Enabling State to Address Governance Challenges in Nepal

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Introduction

The Nepalese citizens are now in the national envisioning process and trying to transform their informal society, economy and polity into formal constitutional state. They are also struggling to rebuild an inclusive state for freedom, justice and peace. Modern state[2] is a constitutional state, a state that also ties democracy within its bounds. It is based on legitimate monopoly on power, taxation, loyalty of citizens and international recognition. It unites the general will of all citizens into a sovereign power to abolish the state of nature and minimizes the risk of eternal fear and anarchy in society fomented by irrational human nature, nature of state and the state of anarchy that characterizes the international system. The fear of violence, overpopulation and scarcity of land, food, water and fuel still feed the source of conflict and threaten the lives of poor in many societies lacking well-functioning public institutions. Only an effective state has the ability to implement all the rights of citizens and prosper in today's high-tech, high-speed and increasingly globalized world. The deliberative politics of Constituent Assembly has politicized citizens about their rights, exposed them to law making process, changed power equation of society and created a new public sphere linked to cosmopolitan laws of human rights, social justice and peace. Nepalese politics has, however, missed the golden mean—between freedom and order, rights and duties, politics and law, aspiration and organization and society and state and, therefore, domination of particular interest has undermined the cohesive public interest of governance.

Modern nation-state is the "product of four closely interconnected processes of institutional closure, such as a political one (democracy tied to national self-determination), a legal one (citizenship tied to nationality), a military one (universal conscription tied to national citizenship) and a social one (the institutions of the welfare state linked to the control of the immigration of foreigners)" (Wimmer, 2002:9). It is also based on human rights, public international law, enlarged communication, trade and technology, migration, etc. The cosmopolitan requirements have increased the state's opening to external environment, commitment to human security and the transformation of ethno-based nation into demo-based constitutional state with the ability to complement governance effectiveness including its role in the balance of regional and global geopolitical interests. In this context, constitutional state is expected to lower the transaction costs.

Nepal's international image of a weak and fragile state, one that does not have effective and accountable public authority to manage many of its pressing problems without outside support, poignantly mirrors the deficiency of many state bearing institutions including State Affairs Committee of Parliament. Since many years Nepal's governments of various hues seemed more survival-oriented than pro-active. As a result, the cabinet instead of becoming a coordinated mechanism of collective national action reflects an arena of vicious conflict of partisan interests. Coordination problem along governance goals has become the main institutional weakness for the ministries, secretaries and department heads. Patterns of policy negotiation among key political leaders take place outside the parliament which basically represents a grand coalition of some super individuals and groups. The parliament is, therefore, cut off from the real life aspirations of citizens and connected with interest groups of society. The learning capabilities of political parties to new ideas, technology and leadership emerging from local governance institutions are very weak though they are resolving petty disputes, enforcing contracts and governing social relations within villages.

The building of post-conflict stable state in Nepal, however, entails it to balance the tension between the institutional closure and institutional opening and seek safe national adaptation in the

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[2] The state is "constituted both in the guise of an apparatus and in the guise of an agent, by the set of legislative, executive and judicial power rights which put some individuals, the agents of the state in position of authority over others" (Hamlin and Pettit, 1991:3).

national and international society. The constitutional state has also to maintain autonomy from dominant interest groups of society, uphold sufficient capacity to mobilize tax and human resources, maximize the standards of human rights, democracy and rule of law, embed in ecology and the general interest of all citizens and muster recognition and legitimacy of its statehood. The Nepali state, however, is facing several institutional gaps: vision gap between the changing yug dharma and indigenous statecraft and social division of labor (even democracy and political pluralism have become contested sites); power gap between juridical international status and actual political capacity for internal social cohesion and system integration; development gap between unequal social classes of society causing structural injustice and conflict; and legitimacy gap between the ability of leaders to govern and their capacity to fulfill legitimate aspiration of citizens for liberty, property, justice, peace and identity. These gaps continue to undermine the separation of the state and society and the possibility to address distributional struggle of left out sections of society.

