

Consolidating Peace

Nepali Constitution-Making: A Filipino Peace Practitioner's Perspective



Professor Ed Garcia

September 2008

About International Alert

International Alert is an independent peacebuilding organisation that has worked for over 20 years to lay the foundations for lasting peace. Working in over 20 countries, we aim to shape policies and practices that affect peacebuilding, and help build skills and capacity through training. Our regional work is based in the African Great Lakes, West Africa, the South Caucasus, Nepal, Sri Lanka and the Philippines. We work on cross-cutting issues critical to building sustainable peace including business and economy, gender, governance, aid, security and justice. We are one of the world's leading peacebuilding NGOs with an estimated income of £8.4 million in 2008 and more than 120 staff based in London and our 11 field offices.

Alert has been working in Nepal since 2002. We work to contribute to the reduction of exclusion by empowering ordinary people to participate in political decision-making, and promoting equitable access to economic opportunities and inclusive security and justice at the community level. In doing so, we work to build capacity among civil society, business, politicians, the public administration and donors to make demands constructively and negotiate together to help the state meet the demands of Nepali citizens.

About Friends for Peace

Friends for Peace is a gathering of respected Nepali citizens who have come together to share their experiences and resources aimed at exploring peace options in the country. It has established a modest resource centre in Kathmandu, open to the public, regularly organising inter-active sessions as well as making available research findings and relevant publications.

About the Author

The author serves as senior policy advisor at Alert. He was a member of the 1986 Constitutional Commission which drafted the 1987 Constitution of the Republic of the Philippines. He taught Political Science at the University of the Philippines and inter-disciplinary studies at the Ateneo de Manila; worked at the International Secretariat of Amnesty International and was founding convenor of its Philippine Section. Among the publications he authored were: *Journey of Hope: Essays on Peace and Politics*, and *the Human Rights Reader*.

Acknowledgements

The Alert mission would like to thank the following: Padma Ratna Tuladhar, Daman Nath Dhungana, Laxman Aryal, Yash Ghaj, Jill Cottrell, Ian Martin and the Royal Norwegian Ministry of Foreign Affairs. Its work would not have been possible without their cooperation and engagement.

© International Alert 2008

All rights reserved. No part of this publication may be reproduced, stored in a retrieved system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without full attribution.

Edited by David Ackers

Layout by Christina Rutherford

Front cover image: © International Alert/Chris Underwood

Consolidating Peace

Nepali Constitution-Making: A Filipino Peace
Practitioner's Perspective

Professor Ed Garcia

September 2008

Contents

Acronyms	3
Foreword	4
Executive Summary	5
Introduction	7
1. A Personal Context	7
2. A Comparative View of Two Asian Countries	8
3. Nepali Conjuncture: Multiple Transitions at Different Stages	9
Constitution drafting in situations of conflict	11
4. The Nepali Consultations: Diverse Reflections	12
5. Selected Learning Relevant to Nepali Constitution-Making:	
Peace, Process and People Before Political Partisanship	16
6. Learning from the Nepali People and Peace Process	18
7. Drawing Inspiration from Nepal's Peace Experience	20
References	22
Endnotes	24

Acronyms

ADB	Asian Development Bank
CASU	Constitutional Advisory Support Unit
CSOs	Civil Society Organisations
DfID	Department for International Development (UK)
MoPR	Ministry of Peace and Reconstruction
NGOs	Non-Governmental Organisations
NPA	New People's Army (Philippines)
PCMC	Peace and Conflict Management Committee
PLA	People's Liberation Army (Nepal)
UNDP	United Nations Development Programme
UNMIN	United Nations Mission in Nepal

Foreword

The new constitution will endeavour to restructure how state and society functions in Nepal. The challenge is to design a process for writing and implementing the constitution that consolidates the hard-fought peace. In a country that has been fighting for peace and justice for decades, expectations of the people are high.

In June 2008, as a civil society activist and co-convenor of the Peace and Conflict Management Committee (PCMC) mandated to monitor the implementation of the Comprehensive Peace Agreement, I visited International Alert in London to discuss how Alert, as an international peacebuilding organisation with 20 years experience, could support in Nepal's constitution process. The outcome was a partnership initiative between the PCMC, International Alert and Friends for Peace (FFP).

Building on the four year partnership between Alert and FFP, a local peacebuilding organisation in Nepal, the outcome was a mission in August 2008 that sought to share Asian experiences of consolidating peace through constitution-making. The mission was led by Professor Ed Garcia, Alert's Senior Advisor and member of the Constitutional Commission which drafted the 1987 Constitution in the Philippines, and was supported by Alert-Nepal's and FFP's programme teams in Kathmandu.

The PCMC is pleased to encourage such international support and solidarity for the implementation of a Nepali-owned and Nepali-led peace process. This report contributes to this process by summarising the key reflections and lessons from the extensive local and international knowledge captured during the week-long interactions, facilitated through this partnership initiative.

Padma Ratna Tuladhar

Co-convenor, Peace and Conflict Management Committee
Advisor, Friends for Peace

Executive Summary

A critical phase in consolidating peace in Nepal involves the drafting of a Constitution that tackles the underlying issues of the armed conflict which erupted in the mid-nineties, while addressing the aspirations of the popular movement that resulted in the 2006 political upheaval.

The signing of a locally-initiated, comprehensive peace agreement in 2006 marked a defining moment in Nepal's history. Drafting a new constitution would be a decisive turning point in the country's path to peace. If and when a constitution is produced, the Nepali people can truly become the co-authors of the basic charter of the land and the architects of their own destiny.

