talking to a delegation led by the Forum for Protection of Consumer Rights Nepal in the capital, Thursday (Nov 6) he said they were sending a team to India to study the ration card system. He said the Nepal Oil Corporation (NOC) would cut fuel prices. "The committee formed to look into fuel adulteration would be revamped if it failed to do the assigned work. The assurance came amidst reports that adulterated petrol had caused motorbike engines to cease. Mahato promised to do the needful to establish the Consumer Court, Consumer Commission and the Consumer Protection Department. The memorandum sought the ouster of representatives of the NOC, dealers and petroleum transporters from the committee, stating that their presence would question the credibility of the investigation. The delegation also asked the government to check supply bottlenecks and adulteration of consumer goods. The forum asked the minister to clarify why the prices of kerosene and cooking gas were not decreased. It demanded that goods and services supply commissioners be appointed in every district. *Leading dailies report*

### Dr Bhattarai Says Education And Health Are Govt's Own

Finance Minister Dr Baburam Bhattarai on Thursday asked private educational institutions of the country

to look for "alternative means for [making] investments" as, according to him, it is the state's responsibility to provide basic education and health to its people. The Maoist second-in-command said the [failed] education policy of the past governments had encouraged private investment in the education sector, carefully hinting that the new education policy of the Maoist led government wouldn't require private investment in the same. He thanked the private educational institutions "for the past help and support", and said that they better look for alternatives for their investments. "The state will take the responsibility for providing basic health and education to the people," he said, requesting that the rather novel approach should not be taken in otherwise. Bhattarai made these remarks while speaking at an interaction organized by the Maoist-affiliated All Nepal National Independent Students' Union- Revolutionary (ANNISU-R) in the capital Thursday (Nov 6). At the same program, he disclosed another shocker saying the government is preparing to distribute academic certificates through open universities to those individuals - whom he referred to as "our friends" - who could not receive formal education due to their involvement in the Maoist war. "Our friends who could not pursue education due to their involvement in the armed conflict but have the necessary skills and knowledge should also receive due [academic] recognition," he said, adding that their "skills and knowledge" should be changed into academic degrees and distributed through an open university.

*Compiled from reports*

### Govt Talks Team In Contact With 14 Armed Groups

Deputy Prime Minister and Home Minister Bam Dev Gautam has revealed that the government has so far established contact with 14 armed groups operating in Terai and eastern hills in an attempt to bring them to the negotiating table. According to him, the government's talks team is preparing to start formal dialogue with the armed outfits very soon. Speaking to reporters after a program in the capital Wednesday

(Nov 5), Gautam also said police forces would be mobilized against the armed groups if they refused to sit for talks to resolve the problem. Asked if the government would mobilize the army if talks fail, Gautam said, "Army won't be mobilized. Armed Police Force and Nepal Police are enough [to deal with them]." The DPM also dismissed reports that education minister Renu Yadav, who is a member of the government's talks team, has gone to India to meet the leaders of the armed groups as part of the talks preparations. Minister Yadav, according to him, is in India on a private tour.

*Compiled from reports*

### Disclosure Of Income Sources Must On Property Purchase

Buyers will now have to disclose their sources of income while purchasing properties exceeding a certain limit, after the government introduces a new provision for which it is doing homework. While purchasing house and land worth more than Rs.5 million and a plot of land worth more than Rs.2.5 million, buyers shall compulsorily mention their income sources. Similarly, income source will have to be disclosed for the purchase of a vehicle costing more than Rs 1.5 million. Talking to the media on Wednesday (Nov 5) in the capital, Finance Minister Dr Baburam Bhattarai said that the Ministry of Finance will soon implement the new provisions for purchasing land and other property. Dr Bhattarai also said that the provision for voluntarily declaring one's income will be strictly implemented from December 30. For the improvement of the revenue administration, the government will increase monitoring and will stick to the 'reward and punishment policy', the Finance Minister said. In his budget speech for fiscal year 2008/09, the Finance Minister had vowed to make the revenue administration transparent and efficient, saying that the government would adopt the policy of rewarding good civil servants while punishing those indulged in revenue leakages. *eKantipur reports*

### Govt To Use Capital Market To Raise Investment

The government has said that it intends to use the resources of the capital

market to raise investment for industrial and infrastructure development. Finance Minister Dr. Baburam Bhattarai said that the government will bring a new policy to use the scattered resources for productive tasks. "Even though this is a communist government, the private properties won't be nationalized. Rather scattered resources will be brought together for capital formation," he said, adding, "The government is not against capitalism. It is against feudalism." He made these remarks inaugurating the Elite Capital Limited, a finance company.

*Compiled from reports*

### Govt Recalls Envoys From India, US

The government has recalled the ambassadors from India and the United States. According to reports, the Ministry of Foreign Affairs has sent a letter, Monday (Nov 3), recalling them. Currently, Durgesh Man Singh is posted as the Nepalese ambassador to India while Suresh Chalise is posted as the Nepalese ambassador to the United States. Both Singh and Chalise are said to be close to the Nepali Congress (NC) party, which is now in opposition. They had been appointed as ambassadors ten months ago after they cleared the parliamentary hearing process. In the past also, governments use to recall envoys after change in central government as many of the ambassadors are political appointees. *Compiled from reports*

### Govt Bans Rallies And Protests In Maitighar Mandala

One of the most favorite spots for protesters and demonstrators has now been made off-limits for them by the government. The District Administration Office of Kathmandu has banned rallies, protests, sit-ins and demonstrations from the roundabout of Maitighar Mandala. Stating that the decision was taken in consideration of the city environment and aesthetic beauty, the DAO has asked protestors to stay away from the place. Khula Manch or the Open Theater, however, has been designated as the alternative to the demonstrators.

*Compiled from reports*

### MoLTM, Entrepreneurs Disagree On Cutting Transport Fare

A meeting of the Committee for revising public transport fare rate on Monday ended inconclusively Monday (Nov 3). No decision was reached at the meeting today after the transport entrepreneurs disagreed with the proposal of Ministry of Labour and Transport Management (MoLTM). The MoLTM floated the proposal to decrease the public transport fare rate by the same percent the prices of the petrol and diesel were slashed, i.e. 10 percent. The transport entrepreneurs said that the current rate must be maintained temporarily as the cost in other issues including insurance has increased. They have demanded that a system be arranged to fix the fare in a scientific manner, stating that the fuel prices have decreased twice this week itself. Only yesterday, Transport Management Minister Bhatta said that the government is trying to find a long-term solution by implementing a system that will automatically revise the transport fare with the revision of fuel prices. The MoLTM has handed over the responsibility of the new system to fix the transport fare in a scientific manner to the Institute of Engineering (IOE), Pulchowk. The Department of Transport Management said that the scientific fare rate would be put into practice after the IOE taskforce submits its report. The transport entrepreneurs have also demanded that the policy of accident insurance be reviewed. The meeting was chaired by Minister for Labour and Transport Management Lekh Raj Bhatt. Another meeting of the committee has been scheduled to take place within next week. With the cut in the price of aviation turbine fuel, the airlines operators have decided to decrease the surcharge in the airfare by fifty to three hundred rupees. A meeting of the Airlines Operators Association of Nepal (AOAN) held today to review the airfares took the decision to cut back the additional charges taken with the airfare to some level. The Nepal Oil Corporation (NOC)

slashed the prices of petrol, diesel and aviation turbine fuel for the second time in a week on Saturday, keeping up with the dramatic fall in crude oil prices in the international market. *Kantipur reports*

### Four Parties Agree To Delete Provision On Whip In Ca Rules

The big four parties – Maoists, Unified Marxist Leninist (UML), Madhesi Janadhikar Forum (MJF) and Nepali Congress (NC) – have agreed not to have



any reference to system of party whip in the Constituent Assembly (CA) rules. "We have decided against any reference toward whip. This means there will not be whip system," said Dinanath Sharma, chief whip of the Maoists. Chief whip of opposition NC, Laxman Prasad Ghimire, added that the parties will have their own provision regarding whip in their respective party statutes. "In party statutes, it will be clear on which matters the parties need to issue whip and on which matters the individual members will be allowed to exercise their conscience," he said. Earlier, NC, Maoists and UML were in favor of whip system while MJF and other smaller parties, particularly Madhesi parties, favored allowing members to vote their conscience on important matters during constitution writing. "The delay in formulating CA rules had blocked the process of writing new constitution for long. Now we have reached to one decision. We will now talk with other parties before finalizing it after which the process of constitution writing will start," said MJF chief whip Ram Janam Chaudhary. *Compiled from reports* ■



**PM Pushpa Kamal Dahal Prachanda inaugurates the Fifth National Science and Technology Conference in the capital GP**

**THE FESTIVAL OF CHHATH WAS CELEBRATED** on Tuesday (Nov 4) with much fanfare. The festival is a major occasion especially for the people of Terai region. During this festival, people worship the setting and rising Sun in river banks and lakes. The festival was celebrated amid zeal and enthusiasm in terai cities like Birgunj and Janakpur. In Kathmandu also, a large number of people gathered in Ranipokhari to observe the festival. In his message on the occasion of the festival, President Dr. Ram Baran Yadav has wished for peace, prosperity and social and cultural harmony for the people of Nepal. Various other political leaders have also issued statements expressing best wishes on the occasion of the festival.

**THE CABINET MEETING, WEDNESDAY (Nov 5),** decided to change the name of three municipalities, which were earlier named after former Kings. As such, the Prithvi Narayan municipality has become Gorkha municipality, Tribhuvan municipality of Dang district has become Ghorahi municipality and Mahendra Nagar municipality of Kanchanpur district has become Bhim Dutta municipality. The cabinet decided to appoint Uttar Kumar Shrestha as the general manager of Nepal Electricity Authority while Sugat Ratna Kansakar has been named as managing director of Nepal Airlines Corporation. The government has also picked six members for the National Planning Commission including Yogendra Yadav, Ram Mani Pokharel, Sunil Babu Shrestha, Ayo Devi Yami, Prem Kunwar, and Ram Dev Singh. The cabinet also decided to promote Bimala Thapa and Parbati Thapa as Deputy Inspector Generals of Police.

**EXTERNAL AFFAIRS MINISTER OF INDIA, PRANAB MUKHERJEE,** is arriving in Kathmandu for a two-day visit later this month, Press Trust of India (PTI) said. Mukherjee, accompanied by a high-level delegation including Foreign Secretary Shivshankar Menon, is scheduled to arrive in Kathmandu on November 24. PTI quoted Indian Embassy sources as saying. This will be the first high-level Indian delegation to visit Nepal after the declaration of republic in Nepal. Prime Minister Pushpa Kamal is expected to pay his second visit to India from November 12 to attend the BIMSTEC meeting being organized in Delhi. Former Indian President A P J Abdul Kalam is scheduled to arrive in Kathmandu on November 17 at the invitation of Kathmandu

University. Kalam will address its convocation ceremony on November 18.

