

Democratic ownership and mutual accountability to international human rights: A reality check of Nepal

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Introduction

Nepal's developmental failure over the past five decades is attributable not so much to the paucity of resources as to the lopsided consequences of the international aid-based economic and fiscal system. As happened in other countries of the world, aid-giving in Nepal gradually became the preserve of the most unaccountable, undemocratic and opaque international financial institutions (IFIs), working in tandem with private multi-national corporations (MNCs).

There is a crippling paradox at the heart of the international system of power. The rhetoric is strong on ethical symbolism, exemplified by the ratification of a profusion of human rights, developmental and environmental instruments of the UN and other regional organisations, mainly the European, Inter-American and African system of human and people's rights. The reality, on the other hand, is preponderantly dictated by the interests and calculations of global financial capital, represented by the IFIs and private global corporations which flagrantly violate all the international instruments of rights that are supposed to govern the relations between states and with their peoples.

IFIs undermining the UN principles

Although the IFIs and other trade organisations - such as the World Bank, International Monetary Fund (IMF), Asian Development Bank (ADB) and World Trade Organisation (WTO) - ostensibly aim at promoting national development and claim to uphold the apparent values and principles of the UN, based on equality and human rights without any discrimination, their actions have primarily served more to de-legitimise and erode the credibility of this international organisation. It has also led to undermining of the funding for the UN's rights-based human rights and development programmes.

Inter-institutional conflict was clearly revealed at the 1993 UN World Conference on Human Rights in Vienna, the 1995 World Social Summit in Copenhagen and other follow up processes. By this time, the notion of the collective rights of individuals, peoples and the communities was under attack from the well-packaged global corporate framework of economic and trade liberalisation, privatisation and globalisation. This will not change until there is a well-defined balance of approach, translating the concept of profit

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into collective national interests, and not narrow corporate profit.

The problem for poor countries like Nepal is that they will be punished heavily both economically and politically if they fail to comply with the global corporate agenda of development. But no punishment or enforcement measures are allowed in the event of violations of UN human rights and environmental treaty obligations in the pursuit of such corporate-led development. UN obligations are confined within the parameters of member states' moral and voluntary obligations and are invoked only if there is no conflict with corporate-led development or the geo-political interests of donor countries.

The tragedy is that the UN system of obligations is more strict and supreme in formal legal terms compared to those of the profit-led corporate institutions. However, what prevails today is the rules for profit and real politik. As a result, even national court systems have abdicated the responsibility to guarantee and protect the constitutional rights or international human rights of citizens. IFIs and MNCs not only enjoy all diplomatic privileges but also impunity for the human rights violations and the economic crimes they commit during the course of their operations.

The UN is reduced to a cash-strapped organization that has to rely on the largesse of tycoons like Bill Gates, who donate a small share of their corporate profits in return for unpublicised but obvious benefits, giving them a standing superior

to the governments of the developing countries who make up the majority of the organisation's 193 members!

Why the Paris Declaration?

The Paris Declaration on Aid Effectiveness (2005) is no more than a reflection of the departure from or destruction of the international commitments made during the adoption of the UN Charter (1945), the Universal Declaration of Human Rights (1948) and numerous other instruments developed subsequently between the 1950s and 1970s. These instruments were gradually put in cold storage as soon as the rich countries saw the UN promoting the cause of the third world countries and their billions of poor people.

All the development agencies of the UN were reoriented to conform to market principles and corporate interests and thus rights-based development was repudiated. The old and strong UN framework that the developing countries desperately need has been replaced instead by the Paris Declaration, the principles of which are legally weak, non-binding and unenforceable, with limited moral value. To compound matters, even this inadequate framework is routinely flouted by aid-giving countries and international agencies.

