

Post-Conflict Constitutional Settlement in Nepal and the Role of the United Nations

Dr. Surya P. Subedi, OBE*

Abstract

Nepalese peace process is quite unique and interesting both from constitutional and international legal perspectives. The comprehensive peace agreement concluded between Maoist and main political parties who together, revolted against the Royal regime, outlines integration of Maoist into mainstream politics and provides basis for inclusive Nepal. Constituent assembly in this regard is the process of institutionalising peace and inclusion of women, ethnic, religious, racial minorities in the governance system. UN through its presence in Nepal, in turn has apart from monitoring peace process, mandate of ensuring fair and free constituent assembly election. Thus, UN would be expected to play meaningful role in ensuring long-term peace and sustainability of democracy in Nepal. Additionally for UN, Nepalese peace process can serve to develop a good model of conflict transformation in other countries.

* Professor of International Law, University of Leeds, UK Barrister, Middle Temple, London, M.A. (Tribhuvan University), LL.M. (University of Hull), DPhil. (Oxford University)

INTRODUCTION

After witnessing years of violence caused by the so-called “people’s war” waged by the Maoists, which resulted in the death of more than 13,000 people, disappearance of between 1,000 to 5,000 people and displacement of about 100,000 others, the guns have fallen silent in the Himalayan State of Nepal. Thanks to the comprehensive peace agreement concluded in November 2006 and the adoption of a power-sharing Interim Constitution in January 2007, it looked that Nepal was back once again on the road to democracy. After agreeing to be part of mainstream politics under a democratic framework, the Maoists were inducted into the interim coalition government formed in April 2007 with other major political parties. Under the peace deal the Maoists had locked away most of their weapons under the watchful eyes of the UN and confined most of their fighters to UN monitored sites dubbed as cantonments.

The main objective of the agreement between the Maoists and other political parties was to hold fresh elections to a constituent assembly to write a permanent constitution for the country. The purpose of a new permanent constitution is said to be to restructure the system of governance within the country and to allow equal access to power for people of all ethnic, religious and racial groups in this country. The aim is also to empower the traditionally marginalized and oppressed ethnic groups in this highly stratified traditional society and eliminate discrimination against them.

However, the peace process is not yet complete and has already faced some testing times, including Maoists’ walk out of the government in September. The election for the constituent assembly was supposed to take place in June 2007 but was postponed to November 2007. The date was postponed once again. At the time of writing, the elections were scheduled to take place in April 2008. Nevertheless, there remained uncertainties about the elections taking place even on this new date. There are various other risks on the road ahead which could derail the fragile peace process any time. Various ethnic groups, especially those in the Terai region, bordering India, resorted to violence to oppose various provisions in the Interim Constitution, claiming that it was not democratic enough and did not give them equal access to power. Consequently, the Government announced a series of concessions to these ethnic groups and the violence subsided.

Thus, although the peace process is still in place for the time being and the country has witnessed a period of relative calm, thanks mainly to the comprehensive peace agreement, the ray of hope that was witnessed at the conclusion of peace agreement is fading away.

The aim of this article is to analyse the post-conflict constitutional settlement in Nepal and the role of the United Nations. The Nepalese peace agreement is quite unique and interesting from both constitutional and international legal perspectives. This article will begin by outlining the political developments in Nepal leading to the resolution of the conflict and assess the provisions of the peace agreement from an international legal perspective. It will then examine the role of the UN in this process and the lessons that can be drawn from this experience.

THE POLITICAL SCENARIO

Nepal is an ancient Himalayan State never directly colonised by any foreign power. But it was ruled by generations of feudal families until 1950. As a country bordering on India to the South and China to the north, Nepal was affected by the success of the independence movement in India in 1947 and the Communist revolution in China in 1949. Following a first major democratic uprising around the time, the country ended the 104 years of feudal rule of the Rana family in 1950 and saw the introduction of modern democratic norms into the governance of the country. This resulted in the adoption of a first democratic constitution in 1961 modelled largely on the British system of constitutional monarchy.

