

**REMARKS BY DR. LARRY TAMAN, INTERNATIONAL PROJECT
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PARTICIPATORY CONSTITUTION BUILDING IN NEPAL;**

**THE TRANSITION PROVISIONS
IN THE NEPAL CONSTITUTION OF 2010.**

Friends and Colleagues:

For the United Nations, the successful completion and implementation of the constitution is a vital part of building the peace and bringing an end to years of conflict. At the opening, Robert Piper noted the great progress made so far in building the constitution. He congratulated the members of the CA the Secretariat and the Speaker.

They have benefited from the input of civil society organizations and from international friends, some of whom are represented here. I join in those congratulations to all of you and assure you of our support in your next challenges.

As many of you know, I have been in Nepal for nearly 1½ years as the head of the UN’s constitution support team. This does not make me an expert on Nepal, but I can tell you about what I have learned in 4 propositions

- **PROPOSITION 1: FEDERALISM IS ABOUT POWER SHARING AND POWER SHARING THROUGH FEDERALISM IS NOW THE KEY TO UNLOCKING THE POTENTIAL OF THE NEW CONSTITUTION.**
- **PROPOSITION 2: THE SUCCESS OR A FAILURE OF THE NEW CONSTITUTION WILL DEPEND HEAVILY ON THE PEOPLE’S**

**PERCEPTION OF WHETHER THE TRANSITION TO
FEDERALISM IS A SUCCESS OR A FAILURE.**

- **PROPOSITION 3: TO BE A SUCCESS, THE TRANSITION TO FEDERALISM MUST ADDRESS SOME BASIC PRINCIPLES.**
- **PROPOSITION 4: THE GUIDING FRAMEWORK FOR TRANSITION TO FEDERALISM MUST BE PROVIDED FOR IN THE CONSTITUTION ITSELF.**

Let's look at each of these in a little more detail.

**PROPOSITION 1: FEDERALISM IS ABOUT POWER SHARING AND
POWER SHARING THROUGH FEDERALISM IS NOW THE KEY TO
UNLOCKING THE VISION OF THE NEW NEPAL.**

I think it is vital for Nepalis and their international friends to accept one political reality: a root cause of the long and painful conflict was the conviction of many that

- previous political regimes, their ideas and their governance systems, had deprived most Nepalis of the most basic opportunities of life – they made Nepal the poorest country of south asia
- that until power is taken from elites and the centre and transferred to ordinary people and outside the valley, the situation will not improve
- that previous efforts to decentralize have been an effort of elites to maintain power rather than to share it: they are at best a failure and at worst, as Purna Man Shakya said yesterday, a ‘gimmick’ that was never intended to share power.

For those of you who suspect that federalism is not the answer, of course it is not the only answer. And for those of you still seeking

to negotiate another course, of course this is an issue for the Nepali people to debate and decide. But let me remind you that Nepal is already a ‘federal republic’ under the terms of the Interim Constitution, that federalism is the fundamental principle that underpins all the work of the Constituent Assembly, and that in one form or another it is clearly the way forward that the people, through their representatives, are now working on.

So, if the new constitution provides for meaningful power sharing through federalism, and if it is successfully implemented, than life may improve. If not, there is a real chance of a return to conflict.

PROPOSITION 2: THE SUCCESS OR A FAILURE OF THE NEW CONSTITUTION WILL DEPEND HEAVILY ON THE PEOPLE’S PERCEPTION OF WHETHER THE TRANSITION TO FEDERALISM IS A SUCCESS OR A FAILURE.

By transition, I am thinking about the path to power sharing through federalism. I am thinking particularly about the early steps, about making a good start and then making steady progress to building the newly structured state

Let’s think together about May 29, 2010, the day after the Constitution is proclaimed. On that day, there will be happy people and there will be unhappy people. The unhappy people, who did not get a province they say they were promised, or a right they say they is guaranteed, will not quickly become happy. For some of them, bringing them into the new nation will take time.