There is no doubt that the effectiveness of aid can be enhanced if all the Paris Declaration principles, limited though they are, are complied with by those who are managing, dictating and controlling the global development process and its

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outcomes. Even the Paris Declaration of mutual accountability can serve as a meaningful tool to measure development effectiveness. However, that is not the case today because aid and development have become the most effective post-colonial, neo-colonial and neo-liberal tool of the day to continue with the past legacy of domination and exploitation in a more indirect, more faceless and apparently more civilised manner.¹

Past failures of aid effectiveness in Nepal

As a country case study, it is important to highlight some of the characteristics of aid-funded projects and activities in Nepal, particularly after the democratic changes ushered in after the 1990 peoples' movement. Nepal, relatively speaking, had a fair constitution that guaranteed most of the civil and political rights, and recognised all the basic economic, social, cultural, environmental and developmental rights (although not explicitly as 'rights', but at least as directive principles of the state). They were to be enforced by law whenever possible.

However, the new democratically elected governments that replaced some three decades of absolute monarchical dictatorship were forced by the IFIs and bi-lateral donors, mainly the World Bank, the IMF, the ADB, the US and the United Kingdom, in such a way that they would receive no aid unless the globally designed free-market policies were put in place. As a

result, even a Nepali Congress government with the strongest leftist opposition in parliament and, subsequently, even a full-fledged but a minority government of the Communist Party of Nepal (Unified Marxist & Leninist) or (CPN-UML) could not do much in protecting Nepal's national interests and priorities in the economic and development sectors.

Any attempts these political groups made at formulating pro-people policies, such as the social security provisions for the elderly, or subsidies in food, drinking water and electricity or grants for local government were heavily criticised by the aid agencies. Whatever the UML government tried to achieve on the fiscal, economic and developmental fronts provoked the ire of the liberal parties, leading to the collapse of the government in nine months in 1995. All Nepal's major aid agencies were involved in the political manoeuvring that led to the downfall of the first ever elected communist government. If the UML government had been given a chance to run the country for some years, the face of Nepal today would have been drastically different. The country could have been spared the 10-year Maoist insurgency launched by the Communist Party of Nepal (Maoist) or (CPNM) and the ensuing claim that Nepal had become a 'failed state'.

In fact, the same aid agencies and IFIs were mainly responsible for all the fundamental failures of the 15 years (1990-2005) of multi-party system. This was one of the main reasons behind the systematic growth of the

¹ For a better aid framework, for example, see, Oliver S. Saasa, Galio C. Gurdian, Zenebeworke Tadesse & Gopal Siwakoti 'Chintan', Improving Effectiveness of Finnish Development Cooperation -- Perspectives From the South, Ministry for Foreign Affairs of Finland, 2003.

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Maoist insurgency and the successes of the People's War (1996-2006). Even the World Bank has recognised this fact and described the Maoist rebellion as an ideology-based political movement catalysed by the economic and development failures and corruption of the period.²

Two examples of failed initiatives by aid agencies are part of the development folklore of Nepal. In one instance, the UNDP failed to eradicate poverty even in the one district, Syangja, that it chose for intensive intervention. Its programme failed despite all its vision statements, missions, programmes, staff and funds. There is also the curious case of the USAID's development project in the Rapti zone. Soon after the completion of this project was announced amidst much fanfare, the Maoists uprising began in this very area. One main reason is that their development approach and process created more poverty and intensified the inequality between the 'haves and have-nots' and, thus, rural youth were ready to join an armed struggle once they were provided the visionary Maoist leadership.

Another instance of failed development intervention was an international NGOs' model projects in the districts of Sindhuli and Sindhupalchowk which were withdrawn after a decade. The INGO not only left these two districts in a mess but also disturbed the local farming pattern and methods which they are now correcting gradually.

