

Transitional Governance: The Hard Choices

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Where Are We Now?

The end of the conflict in 2006 was greeted with great relief by the people of Nepal who lived in fear and uncertainty for 10 years. The signing of the Comprehensive Peace Agreement (CPA) in November 2006 and the emergence of the democratically elected government in May 2008 led by the UCPN- Maoist gave hope to the citizens of New Nepal. With these two major events Nepal entered into a new phase of constitutional development and with a Constitutional Assembly (CA) to formulate a new constitution, the citizens were full of hope for a new dawn of democracy, peace, development and prosperity. There was strong support for peace among the poor

and excluded communities, regardless of their experiences during and views of the decade-long conflict. Even the victims of conflict were not calling for revenge, retaliation or even transitional justice, but rather wished for a process that would ensure sustainable peace and renewed development efforts to improve the livelihoods of the poor and the marginalised.

Three years after the CPA was signed, and after almost 18 months of elected government, the situation is different. The coalition government led by CPN-Maoists resigned over the controversy regarding the demand for the dismissal of the Chief of Army Staff (COAS). A new government led by the CPN-UML was installed. The transition has not gone as well as the people expected.

The citizens of Nepal are still waiting for the peace and development they hoped for after Jana Andolan II. In an article I wrote for this magazine (Issue 11, vol. 3, September 2008) I suggested that the new government faced myriad challenges; "short, medium and long term problems that need to be addressed. These challenges range from addressing the shortages of essential commodities, dealing with the law and order situation, to the strengthening of institutions to ensure the sustainable growth and development of the country". In addition to economic problems, political tension is heightened since the resignation of the coalition government led by the UCPN Maoist. The new government led by the CPN-UML is faced with significant problems: political, economic and social.

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The business of the Constitutional Assembly has been affected by the disruption of CA meetings by the now opposition UCPN Maoist party. As a result the budget which was presented to the Assembly several weeks ago took a long time to be approved by it and therefore government business is in danger of slowing down. Prices of essential commodities are sky rocketing, inflation is on the rise and unemployment, especially in rural areas, is high. The political stalemate between the governing coalition and the UCPN Maoist continues over the dismissal of the former Chief of Army Staff (COAS) by the then Prime Minister (UCPN Maoist) and the immediate re-instatement by the President. Meanwhile citizens are concerned about their country's stability. When will they experience real peace?

Nepal is going through a challenging political transition and political commentators, donors, development practitioners and ordinary citizens have no doubt about the fragile nature of the transitional government and its inability to govern effectively. The disruption of the CA meetings continues to affect the functioning of the government. The constant interruption of daily business of people through strikes, shut downs, extortions and intimidation continue to challenge the government's ability to govern. Long hours of load shedding during the dry months continue to critically affect the functioning of businesses in all sectors of the economy. The challenges the central government faces, the inability to reach a consensus in the formation of workable local governments in the DDCs, Municipalities and VDCs is likely to affect development activities at the local level. These can be read as signs and symptoms of a country going through a challenging political transition.

The Challenges of Transition

There are significant constraints to Nepal's achievement of sustainable peace. Nepal's history of lack of effective governance

by the central government and at the local level reminds us that little has changed since Jana Andolan I in the 1990s or Jana Andolan II three years ago. Many of the country's socioeconomic problems even before the insurgency had their roots in the higher echelons of power; constant interference in key economic decisions, frequent transfers of experienced staff without any rational explanation and working outside the legal framework of government. Past governments have often not been able to protect the institutions that have been mandated to formulate, execute and implement its policies, plans and programmes. Continued political instability, impunity and inconsistent leadership that is unable and unwilling to spearhead coordination and cooperation among public service institutions have contributed to the current governance problems. The resulting confusion has led to significant constraints on efficiency and effectiveness of governance during the transition processes. Inefficient or ineffective procedures and a lack of good management practices can have critical impact on performance of these institutions.

The Centre for Study of Civil War (2005) clearly defined transitional governance institutions as "political institutions that emerge in a society when the status quo is unsustainable. Such situations can arise after a civil war (with the defeat of the government or a negotiated change in governance), defeat in an interstate war, withdrawal of an occupying force, the collapse of an authoritarian regime, or the end of colonial rule. Transitional institutions may or may not be explicitly designed to be temporary. These institutions can be imposed or negotiated or something in between. They can stem from an external power or may be completely indigenous in origin. They might reflect the old order to a high degree (as often is the case in de-colonisation) or, alternatively, constitute a revolutionary departure from the past" (CSCW-2005).