**A BRITISH GURKHA SOLDIER HAS BEEN KILLED** in Taliban attack in the Afghan province of Helmand. Rifleman Yubraj Rai, 28, of the 2nd Battalion of the Royal Gurkha Rifles, died from wounds sustained during an operation south of Musa Qala in the southern province of Helmand on November 4. He is the 122nd British soldier and the first Gurkha killed in Afghanistan since the 2001 US-led invasion to oust the Taliban government. "It is with great sadness that the Ministry of Defence must confirm the death of Rifleman Yubaraj Rai, of the 2nd Battalion, The Royal Gurkha Rifles," British Ministry of Defence said in a statement on Thursday, adding, "While working

alongside a fellow Gurkha, Rifleman Rai received a gunshot wound from enemy fire. He received medical treatment at the scene but died a short time later from his wounds." Rai was taking part in a joint operation by NATO and Afghan troops against enemy forces to the south of Musa Qala. Lieutenant Colonel Chris Darby, Commanding Officer of the 2nd Battalion, the Royal Gurkha Rifles, said, "Yubraj Rai was an extraordinary character and a hard professional soldier with a proven operational record. Having served his time as a driving force in 5 Platoon, he moved to a supporting role in Musa Qala, but it was typical of the man that he volunteered for a place on the operation in Dagan when another member of his Company fell ill, and a measure of his professionalism that he did it so seamlessly." Likewise, Paula Rowe, spokeswoman for Task Force Helmand told AFP, "The death of this soldier has left us all deeply saddened." "Losing a loved one is one of the hardest things to go through, and the thoughts of everyone in Task Force Helmand are with this soldier's family, friends and comrades at this very difficult time," she added. Around 3,500 Gurkhas from Nepal currently serve in the British Army, including in Iraq and Afghanistan. Some 200,000 fought in World War I and World War II and more than 45,000 in total have died serving Britain.

**THE HOME AFFAIRS COMMITTEE** of House of Commons of United Kingdom (UK) on Wednesday (Nov 5) directed its Home Ministry to immediately initiate the process of providing residential rights to British Gurkhas living in the UK. A statement issued by British Gurkha Ex-servicemen's Organization (GAESO) on Wednesday said the committee on Tuesday sent a letter to Home Secretary Jacqui Smith, directing the latter to start working for the residential rights of the British Gurkha at the earliest. The House committee has drawn four conclusions related to residential rights of British Gurkhas after collecting different evidences pertaining to the subject. The committee has made four separate conclusions including the government of UK to be grateful for the bravery and sincerity demonstrated by the British Gurkha towards the British government and its people. Similarly, the committee has also concluded that the Home Ministry should immediately coordinate with the Ministry of Defense to grant the provision of residential rights to British Gurkhas residing in UK, said Gurung. ■



# NEW CYCLE OF DEVASTATING KOSI FLOODS

▪ *Dr. AB Thapa*

**P**eoples of our region must be alarmed that we are quickly heading for far worse Kosi flood disasters. We might be very close to the days when the swollen Kosi would permanently abandon its present course and it would be freely roaming over its vast eastern floodplain. The damages, that resulted from the recent bursting of the eastern embankment, would pale in comparison with the great losses of life and property consequent upon the coming catastrophic Kosi flooding. Even the distant West Bengal and Bangladesh lying on the old course of the Kosi might not be completely out of the Kosi flood danger.

In the past the Kosi debouching into the Terai from the mountain oscillated laterally at long time interval. The recent shifting of the Kosi course must be the beginning of a new cycle of devastating Kosi floods.

## Causes of Kosi Flooding

Various studies done on Kosi so far come to one common conclusion - the Kosi carries enormous load of sediments that it is unable to transport far beyond. The river, therefore, deposits huge quantity of sediments. In this process of building up an inland delta, the river shifted over 120 km from east to west during the period from 1736 to 1954.

In 1941, Sir Claude Inglis, Director, Water Research Station, Poona identified the problem of Kosi as being due to an excess charge of the sand that Kosi waters carry.

Considering the Kosi behaviour, renowned scientists Leopold and Maddock stated (1954) that a braided stream (like the Kosi) will tend to shift laterally at a rate dependent on the rate of accumulation of materials being deposited. As one course becomes higher than possible adjacent paths, the river would shift.

## River Bed Rise

The Kosi is regarded as one of the largest braided streams of the world, though the Kosi River is marked by distinct downstream changes in channel patterns. These patterns are gravel-sandy braided, sandy braided, straight, and meandering.

The alluvial plain of the Kosi River between Chatra and Hanumannagar is triangular shaped. It is steeply sloped with its apex at Chatra. The river has formed a sub-circular mega-fan with a radius of about 60 km downstream of the barrage near Hanumannagar.

In 1966 a study of the delta cone of the Kosi river made by Prof Gole CV Dr. Chitale M. appeared in the

*In the past the Kosi debouching into the Terai from the mountain oscillated laterally at long time interval. The recent shifting of the Kosi course must be the beginning of a new cycle of devastating Kosi floods.*

“:Proceedings of the American Society of Civil Engineers”. The study explains that the delta building of Kosi was still incomplete. The authors have cautioned that the existing measures (embankments) may be short lived.

The studies carried out by Sanyal (1980) and Gohain & Prakash show that in the period between 1963 and 1974 there was high aggradations upstream of the barrage. The area just downstream of the barrage had been marked by a small degradation. But further downstream, there had also been increased aggradations.

### Alarming Reduction in Kosi Barrage Capacity

The Kosi barrage had been designed for a maximum flood discharge of 9.5 lakh cusecs. The maximum flood water level was 25 feet above the bed level. Similarly, the normal pond level was 15 feet above the bed level.

According to Gohain & Prakash the annual rate of the sedimentation upstream barrage based on observations as of the early 1980s is about 5 cm per annum. It implies that within the last 60 years after the commissioning of the barrage a layer of 3 meters thick sediments might have already deposited on the river bed. Now the maximum flood water depth might be only 60% of the original depth.

We can calculate the present maximum flood discharge capacity of the Kosi barrage assuming that the maximum water depth would be only 60% of the original depth. It can be roughly calculated based on the formulas of French Engineer Antoine Chezi and Irish Engineer Robert Manning. We will find that at present the barrage might be able to safely

discharge a flow only up to 4.0 lakh cusecs. Gohain & Prakash have reported in early 1980s "If the discharge exceeds 8400 cumecs (or 3 lakh cusecs), which is fairly common, the whole area between the two embankments is submerged."

**Sedimentation Problems Will Worsen**

Within the last 60 years twice the flood discharges up to 9 lakh cusecs had been recorded. But after 1968 the maximum Kosi discharge never crossed the 6 lakh cusecs limit. It is now an accepted scientific conclusion that the high flood discharges resulting from heavy rainfalls are the primary cause of increased sediment flow. The following is an excerpt from the Karnali project report prepared under the World Bank's assistance.

*"The sediment load from mountainous areas, such as the Himalayas and the Karakoram, is believed to be derived extensively from localized mass wasting (landslides) rather than from generalized surface erosion (Carson 1985). Sediment yield should thus be better correlated to precipitation or runoff events which are two of the main factors causing landslides and gully*

*erosion."*

It is seen that within the last 45 years the Kosi flood discharges were far below the maximum discharges already recorded twice within the last 60 years. As a result, we might not be wrong to conclude that within the last 45 years the Kosi barrage project might have been spared to face serious sedimentation problems. However, there is a great probability that in very near future the situation could take an alarming turn.

**What Comes Next?**

It might still be possible to restore the Kosi river to its original course at a considerable expense. There would be further rises in river bed levels as the years pass and the works to restoring the river course would

***It is seen that within the last 45 years the Kosi flood discharges were far below the maximum discharges already recorded twice within the last 60 years. As a result, we might not be wrong to conclude that within the last 45 years the Kosi barrage project might have been spared to face serious sedimentation problems. However, there is a great probability that in very near future the situation could take an alarming turn.***

become too expensive and technically very complicated.

Very recently the Kosi has burst the eastern embankment and shifted its course headed to south when the flood discharge was only about one lack and eighty thousand cusecs. This flood discharge is quite insignificant compared to 9 lakh cusecs. flood discharges, which have already been recorded twice within the last sixty years. Despite the fact that the Kosi has changed its course at such a low flood discharge, Bihar suffered very heavy losses. It is frightening even to think of the horrors if the Kosi would suddenly burst the embankment at a time when the flood discharge is close to nine lack cusecs. There would be a total devastation of the whole north-east Bihar. Even the distant West Bengal and Bangladesh lying on the old course of the Kosi might not be completely out of the Kosi flood danger.

*(Dr. Thapa writes on water resources)*



**Kam Chandra Poudel:** Twisting elbows

## POLITICS

# Row Rages On

*Even as the major parties have reached agreement to finalize CA rules, the row over army integration rages on*

By SANJAYADHAKAL

**A**fter months of dispute and dilly dallying, the major parties finally agreed to finalize the Constituent Assembly (CA) regulation paving the path for starting the process of writing new constitution.

But the continued row over the issue of army integration and fresh sabre-rattling by the opposition Nepali Congress (NC) leaders suggest that the process ahead will be anything but smooth.

The committee formed to draft regulations for the Constituent Assembly (CA) finalized them on Sunday (Nov 9) evening.

The regulations were finalized after the much-disputed issue of whip was settled earlier by the four big parties who agreed to let the rules remain silent on that issue.

The regulations were finalized by the committee headed by Narayan Man

Bijukchhe in its meeting held on Sunday evening in presence of CA chair Subas Nemwang.

The regulations also have provisions on forming various subject wise committees, methods of passing bills on constitution, ways of their authentication and so on.

The regulations will now be passed by the CA paving the way for starting the process of writing new constitution.

In absence of the regulation, the process of writing the constitution could not start even eight months after the CA election.

The major sticking point was the system of whip. However, the issue was settled when a few days ago, the big four parties – Maoists, Unified Marxist Leninist (UML), Madhesi Janadhikar Forum (MJF) and Nepali Congress (NC) – had agreed not to have any reference to system of party whip in the

Constituent Assembly (CA) rules.

“We have decided against any reference toward whip. This means there will not be whip system,” said Dinanath Sharma, chief whip of the Maoists.

Chief whip of opposition NC, Laxman Prasad Ghimire, had added that the parties will have their own provision regarding whip in their respective party statutes. “In party statutes, it will be clear on which matters the parties need to issue whip and on which matters the individual members will be allowed to exercise their conscience,” he said.