There were other potentially damaging interventions that would have had long-term damaging consequences, but which were stopped by popular struggles. The Arun 3 hydroelectric project was one such instance. It was to be implemented in 1993 with over four dozen lending conditionalities of the World Bank that would have made Nepal a virtual donor colony but was eventually cancelled in 1995 due to massive local and international campaigns after offering better alternatives to implement smaller, cheaper and better hydropower projects.³

The ADB-funded Kali Gandaki 'A' hydroelectric project also had adverse lending conditionalities. The Khimti and Bhotekoshi hydropower projects funded by the private sector aid/loan window of the ADB and the International Finance Corporation involved conditionalities that resulted in power purchase agreements signed under duress by which inordinately high electricity tariffs were imposed. Due to the aggressive stance taken by donors on the aid/loan conditionalities imposed by the ADB on the Melamchi river diversion and Kathmandu water privatisation projects, even the Maoists are now afraid of pushing ahead with the cancellation of patently unnecessary and corrupt projects.

There have been still further examples of such projects which are heavily controlled by donors with the national government not even exercising the right to decide

² See, The World Bank, Nepal Country Strategy Programme Document (2004-2007), Report No. 26509-NEP, p. 7-9

³ Gopal Siwakoti 'Chintan', 'Constraints and Challenges for Building a New Nepal' in *Contemporary Perspectives: History and Sociology of South Asia*, Volume 2 Number 1, January - July 2008, p. 151-158 (published by Centre for Jawaharlal Nehru Studies Jamia Millia Islamia, New Delhi and Cambridge University Press, India).

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which projects should be implemented and which should be rejected. There is never any transparency in the process and decisions are made unilaterally. Most of the experts, consultants, equipment and raw materials are procured from outside Nepal, so national capacity is never developed, and no information is ever furnished to the public about any of the details, procedures and consequences of the project in a timely and meaningful manner. Under such circumstances no underdeveloped country can ever progress.

The latest reality

Despite all the criticism that has been raised around such flawed projects and practices, these foreign-aided projects come with more strings attached than ever. They create more contractual obligations for the recipient countries to comply with thereby raising more financial and environmental costs.

One of the main reasons for this is that IFIs support a contract framework known as FIDIC or Federation Internationale des Industries et Consultants. Once a project is signed as a FIDIC contract then the recipient countries or governments are bound to pay any amount of additional costs or cost overruns to the contractors as recommended by the consultants. Contractors win most of the cases that go to international contractual litigations and arbitrations. In Nepal project costs have increased up to 70 percent, such as in the case of Kali Gandaki 'A'. There are several on-going water supply

and hydro projects in Nepal financed under the FIDIC framework.

Another aid-financed project framework is called BOOT, or Build, Operate, Own and Transfer, under which recipients as well as local communities lose almost all their sovereign and traditional rights to co-own the projects and associated natural resources such as access to rivers and water for future use or even daily use in some cases, e.g. the proposed controversial West Seti hydroelectric project.

As this is becoming the standard practice worldwide to guarantee the highest amount of profit for corporations, recipient countries are always on the losing side. Although these BOOT projects are supposed to be beneficial to recipient countries as they get it back 'free of cost' at the end, what they really get is the transfer of ownership of the project after its useful life is over, typically with unbearable maintenance costs.

No questions are or can be raised as regard disclosure of information to ensure transparency in such projects. The opportunities for participation and involvement throughout the project cycle are low.⁴ Environmental assessments and compliance with mitigation plans are usually fictitious. No effective attempts are made at benefit-sharing with the local beneficiaries. Moreover, such projects have violated international and domestic rights, rules, regulations, norms and standards of

⁴ For details, visit www.wafed-nepal.org, www.bothends.org at Encyclopaedia of Sustainability under the Integrated River Basin Management (Successful Campaigning against Large Dams: The shelving of Arun III in Eastern Nepal) and also www.inspectionpanel.org under Requests for Inspection at Nepal: Arun III Proposed Hydroelectric project and Restructuring of IDA Credit (1994).

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human rights and socio-economic justice. Even the ordinary and accepted rights of labourers and workers as per international law are not respected.