However, the experience with democracy was short-lived. Within two years of the election of a first democratic government, the late King Mahendra took over power in 1962 by imprisoning the elected Prime Minister and his cabinet. The King dissolved parliament, suspended the constitution and introduced a new system known as the indigenous 'panchayat' system of guided or limited democracy under which he became an absolute monarch. Because of the Sino-border war of 1962 both countries wished to have the King on their side rather than oppose his take over of power. The King benefited from the regional Cold War between India and China as well as the international Cold War which was escalating at the time. Thus, Nepal had to wait for nearly another 30 years to witness another democratic wave which was created in 1989/1990 following the collapse of the Soviet Union, the fall of the Berlin Wall, defeat of communism in Europe and the end of the Cold War.

Following a popular uprising against the old panchayat system presided over by the King as the executive Monarch, Nepal embraced, once again, a democratic system of governance in 1990 making the monarchy a constitutional one. The country adopted a democratic constitution in 1990. However, there was a challenge to democracy once again and this time the challenge came from a different quarter – the Maoists. The Communist Party of Nepal (Maoist) had a few MPs in parliament in 1996 and was thus unable to influence policy-and-decision-making in the governance of the country. There were and still are about a dozen or so leftist political parties in Nepal and all of them describe themselves as the Communist Party of Nepal which was established in 1949. Each communist party distinguishes itself from other communist parties by adding different words such as ‘Marxist’, ‘Maoist’, ‘United Marxist-Leninist’, in brackets after the main name of the party.

The largest Communist Party is known as the United Marxist-Leninist (UML), which became perhaps the first Communist party in the world to be voted to power through by and large free and fair elections in the early 1990s, had a substantial number of MPs in parliament and enjoyed the status of the Main Opposition Party. But the number of the Maoist MPs with a revolutionary zeal was a tiny one. Frustrated with the rule of the country by increasingly corrupt and incompetent political leaders, they walked out of parliament and began their armed struggle in 1996 to overthrow the monarchy and the parliamentary system of government. Their stated aim was to establish an old-style proletariat dictatorship through armed struggle.

While the Maoists established their base in the deprived areas of the far-western part of the country and expanded their armed struggle in the rural areas, the democratic parties in the centre got engaged in bitter political bickering among themselves. The central government got weaker by the day and people got increasingly disillusioned with the whole political system. It was during this political instability that the royal massacre took place in June 2001 resulting in the death of King Birendra, the Queen, the Crown Prince and several other members of the royal family, blamed officially to family squabble but unofficially to various theories of conspiracies. Whatever the motive of this massacre, this event shook the very foundation of the State and the traditional power base.

Following the massacre, the present King, Gyanendra, acceded to the throne. Soon after his accession to the throne he made it clear that he was

ambitious and would like to have more powers. When the Maoist insurgency was intensifying in the rural areas, the term of office of parliament expired. It was not possible to hold a new general election in the country due to violence and situation of fear and intimidation in much of the rural areas of this predominantly rural country. The country found itself in a situation where there was no parliament. This resulted in a political stalemate. Exploiting this opportunity, the King intervened and started to assert executive powers. His political adventures culminated eventually in yet another royal take over of power in the country in February 2005, re-establishing himself as the absolute monarch as in the old days of the panchayat rule.

However, the regional and international situation in 2005 was very different from that which existed in 1962 when the present King's father had grabbed power. In 2005, there was neither a regional Cold War between India and China nor an international Cold War. While India, most of the western countries and the UN opposed the royal take over, China maintained its silence. Isolated internationally, the King faced strong urban opposition to his rule from the political parties and civil society organisations and fierce rural opposition from the Maoists. As the King's regime became more oppressive, the political parties were hounded by the royal government. Cornered by the increasingly oppressive royal regime, the main political parties went to form an alliance with the Maoists against the King.

The objective of the new alliance was to end both the autocratic royal rule and the Maoist war in the country and usher the country towards a durable peace and democracy. When both of these forces were united, the King's days were numbered. There were massive demonstrations against the King throughout the country. When millions of people congregated all along the ring road of Kathmandu with a plan to head possibly directly to the royal palace to evict the King from his heavily fortified palace, he had no option but to step down. In the face of this massive popular uprising, there were reports that the army had also told the King that they could no longer defend him.