From the perspective of a Filipino peace practitioner who served as a member of the Constitutional Commission which helped draft the 1987 Philippines Constitution, there are a number of pertinent lessons to be drawn from the Philippines experience of constitution-making – lessons that are readily relevant to crafting a Nepali Constitution that builds sustainable peace.

International Alert's August 2008 mission to Nepal sought to share these experiences, and to learn from the reflections of a diverse range of actors in Nepal. This included debate and reflections from Constitutional Assembly members, constitutional experts, political party and government representatives, international organisations and diverse range of civil society thinkers and activists.

No two conflict contexts are alike, but certain similarities between Nepal and the Philippines stand out that enable learning and sharing to take place, thereby advancing reflective practice. Three interrelated themes salient to the current challenge of Constitution-making in Nepal stand out in particular: peace, process and people.

Consolidating peace, first of all, involves designing a charter that addresses the aspirations of the people – both the country's majority, as well as its minorities. To do so, it must respect the triple bedrock of human rights, social justice and people's participation. Governance, justice and the rule of law, and restructuring the security sector, are important elements to consider in this process.

Secondly, if consolidating peace is to be meaningful, then it must be owned by the people, who should occupy a place at the heart of the constitution-making process. Political leaders and Constituent Assembly members are critical actors, but citizens and civil society organisations are equally important stakeholders, and need to be consulted regularly and in a timely fashion. This process requires the formation of viable institutions and mechanisms to resolve people's differences, sustaining vigilance and ensuring oversight capacity. These are vital even after drafting the charter, so as to ensure its effective implementation.

Putting people before parties, partisanship and regionalism requires both vision and commitment – a task of immense importance in Nepal. A constitution should thus: empower regions, but strengthen national unity; contextualise federalism and the role it plays in addressing different concerns; and forge a consensus on the people’s priority concerns.

Finally, this modest report identifies a number of key lessons to be learned from the Nepali experience that may contribute to advancing the pursuit of peace in the Philippines and elsewhere. These include the following: strengthening the belief that building peace is possible, step by determined step; believing that a reliable process requires forging relationships, where trust is earned patiently over time; building incremental agreements, while undertaking a marathon journey; generating options from seeming stalemates; and respecting outcomes and results from contentious contexts, while developing a capacity for compromise, which may be necessary to transform situations.

Introduction

International Alert's¹ August 2008 mission to Nepal had a two-fold objective: to share a peace practitioner's perspective on constitution-making,² relevant to strengthening the peace in Nepal, drawing lessons from the two decades since the Filipino Constitution was instituted in 1987; and, at the same time, to draw lessons from the ongoing peacebuilding experience in Nepal that could be relevant to the current peace process in the Philippines.

Alert's visit took place as a "partnership initiative" between International Alert, the Peace and Conflict Management Committee (PCMC) and Alert's partner, Friends for Peace (FFP).³ This was facilitated by Padma Ratna Tuladhar, a human rights and peace advocate, co-convenor of the PCMC, advisor to FFP and a former minister of health.

The mission thus consulted with and held dialogues with diverse sectors of Nepali society: Constituent Assembly members and constitutional experts; political parties and their respective leaders; representatives from the government's peace institutions, in particular, the Peace and Conflict Management Committee (PCMC) and the Ministry of Peace and Reconstruction (MoPR); civil society organisations and representatives of women and youth, the indigenous peoples and minorities, *Madhesis* from the Terai plains and the *janajati* (hill tribes); business leaders; and members of the international community in Nepal, both inter-governmental and non-governmental.

1. A Personal Context

As a member of the 1986 Constitutional Commission, I helped to draft the Charter of the Republic of the Philippines, which was ratified overwhelmingly by the people on 2nd February 1987.⁴ This experience was to be extremely valuable in the Alert mission to Nepal. Equally relevant was the experience of having chaired the public hearings committee, of the same Commission. These hearings led to efforts that expanded the consultation process, which brought people in contact with members of the Constituent Assembly. We invited their opinions and discussed relevant issues to improve the draft Constitution. The aim of this was to create a document that would reflect their views and which would recognise the people as co-authors of the basic Charter.⁵

As a member of the "parliament of the streets", as the Filipino peace movement for change in the 1980s was known, I had "crossed over", so to speak, from the ranks of the Philippines' non-violent resistance against the dictatorship, to the constituent assembly.

I saw the endeavour as a way of confronting the country's critical challenges: the problem of power; the exclusion of the majority of people in decisions which affected their lives; and the resulting poverty, injustice, landlessness and

lack of socio-economic livelihood experienced by people in urban and rural areas.

The task of drafting a constitution involved defining the limits of power; ‘to establish the structures of government and specify its powers; to guarantee the basic rights of citizens against the possible excesses of the State or the possible abuse by those in power, while defining the process by which the sovereign people can change the same basic document’.⁶

The imperative, as I saw it then, was to design a process that was inclusive and more responsive to the aspirations of the people. In brief, the task entailed both a historic vision and a pragmatic strategy of reframing mindsets and building institutions – institutions capable of protecting basic rights and responding to the felt needs of the most vulnerable, as expressed in the upheaval that brought down the established order.⁷

This experience, I believe, could shed some light on questions raised in Nepal’s present conjuncture, at a time when Nepali colleagues⁸ are coming to grips with the task of formulating a new constitution in the context of advancing a peace process. Nepal’s Constituent Assembly too, had moved from opposition in the countryside and urban areas, to participate in a task designed to craft a charter motivated by a common purpose: to empower the majority – the powerless and poor – and thus help redress past injustices or historical grievances.