Likewise, Nepal's transitional governance institutions emerged from a decade old armed conflict and the coming together of the CPN Maoist and the major political parties (NC, UML and others) to collapse and replace the royal regime. The government's efforts have been slow in strengthening governance institutions that will deliver peace through reconciliation, reconstruction and development. The Peace and Reconciliation Ministry, with the support of the UN agencies and international development and donor agencies, are providing support to the peace process as well as the government's efforts to get a governance framework in place for reconciliation, reconstruction, peace and stabilisation. The current marathon negotiations by the major political parties to reach a consensus on ways to form a unity government are efforts in the right direction. Nepali citizens, however, are cynical about the outcome of these consultations and negotiations and question the sincerity of the political players.

Remembering the Impact of the Conflict on the People.

Nepalis have not forgotten the violence and consequences of the 10 year insurgency: the physical horrors of indiscriminate bombing and maiming of innocent citizens, the social consequences of violence against women, the fracturing of communal and family structures, the political debilitation and disenfranchisement emerging from daily violence and the deliberate fostering of a culture of impunity and fear are still very fresh in their minds. Although the overall physical and psychological violence has reduced in the past year there are still many forms of violence (intimidation, extortion, kidnapping, etc.) rife in cities and other areas of the country. Nepali society can no longer afford to ignore the significance of past trauma and violence or the continued instability that is affecting their livelihoods. People are keen to rebuild their lives and

forget the violence that ruined their families, social institutions and infrastructures, and jeopardised identities based on place and community. The need of the hour is to formulate policies that focus on developing the government's capacity to lead the peace process. The government needs to address and seek to redress the consequences of the violence through the peace process.

The Problems of Transition Continue: Governance Institutions' Capacity to Deliver

As stated earlier in this article, even with the political changes over the last three years Nepal continues to experience socioeconomic, political, and law and order problems. The government's inability to cater to the needs of its citizens is a result of the breakdown of the country's infrastructure and serious human resource constraints. The state's ability to deliver services, especially in the social sector such as health and education, has been severely affected particularly in rural areas. The government's failure to deliver in key areas such as education and health has resulted in the booming private sector education and health institutions that now cater to a vast majority of the population. The problem of governance in general, and management problems in public sector institutions in particular, have also adversely affected efforts to enhance capacity and improve performance in key sectors of the economy. Institutions responsible for ensuring the country's socioeconomic growth and development have been blamed for the country's poor economic performance.

The Role of Public Sector Institutions during the Transition

Public sector institutions in Nepal play a vital role as vehicles for government operations: managing programmes, finances, and human and other resources. These institutions ensure that a legal and regulatory framework is in place to back policies and programmes and

are responsible for the formulation of policies and the execution of plans and programmes. These institutions are also responsible for monitoring and evaluating development projects, programmes and processes. All these responsibilities require an effective institutional framework. The success or failure of these institutions also often depends on inter institutional relationships (sector and cross sector ministries, central agencies, decentralised local bodies, provincial and districts). The policies, structures (formal and informal), systems and processes as well as financial and human resources available to these institutions determine their capacity to operate successfully.

Development Partners Dilemma

Nepal's development partners are aware that while the capacity gaps identified within the country's institutions are not unique, applying general capacity development (CD) solutions have not been successful due to the country's economic, political, social, cultural and ecological environment. The desire of the development partners now is to search for appropriate solutions that best fit the particular circumstances of Nepal. The need is to focus on improving core institutional functions, particularly those whose performance directly affects socioeconomic development, law and order, the legal and regulatory framework and national leadership. A new realisation is that a transformational approach to capacity development is required to tackle Nepal's serious capacity constraints. It is the government's duty to work with development partners to identify key capacity gaps and to assess appropriate CD intervention strategies to address these gaps.

The Need for a Stable Transitional Government

Nepal needs a strong stable transitional government to continue the process of establishing and sustaining a central authority that is capable of governing. Building and sustaining a strong central government during

the transitional period requires solving inter and intra party divisions, forming a strong central government and equally strong local governments. It also entails developing the capacity of public service workers in order to deliver efficient and effective services. Good governance during transition means dealing with urgent economic, social and political issues and paving the way for the election of a government with the full mandate of the people. Peace can be sustained only when power is attained through political rather than violent means and when government institutions are legitimate.