Earlier, NC, Maoists and UML were in favor of whip system while MJF and other smaller parties, particularly Madhesi parties, favored allowing members to vote their conscience on important matters during constitution writing.

Meanwhile, the dispute over army integration has taken a new turn after the NC leaders threatened to launch strong opposition.

Linking the issue with what it calls as violation of previous agreements, the NC submitted nine-point memo to the Prime Minister demanding that the government implement the past agreements including immediate return of properties seized by the Maoists during the decade-long insurgency. Other demands in the memorandum include scrapping of the paramilitary structure of the Maoist youth wing, Young Communist League (YCL) and reconstitution of the army integration special committee on the basis of political consensus.

The NC’s latest position solidified after Deputy Prime Minister and Home Minister Bamdev Guatam, who heads the special committee, asserted that the panel will not be reconstituted.

Gautam said that even though the government is not ready to reconstitute the special committee, it would try to bring the NC into it because the involvement of the NC would be significant to ensure the army integration process goes smoothly. He also made it clear that the committee would go ahead with its work even if the NC refuses to join it. ■



UNSG Moon: Keeping close tab on peace process

## UNMIN

# Extension Debate

*In line with what the UN Secretary General Ban ki-Moon had said during his recent Nepal visit, the UNMIN chief briefs Security Council that extension of its tenure may be necessary to sustain the progress made by Nepal peace process*

By A CORRESPONDENT

Some January 23, the twice-extended tenure of the United Nations Mission in Nepal (UNMIN) draws to the final close.

But for the agency that was established in order to monitor the peace process, it would seem like leaving the country half way through its peace process.

One of the vital components of the peace process – the army integration – has not happened yet.

There are over 19,000 Maoist combatants stationed at seven cantonments spread across the country.

The government has just recently formed a special committee – envisaged by the interim constitution – for the purpose. But the issue has become a

political hot potato with parties resorting to public posturing further complicating the process.

As such, many say that the expertise and deft-handling by the UNMIN could be crucial in the coming days to resolve the issue appropriately.

It was, therefore, for the same reason that when the UN Secretary General visited Nepal recently, he said that he felt the presence of UNMIN would be necessary for a certain period of time.

### Martin's Brief

Earlier this week, the UNMIN chief and Special Representative of UNSG for Nepal, Ian Martin briefed the Security Council on the peace process here.

Despite the remarkable progress made by the people of Nepal towards peace and democracy, the extended assistance of the United Nations Mission there (UNMIN) and sustained support of the international community was needed, Ian Martin, Special Representative of the Secretary-General and head of the Mission told the Security Council.

Addressing the 15-member body along with the representative of Nepal, Martin noted that the Secretary-General, in his visit to the Himalayan country last week, had said that the recently elected Constituent Assembly was the most inclusive legislative body in the country's history. However, he had added that the political transformation in the Himalayan country must go hand in hand with social and economic transformation; steady progress in the peace process would ensure international support.

He said that, according to Prime Minister Pushpa Kamal Dahal "Prachanda", the priorities of the

Government were completing the peace process, ensuring the drafting of the new constitution and achieving rapid economic progress. There were major challenges in each area, but UNMIN's mandate related directly to the peace process.

In describing the tasks that remained before the Mission had completed its work, he noted the difficulties in forming a special committee responsible for the supervision, integration and

rehabilitation of the former Maoist combatants, which would simplify UNMIN's monitoring responsibilities.

Once the committee began to function, he added, it would face many difficulties because of widely differing views regarding the extent to which Maoist army combatants should or should not be integrated into the State Army. He said that the discharge from the Maoist army cantonments of some 4,000 personnel under the age of 18 in May was not dependent on the special committee, but had been long overdue.

He said he shared the desire of the Security Council to bring UNMIN's mandate to completion as soon as possible. The Secretary-General wanted to drawdown further and close the Mission in a manner that did not jeopardize the peace process and ensured continuing international support for consolidating peace. However, in discussions with the Secretary-General last week, the Prime Minister had said that the Mission's presence at the cantonments would remain necessary pending integration and rehabilitation.

Even under the most optimistic assumptions, that process could now not be expected to end by January, within the Mission's current mandate. The Secretary-General had asked that if a further extension was to be requested by the Government, it should be made as soon as possible.

He envisaged that any recommendation to the Council in response to such a request would be for substantially smaller presence. Experience in various countries, however, had demonstrated the dangers of failing to address successfully the issue of former combatants and the risks that that could pose to stability.

That key aspect of the peace process and the need for cooperation among Nepal's political parties must be seen in the wider context of their implementation of commitments, he said. The 25 June agreement reiterated many of those commitments, but commissions provided for in the agreements were yet to be formed and compensation of victims of the conflict, as well as investigation into the fate of those who disappeared, the

return of displaced persons and property seized and legitimization of youth groups still needed to be pursued. The Madhesi parties also demanded inclusion in all processes, as promised.

"Our aim is the earliest possible completion of the Mission's mandate," he said. "But also the sustained and intensified support of the United Nations system and international community to the peace, development and change which the people of Nepal have demanded."

Nepal's representative, Madhu Raman Acharya, said that the success of his country's peace process lay, indeed, in full national ownership, as well as inclusiveness. The political leadership had taken into account the broader aspiration of the Nepalese people for peace and democracy.

UNMIN's presence would not be required after the process of managing the cantonment of armed forces and weapons was completed, he said. If that process went beyond the end of the current mandate on 23 January 2009, the Government, in consultation with the special committee and the political parties, might request an extension of UNMIN's mandate as soon as such a decision was reached. In that case, UNMIN's presence, which had been already significantly downsized, might be required for another six months maximum, with further adjustment, with a view to allowing it to terminate itself by that time.

Taking note of the Secretary-General's remarks about the consolidation of cantonments in the report, he said that such rearrangement might unnecessarily complicate the process and exacerbate the already poor infrastructure and facilities in the cantonments. It could also unwittingly prolong the rehabilitation and integration process, which were key to logically conclude the peace process.

The Government was committed to taking measures to expedite implementation of the special committee's decisions, so that UNMIN could complete its task in line with the Security Council's mandate.

After those two statements, Saul



**Martin:** Extension may be necessary

Weisleder of Costa Rica, which holds the Council presidency for November, took the floor in his national capacity to welcome progress in Nepal, but also to call for bringing to justice those who had committed crimes during the armed conflict. He supported the Nepalese Government's intention to set up a truth and reconciliation commission, and to investigate the whereabouts of missing persons and bolster the rule of law. He urged the Constituent Assembly to do its very best to achieve agreement and move forward in drafting a new constitution.

He also expressed concern over slow progress in disarmament, demobilization and reintegration of ex-combatants, expressing the hope that funds provided by the peace building fund would make it possible to speed up the process. Costa Rica, he said, would be ready to consider a limited extension of UNMIN's mandate, if requested by the Secretary-General or the Government of Nepal. He warned against withdrawing the Mission in haste or maintaining a larger mission than was required.

The Council had before it the report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process, which commends the parties in the Asian country for their commitment to consolidating democracy, but also states that "understandable" delays in forming the Government have not led to the "hoped for progress" to allow the United Nations special political mission in the country, known as UNMIN, to wind down by its mandate's end next January, as previously called for by the Council. ■

## POWER SHORTAGE

# Darkness

# Rules

Nepal Electricity Authority (NEA) is close to announce load shedding hour for 14 hours a day - two hours more than a year ago. However, the discussion and debate is now on selling the dream of making Nepalese prosperous by exporting the hydropower to Nepal's neighbor. Instead of looking at the domestic demand, priority is given to export-oriented hydro-power projects. As the government has already handed over some of the best and cheapest projects to foreign companies, there are only a few projects left to end the load shedding any time soon. The situation now is such that the citizens of a country with rich hydropower potential are forced to leave without power half their life. Whatever the leaders say about Nepal's hydro power export, irony is that Nepal is importing power from India to maintain the supply. With no major project currently under construction to add extra power to Nepal's grid, load shedding is going to be a part of life for urban Nepalese for many years to come

By KESHAB POUDEL

"We will construct the hydro power projects of about 10,000 MW to export within ten years to India. Exploitation of hydro power is one of the ways to make Nepalese prosperous. This resource must be utilized to make all Nepalese

rich," thundered prime minister Pushpa Kamal Dahal inaugurating Okhaldhunga festival, 400 KM east of capital.

"I have already directed concerned ministries to give green signal to all investors who want to invest in the

projects that are export oriented."

When Prime Minister Dahal was addressing the crowd calling for more investment on hydropower projects, which aim at exporting (November 6), officials at Nepal Electricity Authority



**Hydro resources: Being wasted**

(NEA) were planning to publish harsh load shedding schedule, which will be implemented from last week of November.

"As the water recedes in the rivers, our power projects are now producing just half of their capacity. Since our projects are unable to meet the demands of all our customers, there will be 14 hours power cut from last week of November," said Sher Singh Bhat, director of NEA's System Operation.

Although prime minister Dahal's party claims itself as a party of the proletariat, his mind seems to have been influenced by the outmoded mantra of selling power and making money. Even at the cost of the internal crisis, prime minister Dahal's thrust is to export the power. Thanks to the new harsh schedule, many industries have already declared that they will shut down factories if the government does not supply adequate power. Due to power cuts, many workers have already been laid off.

#### **Shortage of Power**

"As the water is gradually receding in the rivers and demands of power (especially at peaking period) is rising, we don't have any option other than to cut the power supply. We will publish the rescheduled load shedding," said Sher Singh Bhat. "Thanks to destruction of high-tension transmission line in eastern region due to flood, we are not in a position to import the electricity from India. As the water collection in Kulekhani reservoir is low due to short of rainfall compared to previous years, we are not in a position to produce the power as per the demand," said Bhat.

Experts argue that the present load shedding characteristics indicate that our shortage is only for a very short period. So we require additional generation capacity only to meet extreme peak demand. What

Nepal requires now is power stations exclusively for meeting peak energy demand.

Although Nepal's present demand is for peaking power, Nepal is going ahead to implement projects suitable for generation of base load energy to resolve the present power shortage crisis. Even if NEA suppresses the demand by adding few MW in central grid, after few years the power deficit level will reach up. Arun III and Upper Karnali, which are already handed over to the foreign developers, are the best project to meet the peaking demand.

The country has identified short term hydropower development priorities that have not addressed our real requirements. Nepal presently needs additional capacity to meet extreme peak energy demand.

Experts argue that the schemes for generation of peaking energy are relatively inexpensive. However, the attention is now given to rely on hydropower for base load energy generation which costs high to meet short term energy demand. Nepal could

have either propose diesel station or peaking hydropower. As the prices of diesel have gone up, hydro power could be best option.