2. A Comparative View of Two Asian Countries

The question could be asked, why Nepal and the Philippines? And what striking similarities do they have relevant to the task of peace-related constitution-making? Despite obvious differences between a landlocked country wedged between two giant nations, and an archipelagic country with 7,107 islands sprinkled in the expanse of Southeast Asia, a number of compelling factors stand out in any comparison between Nepal and the Philippines:⁹

- **People’s power:** Both Nepal and the Philippines share the distinction of being the only two countries in the world that have experienced people’s power upheavals not once, but twice, resulting in dramatic changes in the political leadership over the last two decades;
- **Maoist presence:** The most significant Maoist challenges in Asia are found in both Nepal and the Philippines, the heart of the struggle originating in the countryside, using protracted armed struggle as part of a political strategy aimed at the capture of state power;
- **Peace process:** In both countries, significant efforts have been invested by the major stakeholders in peace processes, though with varying outcomes: a comprehensive peace agreement has been signed in Nepal; an agreement on human rights and international humanitarian law has

been signed in the Philippines, but there has been no progress in formal talks under the current leadership;

- **Political parties:** A common thread in the political history of both countries has been the role of political parties – meaning to say, their capacity or inability in delivering the promise of profound social change in the aftermath of people’s power experiences;
- **Armed forces:** The armed forces have been involved in shaping political events in both Nepal and the Philippines, and the question of imposing civilian authority over the military remains a critical challenge in both settings;
- **Regional diversity/indigenous peoples:** Both are “nations of regions”, with a strong sense of regional diversity and affinity; such diversity, and the importance of socio-economic and political inclusivity, have become important concerns, with the political centres seriously removed from the disadvantaged rural areas and districts; and,
- **Food, energy, climate insecurity:** The linkage between peacebuilding and food, and energy and climate insecurity, are equally relevant to Nepal and the Philippines, both countries figuring prominently in the list of countries that have a high risk of political violence due to the impact of climate change.¹⁰

A final thought may be added dealing with **Geo-political concerns**. Though the situations in the Philippines and Nepal are not considered global flashpoints by any standards, they nevertheless share common constraints. The New People’s Army (NPA) in the Philippines and the People’s Liberation Army (PLA) in Nepal have both been labelled as “terrorists”, in an attempt to paint these armed groups as somehow marginal actors in the so-called “global war on terror”. At the same time, it is worth recalling that the Philippine Constitution was crafted in the shadow of US regional hegemony. This manifested in the occupation of what then was the largest US military presence outside mainland America: Clark Air Field and Subic Naval Base, which together hosted a combined presence of approximately 40,000 US troops. In the case of Nepal, regional powers like India and China, as well as other international powers, have also cast their shadows on Nepal’s efforts to march to the beat of its own drum.

3. Nepali Conjuncture: Multiple Transitions at Different Stages

A Comprehensive Peace Accord was signed by the seven political party alliance and the Communist Party of Nepal (Maoists) on 21 November 2006, after a decade of protracted armed struggle waged primarily from the countryside.

After informal contacts between government representatives and Maoist leaders in October 2000, local peace advocates facilitated several intermittent rounds of

talks, in 2001, 2003 and 2005.¹¹ In April 2006, a people's power movement helped to restore a new democratic order in Nepal,¹² which provided the conditions conducive to accelerated talks. These resulted in a 25-point ceasefire code of conduct in mid-2006, an eight-point understanding in the same period and the establishment of an interim Constitution Drafting Committee,¹³ which submitted a document for approval by the main negotiating parties in August 2006.

After an agreement on a timeline involving arms management, the dissolution of the monarchy, the creation of an interim parliament and government (including local bodies), and the terms of reference for elections to the Constituent Assembly, a Comprehensive Peace Accord was agreed in November 2006.

Over two years later, in April 2008, democratic elections voted in members to the Constituent Assembly, which was mandated with writing Nepal's new constitution. The election used a combined system of first-past-the-post, proportional representation and direct nominations. Three major political forces emerged, with the Maoists enjoying a plurality. This gave them the prerogative of forming a new government. The ruling coalition's mandate, as drawn from the electoral outcome, was to govern in such a manner as to reflect the aspirations of a majority, in a process that was self-styled as more representative and democratic than previous exercises. This is made possible by means of "proportional inclusion".

The Constituent Assembly is primarily tasked with producing a new Constitution within two years, with the aim of addressing the aspirations of the second *Jana Andolan* (people's power movement). An interesting feature of the Nepali Constituent Assembly, however, is that it is also meant to provisionally serve as both a legislature and act as the executive government. The fact that it needs to confront these multiple tasks simultaneously during the interim period, exposes it to potential leadership gridlock, and deep partisan and regional divisions among the 25 political parties which form part of the constituent body. At the other end of the spectrum, if it dispenses with the necessary checks and balances normally provided by the separation of legislative and executive powers, it could lead to less accountability in governance. This requires taking effective short and medium-term measures within a long-term framework.

This fundamental law of the land then is somehow meant to help consolidate the peace within the context of multiple transitions and the multiple tasks the Constituent Assembly needs to undertake in the interim. It is this singular situation which poses a unique set of challenges:

- Transitioning from a period characterised by waging war on several fronts to a situation where the predominant task is to build a **durable peace**;

- An equally daunting transition of a political system requiring change from a constitutional monarchy to a **secular federal republic**, with **multi-party democracy** as one of its central features; and,
- The distinct transition from a situation characterised by discrimination at different levels of society, towards a more inclusive, democratic order characterised by more **inclusive processes** (described as “proportional inclusion” in the Interim Constitution), addressing such concerns as that of: lower castes (in which *Dalits*, or “untouchables”, are at the bottom), minorities, *Madhesis* (from the Terai plains), *Janajatis* (hill tribes), women (who now constitute 33.2 percent of assembly members), and disadvantaged regions and classes.

