

Full Length Research Paper

Nepal: Federalism for lasting peace

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Many studies have been conducted on the causes and consequences of Nepal's conflict. Given the current peace, proposals on federal restructuring, mostly based on ethnic sub-divisions of the country, are rife. Federal restructuring of the country, it is believed, will be instrumental in power sharing and peace in the long run. It is also believed that federalism will promote inclusive development by granting political autonomy to states (regions) and assuring proportional and fair representation of all ethnic/sub-cultural groups in future governments and other decision-making organs of the state. However, it is not yet clear what kind of federalism this multi-ethnic country will have. Many analysts see federal restructuring of the country as an over-ambitious and challenging task for Nepal. There is also a fear that any hurried decision in this direction may further intensify the underlying conflict and ultimately cause the disintegration of the country. Furthermore, economic issues like revenue and expenditure sharing and resource mobilization are not fully spelled out by the proponents of federalism. This paper suggests an alternative basis for federal restructuring of the nation, which promotes long-term development and sustainable peace.

Key words: Nepal, Post-Conflict reconstruction, Federal reconstruction.

INTRODUCTION

Nepal, a picturesque landlocked Himalayan country with around 24 million inhabitants, continues to be embroiled in violent conflict. Although the decade-long (1996 - 2006) armed conflict (Jana Yuddha or People's War), led by the Communist Party of Nepal (Maoist) (CPN-M)¹ officially ended in November 2006 with the signing of the Comprehensive Peace Agreement (CPA), sustainable peace is still not within the grasp of the Nepalese people. Reports suggest emergence of more than two dozen new armed groups after signing of the CPA, particularly in the

Tarai/Madhes² (Southern plains in the country, where Tarai refers to the geographic flatness of the terrain and Madhes originated from the words madhya and desh, which means middle and the country respectively). Brutal killings, physical torture and abductions of people by these armed groups as well as by the affiliates of some major political parties, including the Young Communist League (YCL)-the youth wing of the CPN Maoists--are becoming common phenomena. After signing of the CPA, in year 2007 alone, 551 people have been killed and 84 people have been killed during the first 100 days of Maosit-led government (18 August - 25 November, 2008), suggesting that deadly conflict still persists in Nepal despite the signing of the peace accord (Table 2).

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¹ In January 2009, following a merger with Communist Party of Nepal (Unity Centre - Masal), the CPN-M becomes Unified Communist Party of Nepal (Maoist).

² See: <http://www.irinnews.org/report.aspx?ReportId=78188>; <http://www.crisisgroup.org/home/index.cfm?id=4941>; and <http://www.kantipuronline.com/kolnews.php?nid=111326> (retrieved on 29 October).

Table 1. Federal structure for Nepal.

Power and Responsibilities	Federal/Central	State/Region	Common/ shared responsibilities
Political, territorial and others	<ul style="list-style-type: none"> - Defence (Army) - Citizenship - Treaty implementation (international) - Supreme Court - Central-level civil services - Emergency Law - Major physical infrastructure (e.g. highways, rail, airports) 	<ul style="list-style-type: none"> - Primary and secondary education - Municipal affairs - Culture and languages - Local infrastructure - Sanitation, drinking water - Inter-state trade - State-level civil services - Police 	<ul style="list-style-type: none"> - Protection of minority rights - Sanitation, drinking water - Environment - Higher education - Scientific research and technology - Pensions
	Economic/Fiscal	<ul style="list-style-type: none"> - Currency and Central (Federal) Bank - National-level commercial banks and other financial institutions - International (external) trade - Import/export duties (customs duties) - Intra-state trade - Value Added Tax - Income tax - Tax on net profit - Stamp duties - Motor vehicle tax 	<ul style="list-style-type: none"> - Regional-level commercial banks, micro-credit and other financial institutions - Sales tax - Wealth taxes - Household tax - Real estate tax - Inheritance and gift taxes - Taxes on transfer of immovable properties - Entertainment taxes

Table 2. Conflict related death in Nepal. Number of death during people's war (1996 - 2006).

YEAR	Total	By Maoist	By State
1996	81	22	59
1997	48	32	16
1998	409	75	334
1999	469	141	328
2000	399	219	180
2001	633	390	243
2002	4647	1351	3296
2003	1863	646	1217
2004	2719	1113	1606
2005	818	258	560
2006	1261	723	538
Total	13347	4970	8377

Source: Informal Sector Service Centre (INSEC), Kathmandu, (http://www.inseconline.org/hrvdata/Total_Killings.pdf).

Table 2b. Number of people killed after formal end of people's war (21 November 2006 - 20 November 2007).

By	Number
State	28
Maoist	22
YCL	1
MJF	33
JTMM	2
JTMM (Goit)	18
JTMM (Jwala Singh)	27
UJTMM	3
Other groups	5
Unknown	95
Total	234

Source: Pyakurel S.R. (2008). Nepal's Transition: Democracy to Sustainable Peace, INSEC, Kathmandu.

Table 3. Major ethnic groups/castes and their population share in different regions.

Caste/Ethnic Group	Share in total population of the country	Geographic region			Development region				
		Hill	Mountain	Tarai	Eastern	Central	Western	Mid-West	Far-West
		Share in total population of the region							
1. Chhettri	15.8	33.36	21.80	8.02	11.90	10.58	11.17	27.82	39.20
2. Brahmin (Hill)	12.7	10.11	16.42	9.77	10.25	11.49	20.23	8.36	13.08
3. Magar	7.1	1.63	11.77	3.69	3.41	3.22	16.43	14.47	1.95
4. Tharu	6.8	0.09	0.48	13.30	5.39	3.02	5.04	15.48	16.41
5. Tamang	5.6	12.24	8.99	1.72	3.71	12.92	0.88	0.17	0.43
6. Newar	5.5	4.34	9.56	1.95	3.58	11.05	3.18	0.79	0.31
7. Muslim	4.3	0.03	0.36	8.38	4.06	5.73	4.24	3.71	0.20
8. Kami	3.9	5.10	5.78	2.12	2.56	1.57	5.71	7.97	7.24
9. Yadav	3.9	0.05	0.08	7.95	5.27	5.81	2.61	1.14	0.14
10. Rai	2.8	5.12	4.21	1.20	10.59	0.82	0.16	0.05	0.07
11. Gurung	2.4	3.00	3.88	0.96	1.18	1.55	7.16	0.94	0.22
12. Damai/Dholi	1.7	1.80	2.51	0.99	1.40	0.86	2.58	2.56	2.78
13. Limbu	1.6	4025	1.94	0.90	6.53	0.13	0.07	0.02	0.02
	Total Population	Distribution of population (individual ethnic group/caste)							
1. Chhettri	3593496	13.97	61.14	24.89	17.50	23.51	14.20	20.96	23.82
2. Brahmin (Hill)	2896477	5.25	57.12	37.63	18.71	31.68	31.93	7.82	9.86
3. Magar	1622421	1.51	73.12	25.36	11.12	15.84	46.29	24.14	2.62
4. Tharu	1533879	0.09	3.16	96.75	18.58	15.73	15.03	27.31	23.35
5. Tamang	1282304	14.36	70.65	14.98	15.31	80.47	3.14	0.36	0.73
6. Newar	1245232	5.24	77.33	17.43	15.21	70.87	11.66	1.72	0.55
7. Muslim	971056	0.05	3.74	96.21	22.09	47.16	19.95	10.36	0.46
8. Kami	895954	8.56	65.00	26.43	15.10	14.04	29.13	24.09	17.64
9. Yadav	895423	0.09	0.92	99.00	31.09	51.79	13.32	3.46	0.33
10. Rai	635151	12.13	66.76	21.11	88.14	10.25	1.14	0.23	0.24
11. Gurung	543571	8.30	71.95	19.75	11.50	22.71	60.24	4.67	0.88
12. Damai/Dholi	390305	6.9	64.8	28.3	18.9	17.6	30.2	17.7	15.6
13. Limbu	359379	17.8	54.4	27.8	96.0	2.8	0.9	0.1	0.1

Source: Compiled/calculated from CBS (2001): *National Census 2058*, Central Bureau of Statistics, Government of Nepal.

The saying that the 'end of war is not the end of conflict' is apposite for Nepal.

To resolve the multifaceted conflict in Nepal, the CPN-M, all Madhes-based political parties (including Madhesi Janadhikar Forum, or MJF, Tarai Madhes Loktantrik Party, or TMLP and Nepal Sadbhabana Party-Mahato, or NSP-Mahato), associations of indigenous nationalities and many scholars are proposing and demanding a federal restructuring of the country, which they believe will ensure the fair representation of all sub-cultural/ethnic groups in the decision-making process, at all levels of government--grass roots to the centre, thus resolving the underlying causes of conflict. Lately, the Nepali Congress (NC) party and the Communist Party of Nepal-UML (CPN-UML) have also included a federal system in their manifestos

(although some leaders of both these major political parties, along with a few small parties, such as the Rastriya Janamorcha, are still opposing to the idea of federalism). The Parliament has also amended the Interim Constitution to transform the country from a unitary state into a federal entity (on December 24, 2007; the amendment was passed overwhelmingly by 278 votes against five votes). Moreover, it has been argued that federalism will divide powers, or establish a formula for power sharing, among different groups of people with multiple identities, thus assuring participatory and inclusive development, hence poverty alleviation.