Consequently, the King made an announcement on 24 April 2006 to relinquish power and to revive the old parliament. He was forced to hand over power to a new coalition government of all major political parties. This was a triumph for democracy and people's power in Nepal. The ambassadors of the U.S. UK, India and other democratic countries seem also to have played their own role when the uprising was reaching its

climax. It was reported that they had applied their own pressure on the King to avoid any further bloodshed in the struggle for democracy. They seem to have told the King that if he did not step down, the country may witness a full-fledged revolution with a messy situation. Indeed, most of the democratic countries around the globe had taken a steadfast approach in opposing the royal takeover and many of them had suspended their aid activities to the government carrying on only those activities that had direct impact on people's real lives. This had a demoralising impact on the royal government. Soon after taking charge of the country, the new government began the process of bringing the Maoists to main stream politics which resulted in the conclusion of the peace agreement in November 2006, ending the Maoist War and the promulgation of the Interim Constitution In January 2007 under which the King was stripped of all of his powers.

The interim constitution did not quite abolished the monarchy but rendered the King completely powerless. The anger that people had against King Gyanendra for grabbing power in February 2005 and the subsequent suppression of pro-democracy movement reduced the monarchy in Nepal not only to a 'golden zero' but to a 'zero' without even ceremonial powers. So much so that King would not be able to receive even letters of credentials from foreign ambassadors. The new Chinese ambassador to Kathmandu became the first foreign ambassador to present his letter of credentials to the Prime Minister in April 2007 and all of Nepal's new ambassadors to foreign countries were appointed by the Prime Minister as the de facto head of the state. However, when the third amendment was made to the Interim Constitution in December 2007 the country was declared a Federal Democratic Republic thereby abolishing the monarchy on paper. This decision to abolish the monarchy is supposed to be ratified by a future constituent assembly.

THE ROLE OF THE JUDICIARY

Given various constraints, the judiciary in Nepal has played an important and constructive role in the restoration of democracy. Exercising its extraordinary jurisdiction, the Supreme Court played a crucial role by ordering the royal government to release political leaders detained during the royal rule of the country. The Court also delivered historical judgments in favour of press freedom and other civil liberties were which heavily curtailed by various decrees issued by the royal government. Notable among them was a land-mark decision which declared unlawful an action

taken by the government against an FM radio station, Kantipur FM, for broadcasting material in favour of democracy. The court order required the government to return all broadcast equipment to the radio station which had been seized in a raid under the cover of night. Although the King tried to influence the judiciary by appointing some pro-King judges to the Supreme Court, the majority kept handing down decisions designed to defend the fundamental rights and freedoms of the people.

The most far-reaching was a judgment of the Supreme Court declaring unconstitutional an “anti-corruption” agency established by the King with a view to harassing political leaders. The Court challenged the authority of the King stating that in a democracy the King had no powers to create such agencies through a royal decree. This direct challenge to the King’s authority coming from the Supreme Court acted as a huge morale boost to those fighting for democracy in the streets. When the people’s movement eventually forced the King to hand over power, the comprehensive peace agreement between the main political parties and the Maoists included in the top of its list a promise to respect and strengthen the independence of the judiciary in the country.

THE PEACE AGREEMENT

The conclusion of the Peace Agreement in November 2006 between the Maoists and the main political parties was a major breakthrough. That agreement outlined the ways and means of integrating the Maoists into the mainstream politics and provided the basis for an interim constitution. It also outlined a power-sharing arrangement between the Maoists and other political parties.

The purpose of the interim constitution was to lead the country towards lasting peace through the adoption of a permanent constitution to be written by a constituent assembly. Any constitution or legislation or treaty is the result of a political compromise and Nepal’s interim constitution was no exception. But it is more of a political document than a proper constitution in the traditional sense of the term. Since this document has come about as a result of ten years of Maoist war and people’s uprising against the King, it has tried to accommodate interests of all sections of the society.