Constitution drafting in situations of conflict

No two conflict contexts are alike, though there may be certain elements that are relevant in shedding light on comparable situations. In drafting a constitution, the socio-political context is immensely important and the particular conjuncture equally so. It is for this reason that the following Filipino context is recalled.

It is worth noting by way of comparison with Nepal that during the crafting of the Philippine Constitution in 1986, the country was likewise negotiating the transition in the following areas: firstly, from what was then called “constitutional authoritarianism” (a euphemism for what in effect was a “conjugal dictatorship”) to representative democracy; secondly, from a regime that perpetrated human rights violations with impunity, to the rule of law, characterised by full respect and protection of human rights; and, thirdly, from a country’s state of dependency, lived in the shadow of the country’s former colonial ruler, the US, navigating to become a sovereign nation promoting its own national interests.

Ratified overwhelmingly in early 1987 in the wake of a people’s power experience, the Philippine Constitution provided the space to build a new future. It was in that particular conjuncture that the following priorities gained prominence:

- Sustaining the people’s vigilance and strengthening the role of citizens and their organisations;
- Forming principled political formations and supporting political parties that gravitated around platforms/programmes of government, rather than patronage and personalities;
- Building viable institutions;
- Catalysing security sector reform; and,

- Deepening the people's peace agenda and undertaking people-centred work.

Having identified the tasks at hand, leaders and people failed to follow through and ensure that the gains made were promoted and protected ceaselessly. Rather than advancing the process that had drawn inspiration from the power of the people, old ways of working and doing politics undermined the potentials of a more meaningful peace.

The Philippine experience, to my mind, provides an example of a rare opportunity that was missed. The priorities for bringing about peaceful change and sustainable peace had been identified, but the opportunities were somehow squandered. It is the hope of these reflections that the missteps of experiences past are not repeated on this occasion. In Nepal, a turning point has been reached; it is imperative that there is no turning back.

4. The Nepali Consultations: Diverse Reflections

Alert facilitated and hosted consultations with members of the Constituent Assembly and representatives of the following key sectors of society:

4.1. Constituent Assembly Members, key people from the drafting of 1990 Constitution (such as the Chair of the Interim Constitution 2007 drafting committee); constitutional experts; and political parties and their leaders, with a focus on the eight major parties, but also including representatives of the other seventeen minority parties.

A workshop for over 30 members of the Constituent Assembly now tasked with crafting Nepal's new constitution by 2010 took place with the participation of the United Nations Development Programme's (UNDP) Constitutional Advisory Support Unit (CASU), the former chair of the Interim Constitution's drafting team, a former speaker of parliament, and academics/researchers.

The following concerns which were expressed in earlier conversations with political leaders were largely re-affirmed: learn lessons from the earlier democratic movement of the nineties; create responsive political structures sensitive to the needs of rural areas; address the concerns of diverse nationalities, ethnicities, and geographical areas; be more aware of deep divisions in society caused by gender, class, castes and clans.

Moreover, it was noted that the imperative was to solve deep-seated socio-economic problems and age-old inequalities which required a truly representative political leadership. This will be essential in order to establish the rule of law, the administration of justice, the reform of the security sector, measures to ensure accountability in governance and the full respect for human rights.

Finally, it was argued that the most urgent tasks involved addressing the widespread poverty experienced by nearly half the population in predominantly rural areas, manifested by indicators such as low literacy rates and low life expectancies below sixty years. It was pointed out, however, that the Nepali people's resilience in the face of adverse conditions has defied all odds in what undoubtedly promises to be a marathon climb.¹⁴

The group of constitutional experts, senior legal figures and academics, several of whom had significant experience of past constitution-making in the country, identified three key priorities to be addressed:

- The lack of institutional legal and constitutional support available to those elected members of the Constituent Assembly charged with drafting the new constitution, which risked weakening the process from the outset;
- Development of proposals to catalyse the formation of an academic consortia from universities and law faculties to perform an advisory role on constitutional law; and,
- Increased access for academic and research institutions to the latest international developments and journals to overcome the drawbacks of poor infrastructure. Concern was expressed that without investment in the legal community, a long-term decline of the sector and the further isolation of Nepal would result.

4.2. Representatives from the Peace and Conflict Management Committee (PCMC), and officials from the MoPR.

Formed with the objective of monitoring the management of conflict at a local and regional level, working in cooperation with the MoPR, the PCMC monitors the implementation of the Comprehensive Peace Agreement. They are a transitional institution, which will act only until the high-level Peace Committee is formed.

PCMC members felt they had a vital role to play but had lacked direction to date, largely as a result of being formed just days before elections to the Constituent Assembly and exacerbated by a lack of sufficient resources and ongoing political uncertainty in the period following the elections. Two points were stressed in the discussions:

- A consensus was reached that it was essential for the PCMC to reach beyond Kathmandu in order to ensure its mandate was genuinely national and that all communities were served by the group's work. In particular the emergence of Local Peace Committees, 35 of which were currently in existence throughout Nepal, would be an essential network for the PCMC to base much of its outreach work on.

- The meeting underlined the importance of the PCMC's role and recognised that resources were required to enable the committee to undertake its work. Members were urged to adopt a marathon mentality for the group's essential work across professional and geographic boundaries, in order to fulfill its mandate. This could include, for example, instituting a series of public hearings in conjunction with other local institutions as had happened in the Philippines.

This group collectively felt that there was a real need to engage wider Nepali society with the constitution-making process and that therefore members of the Constituent Assembly needed to be supported in maintaining their links with local areas and communities in order to reflect their views in the basic charter.

