

## **A participatory process for making a new constitution**

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Constitutions have been made in different ways in Nepal, but in every case they have been 'bestowed' by a Rana or a King. Except for the 1990 constitution, there was no consultation with the people. Even in 1990 consultation was very limited, given the time constraints. Commentators have argued that even this limited consultation did not have much impact on substance of the constitution. The process seems to have been dominated by a small expert body, with close connections to political parties, and the palace. Although the preamble states that sovereignty lies with the people, the constitution was proclaimed by the King.

The result of these top down procedures for making the constitution was to exclude large sections of the people from any participation in the process or influence on successive constitutional changes. Each constitution represented only marginal social and political advances, and continued to exclude the large majority of the people from political or economic power. Consequently each constitution was challenged as the social forces excluded from its political system were able to articulate their grievances and demand justice. Even the most progressive of the constitutions, the 1990 was shaped by forces which still dominate political scene. It aimed to further the unification and homogenising mission of the state by imposing the culture and interests of the rising middle class drawn from a narrow sector of society. Many of its provisions were designed to prevent the emergence of new ethnic, social and regional consciousness. The structures of power it created were hostile to directive principles which recognised, and sought to remove, social iniquities and the depressed state of many communities.

The Janaandolan II was led by communities hitherto excluded from seats of political and social power—which meant the majority of the people. Therefore they aimed at a further (and final?) transformation of society and state structures. Several agreements between the SPA and the Maoists gave expression, in abstract terms, to this aspiration. A constituent assembly, as the manifestation of the sovereignty of the people, was chosen as the vehicle to lay the constitutional foundations of this transformation, the New Nepal. The constitution would no longer be the gift of a king or a small elite, but the handiwork of the people themselves.

If Nepalese are to be true to this dream, the process of constitution making must be fully participatory. Participation means a great deal more than voting to elect delegates to the constituent assembly. It encompasses the active engagement of the people in defining the agenda of reform and the instruments for social and economic change, through debates, arguments and consultations, not only in Kathmandu but throughout the country. It means identifying the causes of oppression, injustice, and the silencing of inconvenient voices through the narratives of the victims. It means allowing opportunities to the people to learn about the constitutional history of Nepal, the experiences of other countries with similar problems, and to develop their capacity for developing democracy. Above all, they must be able to make submissions to the constituent assembly and to be part of the decision making process.

There are three very specific reasons for participation. Three elements constitute the core of the Jananandolan. They are: a new identity as a Nepali, inclusive democracy, and social justice. None of these can be achieved without an active participation of the mass of the people, representing Nepal myriad social and ethnic communities.

The 1990 constitution promised social reform and economic justice. But the power structures under the constitution precluded, for traditional and legal reasons, the effective voice of those in need of reform—despite universal franchise. It is inconceivable that the constituent assembly would adopt a true agenda of social justice unless the marginalised are there to argue their case, and to vote for it. In the past they failed to secure representation through political parties. A mixed member system which the parties have decided, is not particularly suitable for a constituent assembly as opposed to parliament, and by itself will not guarantee representation of the disadvantaged communities. Specific rules must be built into the electoral system to ensure that it does. Inclusive participation also requires the active support of the state and political parties, and perhaps the establishment of new organs of representation, built on different bases from the traditional political parties.

Democracy is no longer equated with periodic elections only. Instead, it requires a regular engagement of the people in the affairs of the state. For this to happen people need both the motivation and the capacity. Neither will be forthcoming if people are not made aware of the importance of the structure and institutions of the state, nature of politics, the role of political parties and other social organisation and their rights as citizens. There is no better time than during constitution making to engage people in discussions of public powers and institutions, and their purposes. Without some public awareness of the mechanisms of the state and an understanding of democracy, the new constitution, however well crafted, would probably fail to take root. Democracy almost never is the result merely of a legal instrument or charter. There can be no democracy without the commitment of the people to it and their willingness and ability to participate in public affairs, aggregate their interests and lobby for it, exercise and protect their rights, and take their own responsibilities as citizens seriously. As is common in many countries, people in Nepal, especially in rural communities, have only a fragmentary understanding of the institutions and procedures of the state. Moreover, in Nepal people have been subordinated to feudal and authoritarian systems of government and now need to be persuaded that they may now freely exercise their rights—and demand respect for their dignity.

A participatory constitution making process should thus aim not only at raising awareness, but also at enabling the people to contribute to the outcome of the process. Their views must be listened to and fully taken into account in the decisions of the constituent assembly. The knowledge they will acquire of the constitution will equip them to better understand the ways of politics and state—and to be good democrats!

The fundamental task of constitution making is to re-define the identity of Nepalis. Many communities, up and down the country, have rejected the Nepali identity codified in the 1990 constitution. They want the recognition of their cultures, languages, and religions. The focus has shifted, as part of emancipatory politics, to particularistic identities, of gender, caste, ethnicity or region. Communities are demanding forms of self-government and social justice, beginning to see themselves

as separate groups, rejecting much of what has until recently passed as central to Nepali identity.

The role of the process of constitution making must be to search for a balance between national and particularistic identities. The 1990 approach of decreeing an identity will not work this time. Identities will have to be negotiated. Since the impetus of the Janaandolan is social justice, complex issues of demands for new entitlements and resistance to them will have to form part of the negotiations. Values by which the people want to live are a critical aspect of identity. And negotiations mean participation, vigorous debates through the country, in numerous forums. They also mean acceptable rules for decisions on the constitution. In this way the constitution will serve as a social contract among the multiplicities of Nepal, not merely state building, but more importantly, nation building.