The election of Constituent Assembly (CA) has circulated social elites into political power, legitimized federalism, secularism and republicanism and sought to fulfill the mandate of popular movement of April 2006, namely, draft a new constitution by May 28, 2010, secure durable peace and initiate structural reforms (Dahal, 2007:18) to establish gender, ethnic, caste and territorial justice. The movement was steered by a coalition of Seven Party Alliance and CPN (Maoist) and was supported by international community. The post-CA process has, however, shifted Nepal's politics from consensus to competition and conflict and made political transition protracted due to trust deficit. Similarly, poor educational, economic, technological, organizational and leadership preconditions to sustain the transition to consolidated democracy can be attributed to this. As a result, many unresolved issues, such as form of governance, federalism, land reforms, adjustment of Maoist combatants, establishment of institutional pillars of peace referred to in the Comprehensive Agreement and power-sharing arrangement have become drivers of conflict. These factors have defied the possibility to create a good society, a society in which individual citizens have a real opportunity for full self-realization based on common values and contribution to common good (Anderson, 1985: XVII). This article explains the leading actors of governance in Nepal, culture of public administration, delivery of public goods, conflict resolution and conclusion.

Steering Governance through Constitutional Design

Governance is the means by which "order is accomplished in relation where potential conflict threatens to undo or upset opportunities to realize mutual gains" (Williamson, 2001: 95). Governance—as a coherent system of norms, rules and institutions—enables national actors to organize information, knowledge and capacities in order to formulate joint policies and achieve constitutional goals. The goals of governance are: national security, rule of law, public access to information, citizen participation in civic bodies, delivery of public goods and services and peaceful resolution of conflict. To become good, the actors of governance have to follow democratic process. The notion of governance has marked a paradigm shift from state-centric decision making to society-centric regime. Horizontal macro actors of governance are—the state, the market, all intermediary actors, institutions, networks and movements constituted as civil society and international community or actors. The micro vertical actors are: District Development Committees (DDC), Municipalities and Village Development Committees (VDCs) and similar forms of hierarchically designed sectoral units of various ministries, departments and corporations.

The state is a territorial entity defined by precise population, government and sovereignty. Governance, by contrast, is de-territorialized. It takes into account not only intra-state but also post-state challenges, such as climate change, globalization of economy and technology, migration, international regime and resolution of transnational threats and opportunities. Governance is a coordinated regime and, therefore, its synergy can be captured through proper communication, coordination, coherence, steering, feed back and collective action of its actors under the vision defined by the Constitution and various international regimes of which Nepali state is a member. Similarly, its normative means and ethical values are assessed in terms of its performance, neutrality, transparency, accountability and equity. Good governance enables citizens to have

opportunities to secure their basic needs, freedoms and rights through an access to markets, assets, and economic goods and properly regulated civic institutions so that poor and marginalized sections of the society can realize their potential and claim ownership of the political process and its outcome. Are the governance actors in Nepal sufficiently cooperating to achieve their shared goals and deploying the normative and empirical means or are caught in the vicious cycle of disharmony and underdevelopment trap? There is a pause as Nepalese leaders driven often by transactional passion are, caught by the populist trap and unable to fix the dysfunctional system through the resolution of authority through compromise and regulate systemic risks. They are also governed by what Herbert Simon calls "bounded rationality" of party politics and unable to incorporate other's interests and concerns. The governance reforms include not only civil service reforms but also the reforms in the institutional culture of all of its actors.

The Leading Actors of Governance
Since the restoration of multi-party democracy there is a paradigm shift from bureaucracy possessing the state's essence to opening itself to market and civil society, universal spirit of hierarchy and control to equality, flexibility and competition, and faith in authority and confidentiality to democracy, transparency, ownership, participation and subsidiarity. Good governance requires a new equilibrium beyond legislative, executive and judiciary where the state's imperative of public order is matched with the market and civil society's aspiration for freedom, autonomy and internationalization. Owing to growing political conflicts in the country and globalization, the governance actors in Nepal face institutional deficiency in providing public order and public good and adapting to technological, sociological and political change. Political crisis in Nepal has produced a political culture of confrontation and deadlock, weakened the power of public to live in civil coexistence and undermined their freedom, well-being and productive lives. The macro actors of governance are: the state, market, civil society and international community as they are the key stakeholders in policy negotiation but they do not feel equally accountable to policy failure.