But there will be happy people those who see in the constitution a vision of a new future, and those who are just glad that debating is over and building is beginning. They have been told that federalism is the key. It will, they have been told

- Increase their influence in the local matters that concern them the most

- Create state and local institutions that are closer to them and that are more subject to their control
- Open the door to new political leadership and new public servants who will break with the old ways.

So, these happy people (and maybe some of the unhappy ones) will now wait to see whether their lives improve. And here, I speak of all lives, not just some.

- Will their security improve? Or will impunity survive?
- Will public infrastructure improve? Or will corruption take money from roads and dams and airports and local projects?
- Will health, education, job training and other social services improve?
- Will their property be fairly dealt with? Will their business prosper?
- Will civil servants who do not wish to leave Kathmandu be fairly dealt with?

I have said they will wait, but how long will they wait? In our work, at the Center for Constitutional Dialogue and in our loktantrik sambads or democracy dialogues all over Nepal, we have talked to nearly 200,000 people from all parts of Nepali society. Any one can see that Nepal’s political system has for a long time benefited from the fact that Nepalis are a patient people. But our meetings tell us that their patience is running out – I believe they will not wait a long time, and that they must quickly see tangible benefits from constitution making or they will join the unhappy people and big trouble will follow.

So, that is why the transition to federalism is so important.

PROPOSITION 3: TO BE A SUCCESS, THE TRANSITION TO FEDERALISM SHOULD ADDRESS SOME BASIC PRINCIPLES. YOU MIGHT THINK OF OTHERS, I WOULD SUGGEST THESE:

- **Be Fair:** Just as there are many people who are optimistic about federalism, there are many who are fearful. They fear that the winners will be rewarded and the losers will be punished. At each step, the transition must aim for fairness.
- **Plan:** The transition to federalism should be well planned – When will it start? What comes first, second and third? Who pays or lends? How much?
- **Do No Harm:** No one who depends on a government service should be worse off under the transition than they were before. School and hospitals and roads – they must all remain open.
- **Improve Services:** the people’s need for services will not stop just because new governance is being built. Look for ways to show immediate impact in service improvement.
- **Accountability:** Who is responsible at each level for making sure that the necessary things are done?
- **Tell the Truth:** People are not foolish or naïve. They do not believe that their lives will change overnight. But, they have reason to be skeptical of their political leaders. So, make promises, even small ones, and keep them.

PROPOSITION 4: THE GUIDING FRAMEWORK FOR THE TRANSITION TO FEDERALISM MUST BE ADDRESSED IN THE CONSTITUTION ITSELF.

The report of the Constitutional Committee has already dealt with one part of the transition provisions in the new constitutions. These are what might be called the stability provisions. Broadly speaking they provide for how the basic functions of the state will carry on until restructuring comes into effect. They do not yet deal with the restructuring itself.

Let's go back again to May 29. On the day after proclamation, none of the new institutions will exist. It is the constitution itself that must answer the basic questions:

- Do new states and local governments come into being immediately, or only after a period of time?
- If they come into effect immediately, how will they be governed until their first elections?
- If they come into effect after a period of time, is it on a date fixed (after 1 or 2 or 3 years)? Do they all come into existence at the same time?
- Do states receive all their powers and resources at the beginning, or is it a harmonized process so that they get powers and resources when they are ready to take on their functions? Who decides if they are ready? Who helps them get ready?
- Who is responsible for overseeing the practical elements of building the new federal state? Is it the new national executive through government ministries? Is it a high level body – a “Constitutional Implementation Commission” – perhaps structured as an independent constitutional body with a limited life span of, say, 7 years? Is it the Legislature through a Parliamentary Committee?

In each of these areas, there are many examples around the world. In Spain, for example, the constitution allows regions to declare their autonomy when they determine themselves. In India, there were important national planning bodies that helped to develop the states. In some countries, transitions were managed by government ministries.

Our job at the UN is to help you identify the relevant examples from all over the world, and to make sure that their experience and expertise is available to you, if and when you wish it. That is our commitment to you and we look forward to working with you in

this next important period. We wish you continuing success in this great enterprise. You are the fathers and mothers of a new nation, and we will be there to help you.