The movement against the King was so widespread that the impact of it was felt in cities, towns and villages across the nation. It galvanised the people of all walks of life. It was not only a political revolution but also a social

revolution. The movement made every ethnic, religious, racial and linguistic group politically conscious and aware of their rights. In other words, the uprising opened up the Pandora's Box in Nepal. Hence, the country began to go through an unprecedented level of transformation in almost all areas of national life. Old values were been challenged and old institutions were struggling to survive and justify their existence. There are nearly 60 or so major ethnic groups without a dominant group and they all have got themselves organised and are seeking equal representation in power. Consequently, the new interim constitution has tried to include more or less every thing for everybody, including a long list of not only first and second generation rights but also third and fourth generation rights. For instance, on the issue of citizenship, Nepal became perhaps the first country to grant a man who dresses and behaves as woman both male and female citizenship at the same time. It remains to be seen how this unique legal status will play out in practice especially in relation to his/her marriage rights.

THE DRAWBACKS IN THE INTERIM CONSTITUTION

The process of making this Constitution did not follow any of the internationally accepted models of constitution-making. Generally speaking, a proper constitution-making process should draw a clear distinction between policy and law. It becomes easier to implement and enforce the provisions of a constitution when there is a clear distinction between the two. However, Nepal's Interim Constitution is a blend of both law and policy. Another flaw in this constitution is that it undermines the doctrine of separation of power and the principle of check-and-balance. While too much power is concentrated into the hands of the Prime Minister without proper mechanism for check-and-balance he is not able to exercise these powers because he has to have the support of other political parties to exercise most of his crucial political powers.

From a purely legal point of view, the Interim Constitution also undermines the principle of parliamentary sovereignty and judicial independence. Most of the important decisions are taken by the alliance of eight political parties, including the Maoists, outside of parliament and presented to parliament for rubber-stamping. Parliamentarians are left with the 'take it or leave it' option and not many of them seem to have the courage to leave it.

However, more serious issue is the absence of the political will to address the issue of impunity in the Interim Constitution. While the peace

agreement speaks of the formation of a truth and reconciliation commission, the Interim Constitution has no provisions for it. This is a serious omission in a country like Nepal where brutalities and atrocities were committed by both sides during the conflict over a long period of time. Of course, the status of the Human Rights Commission has been elevated from a statutory body to a constitutional one. However, the Commission would not be able to exercise any judicial power and its role would basically be limited to monitoring human rights violations and making recommendations. Those whose rights were violated and subjected to atrocities, torture and other inhumane and degrading treatment would not be able to rest in peace without a proper process of transitional justice. Another area of deficiency is the absence of any concrete mechanism for the decentralisation or devolution of power. No government in Nepal has ever paid serious attention to address the problems created by the centralised structure of power. In final analysis, the interim constitution has addressed the Maoist problem by bringing them to mainstream politics but has not fully addressed the issues raised by the people's uprising against the centralised power structure of the state.

THE ROLE OF THE UN

The UN involvement in Nepal is in two folds: Human rights mission and political mission. While the human rights mission is for a longer-term and has a broader mandate, the political mission is for short-term and has a limited and focussed mandate. These missions are, of course, additional to the normal presence of the UN through the UNDP and other UN agencies such as UNICEF etc. The UN came to Nepal in relation to the conflict initially as a human rights monitoring mission in May 2005, during the King's direct rule. The mission was sent by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva and the political mission by the Security Council in New York.

It was in January 2007 that a new political mission of the UN – UNMIN – was established by the UN Security Council through its Resolution 1740 (2007) of 23 January 2007 for a period of 12 months to assist the peace process. Unlike the human rights mission, which was sent by the OHCHR when the royal regime adopted harsh measures to crackdown on the political party leaders, human rights workers and civil society representative, the political mission was sent by the UN Security Council at

the joint invitation of the Maoists and the government in Nepal. The main mandate of the UNMIN is as follows:

1. To support the peace process;
2. To monitor the management of arms and armies of the Maoists and the Government;
3. To assist the parties in implementing their agreement on the management of arms and armies through a Joint Monitoring Co-ordination Committee;
4. To provide support for the conduct of the election of a Constituent Assembly in a free and fair atmosphere;
5. To provide technical assistance to the Election Commission to enhance its capacity to administer a credible Constituent Assembly election.