The State
The reasons of state provide the foundation of public order. And public order is public good. But, the interest of current establishment in "state restructuring," has left the form and functions of future governance undefined other than vague stipulation of federalism and rectification of historical injustice. The UCPN (Maoist) has declared to demolish this state for a new one while others have territorial, ethnic, linguistic and sectoral vision of constructing new state. Unless Nepali state's legitimate "monopoly on power" is restored it cannot overcome security, democratic and development deficit and shape the "rule-based conception of ethical life." It is highly dependent on foreign aid, recognition and legitimacy. Remittance alone contributes 19 percent to GDP. The autonomy of state has been eroded by the growth of multiplicity of societal actors sharing policy and decision domain. Due to growing incongruence between the state and society, inability to contain social rebellion based on unrealized grievances and provide service delivery in the periphery, donors call Nepal a "fragile state" and have accordingly defined the principles for engagement. Only visionary leaders can minimize the political differences, build consensus among the key actors for national action and strengthen the constitutionalization of society, economy and polity. The civil servants as state bearing institution along with the security, disciplinary, policy making, watchdog and supply delivery institutions have primary responsibility to act as an interface with the society. This helps to build the state from bottom up and increases the legitimacy of central institutions of governance.

The Market
Market is a domain of exchange of public goods and services. It unleashes the forces of competition and innovation. The Nepalese market, however, is spatially fragmented and mostly reacts to the code of price and profit. There are hundreds of pockets of small markets not connected to each

other. This condition has defied the national political economy of scale and increased difficulties for the enterprise associations for collective action and create conducive business environment for investment, production, circulation and exchange. Multiplicity of its political economy-- pastoral, peasant, commercial, industrial, service and informational-- requires context-sensitive policies. The planners' earlier belief in the infallible wisdom of market to allocate goods and services and specialization has been shattered as it remained too weak to support the pattern of cooperation across national societies, modernize workforce and strengthen the backward and forwards linkages of the political economy.

The ideology of state minimalism, espoused by neo-liberal political classes of Nepal, limited the power of the state to create security, penetrate society, formulate rules and authority and seek the loyalty of citizens to the polity and the state. They, along with corporate elites and bank defaulters, concentrated in urban areas, preside over a grossly inequitable division of wealth that is both the source of their supremacy, disenfranchisement of the mass of Nepali people and the crisis of public life. How can the market serve as a meeting point for all when these elites are disinterested in social responsibility and prefer to pursue class-blind democratic values? Ethical governance requires a tab on the unrestricted interplay of economic and political actors driven by self-interest and orient them towards democratic ethics of serving public interests. In the absence of social support and political restraint (especially on extortion), market has not been able to balance the forces of supply and demand. The global economic crisis has renewed the vision of public sector in strategic areas including climate change and demand of security by business community, journalists, judges and ordinary public from the Nepali state will likely to change the style of economic analysis of development.

Civil Society

Civil society groups mediate the social cleavages and transform people into citizens. In Nepal, civil societies have been regarded as a rational response to social change, agents of democratization and composition of public power. They are, therefore, endowed with huge responsibilities of promoting social justice without knowing their capacity to foster civic involvement and political participation. The global response to social crisis and de-bureaucratization of development following neo-liberal policies have legitimized civil society's role in public policy and public action. Despite mushrooming growth of civil society, NGOs and voluntary associations, cooperation between the state, the market and civil society in Nepal is marked by general distrust and lack of interest in cooperative action. The societal denationalization by civil society and the market forces has produced a class of cosmopolitan elites who are not obliged by what the notion of citizenship loyalty entails in a democratic political system. This condition has undermined the national ideology of the state and exonerated the market and civil society from constitutional control. Moreover, hyper social activism of civil society contributed to the erosion of boundary between them and party politics and weakened the ability of leadership to inspire mass followers.