The situation of Nepal is very contradictory. In a country reeling in load shedding, the politicians have been selling a dream by promoting the idea to make Nepalese prosperous by constructing the export oriented projects, and there is virtually no project which are under the construction for domestic use.

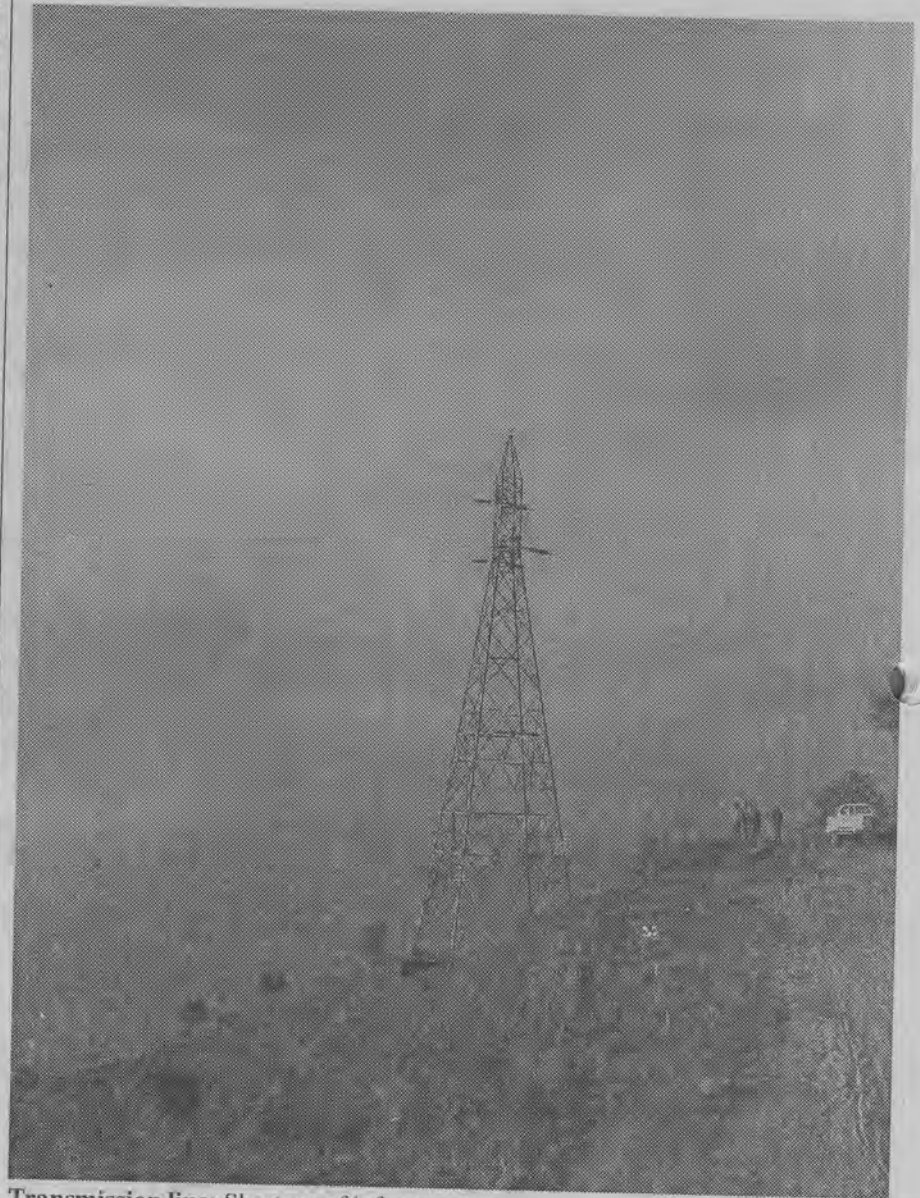
### Completion of Middle Marsyangdi

Although Middle Marsyangdi will add about 70 MW power to national grid from next week, the power is not enough to meet the growing demand of the consumer. The next five years will be darker. As there is no new major project currently under constructions, the coming days for Nepal is going to be much more difficult. "Nepal's own problems are not the shortage of power but a shortage of vision and commitments. All the major political parties concur about the power export not a power for the local generation. For full two years, they have done nothing but talk and talk," said an energy expert.

The load shedding has not come out of blue as has a long history behind it. Soon after the scrapping of Arun III project in 1995, the country's overall power sector policy was virtually dysfunctional. By implementing the projects like Kali Gandaki A, Klimt, Bhote Kosi, Puwa and Chillime, the power crisis was somehow managed.

As there was no big size project in the pipe line, the load shedding became to reality. Nepal is among the few countries in Asia which started to generate hydro power a century ago but its own rate of growth is too slow. In the last one hundred years, it added just 5 MW a year in its grid.

"Kam Kuro EKa Tira Kumlo Boki Thimi Tira. That is what exactly what our previous governments did. Instead of



**Transmission line:** Shortage of infrastructure

working on Nepal's own power shortages, it wasted two precious years approaching export oriented projects like Upper Karnali and Arun III. The present government is behaving no differently- chanting its new found Mantra of 10000 MW in ten years. We need to be genuinely serious of our power crisis- at a time when the global financial crisis is going to hit hard as well," said S.B. Pun former managing director of Nepal Electricity Authority.

### NEA's Capacity

Although NEA's total power generation capacity is 619 MW, it will generate about 400 MW due to reduced

water level during winter. The system loss estimated to be about 25 percent means the actual power supply is 300 MW or half of its total generation. As NEA's entire power supply is based on the run-of- the-river type projects, they cannot produce the firm energy all the time. Except Kulekhani reservoir project, other rivers' energy production fluctuates according to the availability of water.

Power import from India is the only option for the country. If the rehabilitation and reconstruction of high-tension line in Kosi completes on time, Nepal may import about 110 MW of power.



According to Nepal Electricity Authority (NEA), power and energy demand grew by 11.31 percent and 10.76 percent respectively in the review period. The system demand of 721.73 MW recorded on December 31, 2007, happened to be the peak power demand observed in Fiscal Year 2007/08. Likewise, energy demand over the year totalled 3490.12 GWh. As this amount of energy was not available with the system, the deficit amounting to 309 GWh, had to be shedded to keep the electricity service running.

The number of customers availing electricity service of NEA reached 1524610 which is an increase of 9.07 percent over that of previous year. Of the total customers, 95.66 percent belonged to the domestic category accounting for 40.52 percent of total energy sales and 40.66 percent of total revenue.

Industrial units, through representing only 1.67 of the total customers, have significant contribution amounting to 38.81 percent of total energy sales and 35.93 percent of total revenue earned. At a time when global economy is inevitable to hit Nepal, the new load shedding will add future woes.

"There are few critical issues that are very important to resolve the present power shortage problems. Are we paying the due attention to properly maintain the existing hydropower projects and strict adherence to dates earmarked for the completion of the projects under constructions? Have we explored all possibilities to expand the capacity of the existing hydropower projects at least cost and time to significantly enhance the generation? Can the 309 MW Upper Tamakoshi project considered a dependable project fulfill the need to solve the present load-shedding problem? At present the power demand is at the peak, whereas the capacity (KW) is greatly reduced (not necessarily energy KWh)," writes water resource



**Kathmandu Valley:** Growing demand for energy

expert Dr. Ananda Bahadur Thapa, in his article.

#### **Future Projects**

NEA has already proposed some major projects to meet the growing power demand in the country. Upper Tamakoshi (309 MW), Raghughat (30 MW), Upper Trishuli – 3 A (60 MW) and Upper Modi 3A (42MW) are on different stages of development. According to NEA, these projects are expected to be commissioned within five years. NEA is expected to add 525 MW power into the system. Under the Chilime Hydro Power Company Sanjen Upper (11 MW), Sanjen (35 MW), Middle Bhotekosi (80 MW) and

Rasuwadagadi (75 MW) are planned. Similarly, under private sector, Kabeli A (30 MW), Upper Marsyangdi (50 MW) are to be commissioned by 2012. As there is uncertainty everywhere, nobody is certain that these projects will complete at proper time. The dispute of NEA with two major power projects Bhotekosi and Khimti has already sent wrong signals to the potential investors outside.

The global economic recession will have significant impacts on the foreign

investment. In this scenario, Nepal's power crisis seems to be worsening further. Handing over two cheapest projects Upper Karnali and Arun III with firm energy generation capacity to export oriented foreign companies, the government has revealed its priority towards the long run power policy.

"We are committed to construct the proposed projects in accordance with our schedule. As most of these projects have already received the financial commitments from one or other companies, construction of the project seems to be not far away. Kulekhani III hydroelectric project and Chameliya Hydroelectric (30 MW) are now under constructions," said Uttar Kumar Shrestha, newly appointed managing director of Nepal Electricity Authority.

Whatever the officials say about the power crisis, as long as politicians in power do not sincerely identify their own priority; the country will have to live without power for a long time. The time has come now to decide which should get the first priority: projects for internal consumption or export? ■

# “A Janjati Or Dalit Has Been Elected As A President Of United States”

-Marcela Sandova

After the announcement of election results in the USA and victory of democratic candidate Barack Obama, there was a big celebration by American expatriates in Kathmandu. The Mike's Breakfast, a popular American restaurant in Naxal, saw gathering of all kinds of people, mostly American citizens living and working in Nepal in different capacities. Organized by a group called Nepal Democrats Abroad, the victory celebration on 5th of November, was interesting. As supporters of American president Obama were celebrating the victory, **MARCELA SANDOVA**, president of Nepal Democrats Abroad, spoke to **KESHAB POUDE** at Mike's Breakfast about the role she played to organize the program and make this celebration possible. Excerpts:

**How do you feel about the victory of Obama as the president of United States?**

We are very excited. We organized the Democrats Abroad group in Nepal two years ago when I and Richard Regan (UN World Food Program Country representative) first arrived. Richard and I worked together in Whitehouse under Clinton Administration. We met in 1994. I worked in Clinton's election campaign in 1992. This is not the first country where I organized the Democrats Abroad. I did it in Zambia – which is in Southern Africa. When we moved to North Korea, we were the only Americans there so we could not do anything there.

**How did you set up Democratic Abroad in Nepal?**

Here in Nepal we met people like James, Linda and few others and set up a Democrats Abroad. Since we are democrats, we thought why not we set up the organization and do something? More importantly, we could vote. The vote we did this year has been a real effort in getting in a democrat. This is one of the reasons democratic candidate Obama own.

**Did you vote?**

I received my ballot three weeks ago and I sent it three weeks ago. We have just over one hundred democrats abroad in Nepal. This includes registered voters. There was a program to watch the debate. We had more than 70 people who came to each of those events. We had five or six such events. We raised money for Obama. We raised just 5000 dollars for Obama. We have been very active. We would not have been able to raise that kind of money if we were not excited about him. I am from Texas state but unfortunately, in Texas, Obama lost.