At the time of writing, the process of registering the Maoist weapons and their fighters had been completed and the verification of the Maoist fighters in cantonments were undergoing. Most of the weapons were now in UN-approved containers and the disarmed Maoist fighters were in UN-approved and supervised cantonments. The Interim Task Force established to monitor arms and armies was composed of Nepali ex-servicemen from the Indian and British armies themselves and the process was completed relatively easily. The Gurkhas who had kept a low profile and not taken any sides during the conflict were acceptable to all sides in the peace process.

Thus, the country known for its martial race ended up employing its own indigenous wisdom and tact and deploying its own ex-army men to fulfil the task at hand. Unlike in other parts of the world, no foreign troops came to parade in the streets of Kathmandu even under the UN blue helmets. The entire process has been relatively smooth and civilised. Concerns have been expressed in different quarters about the commitment of the Maoists to the democratic process. But thus far they have not abandoned the peace process.

AN ASSESSMENT OF THE PEACE PROCESS

Just as the people's movement in Nepal was quite unique in bringing down the royal regime through a peaceful, civilised, and disciplined movement, the peace agreement and the constitutional settlement reached are also quite unique. Unlike other peace agreements concluded in other parts of the world, the peace agreement in Nepal was not concluded between two

warring or opposing sides or between a rebel movement and the government as such. It was between two sides which had organised and led the people's movement together.

Ironically, the King's take over of power became a blessing in disguise for the country as it forced the formation of an alliance between the Maoists and the political parties and brought about a resolution to the conflict in the country. The Maoists began their armed struggle to overthrow the parliamentary system of government, have now accepted to work under this very system and entered parliament. Although it remains to be seen how sincere they are in their commitment to democracy and human rights, they have maintained that they are willing to work within a democratic framework.

What has happened in Nepal is quite unique from an international perspective too. As stated by Ian Martin, the head of UNMIN, Nepal's peace agreement was not an agreement that was imposed on the parties on an air force base in Ohio or another foreign military base. This was very much a Nepalese peace agreement that was negotiated between the principal Nepalese political actors themselves. Other powers, mainly India, did certainly smile upon it but in no way was it mediated or facilitated by the UN, India or any foreign power. What is more, there are no external guarantors here. This peace process is a hybrid process which has some but not all characteristic of other peace agreements in other parts of the world. It is not a peace agreement between the government and a particular ethnic or indigenous group either. The Maoist movement was not a separatist movement in Nepal. It was about the governance of the country. The aim of the Maoist war was to bring about communist rule in the whole of the country. But similar to the South African and Northern Ireland peace processes, the Nepalese peace agreement is also basically a power-sharing arrangement – which was documented in a legal document, i.e. the Interim Constitution.

The UN was not a party to the negotiations but the UN representative was invited to sign the peace agreement as a witness. Although sent by the Security Council, the UN political mission came to Nepal to carry out the tasks specified by the Maoists and the Government of Nepal. The UN help was sought only in the implementation phase of the peace agreement. Both the parties to the peace agreement, especially the Maoists, were perhaps seeking legitimacy and recognition from the UN. What is more, both sides regarded the UN as a relatively neutral body with relevant experience.

Similar to the Belfast Agreement, the peace agreement in Nepal was also a framework agreement and the implementation of it required to be carried out in different phases involving the management of arms and armies and finally the holding of free and fair elections of a Constituent Assembly for a more permanent resolution of the problems raised by the conflict.

All what the peace agreement has done is to set a process in motion towards lasting peace and democracy; there are huge challenges in the road ahead. People have high expectations of their political leaders. The economy is not in a good shape. The infrastructure is poor and the ability to provide basic public services to conflict-affected communities is weak. The Government presence in much of the countryside is still non-existent. Although the tourists have started to come back, it will take a long time to restore confidence in them and in rebuild the tourist-heaven image of Nepal. The infrastructure that was destroyed during the Maoist war will have to be rebuilt and the government will have to help people to piece together their shattered lives during the conflict.