However, it is not yet clear what kind of federalism this multi-ethnic country should have; (Table 3) for an ethnic breakdown for Nepal and the map for Nepal (Figure 2).

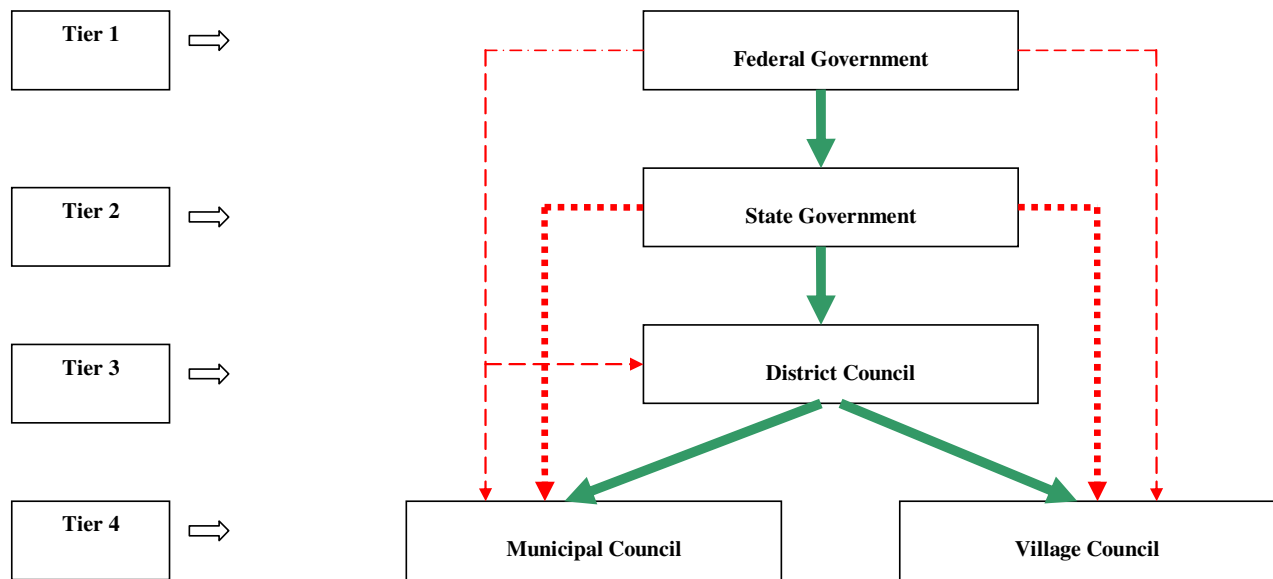


Figure 1. The four tier system of governance and flow of financial resources.

The thick lines shows establishment (permanent) mechanism for financial resources from centre to states, states to districts and districts to villages/municipal level, while, the broken lines shows occasional flow (incase of emergency only) of financial resources from centre/state to grassroots level.

Some of the major political parties, including CPN-M, are proposing ethnicity-based federal restructuring, while Madhes-based political parties are arguing for geographical and linguistic based federal restructuring. The CPN-M is proposing a divided Madhes with three sub-state committees, viz. Mithila, Bhojpura and Awadh, while Madhes-based parties are demanding a single Madhes. Tharus (an indigenous community of the Tarai) are also demanding a separate Tharuhat state in the Tarai. At the same time, many political analysts are seeing the federalist restructuring of the country as an over-ambitious and challenging task. Fears are being expressed that any hurried decision in this direction may further intensify the conflict, leading to the disintegration of the country. Moreover, experiences around the world show that federalism as a mechanism for peacebuilding can work in either direction. Broad-based and equitable development, which requires growth in a low-income country like Nepal, is the ultimate basis for long-term peace. To make federalism work for development, it has to be economically viable and cost effective. Mere creation of many autonomous states, based on ethnicity or some other criterion, does not necessarily deliver development or resolve conflict. It may become an economic burden and a source of further and deeper unrest in the country. Therefore, Nepal's federal restructuring should be de-signed in a manner that promises pro-poor and humane development and should also adequately address the wide gaps in the existing districts in terms of geography, population and deve-

lopment. It should also be kept in mind that the district headquarters as well as state headquarters should be at a convenient distance for its inhabitants.

In light of the above, this paper focuses on federalism for peacebuilding and development in Nepal. Section 2 deals with theoretical underpinnings on federalism and peace building, including various theories of peace - focusing on fiscal federalism, power-sharing and federalism. This section also records the current debate on federalism and peace and ethno-demographic issues in the context of the federal restructuring of Nepal.

Section 3 proposes an alternative federal model for Nepal. Finally, section 4 concludes.

Federalism and Peace Building

Theoretical Underpinnings

Civil wars have become a major global concern as a source of development failure³. One strand of the literature in this area concentrates on analysing the causes and consequences of conflict, rather than on ways of resolving conflict. However, recently the microeconomic underpinnings of the origins and resolution of conflicts

³ Since 1945, more than seventy civil wars have been fought around the world, resulting in approximately 20 million deaths and displacement of more than 67 million people (Collier and Sambanis 2005, pp xiii).



Figure 2. Current Administrative Structure of Nepal.

Source: UN Nepal information platform (<http://www.un.org.np/maps/maps.php>) retrieved on 29 October (<http://www.un.org.np/reports/maps/npcgis/NatBio00004.jpg>).

have also been analyzed (Cuesta and Murshed, 2008; Jarstad and Nilsson, 2008; Roeder and Rothchild, 2005; Walter, 2002).

The rational choice literature suggests that civil wars or conflicts are mainly caused by two factors, that is, greed and grievances. These two factors, if associated with weakening or failure of social contract⁴, further exacerbate conflict (Murshed, 2010). Greed reflects elite competition over valuable natural resource rents, whereas grievances reflect relative deprivation and the grievance it produces fuels conflict (Murshed and Tadjoeeddin, 2009). Conflict, however, can rarely be explained either by greed

or grievances alone, though this greed versus grievance hypothesis may be complementary explanations for most conflict cases. In some cases, greed is the main or dominating cause of conflict (as promoted by Collier and Hoeffler 2004); in other cases, grievances are found to be the main contributing factor, e.g. in Nepal (Murshed and Gates, 2005). Similarly, countries that are able to create institutions to maintain a viable social contract can successfully keep conflict within a tolerable level⁵, despite the presence of greed and grievances. Thus, social contracts are equally important for maintaining peace or preventing violent conflicts. In fact, the three factors work

⁴Weak social contracts are cause of institutional failure, which play a crucial role in transforming grievances into collective violence (Addison and Murshed 2006; Murshed and Tadjoeeddin 2009).

⁵Conflicts that do not harm the growth or development process and human wellbeing (death, injury, displacement, etc) can be said to be within tolerance level.

together (albeit with varying degree) and are producing 'domino effects' in many conflict-affected countries, including Nepal.

As far as long-term conflict resolution is concerned, several concepts are in use⁶. Federalism (decentralization or division of political, administrative and fiscal powers) is a widely used approach in both developing (e.g. Brazil, India, Indonesia, Bosnia-Herzegovina, Nigeria, Ethiopia) as well as in developed countries (e.g. Belgium, Switzerland, Canada, Spain and Italy, among others).

The rationale behind advocating a federal system is that it produces, in certain circumstances, a variety of positive outcomes such as economic efficiency, equity, better service provision and participation or inclusion, among others. It is argued that a federal system allows state governments to better tailor their services to suit the specific preferences and needs of its residents; thus, there is a higher probability that a greater number of people will find happiness within federalism (Hayek, 1945). Moreover, giving groups more control over their own affairs in their regions protects them against the predatory politics of the centre (Lijphart, 1977, 1996; Lustick, Miodownik and Eidelson, 2004). It is also argued that federalism, as a check and balance mechanism, may help to mitigate the ethnic security dilemma⁷ (Posen, 1993) and may insulate ethnic groups from central authority and dampen or impede predatory politics (Tranchant, 2007). Federalism, thus, is one of the power-sharing arrangements that Lijphart (1977) calls for in divided (conflict-prone) societies. He argues that the political problems of a divided society can be resolved in three ways without compromising democracy. They are: (i) assimilation, in which one large group forms the majority (e.g. Westminster/British) system, (ii) consociational democracy and (iii) partition, if the first two don't work. Lijphart presents his arguments in favour of consociational democracy, with four main characteristics: (i) A grand coalition with a minimum winning coalition in the parliament (a grand coalition includes extra parties so that it can represent the views of a broader chunk of the public), (ii) Mutual veto (all groups have the ability to apply brakes to a decision process), (iii) Proportionality (the idea is to move decision making as far up as possible) and (iv) Segmental autonomy and federalism, so that minorities rule themselves, territorially.