**What will be the implication of Obama's election as the president of United States to Nepal?**

A Janjati or Dalit has been elected as a president of United States. It took 232 years to America to be here. It is monumental change. It is good for Nepal and good for the world.

**How do you describe Obama?**

He is a multi-racial.

**What can Nepal learn from the elections in the United States?**

Nepal's democracy is very new and American democracy is over 200 years old. It took us such a long time to reach here. If people are patient and work together, if we give people an opportunity you will get everything. This is what you need to learn from America.

**What are the challenges in front of America?**

Our country has been passing through a very difficult time. It's got two wars going on and is facing horrible financial crisis. That is affecting the rest of the world.

**How much support does the newly elected president Obama have?**

All Americans have to support this new president and we need to be patient about him. Nothing is going to happen overnight. May be he can raise my taxes and maybe he can do something I don't like.

**How different will the president Obama be?**



What I can say is that he is going to be honest and he is going to listen to people that naturally doesn't agree with him. He is not going around the world telling people what to do. He maybe a little bit more democratic.

**Do you see any major paradigm shift in American foreign policy?**

I am not a foreign policy expert so I cannot comment on this subject. What I can say is that the newly elected president will have a different approach to foreign policy in the sense that he will sit down with the people more than Bush was willing to.

**How is your personal feeling?**

All of us gathered here are very excited about the results. After the election, all Americans are behind our new president. For the first time and after a long time, we have a new president. I am proud of this.

**Individually, what change will it bring to you?**

I am proud to be an American citizen and I am proud of my country. The elections are part of our life and every democracy has elections. Once the elections are over, we forget our bitterness of elections campaign. In the last eight years, the way we have acted in Iraq and Afghanistan and horrible things we have been doing around the world were undiplomatic. Such acts increases threat to all individual Americans outside their country. ■

# Snippets from the American Trip (III)

- Madhav Kumar Rimal

The determination of the Islamic extremists to terrorize and kill the Americans and their friends who are supporting them seems almost ineradicable. They are well organized and spread all over the world. Their hatred of the American and Co. is so entrenched that it needs no proof since hundreds of suicide bombers have sacrificed their lives to hurt them. "It is impossible to convince a suicide bomber that he is pursuing a chimera," said a middle east expert. Most Americans think that the Bush administration has shut the door against reconciling the Islamic extremists. A feeling that America should not interfere in the internal affairs of other countries, howsoever demanding, is gaining ground in the US. Many Americans have even criticized their leaders, while discussing with this scribe, for their stance on human rights. They do believe that the super power role the United States is playing is becoming outdated and unwarranted. Even the noted statesman author Dr. Zbigniew Brezinski thinks that the activities of super powers are becoming counter productive in the present day global politics. In the context of the many recognized nuclear powers and some with great potentials of becoming one, the awe and reverence attached to a super power have become toothless and incapable of solving even regional

problems not to say anything about global. As such, attempts to thrust one's weight on issues that might not have any far-reaching impact on one's interest are apt to boomerang. Invasion of Iraq by George W Bush could be cited as a very pertinent example. The nuclear deal signed with India by the United States bypassing so many restrictions, too, produced quite a negative reaction. Even though the most evident reason

The sudden downsurge in the US relation with Pakistan is not only the fallout of deepening Indo-US relation but has been the outcome of the American thinking that Pakistan is not doing as much as she should to nab the Al Qaeda terrorists. Many Americans are very critical of Bush for doling out billions of dollars to Pakistan. A retired senior American diplomat, noted as an expert on South Asian affairs, told this scribe that the

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***Most Americans think that the Bush administration has shut the door against reconciling the Islamic extremists. A feeling that America should not interfere in the internal affairs of other countries, howsoever demanding, is gaining ground in the US. Many Americans have even criticized their leaders, while discussing with this scribe, for their stance on human rights. They do believe that the super power role the United States is playing is becoming outdated and unwarranted.***

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put forth by the proponents of the deal is the containment of China, the enormous potential of marketing billions of dollars of technology must be the overriding factor. This uncalled for deal would engulf one of the poorest regions in the world in a nuclear race that would push the poor countries of South Asia beyond redemption. In such a situation, how are we to take their commitments and protestations about eradicating poverty from the face of the earth?

new US regime after the Presidential elections must reshape its policy in South as well as South Western Asia. When asked whether Pakistan could contribute to mitigate the lopsided balance in South Asia, he said, "Certainly, Pakistan could play a very effective role. But she is not interested. She is West-bound. Since the smaller South Asian nations can, in no way, promote her strategic or economic interests, she is quite happy to maintain just correct relationships with them."

*To be continued*

# Emergence of New Constitutional Jurisprudence in Post-conflict Societies

-by Surya Dhungel<sup>1</sup>

Noam Chomsky's critical remarks against a 'march on a glorious future,' in a theme dedicated to bringing justice and freedom to a suffering world, that resurrected the idea of a "driving passion for democracy promotion," strongly objects international interventions in the internal affairs of many developing countries. However, this has been under the terms of the universally applied 'doctrine of necessity' and 'righteous exceptionalism'<sup>2</sup>. These doctrines, with the support of the world community, have tacitly legitimized external invasion in the area of national sovereignty and helped stretch international jurisdictions to the constitutional regimes of many 'soft-states'<sup>3</sup>. This is seen especially in post-conflict societies and in cases where the state institutions of a country have failed to provide the minimum human security.

In the name of preventing social atrocities, providing human security, restoring peace, and establishing the rule of law and democratic order, new measures have been put into place by soft-states for inviting external help to address internal problems. As a result, existing conceptual barriers of traditional constitutionalism have evolved in many countries, thereby paving a path for the gradual emergence of new constitutional jurisprudence in processes of conflict resolution and negotiations for peace and constitution building.<sup>4</sup> Cambodia in 1991, the recent cases of Afghanistan, East Timor Iraq and Liberia are examples of the global acceptance of such a phenomena. Present day Nepal also represents the changing dynamics of constitutional jurisprudence.

Modern constitution-making, as an essential tool for a 'fresh start'<sup>5</sup> towards restoring sustainable peace, institutionalizing an inclusive democratic order and providing social justice to hitherto excluded communities, especially in post-conflict societies, is a complex process. In light of the traditional elite-driven processes of drafting new constitutions, more emphasis has now been placed on public participation and engagement of interest groups in the framing process to ensure ownership of the people in the Constitution. Since the constitution-making process provides a forum for constant negotiations amongst the competing, and sometime warring, political forces to arrive at a consensual agreement in

a constitution's text, which could serve as the basic law of the land,<sup>6</sup> new innovative mechanisms have been initiated in recent times to promote public consultations as well as openly receive technical inputs from experts. The elected Constituent Assembly of Nepal is inducting such devices through the 'Rules of Constituent Assembly Procedure' in order to make the constitutional process participatory and inclusive.

This paper attempts to analyse some emerging trends of constitutional development in young democracies which have become instrumental in diluting the traditional concepts of constitutional jurisprudence- due to their failure to respond to and include the aspirations and demands of the people. The habit of merely creating new institutions and enacting constitutional principles in a Constitution without the people understanding their basic rights and their inability to relate constitutional provisions to their own day-to-day lives, has proved an insufficient strategy to rouse people's ownership. New methodologies in post-conflict constitution-making exercises have been an integral part of peace building processes in the modern world. Developing jurisdictions and new concepts that exceed the customary boundaries of classical constitutionalism, in both substantive and procedural terms, are outlined in the following note.

## Evolving Jurisdictions

During the colonial era, the occupying foreign powers were able to impose their respective norms of constitutionalism directly through changes in legal systems and traditional institutions. A blend of multiple legal values can therefore still be found to prevail in many countries after decades of independence. The influence of foreign legal systems is quite visible in present day India, South Africa, Cambodia and Liberia, each of which have borrowed legal concepts and standards in their processes of constitution building. After national independence or a negotiated regime change, several countries, including USA, India and South Africa, have tried to indoctrinate their own 'home-grown' constitutional jurisprudence under the veil of 'autochthony',<sup>7</sup> mainly through elected assemblies.

Such influences are more dominant in the

justice sector through judicial activism, with the use of 'judicial interpretism' as a tool. This concept emerged long ago under a common law culture as a universally accepted tool even to internalize foreign concepts of legal jurisprudence while delivering justice and securing citizens' rights within national boundaries<sup>8</sup>. Systemic constitutional conventions and practices have received global recognition and sufficient space, both in newly drafted or amended constitutional texts and referential judgments in courts of law. In response to modern challenges and societal demands, new innovations to introduce constitutional reforms through both legislative and judicial means have helped restructure antiquated state institutions, and further modified traditional political systems even in matured democracies.<sup>9</sup>

In the modern world, international treaties and conventions have not only reshaped the governance model of many countries, such as member states of the European Union, with their common parliament and court, but voluntarily allowed the expansion of UN and international jurisdictions in both human rights regimes and the governance sector.<sup>10</sup> The system of 'UN Governance,' through peace accords and Security Council resolutions, has changed the dynamics of boundary-based 'traditional sovereignty' and allowed the expansion of 'governance legitimacy' by creating new devices, especially in post-conflict failing states. On 23 October 1991, representatives of 21 countries met in Paris for a conference held in the presence of the UN Secretary General and decided: 'The Signatories invite the United Nations Security Council to establish a United Nations Transitional Authority in Cambodia (hereinafter referred to as "UNTAC") with civilian and military components under the direct responsibility of the Secretary-General of the United Nations. For this purpose the Secretary-General will designate a Special Representative to act on his behalf.'<sup>11</sup> 'UN governance' thus gave birth to a new type of constitutional process.