4.3. The leadership of Civil Society Organisations (CSOs), including business, women, youth, Madhesis, Janajatis, Dalits, and constitutional and legal experts from academia and the legal profession.

The business leaders' group consisted of individual entrepreneurs, representatives of women's business organisations and the state hydro-energy sector. The meeting with business leaders underscored three issues:

- There was a unanimous view that the peace process needed to revive Nepal's economy, generating new jobs and employment opportunities. However, they felt that the constitution needed to set the parameters for how an economy conducive to job-creation and growth was to be achieved, which risked a delay in delivering this objective.
- Concern was raised over the impact of a federal structure on how business is conducted across the country. It was felt that this question needed to be answered and clarified in the constitution.
- The need to ensure the inclusive character of Nepal's new economy was stressed and, in particular, that it should be extended to parts of society that had been neglected to date, such as indigenous groups.

In the meeting with civil society leaders, key actor-specific interests emerged:

- It was pointed out that while a third of CA members were women, there is still a need to better reflect the specific needs of different sections of Nepali society, such as reproductive health and inheritance rights for women. Indeed, the importance of gender perspectives cut across all the sectors and was given attention in the discussions on most mainstream issues.
- A 'Youth Constitution' has been facilitated by the Nepali NGO Alliance for Peace. Written in simple and accessible language, it outlines youth aspirations, both of those in and out of school youth.

Preparation for the all-important meeting with indigenous peoples and low caste groups consisted of careful study of an excellent document produced by the Center for Human Rights and Global Justice, of the New York University School of Law, entitled *Recasting Justice: Securing Dalit Rights in Nepal's New Constitution*.

In this meeting, three central concerns were raised:

- The lack of measures to address the needs of Dalit communities in the interim constitution that will be in place until the new document is created;
- The need to promote a sense of national unity that is all inclusive of individual ethnic identities in the context of discrimination in Nepali society that is deeply ingrained which could take generations to overcome; and,
- The urgency of tackling discrimination experienced by regions outside the Kathmandu valley in the provision of public services. Such underlying discrimination needs to be directly addressed by the new constitution and reinforced by decisive action taken by political leaders.

4.4. Members of the International Community: the United Nations Mission in Nepal (UNMIN), CASU, DfID, Asian Development Bank (ADB) and Embassy representatives.

This group included participants from a wide range of NGOs operating in Nepal and representatives from donor government departments, for example DfID, and the ADB alongside the leadership of CASU, among others.

Among the insights shared in the session with representatives of the international community, three ideas stand out:

- This was a time of tremendous opportunity for Nepal but that there was a risk that people's expectations, which were also high, were not being met; a temptation for political leaders was to attempt to include every aspiration in the constitution, but which then could not be implemented, leading to a sense of frustration.
- The constitution was undoubtedly important for Nepal, equally so was the process that would lead up to the finished document; in particular, the group were optimistic that a genuinely inclusive approach would reflect the needs of every community, and in so doing mark a fundamental step forward for the country.
- Of particular interest were the materials already developed by CASU for the purposes of constitution-making and guidelines being produced for assembly members to use in order to achieve inclusivity. Participants

were enthusiastic about the upcoming establishment of a new multi-donor, multi-purpose resource centre for this purpose.

As part of the mission approach, attention was given to the importance of the media, who participated in the press conference and the final day's workshop, as well as the interview conducted by Kantipur Television, whose coverage reached a wide audience in the country.

5. Selected Learning Relevant to Nepali Constitution-Making: Peace, Process and People Before Political Partisanship

Central to Alert's findings is the belief that to consolidate the peace as expressed in the Comprehensive Peace Agreement, there is an urgent need to strengthen the peace elements of the country's constitution.

It is imperative to construct an inclusive charter that addresses the aspirations of its entire people, beyond any form of political partisanship; or to put it differently, guided by a spirit of multi-partisan partnership. To do so, it may be helpful to recommend a priority focus on three inter-related themes: peace, process and people.

5.1. Peace

The Constitution is a work-in-progress aimed at **consolidating the peace**. If the hard-earned peace is to be sustained, then the charter has to be built on the triple bedrock of human rights, social justice and people's participation.¹⁵

In brief, this approach would mean provisions that would give priority to the following principles:

- *Bill of Rights*: respect for the basic rights of persons and sectors, as enunciated in the universal declaration and related covenants, including respect for the rights of indigenous peoples and vulnerable populations such as women, children, workers and peasants; the formation of an independent human rights commission, guaranteed by the constitution *and* endowed with the resources required to perform its task;
- *Social justice*: agrarian and natural resources reform, urban land reform, health, housing, social security and, in particular, the protection of the rights of women and labour; and,
- *People's organisations/participation*: recognition of the role and the protection of the rights of people's organisations, and providing mechanisms for their meaningful involvement in helping to formulate and implement relevant social policies.

Moreover, in drafting the constitution, three further areas deserve close attention and priority in terms of their relevance in contributing to the consolidation of peace:

- *Governance*: including local governments and regional autonomy/federalism;
- *Administration of justice and rule of law*: independence of the judiciary and nominating a body to ensure the independence and competence of appointments to the courts, so as to guarantee the impartial and effective dispensation of justice in the country; and,
- *Security Sector*: civilian oversight of the military, police and intelligence services.

5.2. Process

The key aspiration in the second *Jana Andolan* was the inclusion of people in governance and in the economy.

The interim constitution speaks of inclusive democracy, proportional inclusion and the incorporation of minorities, the marginalised and the indigenous peoples from the rural areas and outside the imperial Kathmandu valley.