Various empirical studies are available that assess the of them suggest that federalism is an effective peace-building mechanism, while this effect tends to be condi-

tional, depending on various conditions or factors such as the political system, economic conditions and the structure of society (Cohen 1997; Saideman et al., 2002; Brancati, 2006; Bermeo, 2002; Bakke and Wibbels, 2006). Thus, in order to make federalism work for peace, the political system and other socio-economic conditions of the country matter. For example, Saideman et al. (2002) find that federalism is more efficient in autocracies than in democracies and Bermeo (2002) presents evidence that federalism works better in wealthy countries.

By contrast, Brancati (2006) argues that the combination of federalism and existing regional parties is conflict-producing. On the one hand, decentralization may curtail ethnic tensions and secessionism by bringing the government closer to the people, increasing opportunities to participate in government and ultimately giving groups control over their political, social and economic affairs. On the other hand, decentralization may exacerbate ethnic conflict and secessionism for the following reasons. First, decentralization reinforces ethnic identities by recognizing certain groups in countries and giving them a sense of legitimacy. Secondly, it enables groups to enact legislation that discriminates against regional minorities. And thirdly, it provides regions with mechanisms, such as regional legislatures, local media and regional police forces that make engaging in ethnic conflict and secessionism easier. Brancati (2006) conducts a cross-country statistical analysis and concludes that decentralization is a useful device for reducing both ethnic conflict and secessionism, but the effect is undermined by the growth or emergence of regional parties. Moreover, failures of federalism in former Yugoslavia, Czechoslovakia and Soviet Union raised doubts about its effectiveness in preventing conflicts (Roeder 1991; Cornell 2002). Some analysts also argue that federal solutions may have a conflict mitigating potential only in the short term, while in the long term secession is a distinct possibility (Haug and Schou, 2005).

Fiscal decentralization⁸, an important component of federalism⁹, is supposed to influence conflict by diminishing the distance between the government and the people (Tranchant, 2007). It is also argued that devolving power to subunits permits designing and providing of local public goods, which correspond to the preferences of local citizens and when preferences are widely heterogeneous across jurisdictions, decentralization tends to be preferable to uniform policy (Oates, 1972; Seabright, 1996; Bardhan and Mookherjee, 2005). Moreover, decentralization is supposed to increase the well-being of

⁶Conflict resolution often refers to the 'elimination of the causes of the underlying conflict, generally with the agreement of the parties' (Zartman 1989, p. 8).

⁷The ethnic security dilemma refers to a situation in which an ethnic group fears that another one may seize power and use it against it.

⁸Fiscal federalism means devolution of expenditure or revenue decisions to sub-national entities.

⁹Federalism needs fiscal decentralization, but one can have fiscal decentralization without federal structures.

minority groups if it empowers them enough so that they can design and implement public policies closer to their preferences (Tranchant, 2007). However, a consumer, in general, does not care who federal, state or city government provides the public good, as long as provision is adequate. Citizens may care about the type of provision in some instances, say for example, what languages are taught in school, which might vary over different education authorities. Nevertheless, certain expenditure or revenue-raising priorities are the subject of the political process and the formation of public policy. It may matter which finance ministry (regional or national) or which legislature (regional or national) decides on public finance and spending priorities. The empowerment of minorities is easy if they are concentrated in one region and they represent the majority or a significant minority of the population, but if the demographic weight of the minority is the same at local level as at country level, decentralization is less likely to give to minority control over its own affairs. It is even possible that things are worst at local level because elite capture is supposed to be higher at lower echelons of government (Bardhan, 2002; Bardhan and Mookherjee, 2000; Platteau and Abraham, 2002).

On the role of fiscal federalism in conflict (ethnic) resolution, Tranchant (2007) argues that fiscal federalism is in principle violence reducing if different ethnic groups are concentrated in different geographical entities of the federation, that is, they are the majority in some of the federated units. However, this still leaves the problem of their conflict with remaining minorities in the sub-national unit and violence risk is increasing in the number of minorities. Moreover, fiscal federalism will not reduce violence if minorities are thinly spread across the whole country because minorities are not a majority anywhere. There are other problems as well; fiscal federalism can cement ethnic cleavages; it can act as a method of appeasement only for resource-rich regions and fiscal federalism can have veto-player functions where blocking does not abate conflict.

Ethnic violence can take the form of mainly peaceful protests by ethnic groups or communal violence that is not targeting the state, or a more systematic rebellion against the state. Cross-country evidence shows that fiscal decentralization increases the intensity of protest, but not the risk of protest for dispersed groups (Tranchant, 2007). As far as rebellion is concerned, fiscal decentralization reduces the risk as well as the intensity of this phenomenon when minorities are a majority in some jurisdictions and even reduces rebellion in dispersed cases. Tranchant (2007) also finds that communal violence rises with decentralization in ordinary least squares estimates, but once unobserved country heterogeneity is controlled for, it reduces this type of violence and if the model predicts well, then fiscal federalism reduces rebellion in all countries without controlling for country-specific

characteristics if minorities are regionally concentrated. Therefore, in countries where minorities are dispersed, other forms of functional federalism are necessary more than fiscal federalism or in addition to fiscal federalism. It also stands to reason that fiscal decentralization will work better in middle income countries with more to spend and in countries with resource-rich regions demanding autonomy (fiscal appeasement).

In summary, the evidence with regard to the impact of federalism, particularly fiscal federalism on conflict and peace is mixed. Therefore, scrutiny of socio-economic conditions and political system is needed, before examining the link between federalism and peace in the Nepalese context too. It can be said that federal governance system can only help Nepal's peace-building process if it is based on and emphasizes both short- and long-term peace and development policies simultaneously.

Peace theories, power-sharing and federalism in Nepalese context

The classic options for sustainable peace/conflict resolution, especially in ethnically divided societies, are¹⁰: (i) the choice between majoritarian (Westminster) democracy and power-sharing consociationalism (Lijphart, 1977, 1995), (ii) the decision whether to establish a foreign protectorate (Walter, 1999), (iii) the decision whether to partition the state (Kaufmann 1996, 1999; Lijphart 1977; Sambanis 2000) and (iv) power dividing as an alternative to ethnic power sharing (Roeder and Rothchild, 2005; Roeder, 2005). In this paper we are not concerned with Presidential versus Prime Ministerial systems per se, rather we are concerned with the structure of the federalist system (thereby ruling out unitary systems) and our concern is with power sharing versus power division within the proposed federal structure for Nepal.

In Nepal, major political parties and the international community are rushing to promote power-sharing institutional arrangements (power-sharing consociationalism) through federal restructuring of the country, based purely on ethnicity with some geographical factors thrown in.

The proponents of power-sharing arrangements argue that more power-sharing institutions promote durable peace (Hoddie and Hartzell, 2005; Jarstad and Nilsson, 2008). It is also argued that power-sharing institutions in post-conflict settlements promote: (i) inclusive government, (ii) group self-government and (iii) proportionality (Lijphart, 1977, 1985, 1995; Nordlinger, 1972; Roeder and Rothchild, 2005; Sisk 1996). And, as more and more

¹⁰Adapted from Roeder and Rothchild (2005), which present details on these alternative options.

power-sharing institutions promote durable peace, peace accords should entail different types of provisions on the sharing or dividing of political, economic, territorial or military powers (Hartzell and Hoddie, 2003).

Implementation of power-sharing provisions that includes political, military and territorial pacts also affects the durability of peace¹¹. And though more power-sharing is always better, it is not possible to ascertain how much of its positive effect is attributable to the various dimensions of power sharing (Jarstad and Nilsson, 2008). Most research focusing on the post-cold war era suggests that political pacts have no significant effects on durable peace, whereas military and territorial pacts are found to significantly increase the prospects for peace (Hoddie and Hartzell, 2005; Mukherjee, 2006). However, Walter (2002) argues that political pacts influence the implementation of an agreement and may reduce the risk of civil war recurrence, but only to a limited extent. She also proposes that power sharing in itself is insufficient to obtain peace and needs to be coupled with third party security guarantees. Jarstad and Nilsson (2008) argue that political pacts are easy and less costly, but territorial and military pacts involve higher logistical, economic and material costs. Implementation of military pacts entails integration of commanders and/or combatants into national armed forces, which is time-consuming, economically costly and directly concern the values of security and vulnerability (Hoddie and Hartzell, 2003; Jarstad and Nilsson, 2008)¹². Similarly, implementation of territorial pacts entails other forms of costs, including government loss of control over part of its territory. Such a restriction in state sovereignty is widely recognized as costly and territorial disputes are deemed difficult to solve (Walter 2003). It is also time-consuming and complicated to implement provisions for devolution, as it often requires enactment of new laws and institutions (Jarstad and Nilsson, 2008). Military and territorial pacts entail very high costs and time, thus reducing the risk that peace breaks down following a settlement.