The government is now facing problem in projecting its policy making capacity over the territorial sovereignty, increase the outreach of public administration and seeking to implement peace-building policies through local peace committees. National territory has become too small for the markets and civil society to function and the government and political parties have not developed any integrative political response to this denationalization. Bulk of Nepalese civil groups are, however, are rights-based than duty oriented, group-enclosed, inorganic, columnalized and suffering from the self-ironies of dependency despite their creative role in conflict mediation, public communication, relief works, civic education, public action and policy engagement. Similarly, radicalism of urban civil society has fostered demand-fuelled politics and eroded the authority of state. They are also unevenly distributed like per capita income and, like market and politics, concentrated in urban areas to foster the constituency of business and global market interests. How to transform the utilitarian instinct of majority of civil society into charity-based organization like Paropakar is a major governance challenge. The cases of VDC, Municipality, DDC, forestry and

irrigation federations indicate that heterogeneity of Nepalese society is not a problem in collective action if institutional incentives are placed for shared governance.

International Community and Regimes

With the advent of modernity in Nepal, the country has always remained a "consumer of public policy." Over 60 percent of Nepal's development budget comes through foreign aid. International community became legitimate stakeholder of policy regime evident from the negotiation of public policy in Nepal Development Forum. The state fragility has increased international attention in Nepal and policies are coordinated with Security Council, UNMIN, WTO and human rights regime. Donor coordination in bridging governance gap between security and development policy under Paris Declaration on Aid Effectiveness and engaging those actors who support endogenous post-conflict state building measures are the ways to avoid unpredictable policy response. It also helps transform a culture of violence into a culture of peace based on rights, pluralism and recognition of various identities within the framework of national identity and common humanity. Sensible donors have increasingly recognized the need for context-sensitive development approaches and allowed local participation and ownership in policy design. Still, "most part of development practice remains donor-driven and aid-centric" (IDS, 2010: 69).

Culture of Public Administration

The administrative arrangements made by the state "shape administrators' incentives and determine their accountabilities" as well as "influence policy outcomes" (Horn, 1997: 1).The society-centric governance presumes that there are enough competing centers of power and competing groups, enough citizens competing for influence over public policies and the institutions of governance giving scope for participatory democracy. But the hard question is to explore how democratic process itself is situated within certain political relations, social and economic division of labor, civil-military relations and their competition and conflicts. Nepalese bureaucracy cannot be divorced from the reality of inter and intra-party competition and remain isolated from growing public expectation of service responsiveness. There is constant reshuffling of civil servants in every change in government. This has eroded both institutional autonomy and performance.

Nepal cannot afford the luxury of inventing every times making the old unsustainable given its resource constraints. This has posed a problem for civil servants to remain neutral, seek to pursue institutional interests and manage to bring social and collective goods to the citizens. Similarly, this also marks the loss of institutional memory vital for public policy making and indigenization of public policy. Autonomy of public administration from special interest groups of society is possible with highly selective meritocratic recruitment through Public Service Commission, long-term rewards for career improvement, fair penal system and a system of rule of law. The political imperative of social inclusion, affirmative action and political measures, however, poses a challenge for this. Similarly, historical crisis in rule of law in Nepal has added other woes to this. The instability of constitutional system can be attributed to a spar of several worldviews—conservatism, ethno-territorialism, nationalism, liberalism, socialism and inability of patrimonial leadership to establish a modicum of unified legal order to compress the state of anarchy. Similarly, the existence of multiple authority patterns in Nepalese leadership and dominance of informal transcript of society, economy and polity over constitutional system indicate that law has not fostered a common identity between the rulers and the ruled.

Public administration is an executive part of the state. The legality of public administration in Nepal springs from the separation and balancing of powers among executive, legislature and judiciary, the justification and application of norms and binding administrative power to the interest of citizens in common. This means its autonomy, integrity, impartiality and honesty in performance are crucial indicators for good governance. The Constitution obliges the state to protect citizens and leave all other activities to self-regulating market forces except in the cases of poor, Dalits, women, indigenous people and the marginalized requiring social justice, access to opportunities and identity.

Bureaucracy coordinates the functions of the state and society and executes the "rules of the game" governing public policies, elections, property rights and contracts.