The ultimate objective of the peace process is to hold election for the Constituent Assembly and this had to be conducted in a free and fair atmosphere to ensure that maximum number of people can participate in the process and take ownership of the new constitution. The Maoists have still some way to go to win the trust and confidence of the people both within and outside of Nepal. Thus, peace has returned to Nepal but this still is a fragile peace and the road ahead is perhaps a more challenging one.

SHORT-TERM V. LONGER-TERM APPROACH OF THE UN

The UN came by invitation accepting the terms of reference stipulated jointly by the Maoists and the government. The Maoists who had a terrorist tag internationally on them were keen to get rid of this tag and were looking for a stamp of legitimacy from the UN. Other political parties too were committed to bringing the UN into the country to consolidate power into their hands and thwart any possible attempt by the King to mount yet another challenge to democracy in different pretexts. The UN could have said that it would come to the country to assist the peace process provided both sides committed themselves to abiding by international human rights and humanitarian norms such as those concerning impunity, transitional justice, good governance, equality, and more and genuine democracy in the country. Euphoric by the achievements of their uprising, a vast majority of the people would have supported the UN if it had spelt out its conditions for

help. By the display of its short quick fix approach the UN has failed to certain extent in its mission to promote human rights, justice and fairness in Nepal.

An unbalanced or undemocratic internal political structure has been responsible for the conflict in the country. There are various ways of addressing the issue of inclusiveness in the governance in the country. Among them are the system of proportional representation, decentralisation or devolution of power and the adoption of a federal structure in a diverse country. Of course, all of these are matters for internal or national constitutional law and it is up to the State to decide what system of government the country wishes to have. However, since there is no international constitutional law, the reach of international law of human rights could have been extended to prescribe a more genuine and inclusive democratic system to address the political problems in the country.

Perhaps the approach of the UN was not to risk any derailment of the peace process by imposing its conditions on the parties. The UN political mission in Nepal seems to have been driven by a desire to go in for a relatively risk free quick mission and get out without much hassle on its shoulders. But by doing this the UN runs the risk of failing the people of Nepal and undermining its stature as a world body committed to promoting and protecting human rights internationally. For the UN, Nepal was a small crisis to manage but a huge opportunity to develop a good model for countries around the globe which were going through similar cases of internal strife resulting from bad governance and otherwise. As a result of its limited mandate, the UN has been criticised for being ineffective in Nepal. The UN did not insist on making appropriate arrangements even on the issues of impunity and transitional justice in a country like Nepal where so many lives had been lost in the brutal internal war that lasted for nearly 10 years.

CHALLENGES AHEAD FOR THE UN

Now its name is attached to the Nepalese peace process, the UN in Nepal has challenging tasks ahead of it. Not many observers expected the UN political mission in Nepal to leave the country within a year's time stipulated by the Security Council. The elections for the constituent assembly slated for June 2007 had to be postponed citing logistical problems and political environment. They were expected to take place in November of the same year, but it has been postponed again. At the time of

writing, the elections were scheduled to take place in April 2008. It remains to be seen whether they will take place on the new date. The mandate of UNMIN was renewed in December 2007 for another six months. Given the fluidity of the political situation in the country, the UN may have a longer presence in Nepal.

The challenge for the UN is not only to manage the arms and armies but also to ensure that the elections for the constituent assembly are held in free and fair atmosphere in such a country where vote-rigging has been a perennial problem and that power is decentralised, traditionally marginalised groups are represented in the governance of the country and human rights norms are upheld. Although the UN Security Council seems to have regarded the UN political mission in Nepal in the form of the UNMIN as a short-term and 'quick-fix' mission, it is difficult to see how the UN can make a quick exit without addressing the both short-term and longer-term challenges facing not only Nepal but also the UN in Nepal. Once the UN presence is there and people's expectations are raised, as a world body with a mission to promote human rights and the rule of law in its member States the UN would be expected to perform the tasks beyond the relatively easier management of arms and armies. The problems in Nepal are deep rooted and the UN would be expected to play a more meaningful role in terms of ensuring longer-term peace and sustainability of democracy in the country.