Power sharing may not be a panacea as far as sustaining peace treaties is concerned, or for promoting democratic development. First, when there are valuable resource rents at stake, or small territories over which some groups have control, power sharing may be an insufficient incentive for some parties to hold to the

peace. A group may then opportunistically sign the peace treaty and revert back to war. This has been painfully demonstrated recently in Angola and the history of the Sudanese North-South conflict. Secondly, power sharing may not prevent the formation of splinter groups who acts as spoilers towards the peace process. Often, this is the result of not all parties being included in peace talks, as has recently been the case in the Darfur or Chad. Even after the peace deal has been signed certain disgruntled elements may break away to form their opposition to the peace process hoping to gain more in the future by a return to conflict. Thirdly, power sharing formulas may become obsolete if ethnic compositions alter in the future. Most societies are dynamic and the ethnic mix is subject to change. For example, in the Lebanon the allocation of seats in Parliament reflects an obsolete ethnic decomposition dating back to the 1920s. Fourthly, power sharing formulas may give too much weight to those enamoured of violence and place too little emphasis on moderate voices. This not only endangers the peace accord, but may also retard the future evolution of democracy. Finally, power sharing may perpetuate ethnic polarities in political parties in the longer-term. An example based on a developed country's evolution may be in order. Society in the Netherlands was traditionally divided along a Catholic-Protestant cleavage. During its democratic evolution from the 19th century, politics and political parties were drawn along these confessional lines, as were other institutions, particularly education. The institutional basis of this polarisation came to be known as 'pillarisation' (with a Catholic pillar, a Calvinist-Protestant pillar, a humanist pillar etc. for various walks of life, such as schooling, the media, even employment and so on). Yet, eventually the democratic process altered what was meant to be a Catholic or a Protestant, supporting the earlier argument that economic development alters cultural attitudes. Gradually, pillarisation along confessional lines became extinct (by the late 1960s) and more cross-cutting issues based political parties have emerged. Excessive emphasis on power sharing can retard these forms of modernisation and democratic development.

Although the international community's interest in power sharing increased significantly, but as argued by Roeder and Rothchild (2005), their experience in promoting power-sharing arrangements in post-civil war situations is very limited and surprisingly little empirical evidences are available that show that power sharing facilitates the consolidation of peace and democracy in ethnically divided societies. Similarly, the evidence shows that societies emerging from civil conflicts and new democracies in ethnically divided societies are not limited to a hard choice between the so-called Westminster majoritarian and power sharing (Roeder, 2005).

Roeder (2005) also argues that power-dividing institutional arrangements as an alternative to ethnic power-sharing

¹¹For details on effects of power-sharing provisions in negotiated settlements on durable peace, see Hartzell 1999; Hartzel and Hoddie 2003; Hoddie and Hartzel 2003; Jarstad and Nilsson 2008; Walter 2002.

¹²Integration of People's Liberation Army (CPN-M's military wing) with Nepal Army (Government Army) is one of the most debated and controversial issues and sources of conflict among major political parties, including partners in current coalition government' thus, many observers see it the most challenging task in Nepal's peace process.

arrangements are more likely to deter the escalation of ethnic conflict to ethno-national¹³ crises. Power-sharing arrangements may be necessary to initiate a transition to peace, but only under specific and somewhat unique conditions, it will be a prudent starting point for successful transition to stable peace and democracy for long term (Roeder and Rothchild, 2005). Power sharing seems to offer an inclusive compromise; yet, it soon becomes evident that short-term accommodation to initiate a transition to peace and democracy comes with high long-term costs. Roeder and Rothchild (2005) also argue that the very same institutions that provide an attractive basis to end a conflict in an ethnically divided country are likely to hinder the consolidation of peace and democracy over the long term.

Moreover, Adekanye (1998) warns of power-sharing dilemma¹⁴-power-sharing institutions frequently facilitate a transition from civil war, but thwart the consolidation of peace and democracy-these cannot be ignored if long-term and sustainable peace is to be achieved. This dilemma emerges from the gap between the promises needed to initiate the transition and the performance necessary to consolidate peace and democracy (Roeder and Rothchild, 2005). Therefore, peace-builders should note that the long-term power-sharing arrangements (the phase of consolidated peace and democratisation) should not be superseded by short-term transitional arrangements (Roeder and Rothchild, 2005; Murshed, 2008).

In Nepal, as the issue of state restructuring (federal restructuring) is rotating around the ethnic issues (ethnic power sharing), it can be argued that power sharing based purely on ethnicity cannot be sustainable because (i) all issues (fiscal policy, trade policy, social policy, etc) will be 'ethnicised', (ii) it produces incentives to make demands in favour of ethnic groups, (iii) there are incentives to undermine the federal government by ethnic leaders and (iv) power sharing is unlikely to be guaranteed or enforced by an external power (say India), on a long-term basis.

So, Nepal may follow the power dividing solution as proposed by Rothchild and Roeder (2005) and Roeder (2005), for ethnically divided societies. Roeder and Rothchild (2005) propose a 'nation-state stewardship' as a new and long-term strategy for peace building. The strategy has three principles or objectives: (i) construct political institutions that express the shared sentiment of people that they should constitute an independent state, (ii) the shared sense of nationhood also limits the realm

of governmental responsibilities and (iii) the international community must avoid privileging the former warring parties.

The power-dividing formula/concept is closely akin to the American constitution and political system. Its main characteristics are: (i) creation of multiple majorities and (ii) limitation on the powers of all layers of government. First, the creation of multiple majorities implies separated decision making into many layers and includes a federal or central level of governance. But power division can take place even without a federal structure, as long as there are multiple majorities. For example, even in city governments, one committee decides on finance, another on education policy, another on police and yet another on street lighting. Power division occurs if the composition of each of these bodies is different, leading to varying decisive majority configurations; so, for the sake of argument, in one committee Dalits have a majority, in another Chhettris. Also, in federal governments, such as the United States, the electoral rules for the President are different from those for the Senate and the House of Representatives. Power division also means separation of powers between executive, legislative and judicial branches, as first discussed by Montesquieu and later by Madison in his Federalist Papers (Murshed, 2010: chapter 5). This does not occur in Britain because the Prime Minister sits in Parliament and the Lord Chancellor who has judicial and executive functions as a Cabinet Minister is also the Speaker of the House of Lords. So, the Westminster system is neither power dividing nor power sharing because the electoral system is 'winner take all'. This was the model inherited in most British colonies, including India, which influence Nepal's political sphere most. None of the multiple majorities should have veto power. This means checks and balance (also proposed by Madison) and constraints on executive power. In the USA, the Congress can pass a bill and the President can veto it unless there is a two-thirds majority in the Congress. The President's cabinet appointments require Congressional approval. The Supreme Court can declare a statutory law or executive action unconstitutional through judicial review.

Limitation on the powers of all layers of government is the second most important characteristic of power division. For example, the USA had a Bill of Rights, which the state cannot interfere with, particularly the freedom of worship, leading to the separation of church and state. In Europe, also there is a Charter of Human Rights limiting state interference. The idea was developed by James Madison in his Federalist Papers.

Rothchild and Roeder (2005) also argue that the long-term survival of any power-sharing mechanism depends on the emergence and presence of power-dividing rules. Only then will it be stable in the long run. So, power divi-

¹³Ethno-nationalism refers to claims and counterclaims concerning the right of an ethnic group to self-governance within a state of its own (Breuililly 1994, as quoted in Roeder 2005).

¹⁴The dilemma is termed as 'ending the war, losing the peace' (Roeder and Rothchild 2005, p. 12).

sion is essential to power sharing. Roeder (2005) provides empirical evidence (econometrics, logit regressions) to support this.

In this context, it can be said that the success of federalism as a power-sharing (long-term) regime in Nepal will depend on its coverage political, economic, military, territorial, etc; implementation of political, economic, military and territorial pacts; and cooperation among various political parties and ethnic elites to implement it. Hardliners from different ethnic groups may stir popular demands for a larger share of economic resources, more political and civil service positions and greater political autonomy. As suggested by Roeder and Rothchild (2005), for sustainable peace, moderation of political leaders and ethnic elites to contain hardline elements within their parties and communities will largely determine the success of power-sharing arrangements.

Provision for ethnic entities¹⁵ in the constitution, linguistic and religious autonomy, education in mother tongue, proportional representation in employment and governance system and many other issues are arising in Nepal (leading some analysts to say that a Pandora's Box has just been opened up in Nepal). Some groups are also demanding constitutional provisioning for assurance of secession and establishment of new sovereign states. Other analysts argue that the federal system will be too expensive and complex to manage for a poor country like Nepal. In addition, it would further intensify centre-state and state-state resource conflicts and create new ethnic conflicts in the country. Therefore, it will be a challenge for Nepal's political leaders to craft political institutions that will sustain peace and foster democracy in the long term. The prime task ahead is designing of political arrangements that can simultaneously meet the tests of representativeness, democratic accountability, effective governance and political stability. But, uncertainty about the future is very high and peace will depend on guardianship of key politicians that serve not only their own parties, but the nation as well. The role of international community, including the UN and neighbouring countries (India and China) and donors (development partners of Nepal) is equally important. But, donors need to be mindful of the fact that democratic transition has the potential of producing violence in the short run as people suddenly have greater scope for venting dissatisfaction, especially when unaccompanied by sufficient economic progress (Murshed 2008).