Professor Yash Pal Ghai, while speaking



at a gathering of Nepali elites at a seminar about the causes of constitutional failures in countries, tried to analyse the effect of globalization on the 'modern constitution.' He highlighted the growing interconnectedness of global economic transactions as a reason for evolving jurisdictions. Due to globalization, according to him, power has shifted from national frontiers to international institutions, regional organizations, international corporations and international markets. Reinforcing this view, World Bank President Robert Zoellick recently stated, 'the events of September and October 2008 could be a tipping point for many developing countries... as always, the poor are the most defenceless'. He further added, "We cannot turn the clock on globalization...fate presents an opportunity wrapped in a necessity: to modernize multilateralism and markets."<sup>12</sup>

"In fact we are not in control of our destiny," Professor Ghai claims, "and yet we are making constitutions, for the most part, on the assumption of an old type of sovereignty, where we would be truly in control of our destiny."<sup>13</sup>

#### New Constitutional Jurisprudence

The first paradigm shift in the regime of constitutional jurisprudence, noticed by many legal scholars as early as the nineties, was in areas of political constitutionalism and governance. In place of a national Constitution as a supreme legal instrument of governance, a separate charter, in the form of an 'Agreement on Comprehensive Political Settlement' was developed in Paris on 23 October 1991, based on a 'framework document' (of 28 August 1990) was agreed upon entirely by Cambodian parties, and later endorsed by the UN Security Council and General Assembly in September and October 1990, through respective resolutions 668 and 65/3. This 'Agreement' of 23 October 1991, signed by Cambodia in Paris as one of 21 parties, was the supreme governing document for Cambodia until it produced a new Constitution in 1993 through a Constituent Assembly. The ultimate source of sovereign authority, or 'rule of recognition' in Professor Hart's terms,<sup>14</sup> was accepted in a Supreme National Council formed on 10 September 1990 in Jakarta, to be chaired later by Prince Norodom Sihanouk. Sole responsibility of governance in the country, during the interim phase of political transition between 1991 and 1993, was entrusted to the UN-appointed Transitional Authority (UNTAC), led by a foreign national.<sup>15</sup> UNTAC's additional role was to ensure the fair conduct of Constituent Assembly elections for Cambodia and assist in the

drafting of a new Constitution.

Other countries have received similar assistance from bodies like the UN and other international communities, such as ECOWAS and African Union in the case of African nations. Interesting examples of constitutional development can be taken from the experiences of these countries. New constitutional norms, taking shape during a country's peace building process, may include:

- *Replacement of a national Constitution by 'peace accord' for transition, and in some cases subordinated by Transitional Authority Law, for the governance of a country during the transitional period until a new Constitution has been drafted, as was done in cases of Cambodia, Afghanistan, East Timor and Iraq.* Parties to such agreements (or peace accords) in many cases are representatives of foreign governments, international agencies, United Nations, and in some cases civil society. A USIP/UNDP study shows, since 1975 nearly 200 new constitutions have appeared in countries at risk of international violence. Internationally brokered peace accords have entailed the developments of new constitutions in the Balkans, Cambodia, East Timor, Rwanda, Chad, Mozambique, and the Comoros. New fundamental laws have been featured in the adoption of competitive political systems from Albania to Zambia.<sup>16</sup>

- *Legitimization of an agreement (peace accord) prepared abroad as a vehicle to partially suspend or amend a national Constitution for establishing transitional government.* In time of crisis or profound change, when the existing Constitution may not provide sufficient guidance, the process opens with deliberations about the appropriate format for subsequent arrangements. These cases include regime-changing amendments and formulation of interim constitutions. Out of 194 cases of Constitution drafting between 1975 and 2003, one third of the countries have opted for an *Interim Constitution* as a transitional arrangement, and some have permitted a charter (Peace Accord) to be a basis for interim governance.<sup>17</sup> With an objective of resolving disputes and establishing peace, Accra Accord on Liberia was signed in August 2003 on the initiative of ECOWAS and The African Union to suspend relevant provisions of the existing Constitution related to the Legislature and Executive branches. For the transitional period an interim unicameral legislature was formed along with a cabinet based on the consensus of the signatories and leading political forces, such as Government of Liberia (GOL), Liberians

United for Reconciliation and Democracy (LURD), Movement for Democracy in Liberia (MODEL) and other parties. With regard to the Judiciary, however, organizational structure was left unchanged. But justices of all courts were terminated, and arrangements for recruiting new ones were made with the Liberian Bar Association heading the committee for vetting.<sup>18</sup>

- *Recognition of Security Council resolutions, with or without the request and consent of the host country concerned, as a basis of intervention for constitutional changes or monitoring of the peace process by UN.* In the case of Iraq for example, UN involvement was not based on the request of the forcefully dislodged government.

- *Grant of supervisory and legitimizing authority to the UN for national elections as well as for monitoring the management of arms and armies.* While the UN in Cambodia and East Timor was responsible for administering and legitimizing the elections of Constituent Assemblies, in other countries, including Liberia and Nepal, it was the National Election Commission that took up the task of administering national elections. UN in these countries was merely a monitoring body which provided technical support upon request.<sup>19</sup> However, big armies of international and national observers were present in most countries in recent times in the name of ensuring fairness in elections. Impacts of such election observations are occasionally found negative and adversely help to legitimize the state-sponsored, and sometime state-ignored, intimidations. UN reports on Cambodian elections and EU reports on Nepal's recent Constituent Assembly election may be cited as instances of such faulty legitimization.

- *Emerging notion of participatory constitutionalism for ensuring social inclusion, public participation and national ownership in the constitution-making process.*<sup>20</sup> Constitution-making in post-conflict societies has been well recognized as a process-based substantive constitutional right. The experiences of South Africa, Kenya, and Rwanda have demonstrated that public engagement in constitution-making is vital for the ownership of the drafted constitutional text by the people; especially those excluded and marginalized groups. Failure to engage the people in the process may cause a revival of conflict, as in Liberia, Haiti and Sri Lanka<sup>21</sup>. Nepal has constituted a massive and inclusive Constituent Assembly of 601-elected members to formulate a new Constitution, with sufficient representation of diverse groups, including indigenous nationalities (janajatis), Dalits,

Madhesis, and nearly 191 women. Based on the South African and Kenyan experiences, Nick Haysom, former legal advisor of Nelson Mandela, suggested several benchmarks (such as, majority support to the process and product, inclusiveness, transparency, participation, educative, facilitative of nation-building, and adequate time for the process) at a conference in Kathmandu. He considered these issues important in evaluating a constitution-making process, particularly, but not limited to conflict-ridden societies. He correctly said, "It is not ultimately the lawyers and the politicians who will man the barricades to protect the Constitution if it comes under attack- it will be the people and they will only do this if they feel a commitment to it."<sup>22</sup> For many, constitution-making is an opportunity for nation building and consolidating the unity amongst diverse communities and groups, and such opportunities have been lost by some countries due to unnecessary external interventions.<sup>23</sup>

• *Formulation of Fundamental/Essential Constitutional Principles.* Eight objective resolutions were passed in December 1947 by the Indian Constituent Assembly as guiding principles for the drafting committee; political leaders felt such standards were essential before starting the drafting process. In absence of expressed immutable principles, the Supreme Court in India decided to derive 'basic structures' of the Constitution from the text as immutable through judicial pronouncements.<sup>24</sup> But importance of the fundamental constitutional principles reached its height only when the South African constitution makers incorporated 34 principles in the Interim Constitution itself as fundamental and mandatory for the Constituent Assembly to comply with while drafting a new Constitution for the Republic of South Africa (1993-1996). These principles were enforceable by the Constitutional Court. In some countries where the UN played a key role (as in Namibia) the UN Security Council reviewed the draft Constitution before it came into effect.<sup>25</sup> According to one USIP/UNDP report, in one-third of the constitution writing exercises completed during the period 1975-2003, a set of irreversible principles were developed by each country as conceptual terms of reference with which the final draft had to comply in order to secure ratification.<sup>26</sup> Many modern constitutions have now started incorporating fundamental principles in the Constitution itself.<sup>27</sup> Pressures are building on political parties and Constituent Assembly members in Nepal to agree on minimum 'fundamental

constitutional principles' as their terms of reference for drafting a new democratic Constitution for Nepal.<sup>28</sup> Some scholars have already suggested 'restructuring of the state, which appears in several places of the Interim Constitution, to be the most important principle'. A major responsibility of the state, as stated in the Preamble and Article 33 (d) of the Nepalese Interim Constitution, is to 'carry out an inclusive, democratic and progressive restructuring of the State by eliminating its existing form of centralized and unitary structure in order to address the problems relating to women, Dalits, indigenous tribes, Madhesis, oppressed and minority community and other disadvantaged groups by eliminating class, caste, language, sex, cultural, religious and regional discriminations'. Since the Constituent Assembly is the manifestation of the *Jana Andolan* (people's movement) in Nepal, it is not unreasonable to argue that these goals have the status of the fundamental constitutional principles and bind the Assembly.<sup>29</sup>

#### Issues and Options

The progressive development of modern constitution-making as an essential process of negotiations to resolve conflicts and establish peace is well-recognized. While drafting six constitutions in six decades since 1948, Nepal has never implemented participatory exercises in negotiating constitutional provisions that would best reflect the aspirations of the common people. Like most countries in the world, constitution-making has remained an elite-dominated process in Nepal up until now. The emphasis made in recent years on ownership and participatory process has encouraged people to be prepared to contribute to the Constituent Assembly-led consultation exercises for producing an agreeable constitutional text. Recognition and acceptance of the inclusive process as a substantive right of the people is a welcome development-so too is the innovation of formulating 'immutable constitutional principles' as guidelines for the constitution makers.

There are some serious issues of concern in emerging constitutional trends that need immediate attention of the legal community. One main contentious issue is related to the legitimacy of the expansion of UN jurisdiction to run a transitional government in a regime-change situation, based on the Security Council Resolution and Peace Accord. An act of replacement or amendment of a national Constitution by provisions of Peace Accords signed on foreign soil by non-citizens of the country concerned, is an extra-

constitutional move, and is very difficult to recognize as universally acceptable under constitutional jurisprudence.

Many Cambodians have reservations about accepting the Cambodian constitutional experiment as successful. For some scholars, the UN experiment of UNTAC in Cambodia was an utter failure and financially outrageous. So is the case of Iraq. In order to get rid of the financial burden and cover up its inability to establish constitutional order under the newly promulgated Constitution, according to many local politicians, the UN Authority unduly engineered the concept of Co-Prime Ministers, simply because the losing party (Cambodian People's Party) threatened to dislodge the leader of the winning party, Prince Ranaridh, from his seat of power.<sup>30</sup> The elected government was forced to leave the country when the coalition partner staged a coup and assassinated several officials including a Minister. Had the threat of the revival of conflict in 1997 after the coup not been skilfully handled by the diplomatic community, Cambodia would have plunged into another round of violence and armed conflict, as it had happened in Liberia in 1995-2003.

The Constitutional system has not yet taken its roots in Cambodia, and the issue of impunity is being half-heartedly addressed after a prolonged delay through an extraordinary mixed tribunal. It is doubtful whether 'justice' will prevail in Cambodia to the satisfaction of the Cambodian people, especially those whose families were victimized during the period of genocide and civil war.

Expansion of external jurisdiction through a Peace Accord in Afghanistan and Liberia also can hardly be seen as success stories. In the case of Liberia, the authority of the signatories of the Accra Accord signed in August 2003 to amend and suspend several provisions of the Liberian Constitution to restructure the government system for the transitional period is a repetition of the Cambodian outcome.