Moreover, it is important to identify mechanisms to encourage effective and meaningful participation, such as: consultations with regions and sectors; public hearings; the creation of a Secretariat; the identification of resources, resource people and resource centres; and availing of CASU, soon to be converted into a regional resource centre.

The following five principles may in summary help guide a **process** toward becoming more meaningful and responsive:

- Put **people at the heart of the process**;
- Strengthen people's **participation/consultation**;
- Form **principled political formations** and political parties, ensuring party platforms and programmes of government are translated into principled political practice;
- Build **viable institutions** and design **mechanisms to resolve differences**; and,
- Sustain **vigilance** even after the drafting of the charter – particularly in the implementation of its provisions – and retain civil society's **oversight capacity**.

5.3. People

Drafting a constitution requires putting people first, before political parties and beyond partisanship and regionalism. A multi-partisan and common platform is necessary, both to support and strengthen the peace elements of the constitution.

Three other reflections come to mind:

- **Empower regions, but strengthen national unity**, so as to enable the country to meet global/national challenges like the impact of climate change or the floods in the Terai regions in mid-August 2008;
- **Contextualise the critical issue of federalism**, while addressing standards and concerns that transcend borders. Economic and trade flows – and hence inclusive growth – can, for example, only be fostered through an integrated economy. Similarly, where rivers, plains and valleys ignore borders, and when 90 percent of power generated in Nepal is hydroelectric, agreement on such issues is incredibly important; and,
- **Forge a consensus on the people’s priority concerns**, such as ensuring the impartial and timely administration of security and justice, and providing for the basic needs of people – without any form of discrimination, while preserving the freedoms of its citizens. Likewise, there is a need to forge a consensus on upholding and protecting human rights, *at all times*. These issues need to be prioritised and communicated to citizens.

In brief, it must be stressed that the endeavour to produce an inclusive charter with a strong peace character, would address the common concerns of people across the diverse divides in the country.

Moreover, in the process of constitution-making itself, there needs to be cross-party agreement, so as to ensure inclusivity, resourced by the provision of public hearings and consultations. In parallel, materials and expertise within Nepal of relevance to the constitution need to be made available in more user-friendly formats to members of the Constituent Assembly, as a matter of urgency.

6. Learning from the Nepali People and Peace Process

Exposure to the Nepali experience of building peace and direct exchanges with Nepali peace advocates and leaders at different levels of society, provide a number of critical lessons. These may be valuable in similar situations elsewhere to catalyse efforts that could result in profound, yet peaceful change.

Firstly, **building peace is possible, step by determined step.** Given the right conditions and the continued commitment of people who have put their hand to the plough, it is possible to build peace in a determined and resilient manner. In a country famed for heroic endeavours to reach successive summits, Nepal has likewise borne witness to courage in the pursuit of peace. An uncanny capacity to persevere in the midst of differences – often in periods of uncertainty – account for the progress achieved in the long drawn out path to peace.

The sustained efforts that bridged the “lean periods”, in between the breakdown of talks, provide ample testimony to the determination of the peace advocates within civil society and those within the conflict parties, including a number of political leaders from different political formations.

Secondly, **building a reliable process is as indispensable as forging relationships, where trust is earned patiently over time.** Many unnamed people in civil society and those among the conflict parties have, through wisdom, patience and humility, worked together to accompany the peace process in and out of season, despite their political differences. Many examples of quiet courage abound in Nepal from the local to the national level.

There were persistent efforts by local facilitators and mediators, for instance, who shuttled between the parties and observed the proceedings, often without voice or vote. Often they witnessed and supported the process by their mere presence, and exercised their powers of persuasion humbly by building and deepening trust without claiming credit. One thinks of the religious leaders who brokered peace between Hindus and Muslims in the central Terai, for example.

Thirdly, **building incremental agreements,** though seemingly imperfect, unfinished and time-consuming, may in fact be the shortest route in what is in reality a marathon journey. The drama of a comprehensive agreement rarely takes place and one needs to appreciate the pragmatic character of identifying the building blocks of peace. Though it may seem slow, imperfect and unfinished, incremental agreements nevertheless ensure persistence in moving forward.

Take for instance, the Nepali leaders, who signed successive agreements over a three-year period from the second *Jana Andolan* to the elections to the Constituent Assembly in April this year. Among the agreements were a 25-point ceasefire code of conduct signed in mid-2006, an eight-point understanding in the same period, and the establishment of an interim Constitution drafting committee soon after. Even still, the Constituent Assembly marks just the start in the difficult task of building peace in Nepal.

Fourthly, **generating options from seeming stalemates** and revisiting the elements for minimum common platforms can be valuable steps, or “defining moments”, in what otherwise could be seen as merely a bleak landscape. The clearest example of this capacity can be seen in the aftermath of the people’s power upheaval of April 2006, which saw a willingness to explore further options, where before, stalemates had led to near-breakdowns in

communications between the seven party alliance and the Maoists negotiators. Nepali leaders and their civil society champions were also able to present and negotiate new options in January 2007 and March 2008 to the violent stalemate over issues relating to the exclusion of the Madhesis from the peace process. This included the ability and will to be flexible across parties, and to negotiate a consensus-based review of previous agreements, so as to ensure greater representation of Madhesis in new institutions and processes.

Fifthly, identifying clear international mandates in support of local-led processes can support conditions for more trust and capacity for peace. Undeniably, progress in the peace process in Nepal has only been possible due to the emphasis on Nepali ownership. There has at times been an uneasy relationship between international and national actors, particularly where confusion around agreed mandates has created suspicion. Where these mandates have been communicated well, the work and sense of shared purpose among international organisations, institutions and individuals has been perceived by many as a valuable contribution and complement to key Nepali-led processes. UNMIN, for example, has helped to build trust during the disarmament and demobilisation process, through their monitoring presence. The Office of Human Rights and CASU have also played and will play their small and important part, in collaboration with Nepali civil society, to help move Nepal towards a peaceful outcome.