Murshed (2010) also stresses the necessity of adequate post-war aid for sustainable peace and argues that the conflict-abating properties of economic growth and poverty reduction are perhaps the most significant factor

in building lasting peace, but to re-start growth poor countries need overseas development assistance. External intervention and economic aid are important in the short run; however long-run policies for conflict resolution need to be endogenous. Similarly, attention has to be focused on constraining the political elite so that they choose development rather than repression via instruments such as separation of powers, an independent judiciary and policies that foster economic diversification and movements away from the reliance on a few economic activities (the staple trap) are central to long-term economic progress as well as peace (Murshed, 2010). Peace-building policies need to be broad-based and pro-poor; otherwise, the grievances that produced the civil war may re-emerge. Peace building through restructuring of the state as a long-term solution for sustainable peace should also envision and target long-term goals, inclusive development and democracy. Moreover, economic policy-making and the political process are two inseparable issues; thus, they should be kept in mind while restructuring the country for the federal governance system (Murshed, 2008).

Federalism and peace process in Nepal: A debate

The debate on federalism and decentralization or restructuring/reforming the governance system has a long history in Nepal, but not an honourable one. Rana planner Bijaya Shamsher prescribed the Swiss federal model for Nepal in the 1940s (Bhattachan, 2003). However, his recommendation was never heeded to by political leaders, planners and scholars in Nepal. In fact, federalism somehow did not capture the imagination of Nepalese and foreign scholars until 2000. Govinda Neupane (2000), Nilam Shekhar Adhikari (2000) and Mahendra Lawoti (2002), by writing their Master's or doctoral dissertations focusing on federalism as the most suitable form of consensual democracy and inclusive development, brought the debate into mainstream politics of Nepal (Bhattachan, 2003). The issue of federalism, with ethnic, regional and cultural autonomy, secularism and right to self-determination, became prominent during the Maoist-led People's War (1996 - 2006). Federalism with autonomy has now become the prime agenda of many ethnic, regional, lingual and cultural groups. The Tarai movement of 2007 heightened the issue of federalism further.

After the people's movement of 1990, out of the 44 political parties registered with the Election Commission, only three demanded federalism, viz Nepal Rastriya Janajati Party demanded federalism based on ethnicity, Nepal Sadhbhawana Party (NSP) demanded federalism with autonomy for the Tarai region and Nepal Rastriya Janamukti Morcha demanded administrative federalism

¹⁵ For example, Limbuwan Swayatta Pradesh (Limbuwan Autonomous State), Ek Madhesh Ek Pradesh (one united Tarai state).

(Bhattachan, 2003). The Nepal Federation of Indigenous Nationalities (NEFIN) has been demanding the right to self-determination and ethnic autonomy since its establishment in 1990. The CPN-M has made it public that they are in favour of semi-federalism. Other major political parties, including the NC and the CPN-UML, included federalism in their manifestos, but not very clearly.

The debate on restructuring or federalism, however, is confined to the political and socio-cultural issues, ignoring the economic issues. Some political parties and leaders and scholars are trying to touch the hearts of people by raising voices for federal system, purely based on ethnicity. However, in Nepal, it is almost impossible to find a Village Development Committee, the smallest unit in the present governance system, without ethnic or racial diversity. Moreover, rural to urban and north to south migration is also a continued and unavoidable phenomenon. In addition, ethnic and racial values are becoming less important for younger generations, perhaps due to the better education they have received compared to earlier generations. Thus, establishment of a federal system purely based on ethnicity is neither possible nor wished by the majority of people.

Hachhethu (2003) argues that federalism should be predicated on two grounds: the heterogeneous character of population and because of this heterogeneity, settlement patterns of diverse groups need to be in mixed or separate territories. Bhattachan (2003) however claims that although Nepal is small in size, in terms of socio-cultural diversity it is not small; hence, federalism is possible on this count as well.

Nepal has to choose from different federalist models practised in different countries: (i) geographically divided federations (e.g. Switzerland, Canada and Russia), (ii) corporate federation (eg Nigeria), (iii) unequal/mixed federation (e.g. Quebec in Canada, Kashmir in India), (iv) confluence federation (e.g. Belgium) and (v) union federation (eg USA, EU) or could develop or adopt a mixed federation suitable for the country¹⁶. Nepal's model of federalism has to respond to the specificities and needs of the country and should not be influenced by foreign ideologies, however, in view of similarity of culture and experience, Nepal might find the example of India useful (UNDP 2007, p. 11).

A New Federalist Proposal for Nepal

A brief review of federation proposals for Nepal

Some political parties and many scholars have their own

proposals for federal Nepal. Bohara (2008) grouped the proposals of political parties for federal structure under two models: (i) ethnic enclaves, as proposed by the CPN-M, (ii) geographical enclaves with a single stretch of Tarai as an autonomous state, as demanded by Madhes-based political parties. Although two major parties, the Nepali Congress (NC) and CPN-UML, have included it (federal restructuring) in their manifestos, they have not articulated any specific proposals of their own. The NC has long been opposed to federalism, although it was among the parties which promoted the recent insertion of federalism in the Interim Constitution. Similarly, the CPN-UML supports autonomy based on ethnicity, language, culture and region as an aspect of the right of indigenous nationalities and ethnic groups to self-determination, but its criteria seem to be too confusing and the party will have to come up with concrete proposals for designating federal regions or states and explain the meaning and context of self-determination and the extent of autonomy and how it is to be exercised (UNDP, 2007: p.14).

Similarly, many scholars and researchers have also presented proposals for a federal Nepal. Their proposals can also be divided into two categories: (i) that suggest a pure territorial sub-division¹⁷ with no regard to socio-cultural diversity and (ii) that suggest a socio-cultural sub-division of the country.

Among these academic proposals, Bohara (2003) suggests transforming the current five development regions of the country into five autonomous federal regions for four reasons: (i) such a regional subdivision already exists and requires no redrawing of geographic boundaries, (ii) it would give priority to capturing regional sentiment and voice (iii) any ethnic subdivision of country is dangerous and counterproductive for a small and highly diverse country like Nepal and (iv) the current regional structure mirrors the major river basins of Nepal and will make development of water resources easier by minimizing hill versus Tarai conflicts in sharing of water resources. He argues that a cooperative membership model of ethnic regions under a resourcefully diverse state umbrella of, for example, Karnali, Gandaki and Koshi will also reduce potential resource conflicts. This type of resource conflict currently being waged in many other parts of the world (e.g. Sudan) over water, precious metals, lands and oil cannot be ruled out for an emotionally charged country like Nepal where the food secu-

¹⁶ See Bohara 2003, 2008; CS Center 2008; Sharma 2007.

¹⁷ Pure territorial federation is best suited to large countries, where vast physical size makes it difficult to govern the whole country from the centre. But, Nepal is a small country but with vast ethnic diversity; thus for the purpose of territorial federation one can think of either a topographic subdivision (mountain, hills and Tarai), or an administrative development region or zonal type subdivision (eastern, central, western, mid western and far western regions), or a certain combination of both topographic and regional subdivisions.

city issue and drought are likely to continue to force the people from the erosion-prone mountainous regions to migrate down to the flood-prone fertile plains (Bohara, 2008).

But, indicating the weaknesses of Bohara's proposal, Sharma (2007) argues that the current regional structure was purely a conception of the elite and development experts on the top of the ruling hierarchy; thus, it is not surprising that the leaders of indigenous nationalities and Madhesis will strongly reject any federal proposal that is based on such sub-division. Similarly, the proposed central region will have the most dominant presence in federation, with larger than one-third share of national population, 42% share in national GDP and 79% share in national revenue. Such a large size might impart an overpowering clout to this region in the national politics and government, which may be used by the region to distort distribution of national resources in its favour¹⁸. Sharma (2007) further warns that in a country like Nepal where there is a growing practice of violent street demonstrations in support of political demands, which often tend to disrupt economic activities and cause property losses and inconveniences to the general public, the size of constituent states in the future federation warrants very careful consideration. Although, Bohara (2003) proposes a mixed proportional representation (PR) system for regional assemblies, which may help partially inhibit ethnic conflicts, but the PR system alone is not likely to satisfy the marginalized ethnic groups in Nepal who are demanding ethnicity-based autonomous regions. Moreover, it would not be surprising if there is more ethnic violence and even another insurgency in the future, if the demand for autonomous ethnic states is denied¹⁹. Finally, Bohara extends the argument of ease of harnessing of water resources in support of his proposal as he assumes that having hill and Tarai areas of the same river basin under the same regional government would minimize inter-area water conflicts. But, in federal Nepal major water projects are likely to remain the responsibility of the central government, because they require huge investments and tend to have international relation implications and even in the current unitary system of governance, Nepal has been witnessing problems and disputes related to water resources (Sharma, 2007).