The constitutional legitimacy of the restored and politically restructured Parliament in Nepal, to replace the old Constitution of 1990 by an Interim Constitution in 2007, and allowing the Interim Legislature-Parliament to overtake the mandates granted to the sovereign Constituent Assembly, has been repeatedly questioned in Nepal.

The challenge before transitional states is therefore to reconcile the contradictions of the national need to restore peace and to expand jurisdiction-based constitutional order on one hand, and harmonize the benefits of

evolving constitutional jurisprudence, such as participatory (and inclusive) constitutionalism and immutable constitutional principles, on the other hand. In addition, these new developments have unduly empowered and legitimized the human rights unfriendly actions of new political forces whose democratic credentials have yet to be tested, at a time when traditional institutions of democracy and rule of law have been severely weakened during conflict.

Nepal hopes to see the elected and inclusive Constituent Assembly represent the people as an effective forum for deliberating important issues and negotiating resolutions at the national level, by providing additional impetus to the evolving tool of participatory constitutionalism. But this may not prevent the onslaught of power and resource-supported constitutional invasions in post-conflict societies, as experienced in other countries, unless a mechanism is put into place to address the problem of transplanting national constitutions.

The time has come for a forum like LAWASIA to undertake the responsibilities of examining and assessing the emerging practices of post-conflict constitutional jurisprudence, both substantive and procedural, before it is too late.

- 1 Prepared for 21 st. LAWASIA Conference (29 October -1 November 2008) by Dr. Surya Dhungel, a former law professor and senior Supreme Court Lawyer from Nepal, and Senior Partner of Nepal Consulting Lawyers, Inc. He has also served the United Nations in Cambodia and Liberia, both post-conflict societies, for seven years respectively as Chief of the Legal Assistance Unit of UNOHCHR and Rule of Law Adviser (Human Rights) at United Nations Mission in Liberia (UNMIL) between 1999 and 2006. For the past 18 months, he has contributed to the preparatory assistance project of UNDP- Nepal, to support the constitution building process as Senior Project Manager. He has also published books and featured articles on the Nepalese Constitution, specifically, as well as various contemporary legal issues.
- 2 For a harsh criticism of such phenomenon, refer to Noam Chomsky's *Failed States: The Abuse of Power and the Assault on Democracy* 103-166 (Allen & Unwin, NSW, 2006)
- 3 Gunnar Myrdal, a Swedish Nobel Laureate, uses the term 'soft-states' referring to vulnerable and fragile states in his famous books: *The Asian Drama-An Inquiry into the Poverty of Nations* (1968) and *The Challenge of the World Poverty* (1970)
- 4 Dr. Surya Dhungel, "Danger of Revival of Conflict" in SPOTLIGHT Weekly Magazine (27 June - 4 July, Kathmandu, 2008)
- 5 KC Wheare, *Modern Constitutions*, Ch. 1 and 2 (Oxford University Press, London 1966)
- 6 Nick Haysom, "Negotiating a Sustainable Political Settlement: Lessons from the South African Transition," *Democratic Constitution Making: Experiences from Nepal*, 105-117 (Eds. Bhattarai and Subedi, NESAC/IDEA, Kathmandu,

- 2007); Yash Pal Ghai, "Interim Constitution in the Constitution Making Process," *Discussion Paper* (Constitutional Advisory Support Unit/UNDP Nepal, 2008)
- 7 D. Conrad, "Constituent Power, Amendment and Basic Structure of the Constitution: A Critical Appreciation", 1-23, vol. 6 & 7 (Delhi L.R., 1977 & 1978); KC Wheare, *Constitutional Structure of the Commonwealth*, 95 ff (Indian Print, New Delhi, 1960); *Keshavnand Bharati vs. Kerala* AIR, 1973 SC, 1861; *Indira Gandhi vs. Raj Narayan*, AIR, 1975, SC, 3299
- 8 Rajeev Dhawan, "Judicial Law-Making and 'Committed' Judges: Doctrinal Differences in the Supreme Court and a Recent Case", 24, Vol. 6-7 (Delhi L.R. 1977-1978); Justice Krishna Iyer, "The Judicial System: Has it a Functional Future in our Constitutional Order", 1 S.C.C. (1979); Also see, Paramanand Singh, "Bakke and Thomas: A Comparative Legal Analysis of Emerging Judicial Responses to the problem of 'Equality' and 'Compensatory Discrimination' in USA and India", 48 *Delhi L. R.*, *Ibid*
- 9 British *Constitutional Reform Act, 2005* to be implemented from 2009. See also, Rodney Brazier, *Constitutional Practice*, 2 nd. ed., 1-5 (Oxford University Press, Oxford, 1994); In three leading Parliamentary Dissolution Cases- I, II, and III of Nepal, between 1993 and 1996, the Supreme Court of Nepal entertained the references of British, Australian, Indian, and Pakistani constitutional practices and case laws with regard to parliament dissolutions in Nepal. In India, the concept of basic structure was the gift of the judiciary propounded by justices in the famous *Keshavnand Bharati vs. Kerala* case (1973), *Ibid*.
- 10 Monitoring of the implementation of human rights treaties by UN international human rights bodies (Charter bodies, treaty bodies and other UN bodies like General Assembly, Economic and Social Council, and ICJ) and Regional Bodies (European Court of HR, African Commission on Human and People's Rights, Inter-American Courts of HR), including ICC and international organizations like ICJ, ICRC, AI, Human Rights Watch and I.L.A. Ruling of the UN Human Rights Committee on a case of leaders of the Mikmaq tribal society in Marshall vs. Canada (CCPR/C/43/D/205, December 1991), rights of the Mikmaq people to participate in the public affairs under Article 25 (a) of ICCPR have been recognized. It has been further reinforced later in 1996 in a textual authority: "Citizens also participate directly in the conduct of public affairs when they choose or change their constitution". Also see, Vivien Hart, "Democratic Constitution Making" (Special Report of USIP on Constitution Making, 2002-2003)
- 11 Cambodia was the first country to venture for this experiment in 1991 through United National Transitional Authority (UNTAC) followed by Afghanistan, East Timor, Iraq etc. See: Articles 2, 12-14, and 18 of *Agreements on a Comprehensive Political Settlement of the Cambodia Conflict* (Paris, 23 October 1991) and HWR Wade, "The Basis of Legal Sovereignty", 172 *Cambridge L.J.* (1955); Rohan Edrisinha, "Conflict and Constitutional Process: Some Sri Lankan Experiences" in *Democratic Constitution Making*, 133-138 (NESAC/IDEA, Kathmandu, 2007).
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- 14 HLA Hart, *The Concept of Law*, 97 (Oxford University Press, London 1961); In Kelsen's term

- 'Grundnorm' for the ultimate source of authority,
- 15 *Cambodian Agreement for Political Settlement, Ibid*; The States participating in the Paris Conference on Cambodia, were, namely, Australia, Brunei Darussalam, Cambodia, Canada, the People's Republic of China, the French Republic, the Republic of India, the Republic of Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Socialist Republic of Viet Nam and the Socialist-Federal Republic of Yugoslavia, in the presence of the Secretary-General of the United Nations.
- 16 Jennifer Winder, "Constitution Writing & Conflict Resolution", (USIP/UNDP Study Report, 2004)
- 17 *Ibid*.
- 18 *Comprehensive Peace Accord on Liberia* signed in Accra in August 2003.
- 19 *Peace Accord of Cambodia* (Paris 1991); Three Separate Agreements on East Timor (Signed in 1999); Boon Agreement (December 2001); Accra Accord on Liberia (August 2003) and Peace Accord on Nepal (Kathmandu 2006); Also see, *Comprehensive Peace Accord* (21 November 2006) and *Agreement on Monitoring of the Management of Arms and Armies* (8 December 2006), respectively under Schedule 4 and Schedule 5 of the Interim Constitution of Nepal, 2007. In case of Liberia, United Nations Mission in Liberia (UNMIL) was heavily involved in providing all technical and logistic support to the Liberian Election Commission in 2006 for presidential election.
- 20 Vivien Hart, "Democratic Constitution Making" (Special Report/USIP, USA, 2004). Internet. See also, Yash Ghai, "Participatory Process for Making a New Constitution", *Discussion paper* (CASU/UNDP, Kathmandu, 2008); Vivien Hart, "Owning the Constitution: A Path to Peace?", *Fellow Project Report*
- 21 Surya Dhungel, "Danger of Revival of conflict..." *SPOTLIGHT Weekly Magazine, ibid*.
- 22 Nick Haysom, "Comparative Experience: Constitution Making in Post-Conflict Societies", 8-11 *Constitution Making in Nepal* (Conference Report, CASU/UNDP, Kathmandu, March 2007); Surya Dhungel, "Revival of Conflict and Authoritarianism in Post-conflict Situations", 116-120 *Lumbini Judicial Mirror*, Issue-3 (Appellate Court Bar Association, Butwal, Nepal, August 2008).
- 23 Jonathon Morrow, "Iraq's Constitutional Process II: An Opportunity Lost", *USIP Special Report*, No. 155 (December 2005); Christina Caan, "What Have We Learned from Iraq and Afghanistan", (USIP Briefing, 22 April 2005); Ray Salvatore Jennings, "The Road Ahead: Lessons in Nation Building from Japan, Germany, and Afghanistan for Postwar Iraq", *Peaceworks No.49* (Peaceworks, May 2003); Yash Ghai's Background Paper on the Constitution Making Process, 34 *Constitution Making in Nepal*, Appendix-1, *Ibid*
- 24 H. Conrad, "Constituent Power...", *Ibid*
- 25 *Constitution Making in Nepal*, 40 (Conference Report, CASU/UNDP, Kathmandu, 2007)
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- 27 Articles 8 to 12 of the Ethiopian Constitution have incorporated fundamental constitutional principles.
- 28 Surya Dhungel, 5 *The Himalayan Times* (13 August 2008, Kathmandu)
- 29 Yash Ghai's Background Paper on the Constitution Making Process, *Ibid*
- 30 Based on the Author's personal interactions with local politicians during his assignment in Cambodia (1999-2004).

## VP's REMARKS

# Dramatic Posture

*After a long period of silence, vice president Parmananda Jha starts talking from all sides of his mouth*

By SANJAYADHAKAL

After he courted controversy by taking oath of office in Hindi language, vice president Parmananda Jha had remained silent for a long time.

But he made a dramatic departure from the silence last week when he fired salvos on all controversial subjects from special committee on army integration to provision of whip.

Jha went on to describe the special committee as 'unconstitutional'. "What do they mean by major parties?" he questioned, referring to what has been described as representation of "major parties" in the special committee.

"There is no constitutional definition of major parties. Since the interim constitution does not define "major parties", involvement of certain parties in the committee does not bear constitutionality," he said.