Sixthly, respecting outcomes and the results of contentious contests, and developing the capacity for compromise, may be required to transform situations. The win-win outcome of this approach is that confidence generated by a process owned by local stakeholders can generate the energy and the commitment required for continued progress. The ability of the Nepali leadership and civil society to keep the peace process alive from 2006 to date, despite seemingly insurmountable obstacles, huge public expectations and some outside cynicism, is testimony to this shared approach. There will of course be further problems ahead, but the memory of a shared experience engaged in small steps forward, or a sense of common purpose, will strengthen the resilience to confront future obstacles or potential hurdles.

7. Drawing Inspiration from Nepal's Peace Experience

In a world confronted by protracted armed conflicts and handicapped by limited options, the experience of Nepal serves as an inspiration for peace endeavours both in Asia and in other regions around the world. The promise of progress in the peace front in Nepal is therefore, in more ways than one, premium space that deserves to be preserved.

In this spirit, the exchange of Nepali and Filipino experiences on constitution-making in the context of peace-building acquires considerable significance. It is important to recognise valuable insights, initiatives and steps that can be helpful. Timely reflections can also serve as apt reminders to help avoid shortcomings and serious reversals of similar experiences.

Moreover, progress made in the peace process in Nepal can serve as both encouragement and inspiration for those who tirelessly work for peace in diverse regions of conflict. If peace advocates across the globe and, in particular, in the Philippines, take heart because their Nepali counterparts have turned the page and not turned back, then this undertaking would have been well worth the effort.

References

Alliance for Peace-Nepal (2008). *Model Constitution of Nepal: Youth Vision and Perspectives*. Kathmandu, Nepal: UNDP.

Center for Human Rights and Global Justice (2008). *Recasting Justice: Securing Dalit Rights in Nepal's New Constitution*. New York: New York University School of Law.

Dalit NGO Federation (2007). *Nepal: Will a New Constitution Secure Dalit Rights?* Kathmandu, Nepal: Dalit NGO Federation.

Friends for Peace (2008). *Modular Training Course on Conflict Transformation and Peacebuilding*. Kathmandu, Nepal: Friends for Peace.

Garcia, Ed (2008). *Crafting the Peace Character of the Basic Charter: Perspectives from a Filipino Peace Practitioner*. London, UK: International Alert.

_____ (2008). *Crafting of a Constitution, Peace Practitioner's Personal Testimony: Sharing Thoughts with Nepali Peace Advocates, Contributing to Build the Country's Basic Charter*. London, UK: International Alert.

_____ (2003–updated 2006). *On the Unfinished Struggle for Peace in Nepal: Reflecting on Conversations with a Maoist Leader*. London, UK: International Alert.

_____ (1989). *Unfinished Quest, Imperfect Document*. Quezon City, Philippines: Claretian Publications.

Government of Nepal (2007). *The Interim Constitution of Nepal 2063, As Amended by the First, Second and Third Amendments*. Kathmandu, Nepal: Government of Nepal.

Government of Nepal and the Communist Party of Nepal (Maoist) (2006). *Comprehensive Peace Accord*. Kathmandu, Nepal.

Government of the Philippines (1987). *Constitution of the Republic of the Philippines*. Quezon City, Philippines: Government of the Philippines.

International Alert (2007). *Nepal at a Crossroads: The Nexus Between Human Security and Renewed Conflict in Rural Nepal*. London, UK: International Alert.

_____ (2006). *Local Business, Local Peace: the Peacebuilding Potential of the Domestic Private Sector*. London, UK: International Alert. Case Study: Nepal, pp.405-431.

International Alert-Asia (2006). *Comparative Learning on Peace Practice*. London, UK: International Alert. Chapter 1, 'Revisiting the People's Power Experiences and Rethinking the Peace Processes in the Philippines and Nepal', pp.5-9.

International Crisis Group, 'Nepal's Election: A Peaceful Revolution?', *Asia Report*, No.155, 3rd July 2008.

_____, 'Nepal's New Political Landscape', *Asia Report*, No.156, 3rd July 2008.

International Institute for Democracy and Electoral Assistance (2008). *Nepal in Transition: A Study on the State of Democracy*. Stockholm, Sweden.

National Business Initiative, 'Ten Points Compact from the Business Community of Nepal', 20th April 2008, at <http://www.nbinepal.org.np/front/fnewsdesc.php?id=3>.

Peace Secretariat, Government of Nepal (2007). *Agreements and Understandings on Peace Negotiations of Nepal*. Kathmandu, Nepal.

Dan Smith and Janani Vivekananda (2007). *A Climate of Conflict: The Links Between Climate Change, Peace and War*. London, UK: International Alert.

United Nations Development Programme (UNDP), Constitution Advisory Support Unit (2008). *Federalism and State Restructuring in Nepal: The Challenge for the Constituent Assembly: Report of a Conference organised by the Constitution Advisory Support Unit, UNDP 23-24 March 2007, Godavari, Nepal*. Kathmandu, Nepal: UNDP.

_____ (2008). *Human Rights, Diversity and Social Justice: Report of a Conference organised by the Constitution Advisory Support Unit, UNDP 29-30 April 2007, Biratnagar, Nepal*. Kathmandu, Nepal: UNDP.