Devkota and Gautam (2006) used the three major river basins as the basis for sub-division of the country: (i) the

Koshi region, which spans from Mechi zone in the east to Janakpur in the west, (ii) Gandaki region, which spans from Narayani zone in the east to Lumbini in the west, (excluded the Kathmandu Valley), (iii) Karnali region, which spans to the rest of the country to the west of Gandaki region. Besides these three regions, they propose a separate Kathmandu Valley Region. In their proposal the Chief of every region shall be directly elected by the voters of the region, but the Regional Council (the legislative arm of the region) shall consist of the elected chiefs of each local government unit (100 to 150 units) within the region. Devkota and Gautam (2006) do not propose separate election for Regional Council and direct method of ensuring proportional representation (PR) of various socio-cultural groups in the Council. Instead, they propose a mixed PR system for the national assembly.

The three basin-states proposed by Devkota and Gautam are very large: (i) Koshi (34, 29 and 12% shares in population, GDP and revenue respectively), (ii) Gandaki (36, 38 and 40% shares in population, GDP and revenue respectively) and (iii) Karnali (23, 17 and 3% shares in population, GDP and revenue respectively). The share of Kathmandu region in population and GDP is 7 and 16%, respectively, but its share in revenue is 45.6%. Thus, revenue sharing and large state size may create problems in the future. Moreover, Sharma (2007) warns that this sub-division would not be acceptable for many indigenous groups and Madhesis, as the Chettri and hill Brahmin (collectively) would remain the most dominant group in three of the four regions of this proposal (26% in Gandaki, 41% in Karnali and 36% in Kathmandu). Similarly, a territorial federation simply postpones the linguistic and ethnic tensions; it does not resolve them forever, (Sharma, 2007).

Limbu (2003), attempts to partially accommodate the demand of indigenous nationalities and Madhesis through his proposal of cultural federation within a territorial federation. He proposes seven autonomous zones in the country. He also proposes each zone to have three to 13 ethnicity and/or language-based subunits for individually empowering various language and ethnic groups, reside in the zone and a proportional representation system for legislative assemblies in the zones. In Limbu's proposal, Chettri and Brahmin (Hill) jointly compose the highest population share in five proposed zones (Pallo Kirat 26%, Tamuwan 29%, Magarat 32%, Karnali 35% and Mahakali 51%). Whereas, the Maithili speaking population would have the highest population share in two zones (Majh Kirat 40% and Ollo Kirat 21%).

The main problems with Limbu's proposals are: (i) the Ollo Kirat would be a very large state with a potentially domineering role in the federation (29% population, 36% GDP and 51.4% revenue), (ii) the proposal of federation-

¹⁸Although the constitution of a country may guarantee equal de-jure power to every state, the de-facto political power that is generally implicit in the population, economic and fiscal size of a state can prove overwhelming to the central government to resist political demands of a large state (Sharma 2007).

¹⁹Some indications are already in sight (e.g. mini-insurgency instigated by various terai armed groups like Janatantrik Tarai Mukti Morcha and some hill-based indigenous nationalities).

within-federation sounds complex and it is unclear whether small ethnic subunits within a zone can satisfy the aspirations of ethnic/language groups, especially that of Madhesis who make up a large majority in Terai and aspire for their own autonomous states and (iii) the ethnic names that are attached to zones could be controversial (e.g. the Maithili-speaking people who make up the largest population group in Majh Kirat and Olo Kirat may like to name their states as East Mithila and West Mithila and two biggest population groups of Tamuwan, hill Brahmin and Chettri and Bhojpuri-speaking people may not like the name Tamuwan, as it is identified with Gurungs only (Sharma 2007).

Shrestha (2005) propose a fourteen state federation for Nepal. They are: (i) Yakthung, (ii) Khambu, (iii) Tambsaling, (iv) Nepal Mandal, (v) Tamu Gandak, (vi) Magar Gandak, (vii) Bheri, (viii) Karnali, (ix) Mahakali, (x) Kochila, (xi) Mithila, (xii) Bhojpuri, (xiii) Awadh and (xiv) Tharuhat. The states are more homogenous in size with no domineering presence of any state in the 14-state proposal of Shrestha. He also suggests a separate Awadh state for Awadhi-speaking people. But, Bhojpuri-speaking people become the largest group in that state. He proposed Kochilla state (Jhapa, Morang and Sunsari districts in eastern Nepal) for the purpose of drawing specific attention to the concentration of few native ethnic groups (Dhimal, Rajbansi, Tajpuriya, Satar and Jhangad) that reside in this area. However, even the combined population of these native groups is very small, compared to those of Chettri and Hill Brahmin (26%), Maithili (19%) and Tharu (7%). Moreover, in this proposal Hill Brahmin and Chettri (BC) would be the largest group in the states meant for Limbu (Yakthung - 26% BC and 23% Limbu), Rai (Khambu - 29% BC and 26% Rai), Newar (Nepal Mandal - 36% BC and 35% Newar), Gurung (Tamu Gandak - 36% BC and 23% Gurung) and Magar (Magar Gandak - 42% BC and only 28% Magar).

Gurung K. B. (2005) proposes 11 states for federal Nepal. They are: (i) Limbuwan, (ii) Khumbuwan, (iii) Maithili-Tharu, (iv) Tambsaling, (v) Newar, (vi) Tamu, (vii) Magarat, (viii) Tharu- Bhojpuri, (ix) West Khasan, (x) Tharuhat and (xi) Far-West Khasan. In this proposal the states are generally small, except for the domineering presence of Maithili-Tharu state. This proposal also successfully demarcates a state for Limbus where they make up the largest population group (30% followed by BC 27%). But, Rai, Newar, Gurung and Magar are not a largest group in the states proposed for them.

Sharma (2007) proposes a cultural federation of 15 small size states (10 hill states and 5 terai states); with directly elected governors in the states and a proportional system of representation in the state assemblies. He argues that a cultural sub-division offers a greater promise of durable peace and stability of federation than a

territorial subdivision and would also help improve economic efficiency in delivery of governmental services. In Sharma proposal, the states are more homogenous in terms of population and their share in GDP. Thus, there is no domineering presence of any proposed states. Terai-2 state has the largest share in population (13%), followed by terai-5 (10%), Terai-1 (9%), Terai-4 (8%) and Hills-8 (8%). Similarly, Hills-5 has the highest share in GDP (16%), followed by Terai-1 (10%), Terai-2 and Terai-5 (9%). However, in terms of revenue share, Hills-5 (45.6%) and Terai-3 (25%) have some domineering presence in the proposed states.

Pitamber Sharma²⁰ opposes using the ethnic basis in state restructuring and argues that the real way to fight exclusion is to focus on development and therefore accords high priority to economic viability and resources. He also argues that "the identification of federal units or regions should be guided by the objectives of regional development" (UNDP, 2007, p. 14 - 15). Taking as guidelines macro-watersheds, dominance of specific ethnic/caste groups, prospects and feasibility of the development of inter-geographical regions, resources and potentiality for autonomous development and historic experience, obstacles and challenges for inclusive development, he recommends the creation of 6 regions, running north-south, except for one (Karnali) and 19 districts. The six federal regions proposed by Pitamber Sharma are: (i) Eastern (with 23.1, 21.1, 19.3% share in population, GDP and area, respectively) (ii) Central (with 25.5, 23.7, 16.5 share in population, GDP and area, respectively), Capital (with 7.1, 15.9, 0.6% share in population, GDP and area, respectively), Western (with 21.8, 21.6, 21.5% share in population, GDP and area, respectively), Karnali (with 0.9, 0.7, 13.3% share in population, GDP and area, respectively) and Far Western (with 21.6, 16.9, 28.7% share in population, GDP and area, respectively). In his proposal, eastern, central, western regions have food surplus, while capital, Karnali and far-western regions are food deficit regions.

Although Sharma's own criteria are internally incompatible, he is able to factor in ethnicity by devising a four tier level of government, particularly the district and the village (UNDP, 2007). The basic problem in his proposal is that the proposed Karnali region is very small in terms of population and GDP (less than 1% of population and GDP), thus might not be able to effectively run the political and economic institutions of the region.

All of these federal proposals have their own limitations and shortcomings - mainly because they are unable to properly portray the economic dimensions of a federal state, particularly the issues of economic efficiency and fiscal transfers--revenue/expenditure sharing.

²⁰ In UNDP (2007).

Basics of federal restructuring of Nepal

Federal restructuring may achieve lasting peace, but it should be economically viable, efficient and cost effective. Mere creation of many autonomous states based on ethnicity or some other issues that are not sufficient to create a viable state will neither deliver development nor resolve the conflict. It, in fact, will be a burden (resource-consuming/costly) and a source of deeper conflict in the country. Therefore, apart from ethnic issues, the issues of geography, population and development should also be adequately addressed during restructuring. In brief, federalist restructuring should be designed in a manner that not only promises pro-poor and humane development, but also adequately addresses the wide developmental gaps in existing districts and zones. It should also be borne in mind that the district headquarters as well as state headquarters should be at a convenient distance for its residents.