Representative democracy defines the basic norms of governance where bureaucracy is bounded by general policies, structured by division of labor and hierarchical control and reviewed for rough conformity to some principles and policies of the state, constitution and laws. The administrative power has a statutory basis approved by people's representatives in a procedure by discussion, consent, public opinion and constitutional legitimacy. The expanding nature of welfare state and increase of social rights in the Interim Constitution 2006 have added more power to bureaucracy in planning, policy making and service provisions and their increasing control over money, infrastructure development, technical expertise and information. The governance reforms thus also required new checks, such as ownership of clients, the use of ombudspersons, hearing of public grievances, citizen charter and citizens' access to the conduct of public affairs as well as call for the de-politicization of anti-corruption standards.

The road map of governance reforms articulated in Governance Act is a necessary but not a sufficient condition to address the question of national integrity system that plagues the functions of governance. System of political will necessary to carry out reforms in Nepal is complicated by the legacy of paternalism, discretionary authority and a political culture of chakari and affno-manchhe thus de-motivating the esprit de corps of civil servants and the exercise of legal-rational authority. A number of reasons militate against the accountability of Nepalese bureaucracy. First, due to security and authority vacuum in the field civil servants are finding it difficult to hold their job in high esteem and perform their duties. Second, symptoms of institutional decay have occurred in which public officials subordinate their dharma (institutional duty and authority) to partisan and self-interest as punishment and reward system is based on political patronage. Third, there has been an increase in the deficit of their morale and civic responsibility to serve the citizens. And, de-motivation of civil servants in both karya dachhata (ability) and karya chhamata (capacity) has consequently led to a weakening of cohesive governance. The deficit of trust between the politicians and civil servants at higher level and government and the governed at the local level mirror the lack of virtuous cycle of state-society ties. Only a public communication grounded on the ability of the state to guarantee citizens' right to information, protected by independent courts and a vibrant civil society makes the abuse of governmental power absolutely intolerable and reduces the distortionary effects of corruption and culture of impunity. Public access to government information empowers citizens to make important choices and to achieve a greater degree of transparent governance.

Delivery of Public Goods

The ongoing high political dynamics has undercut the policy capacity of national state to pursue various phases of human rights needs in Nepal—liberation, entitlements and social opportunities and arrest the deviation from the popular mandate and constitutional vision. Many of rights have become non-actionable and non-justiceable because the state as the only duty bearer lacks sufficient institutional capacity and resources to respond to welfare needs. The contribution of tax to GDP is only 12 percent which is insufficient to subsidize the production and distribution of public goods and services in various topographical zones. Post-conflict justice and reconciliation requires joint development projects, engagement of youth and victims of conflict in peace economy, rehabilitation of displaced and reconstruction of damaged infrastructures so that flow of goods becomes easier. The transformation of political discourse, context, actors, issues and rules has altered "political framework condition" of development requiring multi-channel of goods and service delivery—the state, private sectors, consumer groups, community organization and cooperatives, etc. But, conceptual and operational deficiency in addressing this transformation mirrors the shortfall of governance rationality and constitutional responsibility of leaders to mediate a class and gender-neutral state.

Governance's ability to muster political will for institutional reforms and achieve targeted programs for poverty alleviation, employment and social inclusion embedded in Tenth Plan, MDGs and PRSP can be realized only if the central functions of the state such as security, order, welfare

and rule of law are restored and linked to negotiated conflict transformation. Economic performance is largely determined by the structure of incentives, "public choices" accorded to the stakeholders by the government and the delivery of basic services, such as education, health, social welfare provisions, water and sanitation, communication, technology and ecological resources underlined in Service Delivery Guidelines. Persistence of chronic poverty in Nepal implies the deficiencies of economic policies to support production revolution and foster the social and system integration of Nepalese society. The UN has indicated 3.5 million people of Nepal are facing food insecurity. This is partly caused by syndicated transport system, monopoly on supply, security constraints and lack of sound supply system.

If poverty alleviation is meant to overcome powerlessness there must be a political will and strategy of the political class and a shift of economy from revenue based to agro-based, symbolic to real economy and ecologically disembodied to that embedded into deep ecology so that negative effect of climate change in the life of Nepalese society can be minimized. A constitutional structure must be created in such a way that right to livelihood is institutionally guaranteed, poverty alleviation becomes a participatory process, a new social contract of the poor with the state is negotiated to uproot the root causes of conflicts in time before they escalate into unmanageable proportion.