In such an aid regime, there is simply no possibility of establishing mutual accountability and transparency in aid-funded projects. There is certainly more willingness on the part of recipients to comply with such standards or principles, such as the Paris Declaration, but less or none on the part of the IFIs and major lending/donor countries or agencies.

A new political reality in Nepal: the rise of the Left

In the case of Nepal, there is now a new dimension that the corporate world of aid and lending has to contend with—the institutional rise of radical left-wing politics. The recent and first ever elections to the Constituent Assembly amply demonstrated that Nepal is overwhelmingly a left-wing country, with the Maoists and the UML alone garnering more than 50% of the vote. Nepal now has another opportunity to correct the mistakes of the past, reforming existing aid policies and projects that are harmful for Nepal, removing the constraints to the growth of the country's trade and entrepreneurship and coming up with a comprehensive socio-economic and fiscal transformation package addressing the needs of a broad spectrum of Nepali society, in accordance with national requirements, national priorities and local capacities.

For the donors, the extraordinary performance of the Maoists has come as a surprise since they were confident that they would win only a small number of seats. While they have reluctantly come around to accepting the verdict, they are extremely unhappy with the outcome. Accustomed to dictating terms to Nepal for decades, they have suddenly come face to face with the reality that the people of Nepal wish to take their own independent decisions. The dilemma for them is whether to stand by norms of electoral process or express their ideological biases beyond their territorial jurisdiction or legitimate concerns. If a new Nepal is to be considered a fully sovereign state then the donor community will have to abstain from interfering in its domestic development priorities as has been their wont in the past.

The lesson that all the donors of Nepal need to learn immediately is that development effectiveness cannot be ensured in the country if they persist with their old ways. The spirit of welfare-based democratic socialism has been born in Nepal and reactionary forces will find it difficult to suppress it. The usual slogan they chant, "*communism is dead*," will not work in Nepal. For the majority of rural Nepalis and poor urbanites, the world of Bush and the US war on terror simply does not exist and their priorities are more focused on everyday issues of livelihood. The change that has come about in the Nepali polity is due not only to the Maoist People's War and the UN-monitored peace process but also to the desire for everyday transformation.

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There are only two options in front of the Maoists. Either they will have to confront the donor community and take a strong stand or they can simply cave in to international pressure for the sake of remaining in power—a suicidal mistake the UML made in 1994–1995. The communist-phobic West must be made to realise that the dominant mood in Nepal is anti-neo-liberal and anti-imperialist. The aid community must understand that the power structure of the new republic of Nepal will reflect the pluralism of society and must, therefore, pursue a progressive national agenda of independence and people-led development. This is difficult for members of the international community in Kathmandu to swallow since they have used their financial clout to purchase the loyalty of the entrenched upper caste vested interests that have been running Nepal so far.

International civil society as donors

It is relevant also to touch upon the reality of aid that comes through international civil society as intermediary donors. Known as international non-governmental organisations (INGOs), many of these organisations channel their aid through national or local non-governmental organisations (NGOs). Some of these INGOs are not very different from official donors as they practice the same values of development and adopt the same corporate managerial style.⁵

This type of INGO takes money from their governments and establishes their own bureaucracy and control mechanisms in their own capitals. The mutual agreement between them and their supporting governments is that the same philosophy of development will be perpetuated through the aid disbursed through them. Even the better INGOs are not allowed to go beyond the boundaries fixed by their governments as the original donors. There is now a new practice that development aid cannot be given to NGOs or civil society organizations in the south unless they have an INGO partner in the north -- a new form of dependency!

As a result, a huge part of the money allocated for the south goes towards operations, salaries and travel expenses of INGO officials in the north. The rest of the money is then invested in development through national or local NGOs that are more accountable to their paymasters in the north and proportionately non-transparent to local society in the actual areas of their operation. These I/NGOs are often actively engaged in undermining national states and political organisations through subtle and explicit propaganda in the areas where they work. In many cases, local NGOs then hijack the prevailing social and political agenda and establish family and party-cadre-based NGO empires.