Bolton and Ronald (1997) argue that any benefits of a federal sub-division of a country may be achieved within a unified nation by replicating the administrative structure with a suitable degree of decentralization of authority to lower-level governments. However, in spite of forty years of decentralization efforts in Nepal, the necessary devolution of power and strengthening of institutional infrastructure associated with true decentralization were never pursued vigorously by the past governments, including during limited democracy after 1990 (Gurung, 2003; Sharma, 2007). Therefore, the decentralization slogan has lost political credibility and the CPN-M successfully substituted this slogan with the slogan of self-determination and autonomy for indigenous nationalities to attract the youth from the marginalized indigenous nationalities to recruit them into their cadre and to expand their political base for insurgency (Sharma, 2007). Moreover, it is almost impossible for major political parties to oppose the idea of federal restructuring of the country, as they have already included it in their manifestoes and the Interim Constitution as the main pillars of state building and conflict resolution. A constitution with federal governance, well drafted and well implemented, can play a role in conflict prevention, but it cannot be a solution for every problem, including low economic growth and inequitable development. Therefore, long-term goals should be addressed properly for long-term sustainable peace.

The people's expectations from the government are very high. In fact, the people of Nepal are waiting for a miracle in terms of real and substantive changes in their life through creation of employment opportunities, better income, better education and health services, among others. If the federal government is unable to do so, people will be dissatisfied and conflict may re-emerge soon, on a larger and deeper scale. To bring real and substan-

tive changes in people's life; Nepal needs to have sustained and pro-poor growth, a corruption-free society and political stability, among other factors. Mainstreaming of marginalized groups should also be a priority agenda at all layers of future government (e.g. federal, state, district and village/municipal).

The new proposal

As indicated above, there are many options (e.g. majoritarian/Westminster democracy, power-sharing consociationalism, power dividing and separation) to resolve conflict, particularly ethnicity based conflict. And to resolve the multifaceted conflict of Nepal, major political parties, associations of indigenous nationalities, many scholars and the international community are proposing and/or demanding federal restructuring of the country. Moreover, as the people of Nepal (basically marginalized and minority groups) are not in the favour of majoritarian/Westminster democracy and are demanding for ethnicity based state restructuring, the first option (majoritarian/Westminster democracy) can not resolve the problem of Nepal. Similarly, neither any political party nor a group of people is demanding or voicing for the other extreme (separation). Therefore, the debate on Nepal's peace building process is confined to power sharing and power dividing through federal restructuring of the nation.

In this context, the most important issue in the process is that of division of powers, political, economic and territorial, between the federal and state governments. However, there is no standard formula for dividing powers and in the newer federations; the central government is given many powers which have direct impact on everyday life in the sub-national units (UNDP 2007: p.29). Certain powers, such as foreign affairs, defense, citizenship, currency, international trade, maintenance of integrated domestic economy, regulation of large natural resources and national infrastructure are almost always best exercised at the central level.

Powers for the state/region (sub-national) units mostly include primary and secondary education, local markets, cooperatives and micro credit, primary health, agriculture, irrigation, local taxes (land, sales taxes), culture and local languages (including libraries and local museums), sanitation, sports and recreation and local transportation (UNDP, 2007). Table 1 presents some power/responsibilities sharing/dividing formulas between the two levels of government.

Fiscal decentralization is another important aspect of power division. Fiscal decentralization helps accelerate growth through improved efficiency in resource mobilization, reduction in transaction costs in designing and implementing anti-poverty policies and ensuring better incentives and accountability. However, it is also associa-

ted with 'elite capture' (Bardhan and Mukherjee, 2000) and decentralized corruption (Prud'homme, 1995), therefore, these issues to be given due consideration, while reconstructing the state. Fiscal transfers from the centre to the state are necessary to meet the fiscal needs of the states and for correct spill-over. Therefore, a proper mechanism or institutional set-up needs to be established to coordinate and implement the fiscal transfer activities. For that purpose a three-tier institutional set-up may be useful, for which constitutional provisioning is needed. First, a Federal Fiscal Commission may be established, which will determine what share of federal taxes (customs, excise, VAT, income, etc) will go to the state and also establish level of grants-in-aid. Second, the National Planning Commission (NPC), with representation from all states and some experts, can be constituted. The NPC will make recommendations for additional grants and loans, aimed mainly at supporting development plans and helping to finance projects in the state plan. Third, at state level, a State Planning Commission (SPC) should be established to prepare state development plans. In this regard, as suggested by Richard M. Bird (2002), four fundamental questions must be answered with respect to intergovernmental fiscal transfers in future federal Nepal:

- i) Who does what? (The issue of expenditure assignment).
- ii) Who levies what taxes? (The issue of revenue assignment).
- iii) How is any imbalance between the revenues and expenditures of sub-national governments that results from the answers to the first two questions to be resolved? (The issue of vertical imbalance).
- iv) To what extent should fiscal institutions attempts to adjust for the differences in needs and capacities between different governmental units at the same level of government? (The issue of horizontal imbalance or equalization).

Considering the above and keeping in mind the ethnic composition/distribution of population in different geographic and administrative regions, a nine state and sixty-six-district proposal for federal Nepal is presented in Table 4. The population of each proposed region is more than two million, except the Rajdhani (capital city Kathmandu), which has a population of more than 1.5 million. Similarly, populations of all proposed districts are more than 100,000. A very minor readjustment at district level has been proposed²¹. The number of districts is re-

duced from current seventy-five to sixty-six with a view to working continuously with established existing institutional arrangements at the district level, while making it cost efficient. As the north-south migration is very high, all Southern regions have very mixed proportion of population, with no dominating concentration of any ethnic/caste group, except in the Far West Madhes, where Tharus constitute 34.6% of the population.

A four-tier (two plus two tier) governance and administrative system (the first two are federal government at the centre and state government at regional level and the second two are district and village/municipal governments at grass roots level) might be a useful model for federal Nepal (Figure 1). The rights-political, economic, territorial and responsibilities of both federal and state governments should be clearly determined and defined in the constitution. Similarly, the interrelationship between the federal and state governments as well as between the states should be clearly defined in the constitution. Proposals on political (legislative and executive) and judiciary are presented below.

Legislature

At federal or central level, legislatures should be bicameral so as to provide an adequate check on the legislative excesses of a popularly elected lower house. The lower house could have 150 - 200 members, directly elected from the districts. At least one member should be elected from each district with less than 200,000 populations, but for each additional 150,000 population, one extra member should be elected; for example, the districts with less than 200,000 populations will have one member, 200,000 - 350,000 will have two members, 350,000 - 500,000 will have three members and so on. The political parties registered with the Election Commission and independent candidates can contest the election to be held every five years. Political parties could assure 50% seats for women. An upper house of around fifty or sixty members can be elected by the members of the lower house on the basis of proportional representation system. The seats in the upper house may be apportioned along Nepal's multi-dimensional ethnic lines. For example, four members from the ethnic/caste groups that have more than 1.5 million population (Chhettri, Brahmin [hills], Magar and Tharu), three members from the ethnic/caste groups that have 1.0 - 1.5 million population (Tamang and Newar), two members from the ethnic/caste/religious groups that have 0.5 - 1.0 million population (Muslim, Kami, Rai, Yadav, Gurung) and one

²¹In February 2009, the government decided to establish Integrated Service Centres outside some of the district headquarters. However, locals in various districts protested and demonstrated (violently) against the decision and government finally revoked its

decision. This incidence shows that massive readjustment and shifting of district headquarters may create further conflict in Nepal.

Table 4: The new proposal.