Transitional Political Administration and Governance Priorities

Most transitional political administrations are characterised by a number of political and governance challenges. It is suggested that transition governments often have short lives as their mandate is to prepare the way for an elected government with a defined mandate (4 or 5 years) to govern. In Nepal, the transition government will govern until a new constitution has been written and adopted by the CA, paving the way for a general election which will see a democratically elected government in place. But as experience has shown, a conducting successful election on its own in post conflict situations does not guarantee political stability and good governance. In many post conflict situations, the capacity of the state to govern remains fragile due to the continuing issues of legitimacy, the lack of resources and flight of labour, senior civil servants, professionals and technocrats. Furthermore, as evidence shows in Nepal's successful electoral process, successfully conducting elections alone does not immediately result in the new government being able to effectively extend its authority and assume its responsibility throughout the country. Thus, in post conflict situations,

governments also face the challenge of showing results sooner rather than later, proving their effectiveness while, at the same time, accommodating the interests of the opposition and providing the so-called peace dividends. The major parties need to put aside their party interests and support the rebuilding of the country.

For effective service delivery, the country needs the coalition of a strong civil service, civil society, bilateral and multilateral agencies, and NGOs. Indeed, it is critical that in a post conflict context all institutions and services reach all the people, especially in rural or remote areas. Such efforts to re-establish public services as a matter of priority also serve the purpose of returning to normality. The opening and running of schools, access to health care and clean water are but a few of the necessary peace dividends. Investments in these sectors need to start early since tangible results take years to show.

Management of Human Resources and the Issue of Corruption

Despite the abundance of human and natural resources, ordinary people in many post conflict countries continue to be poor and do not benefit from their nation's wealth. The human development index in these countries is usually very low. This is often the result of the structural damage done to the country's economic potential by a prolonged and devastating civil war caused in part by decades of mismanagement, corruption and marginalisation of the rural population. Thus, in post-conflict contexts, sustainable development efforts should be aimed at strengthening public accountability and transparency to ensure that the country's

resources serve the interest of the people. Effective mechanisms are also required to ensure transparency and accountability of all state revenues. The above would require concerted efforts on the part of post-conflict governments to take control of the national resources and ensure equitable distribution of the benefits accruing from them.

Corruption is usually prevalent in most post conflict situations and Nepal is not an exception. Corruption acts as a negative incentive for investments and the flow of Overseas Development Assistance (ODA). It is therefore advisable to look into the issue of corruption as early as possible in order to create an enabling environment both for domestic and foreign investment. Indeed, it could be argued that efforts are needed to prepare grounds for countries emerging from conflict to join entities such as the SAARC to promote good governance in political, economic and corporate spheres.

Reconciliation

Reconciliation should be a priority during a transition. Having endured a divisive and brutal armed conflict there is merit in reconciling a polarised society and removing political immobility. In fact, creating an environment of political collaboration among the different factions should be one of the objectives of peacekeeping missions. Several models of reconciliation have been tried in East Timor, South Africa, Rwanda and Sierra Leone. These include the establishment of Special Courts, Truth and Reconciliation Commissions, Traditional Healings, etc. The process of reconciliation has been slow in Nepal. A reconciliation process needs to be put in place to deal with the physical and psychological pains of the past years.

A successful transition would, therefore, require the government and all political parties, civil society, NGOs, other development agencies and the private sector organisations to work towards finding an appropriate approach to reconcile a polarised society. Truth and justice helps a society to put war behind it while inculcating a culture of justice and rule of law and making efforts to changing the culture of impunity. A National Reconciliation Programme, which will support equally strong local reconciliation groups could assist Nepal's peace process.

Restructuring the Economy for Greater Stability

For Nepal to be able to overcome its widespread poverty and high rate of unemployment, its transitional government needs to focus on its economic policies in areas where poverty continues to drive active labour to migrate or to engage in criminal activities. Peace restored will not be sustainable until the young unemployed are engaged in meaningful economic activities. The transitional government needs to engage international development partners as well as national NGOs in developing strategies that drastically reduce the levels of poverty caused by the conflict and general mismanagement of the economy by previous governments. It is essential to adopt policies that can help to create new jobs to boost economic growth. A close working relationship between the government and development partners could help the economy to recovery at a faster rate, thus creating potential for greater stability. ■

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