_____ (2007). *Constitution Making in Nepal: Report of a Conference organised by the Constitution Advisory Support Unit, UNDP 3-4 March 2007, Kathmandu, Nepal*. Kathmandu, Nepal: UNDP. Including Appendix 1: 'Background Paper prepared by Yash Ghai for the Conference The Interim Constitution on the Constitution Making Process', pp.34-44.

Yash Ghai (2005), 'A Journey around Constitutions: Reflections on Contemporary Constitutions', *South African Law Journal*, Vol.122, Part 4, pp.804-831.

Websites

UNDP Constitution Advisory Support Unit Nepal, at www.undp.org.np/constitutionbuilding.

Endnotes

¹ Alert's country programme in Nepal took off at the inception of the peace process in the country, accompanying the Friends for Peace, catalysing conflict-sensitive approaches to development, rethinking security sector reform in the context of rural communities and working with sectors such as business leaders for peace. The Alert team that collaborated in the preparations and the conduct of the mission from 18-23 August 2008 included communications director Chris Underwood, and the organisation's country programme led by Lindsay Alexander, Rebecca Crozier, Ratna Shrestha and DB Subedi.

² International Alert (2008). *Sharing Thoughts with Nepali Peace Advocates, Contributing to Build the Country's Basic Charter*.

³ Friends for Peace is a gathering of respected Nepali citizens who have come together to share their experiences and resources aimed at exploring peace options in the country. It has established a modest resource centre in Kathmandu, open to the public, regularly organising inter-active sessions as well as making available research findings and relevant publications.

⁴ An account of the process of writing the constitution and of dealing with the main issues relevant to building peace in the country from a peace perspective is found in the publication, "Unfinished Quest," 1989.

⁵ As an explanation of my vote on the final draft of the Constitution, I stated in part: 'From the very beginning I had no illusions. I was convinced that, at the end, this Constitution would at best be imperfect and unfinished, and would reflect the ambiguous character of the diverse social and political forces which put an end to the dictatorship... What we have forged is a compromise document, an imperfect creation that mirrors this reality; a document that, moreover, does not resolve in a more decisive manner the dilemmas faced by our people in their long historic struggle to be truly free. Nevertheless, it provides the ground for our people to pursue unfinished quests and projects in different arenas of future political struggles: electoral contests; pressure politics exerted on parliamentary actions and the political will of the executive; the tasks of building people's organisations and political parties; the parliament of the streets; the possible plebiscite on the bases before 1991; and, if necessary, the application of the reserved power of the people to initiate and bring about change'. Ed Garcia (1989). *Imperfect Document, Unfinished Quest*, p. 12.

⁶ International Alert (2008). *Sharing Thoughts with Nepali Peace Advocates, Contributing to Build the Country's Basic Charter*.

⁷ Earlier, I had written a peace practitioner's personal testimony on the crafting of a constitution where I shared the following: 'There was no doubt from the outset who the major co-authors were in this historic undertaking. The people in their millions made the upheaval possible; consequently, they earned the right to be the authors of their destiny providing a passage to a working constitutional democracy... The first time I took the floor during the deliberations was to argue for the necessity of public hearings and a nationwide consultation to incorporate the voices of the most vulnerable, in particular, the peasants and the indigenous people in the process of drafting the charter... I had no illusions on the task at hand: the hurdles the country had to overcome were immense and complex. It would take more than a political upheaval and a basic document to rectify the inequities of decades past. Though I believed that profound social changes required the work of generations, I was equally convinced that steps could be taken sensitive to the aspirations of the majority'.

⁸ Besides sharing a Filipino experience in constitution making with a particular attention to strengthening its peace elements, the exchange offered those involved in the current Nepali process insights into what had worked well and what had not, with a view to assisting the process in Nepal reach a conclusion by avoiding a repeat of past mistakes made in another Asian context with a number of similarities. Confer the article, "Sharing Thoughts with Nepali Peace Advocates, Contributing to Build the Country's Basic Charter."

⁹ A more comprehensive comparative analysis is made in the monograph, "Revisiting the People's Power Experiences and Rethinking the Peace Processes in the Philippines and Nepal," in Alert-Asia, Comparative Learning on Peace Practice.

¹⁰ Confer the Alert publication, "A Climate of Conflict," 2007; and, the proceedings of the international conference on food, fuel and climate insecurity and peace-building co-sponsored by International Alert and the Asian Institute of Management Policy Center, held in Manila, 27 August 2008.

¹¹ Confer the brief paper, "History of Peace Negotiations, 2000-2006," no author.

¹² In 1990, a people's power upheaval brought to power a democratic order in the Nepal. Yet it laboured under a monarchy and the political parties lacked the capacity to represent their constituents. Between 1995 and 2006, the Maoists waged a people's war against this administration.

¹³ At first this was a six-member committee, but was later expanded to a 16-member drafting team.

¹⁴ These reflections captured in essence conversations with peace negotiators such as Baburam Bhattarai of the CPN-Maoist, “On the Unfinished Struggle for Peace in Nepal: Reflecting on Conversations with a Maoist Leader”, Alert trip report, originally drafted in May 2003 and updated in April 2006.

¹⁵ In the Philippine case, these principles are found in the articles on the Declaration of State Principles, and the Article on Social Justice and Human Rights.

International Alert-Nepal

Anam-Marg-18, Anamnagar, P O Box 24118, Kathmandu, Nepal
Tel +977 1 4268471, Email nepal@international-alert.org

International Alert-Global

346 Clapham Road, London SW9 9AP, United Kingdom
Tel +44 (0)20 7627 6800, Fax +44 (0)20 7627 6900, Email general@international-alert.org
www.international-alert.org

ISBN: 978-1-906677-41-1