



Meeting demands for self-determination in Nepal

Constituent Assembly must accommodate ethnic diversity in a federal system

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Federations

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Nepal's Constituent Assembly abolished its long-reigning monarchy on May 28, 2008, transforming the country into a republic from a kingdom in one fell swoop.

Over the coming two years, the Assembly will define and design the country's federal structure. Consensus is emerging among political parties, civil society actors, and academia on the need for using criteria such as ethnicity, language, culture and territory as the basis for the

future federation. However, there are divergent views on the right to self-determination. The issue remains contentious and has generated considerable anxiety, fear and uncertainty.

The thorny issue of the right to self-determination cannot be ignored. It must be addressed in the federal design with utmost care to strike a balance between accommodating cultural diversity and not encouraging violent

conflict or secession. This need for balance requires a careful analysis of the available options.

First raised by indigenous peoples

The demand for the right to self-determination was raised first in Nepal by indigenous peoples, known as *adivasi janajati*. During the last two decades, activists within indigenous movements have championed this cause and brought it to national attention. The



People from the Kirat community perform their traditional dance during the Sakela festival in Kathmandu on December 12, 2008. Sakela is the main festival of the Kirat which is celebrated during the full moon by praying to Mother Nature for good crops and protection from natural calamities.

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Nepal Federation of Indigenous Nationalities, an umbrella organization representing 54 organizations, for example, stated that its chief demand for state re-structuring is the enshrining of the principle of "ethnic autonomy with the right to self-determination."

The group considers such a right essential to redress historical injustices imposed upon their society by Nepal's dominant group. The political parties that emphasize ethnic, linguistic and cultural rights – including *Sanghiya Loktantrik Rastriya Manch*, *Tamsaling Nepal Rastriya Dal*, *Nepa Rastriya Dal* and various factions of *Rastriya Janamukti Party* – have identical views on this issue.

As well, as the Communist Party of Nepal (Maoist) commonly known as CPNM, engaged in armed rebellion in 1996 and because it incorporated the agenda of a right to self-determination into its political program, the notion has spread across the country. The CPNM endorsed the right to self-determination and ethnic autonomy as early as 1994 when it held the so-called First National Conference.

Maoist ideologues Baburam Bhattarai and Hisila Yami, writing on the Nationality Question in Nepal, stated that their party "declared Nepal as a multinational and multi-lingual country and, having accepted the principle of rights of nations to self-determination, proposed autonomy for different nationalities." As the people's war – as it became known – developed further, the CPNM announced in 2004 the formation of 11 autonomous regions in the country which were to have a right to self-determination. The party's view is that the right to self-determination includes the right to secession. For the CPNM, the right to secession is closely linked with the people's right to revolt against oppression.

Movements made same demands

To complicate the situation, there were similar demands made by movements in the *Madhes*, the southern strip of Nepal bordering India, also called the *Terai*. The *Madhesi* movements – involving the Maithili, Bhojpuri and Avadhi-speaking

people and other groups living on the southern plains – which surfaced vigorously beginning in 2006, have adopted the vocabulary and made the same demands. The Madhesi Janadhikar Forum – a regional political party that won 50 seats in the Constituent Assembly (CA) – says in its election manifesto that it wants "complete autonomy of the *Terai* with the right to self-determination."

While demands for the right to self-determination have escalated to a non-retractable level, details about how this should be done have not been made clear yet. Neither the indigenous peoples' leaders, who demanded self-determination as a fundamental right upon which other rights depend, nor CPNM, which promised self-determination of the nationalities with the right to secession, have come up with details about how this powerful and emotive principle should be dealt with by the federal constitution.

Adding to anxiety

The open-endedness of the concept as it is advocated by some people has added to the anxiety of political actors who see the right to self-determination simply as the gateway to secession. Such anxiety

is particularly strong among conservative sections of Nepali society that believe Nepal was a "creation" and "possession" of the Shah Dynasty, the former royal family of Nepal, and therefore, must be kept unitary and centralized. In a recent television interview, Kamal Thapa, a leader of the Rastriya Prajatantra Party and a supporter of the former royal regime, said that granting the right to self-determination would undoubtedly ultimately lead to the disintegration of the country.

Major political parties such as the Nepali Congress (NC) and the Communist Party of Nepal (United Marxist Leninist) have for now dodged the issue by saying that the powers of constituent units will be determined by the CA or by a special high-level commission on state restructuring.