Regions/States	Proposed districts (share in total GDP)	Population (share in total population)	GDP Share (%)	Ethnic/caste concentration (% of population)
1. Sagarmatha	Taplejung (0.53%), Sankhuwasabha (0.67%), Solukhumbu (0.52%), Ilam (1.15%), Panchthar (0.72%), Tehrathum (0.47%), Dhankuta (0.61%), Bhojpur (0.68%), Khotang (0.74%), Okhaldhunga (0.50%), Udaypur (0.94%)	2045213 (9.0%)	7.52%	Rai (21.2%), Chhettri (18.1%), Limbu (12.2%), Brahmin-Hill (9.8%), Tamang (6.9%) Magar (6.1%)
2. Purba Madhesh	Jhapa ((2.75%), Morang (4.55%), Sunsari (2.88%), Saptari (1.79%), Siraha ((1.67%)	3242057 (14.3%)	13.65%	Brahmin-Hill (10.5%), Yadav (8.5%), Tharu (8.1%), Chhettri (8.0%), Muslim (6.6%)
3. Madhyamanchal	Dolakha (0.57%), Sindhupalchok (1.17%), Sindhuli (1.0%), Ramechhap (0.72%), Kavre (2.02%), (Rasuwa, Nuwakot) (0.27%+1.19% = 1.46%), Dhading (1.21%), Makwanpur (2.41%)	2408641 (10.6%)	10.55%	Tamang (31.8%), Chhettri (16.1%), Brahmin-hills (15.0%), Newar (9.6%), Magar (5.7%)
4. Madhya Madhesh	Dhanusha (2.23%), Mahottari (1.46%), Sarlahi (1.7%), Rautahat (1.58%), Bara (4.02%), Parsa (2.33%)	3462036 (15.2%)	13.33%	Yadav (13.2%), Muslim (12.7%), Tharu (4.8%), Teli (4.7%), Koiree (4.6%)
5. Rajdhani	Kathmandu (12.41%), Lalitpur (2.32%), Bhaktapur (1.4%)	1645091 (7.2%)	16.14%	Newar (35.4%), Chhettri (18.9%), Brahmin (10.5%), Tamang (8.9%)
6. Paschimanchal	(Manang, Mustang, Myagdi) (0.09%+0.12%+0.46% = 0.67%), Lamjung (0.76%), Gorkha (1.17%), Tanahu (1.25%), Syangja (1.41%), Kaski (2.17%), Parbat (0.64%), Baglung (1.03%), Gulmi (0.75%), Palpa (1.05%), Arghakhanchi (0.79%)	2818091 (12.4%)	11.69%	Brahmin-Hill (24.2%), Magar (20.6%), Chhettri (14.8%), Gurung (10.0%), Kami (7.8%)
7. Paschim Madhesh	Chitawan (2.7%), Nawalparasi (2.46%), Rupandehi (3.21%), Kapilbastu (1.8%),	2225313 (9.8%)	10.18%	Brahmin-Hills (17.1%), Tharu (13.0%), Magar (8.5%), Muslim (8.2%), Chhettri (6.5%), Yadav (5.4%)
8. Sudur Paschimanchal	(Dolpa, Rukum) (0.09%+0.63% = 0.72%), (Mugu, Humla, Bajura) (0.12%+0.14%+0.30% = 0.56%), (Jumla, Jajarkot, Kalikot) (0.26%+0.38%+0.03% = 0.67%), Dailekh (0.51%), Pyuthan (0.53%), (Rolpa, Salyan) (0.61%+0.16% = 0.77%), Surkhet (0.98%), Bajhang (0.46%), Darchula (0.48%), Achham (0.59%), Doti (0.65%), Baitadi (0.7%), Dadeldhura (0.56%)	2664954 (11.7%)	8.18%	Chhettri (45.2%), Magar (11.9%), Brahmin-Hills (10.5%), Kami (10.1%), Thakuri (6.4%)

Table 4. Contd.

9. Sudur Paschim Madhesh	Dang (1.64%), Banke (1.76%), Bardiya (1.24%), Kailali (2.44%), Kanchanpur (1.69%)	2225465 (9.8%)	8.77%	Tharu (34.6%), Chhettri (18.1%), Brahmin-Hills (10.5%), Magar (5.3%), Kami (4.7%), Muslim (4.6%)
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Note: As the population of 9 districts is below 100,000, so it would be better to merge them with other adjoining districts with compatible/comparable geography and ethnic composition in population (the merged districts are given in the parentheses). Therefore, total districts proposed are 66.

Data sources: CBS (2001): National Census 2058, Central Bureau of Statistics, Government of Nepal and UNDP 2004.

member each from the ethnic/caste groups that have 100,000-500,000 population (Damai/Dholi, Limbu, Thakuri, Sarki, Teli, Chamar/Harijan/Ram, Koiree, Kurmi, Sanyasi, Dhanuk, Mushhar, Dushadh/Paswan, Sherpa, Sonar, Kewat, Brahmin-Tarai, Baniya, Gharti/Bhujel, Mallah, Kalwar). To ensure the representation of other smaller ethnic groups in the Assembly, ten members can be elected to the upper house from other ethnic/caste groups.

Regional Legislature

Similarly, at regional or state level, a Regional/State Assembly of 100 - 150 members, depending on the population of the state, should be directly elected from the electoral areas, determined by the Election Commission on the basis of numbers of voters, geographical and other features, which will be recommended by the Federal Assembly. A council of state ministers (15 - 20) could be established at regional level. Like at federal level, representation of women (50% women candidates by each political party) and smaller ethnic groups is to be ensured. At least one member from each ethnic group/caste that has a population of more than 50,000 in the region/state but is not elected directly is to be nominated or elected by the mem-

bers of the regional/state assembly.

Executive

A ministerial council headed by the Prime Minister is to be established as the executive to run the daily functions of the federal/central government. Support of majority members of the Federal Assembly should be needed to form the government (Council of Ministers/Cabinet). A Council of Ministers/Cabinet (15 - 25 members) is to be formed by the Prime Minister from among the members of the Federal Assembly. At least one person (Minister) is to be included in the Cabinet from each state.

Regional Executive

The lower levels of governance are Districts and Municipal/Village Councils. District Councils will directly deal with the State Assembly, while Municipal and Village Council will directly deal with the District Councils. The central or federal government will provide grant/support direct to the state government and the state government should transfer the funds/grants to lower level. However, in emergencies like natural disasters,

the federal council may work directly at the district/municipal/village level.

Judiciary

There are many proposals (from political parties and academics) on judiciary system under federal Nepal. The Maoists have suggested a three-tier system of judiciary with the Supreme Court at the top and courts at the State and Local levels. In addition, Maoists also proposed People's Courts and reconciliation centres at the village and municipality levels. Similarly, CPN-UML proposed²² four tier judiciary system (Supreme Court, State Court, District Court and Local Alternative Court) for federal Nepal. Nepali Congress party suggests for independent judiciary, but structure of judiciary is not explained well in its proposal. Similarly, Madhesi Janadhikar Forum, The TMLP and other parties also not have detailed proposal on federal judiciary system. A high-level committee/panel headed by a senior Supreme Court Justice was also formed to frame modalities for restructuring the judiciary under a

²² <http://www.cpnml.org/>

federal system. Prof Siegfried Bross²³, a judge at the Federal Constitutional Court of Germany and chairman of the Executive Committee of the German Section of the International Commission of Jurists suggest that in a federal system, there should be a court at the provincial level, a Supreme Court at the centre and also a separate Constitutional Court which is independent from the Supreme Court. In his opinion, the main reason for setting up the Constitutional Court is to take into account the diversity of the people within the country through the appointment of the judges.

A three tier judiciary system (District Court, High Court at region/state level and Supreme Court at central level) seems appropriate for federal Nepal. Supreme Court should be the final arbiter in determining the meaning of the constitution.

Conclusion and Recommendations

The 'end of war is not the end of conflict' in Nepal, as proliferation of new armed groups and killing of people continued even after the declaration of the CPA, which ended the decade-long 'People's War' waged by the CPN-M. The conflict in Nepal cannot be ended by political pacts alone, as the causes of conflict are diverse, ranging from political, economic, socio-cultural and ethnic to many more. Therefore, a broad-based conflict resolution strategy is needed to establish sustainable and durable peace in the country. The strategy should sufficiently address the problems associated with the conflict. Most importantly, the strategy should deliver economic development that brings real changes in people's life.

Federal restructuring of the nation seems 'a must and the best option' for Nepal, as it has already been included in the Interim Constitution as the guiding principle for state building. It is also a top priority agenda of all major political parties and international peace builders engaged in Nepal's conflict resolution process.

It is argued that federalism will divide powers, or establish a formula for power sharing, among different groups of people, thus assuring participatory and inclusive development. Yet, the experience around the world is mixed regarding the interrelationships between federalism and growth and development. In other words, conditions. Development (participatory and inclusive) and growth should be topmost in the agenda for federal restructuring. To make federalism work for development, it also has to be economically viable and cost effective. Mere creation of many autonomous states based on ethnicity or some other issues which are not sufficient to

create a viable state can neither deliver development nor resolve a conflict. It in fact will be a burden and a source of deeper conflict in the country. The population and size of the economy should define the federal sub-units or states. It should also be well suited to the country's geographical and socio-cultural dimensions. Therefore, a four-tier (two plus two tier) governance system may be ideal. Fiscal transfers from the centre to the states, states to the districts and districts to the villages/municipalities are necessary to meet the fiscal needs of the states and local governments. Therefore, a proper mechanism or institutional set-up needs to be established to coordinate and implement the fiscal transfer activities. For that purpose, a three-tier institutional set-up may work: (i) Federal Fiscal Commission, which will determine what share of federal taxes (customs, excise, VAT, income, etc) will go to the state and also establish level of grants-in-aid, (ii) National Planning Commission (with representation from all states and some experts), to make recommendations for additional grants and loans, aimed mainly at supporting development plans and helping to finance projects in the state plan and (iii) State Planning Commission (SPC), to prepare state development plans.

Political, economic and territorial powers of the federal and state governments and their interrelationships as well as the relationship between the states should be clearly defined in the constitution, based on power dividing rules (the separation of powers). Instead of coming up with 'quick fix' and wrong solutions, a 'late but better' and 'long-term' solution is needed for Nepal. The debate to elicit answers to many political and economic issues is still ongoing in Nepal.

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²³See: <http://www.nepalitimes.com.np/issue/2009/04/03/ConstitutionSupplement/15823>

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