In order to ensure that traditionally marginalised groups have an equal opportunity to participate in the governance of the country, the UN should encourage the political forces within the country to establish political structure that is as inclusive as possible and the right of the traditionally marginalised groups is protected. Thus far, the task for the UN in Nepal has been a relatively easy one. This is because unlike in Sri Lanka, Sudan or elsewhere, the conflict in Nepal was not along racial, ethnic, territorial or religious lines. It was about political governance of the country. Most of the political parties are organised on the basis of political ideologies rather than on the grounds of race, ethnicity, colour, creed or geographical conditions. But as has been witnessed in the Terai region this may not remain so in the future in such an ethnically diverse country if the political system does not address the issues raised by different traditionally disadvantaged groups.

For this, UN has to make sure that Nepal's future political set up is a truly democratic and inclusive one. It should do its utmost to ensure that modern human rights agenda finds its way not only into the future constitution of

the country but also into the workings of the organs of the State, including the police, army and other law enforcement agencies. The UN should do its utmost to ensure that the perpetrators of human rights violations are brought to justice. Although the Peace Agreement of 21 November 2006 provides for the establishment of a National Peace and Rehabilitation Commission as well as a Truth and Reconciliation Commission to probe into violations of human rights and crimes against humanity in the course of the conflict, the Interim Constitution makes no mention of them.

None of the parties in the conflict or those in the government now appears serious enough in addressing past human rights violations in Nepal. As the promoter of human rights, the UN should use its power and influence and apply both the stick and carrot approach to make sure that the political parties do not ignore this problem. For this, there should be better coordination between the activities of the Geneva based bodies and New York based bodies of the UN. With a relatively easy mandate and mission, the UN cannot afford to fail the victims of human rights violations in Nepal.

CONCLUSION

The example that Nepal has set by bringing a large insurgency movement to mainstream politics through dialogue and peaceful political process has ramifications for the wider world. The whole peace process and the post-conflict constitutional arrangement in Nepal remains a remarkable achievement of the people of Nepal. They have come a long way from where they were just over two years ago.

However, the challenges ahead are more crucial and complex. The UN should work towards ensuring the creation of an environment conducive to holding election for the Constituent Assembly in a free and fair atmosphere, ending impunity and securing accountability for human rights abuses, ensuring that the army and the law enforcement agencies, including the police, fully respect human rights and addressing discrimination against women in this traditionally conservative society and other marginalised and disadvantaged groups. In other words, the UN too should look beyond conflict resolution and conflict management and help the major political actors within the country to deal with more fundamental problems regarding the governance of the country. The UN has an opportunity to assist the political parties, including the Maoists, to develop a good model for stronger and sustainable democracy in Nepal whose impact could spread beyond the borders of Nepal.

With regard to the challenges for the internal political actors of the country, they should strive hard to make sure that there is more internal democracy within the major political parties themselves. They have been carried away by populist bandwagon and revolutionary ideas. They have not demonstrated maturity in the governance of the country. After bringing the Maoists to mainstream politics they have created other problems in the country. They have opened up the Pandora's Box and it would be very difficult to put the genie back into the bottle. They have accepted the idea of federal structure for the country. But federalism may not necessarily be the best answer to Nepal's problems. Massive decentralisation of power or devolution of power on the basis of geography would be better for a country such as Nepal which is a mosaic of so many ethnic, linguistic and racial groups.

The way forward for the country is to hold the elections for the constituent assembly as soon as possible to write a new constitution which promotes the rule of law, tolerance, peaceful co-existence and culture of democracy in Nepal. Democracy has come to Nepal on paper on many occasions but it has failed time and again because the culture of democracy amongst the ruling elite is weak. That is why the country has found itself time and again in a political turmoil. Thus, the challenge ahead is to institutionalise the democratic norms and culture in all aspects of political life in the country so that it can move forward towards lasting peace and prosperity.