Such resistance is understandable as states around the world are generally reluctant to recognize the right to self-determination of groups within a state because this can conflict with the principle of territorial integrity. The dynamics in Nepal reflect this, as on one hand, the state primarily wants to avoid disintegration, while on the other, indigenous peoples and distinctive



REUTERS/GOPAL CHITRAKAR

Tharu activists demonstrate in Kathmandu against the Madhesi demand that the whole of Nepal's Terai region become one single constituent unit. The Tharus are Nepal's fourth largest indigenous group. They occupy Nepal's lowland region with nearly seven per cent of the population. They have been demanding a separate constituent unit of their own within the Terai region.



population groups living in the state want their right to identity recognized.

Postponing, ignoring or dismissing the issues does not help in developing a solution that contributes to peace or strengthens democracy. Attempts to maintain territorial integrity of the Nepali nation-state through force would obviously bring more tragedy than good to the people. Instead, demand for self-determination in the context of Nepal must be considered in the context of the historical experience of marginalization of indigenous peoples and other groups. These groups were not only excluded from power, but also experienced economic exploitation, political suppression and cultural discrimination. The demand for autonomy and self-determination is aimed at creating an inclusive state based on democratic values of equality, human rights and the rule of law.

Accommodating cultural diversity

Self-determination must be understood in a broader sense in relation to accommodation of cultural diversity in multicultural states such as Nepal. Secession would then become only one possibility, perhaps as the extreme form of self-determination.

Secession, as one dimension of the right to self-determination, is more of a concern to the opponents than the proponents of such a right in Nepal. There was never a demand for a separate state even when marginalized groups characterized the unitary and centralized state of Nepal as one of "internal colonization" by minority caste Hindu elites under the patronage of a feudal king.

Thus, holding the Nepali state intact – using a reconfigured formula and restructured political institutions – is still a common value for all contending political forces. Indeed, indigenous scholar-activist Krishna Bhattachan, argued the new constitution must clearly mention the right to self-determination as a collective right of indigenous peoples.

"This shall not mean secession," Bhattachan added.

Bhattachan made the statement at an

event organized on the occasion of World's Indigenous People's Day on August 9, 2008.

Indeed, the right to self-determination as a recognized principle in international and constitutional law can have a range of meanings and dimensions supporting its implementation. Professor Antonio Cassese, an international law specialist who served as the first president of the International Criminal Tribunal for the Former Yugoslavia, distinguishes between external and internal dimensions of the right to self-determination. The external dimension of the right to self-determination mainly concerns the international status of the people concerned. Secession would be one example of this. The internal dimension, on the other hand, is related to state structure and legal regulations to ensure democratic rights for diverse groups.

In the contemporary context, the doctrine of a people's right to self-determination, often credited to Woodrow Wilson, is more often evoked in the context of accommodating diversity in pluralist or multicultural settings of nation-states than in the context of decolonization. There are virtually no states today that have enshrined the right of secession in their constitutions with the possible exception of Ethiopia. But recognition of cultural diversity and equal rights has become a widely accepted democratic norm.

Guaranteeing group identities

While the debate on the right of secession is not of major practical relevance for federal Nepal, the right to self-determination nevertheless is something that is very important for some people. Respecting peoples' aspirations and using insight from elsewhere, for example South Africa, Nepal's new constitution can guarantee the right to self-determination to the "Nepali people as a whole," without precluding the right of self-determination of indigenous peoples. In this way, Nepal's challenge of achieving "multicultural nationalism," or proverbial "unity in diversity," perhaps can be addressed by ensuring various

groups a right to their identities. Such a move would help these people feel more disposed to integrate into the state in which they live.

The adoption of the Declaration on the Rights of Indigenous Peoples by the United Nations General Assembly in September 2007 was welcomed enthusiastically in Nepal. With this declaration, the UN said that indigenous peoples have the right to self-determination. The declaration affirms the close relationship of indigenous peoples with their ancestral land, and territories that form the base of their collective existence, culture and spirituality, as well as the right to self-determination in the framework of the state in which they live. However, the declaration, a joint document of world indigenous peoples and governments, also specifies that self-determination does not mean separation. The spirit of the declaration is reflected in Nepal when people express their desire for recognition of cultural identity and democratic rights, as well as the historical legacy of people from mountain, hill and *Terai* living together.

With these aspirations, indigenous peoples in Nepal joined together to congratulate 199 CA members belonging to indigenous peoples on June 21, 2008. Before an audience of 1,000 in the heart of Kathmandu, the speaker of the CA, Subash Chandra Nembang, who is from the indigenous Limbu people, said: "We as your representatives to the CA will not disappoint you. ... We will make sure that you all keep your head high as united Nepali who respect diversity."

Thus the designers of the new federal state of Nepal, who must take into account a wide range of concerns from ensuring effective fiscal and judicial arrangements, to whether the country be governed by a parliamentary or presidential system, must be guided by the need for the design to include principles of self-rule and shared rule. This will be crucial for meeting Nepal's challenges and for realizing the peoples' desire for self-determination in a common and united Nepal. 