Conflict Resolution
Nepali state is besieged by six-cornered conflicts rooted in interest, ideology and identity: between Maoist and non-Maoist parties for power sharing arrangements and different approaches to state-building, democracy, development and peace; social movements of various sections of society demanding distributive justice, power and recognition to their identities; Madhesi parties demanding "one Madhesh, one province" and Tharus' opposition to it; 20 minority groups who are non-represented in the CA demanding voice and visibility; an un-adjustment of Rastriya Prajatantra Party-Nepal to newly-enforced consensus of current establishment on secularism, republicanism and federal state and its plea for referendum on these issues; and 116 non-state armed actors, ethnic armies and militant youth wings of various political parties driven by reactive statelessness and engaged in competitive violent action against the state sovereignty.

Resolution of conflict demands proper study and suitable political response to address the "root causes" of conflict, management of conflict residues, establishment of institutional pillars of peace (Ghimire, 2008) as well as a transformation of the rationalist conception of politics where power is pitted against power for supremacy thus sidetracking the question of social justice, reconciliation and peace. Nepalese political actors must learn from the failure of power-mediation approach of 1950, 1990 and 2006 where social contracts created their own enemies and rendered democratic peace unsustainable. Hierarchical nature of conflicts in Nepal entails multi-track and multi-step conflict transformation strategies based on pluralist consensus. This means peace building measures requires simultaneous strengthening of institutional base of security, order and welfare and expanding the outreach of state in society.

Ordinary citizens, working at the grassroots level, are now coping with various types of conflict and inventing the change process. But, they need full agents of change—information, skills, organizations, networks and resources. To change the structural causes of underdevelopment, the organization of the poor must have critical mass of change agents to reform the governance that does not bring well-being, freedom and identity and articulate a vision for things higher than those offered by today's government, political parties and civil society. Conflict resolution implies governance effectiveness in normalization of situation, reduction of violence in society, structural reforms and implementation of a common development concept articulated in the Comprehensive Peace Agreement.

Conclusion
When Constitution, the only governing plan of the nation, is made a contested site for power struggle and interest groups of society reflect institutional biases of their organizations, the only

option left for bureaucracy is to act with public-minded spirit and connect themselves with the values and experiences of common people who are coping with various types of conflicts and struggling to evolve norms based on their needs, aspirations and reciprocity. This is the way to win the confidence of Nepalese citizens and the development partners who believe that Nepal ceased to become a developing country. The new driving forces of social transformation require the Nepalese bureaucracy to a new adaptation and multiple engagements with society. The driving forces are:

- democratic ideals—particularly human rights, social equality, inclusion and inter-generational and ecological justice;
- patterns of political engagement-- especially active political participation, debates and dialogues about salient issues, non-violent protests and social movements to negotiating social contract, foundations for inclusive development, sustained peace building measures and transitional justice;
- democratization of the nature of state institutions-- particularly improved civil-military relations through right-sizing, professionalization and democratization of security agencies and demilitarization, civilianization and integration of armed groups in productive lives, discursive formation of laws, neutral jurisprudence, bureaucratic reforms to make civil servants more innovative, inner-party democracy, constructive role of civil society in forming rational identity, neutrality of educational, media, disciplinary and service delivery institutions;
- inclusion of all the relevant concepts in a new road map -- for getting to the final democratic arrangements of new constitution, peace, use of subsidiarity and basic needs fulfillment; and
- endogenous post-conflict state building measures to avoid unpredictable policy response.

Good governance in Nepal requires the citizens to forge a single national identity, an identity sustained by a democratic partnership among the state, the market, the civil society and citizens. But, without strengthening the state-bearing institutions the outreach of state in society can not be beefed up and the benefits public bureaucracy brings can not be delivered. There is a need to ramp up national integrity system to build the trust of citizens in governance. Resolution of contesting issues, drafting of new constitution and peace building are related to responsive governance. Donor coordination in bridging governance gap between security and development policy under Paris Declaration on Aid Effectiveness and engaging those actors who support of post-conflict peace process is equally essential to address governance challenges. Democratic political culture cultivates the habits of public communication, compromise and collective action, not deadlock causing a crisis of public life and public policy. The culture of constitutionalism is an essential condition of peace which is also a lynchpin of governance effectiveness.

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