He also criticized the political parties for delaying the constitution writing process. Stating that new constitution should be drafted within the stipulated time, Jha said the parties have not focused their attention on this direction.

He said he would "speak up" if the constitution-making process got further delayed. He was speaking at a special interaction program organized by the Reporters Club in the capital Wednesday (Nov 5).

Jha also reiterated his discontent over lack of clear role for him. "People have expectations from the President and Vice President, so their roles should be well defined. That's what is missing [in the constitution]."

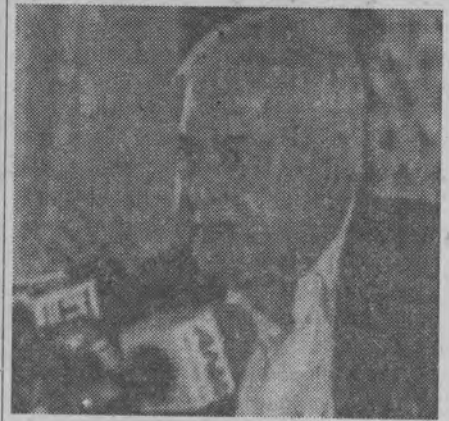
His comments drew sharp and scathing reaction not only from two coalition partners – Maoists and UML – but also from Madhesi Janadhikar Forum (MJF), which nominated him for the position of vice president.

The Maoists and UML expressed strong objection against his remarks. The two parties concluded that the Vice President's views were "unconstitutional". They also decided to request Prime Minister Pushpa Kamal Dahal to talk with other parties and seek an explanation from Jha, who is a former judge of Supreme Court.

Foreign Minister Upendra Yadav, who is also the chief of the MJF, also censured Jha for his 'unwarranted remarks.'

Terming Jha's comments as personal, Yadav said that the special committee was indeed constitutional even though he admitted that there were lapses in determining which parties are major parties.

Despite the objections, VP Jha defended his position. Speaking to reporters in Biratnagar, VP Jha said he was "compelled to speak up" as the parties breached the interim



VP Jha: On defensive note

constitution by speaking against federalism.

He said no one could impeach him. "For impeachment, someone has to point out that I violated the constitution, which I have not," he said.

He also insisted that the media and the parties misinterpreted his views in order to drag him into controversy.

Maintaining that the job of the President and the Vice President is to protect the constitution, Jha said he simply wanted to caution the parties [against violating the constitution].

He instead retorted saying the parties that are talking about impeachment deserve to be impeached.

Not cowed down by the fresh controversy, VP Jha also made comments regarding another 'hot' issue – the one related with the system of whip.

"By talking about putting in place the system of whip during constitution making, the parties are trying to infringe upon the fundamental rights of the CA members," he said.

"If again, we try to engage in the majority vs minority while writing new constitution, it may not be owned up by the people," he said. ■



“China and India cannot leave us behind languishing in poverty when they continue to prosper. It will not be good for them. I have told this to leaders of both the countries.”

*Prime Minister Pushpa Kamal Dahal ‘Prachanda’ addressing a function in Okhaldhunga.*

“The nation will face a disaster if the new constitution is not written on stipulated time.”

*Girija Prasad Koirala, president of opposition Nepali Congress (NC), and former prime minister, talking to a delegation of Federation of Nepalese Journalists (FNJ).*

“The NC must be brought into the special committee (on army integration). We have to reach understanding on this issue.”

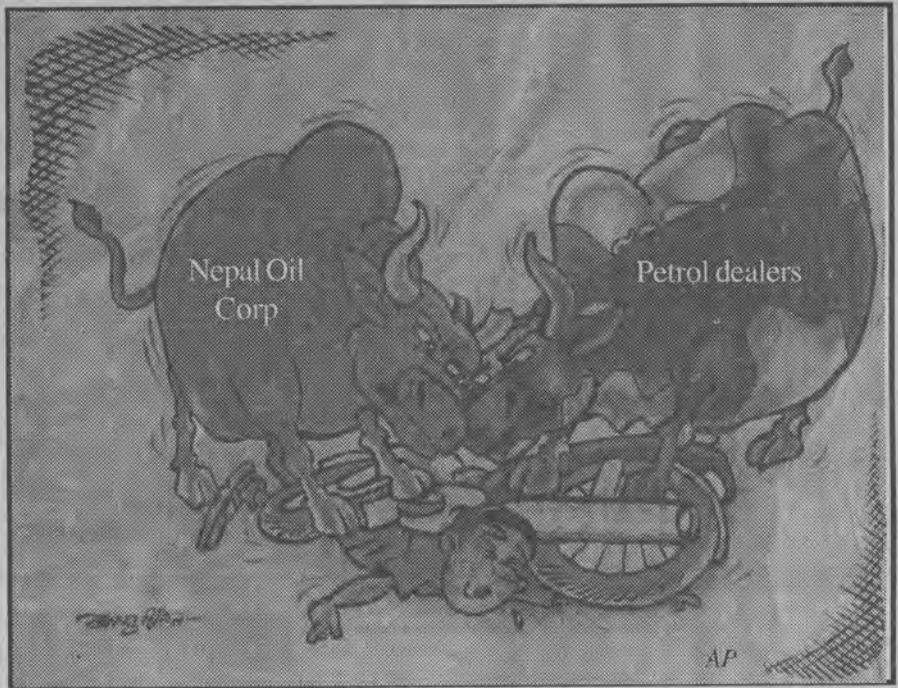
*Jhal Nath Khanal, general secretary of the Unified Marxist Leninist (UML).*

“There is no constitutional definition of major parties. Since the interim constitution does not define major parties, involvement of certain parties in the special committee does not bear constitutionality.”

*Vice President Parmananda Jha, addressing a press conference.*

“His views are his personal. We think that the committee formed by the committee is constitutional.”

*Upendra Yadav, foreign minister and chief of Madhesi Janadhikar*



*Forum (MJF) – which nominated Jha for the position of vice president.*

“I am aware of my duties and responsibilities as a minister. I cannot think of meeting a person who is accused of murder and who has been suspended by my party.”

*Ram Bahadur Thapa ‘Badal,’ Defense Minister, denying reports that he was in contact with Kali Bahadur Kham Magar ‘Bibidh’ who has been accused of murdering one Ramhari Shrestha.*

“Youth Force [of UML] and Young Communist League should be dissolved

immediately because they are taking law into their hands.”

*Bamdev Gautam, Deputy Prime Minister and Home Minister, who is also a standing committee member of the UML.*

“Our friends who could not pursue education due to their involvement in the armed conflict but have the necessary skills and knowledge should also receive due [academic] recognition.”

*Dr. Baburam Bhattarai, Finance Minister, adding that the “skills and knowledge” of former insurgents should be changed into academic degrees and distributed through an open university.*

## TRANSITION

**RENAMED:** The name of three municipalities by the cabinet. Prithvi Narayan municipality has been changed into Gorkha municipality; Mahendra Nagar municipality into Bhim Dutta municipality; and Tribhuvan municipality into Ghorahi municipality.

**APPOINTED:** Uttar Kumar Shrestha as the general manager of Nepal Electricity Authority; and

Sugat Ratna Kansakar, as managing director of Nepal Airlines Corporation.

Yogendra Yadav, Ram Mani Pokharel, Sunil Babu Shrestha, Ayo Devi Yami, Prem Kunwar, and Ram Dev Singh, as members of the National Planning Commission.

**PROMOTED:** Senior Superintendents of Police Bimala Thapa and Parbati Thapa, as Deputy Inspector General of Police.

**KILLED:** Rifleman Yubraj Rai, 28,

of the 2nd Battalion of the Royal Gurkha Rifles, died from wounds sustained during an operation south of Musa Qala in the southern province of Helmand, Afghanistan, on November 4.

**RECALLED:** The ambassadors to the United States and India, Dr. Suresh Raj Chalise and Durgesh Man Singh, by the government.

**BANNED:** Rallies and public demonstrations, from Maitighar Mandala, by the Kathmandu District Administration Office.



## FOLK TUNES

# Diversity In Unity

*Every country has its own folk music but each of them have some commonalities as well*

By A CORRESPONDENT

**F**olk tunes have long history and most of such tunes evolved along with the human civilization.

Some such tunes even represent the ancient time. Of course, there are certain modifications but such folk tunes do reflect the original tunes of the past.

Organized by the Nepal Music Center in association with the Norwegian Embassy to celebrate 100 years of Nepali music recording and 25 years of Music Nepal, the four day International Folk Music Festival 2008 brought the folk music from around the world to Nepal.

Inaugurated at Nasal Chowk Bashantapur and performed at the Gokarna Forest Resort on November 5, the folk tunes will be performed in other cities also.

At the start, Manjushree dance was played followed by Mangal Dhun in which all the performing artists circled the Nasal Chowk.

The International Folk Tunes Festival is first of its kind held in Nepal where one could listen to the folk tunes of various parts of the world.

Nepal is known as a country of diversity in terms of geography, culture and people. Similarly the country is full of diverse music, too. From hills to mountain and plain, all different indigenous communities living in these areas have their own music instruments.

From life to death and festivals to mourning, various communities use different kinds of music instruments. This is true not only for Nepal but applies globally. All the countries in the world have diversity in folk tunes.

The dancers from far western Nepal performed the very traditional dance Hud Keli, which is normally performed during Dashain and Tihar festivals. A group of men dressed in flowing skirts

and carrying different instruments danced and sang songs. To show diversity of Nepal, Tharu dancers performed another interesting but different dance with folk tunes. The Sakhiya Paiya, dance from Dang, mid-western plain, has its own charm and cultural value for Tharu community. The dance, which is normally performed during the period of Maghi, new year of Tharus- is basically for young boys and girls.

After Tharu dance, Norwegian musician Svein Westad performed his music. As the surrounding was filled with soft sound of Murchunga, the Norwegian musician performed his folk tune.

Being very similar to Nepali, Rajasthan folk artists attracted a large number of crowd when they started their performance. Rajasthan folk artists who played peppy music and the lead vocalist showed very interesting vocal range luring the audiences. Performed during the wedding time, the Rajasthan folk song called Amba Bari Lagani enthralled the crowd. Similarly, the artists from Africa and other parts of the world, too, performed their ethnic and traditional music.

At a time when many folk music are gradually disappearing, this kind of festival helps preserve them. Although there are different styles of performing music, what they have in common is the sound and inner expression regarding love and affections. This is what one could find in the international music festival.

"We are very happy to be a part of this kind of program which helps preserve the folk tunes which evolved through the human evolution. One can find different tastes of music here," said Norwegian ambassador to Nepal Thor Gislesen.

"Nepal is a country of diverse folk songs and folk music," said cultural expert Satya Mohan Joshi, highlighting the importance of folk songs and tunes in the day to day life. "This is a part of our history and culture." ■

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