⁵ In Nepal, a western-funded community NGO professional can earn more than of a full-time permanent university professor does. The affluence of the NGO world is evident also in the kind of vehicles that they purchase—Sports Utility Vehicle's like Pajero and Prado. See, Gopal Siwakoti 'Chintan', Foreign Intervention in Politics through NGOs: A Case of the Left in Nepal at Juha Vartola, Marko Ullivila, Farhad Hossian & Tek Nath Dhakal (eds), *Development NGOs Facing the 21st Century: Perspectives from South Asia*, Institute for Human Development, Kathmandu, pp. 134–143.

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The main motivation of many of these civil society professionals is the easy access to huge foreign money they have, the capacity it gives them to build patronage networks and the freedom from local control and accountability that they enjoy in the absence of strong laws and a regulatory framework to monitor and ensure the effectiveness of the development work. The way these I/NGOs work is not very different from the operational style of private corporations and the perks of office are equally generous.

In Nepal, it is not difficult to understand why so many professionals and experts have left political and social movements and joined the NGO world or have established their own home-based NGOs for development. These same people are paid money by IFIs and I/NGOs for critiquing their national governments who have, through aid, been reduced to a state of supine dependence and acceptance of internationally driven development agenda.

Given this situation, it will not be surprising if the political struggle against the Maoists or a government led by the Maoists with radical agendas is led by the various NGOs in Kathmandu and elsewhere in the name of human rights. They will try to maintain their stranglehold and with the backing of the international community become focal points for reaction against any progressive and radical policies initiated by the new Nepali state. They will most certainly also try to undermine all state agencies responsible for delivering public services in the social sector, such as drinking water, food, agriculture, electricity and healthcare.

It is important to understand that NGOs should never attempt to replace the state and its agencies and they should focus their civil society work instead on advocacy. Learning from the lessons of various national and regional civil society consultations held in Nepal for the Accra process, it was reaffirmed that NGOs like those involved with the International Steering Group (ISG) of the civil society parallel process to the OECD's HLF on Aid Effectiveness can play the role of bridging and liaising with the donor governments and agencies in changing their development policies according to the needs of recipient governments and national development entities. National or local NGOs can also facilitate policy formulation and planning of development within the country, particularly in favour of rural communities and their civil society organisations.

Conclusions and recommendations

It is imperative to recognise that aid is a temporary instrument and should not be converted into a permanent and institutionalised mechanism of new forms of resource extraction, policy distortions, economic exploitation and political control by international financial institutions and major donors. Aid should not be regarded as money given by the poor of the rich countries to the rich of poor countries. Aid must follow national needs and priorities as proposed by its democratically elected governments in a true sense and not be dictated by IFI conditionality, whether formalised or not. The practice of aid conditionalities, and contractual arrangements such as BOOT and FIDIC

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in supporting large and destructive infrastructure projects must be stopped and discouraged.

The framework of any aid must be within the boundaries and obligations of UN and other multilateral or regional human rights, environmental and development frameworks, including the Paris Declaration. Aid should be directed towards those who need it most, should reach recipient communities directly and should be spent in the manner most suitable for the local public good. Local government and development authorities must have a significant role in governing aid money and these institutions should be accountable to local communities and not beholden to the IFIs. Civil society can play an important role in ensuring a multi-stakeholder process of democratic decision-making and monitoring development effectiveness. Priority should also be given to budgetary support and national capacity-building and not to project-based approaches.

Developing countries should not be forced to do anything against their national and international framework of human rights and environmental obligations in ensuring

equal access and opportunity to all rights and resources, including aid money, and the guarantee of not only civil and political but also economic, social, cultural, environmental and developmental rights. The aid community, and IFIs in particular - who play such a dominant role in this - should also refrain from disengaging with governments that may differ with them on the policies of liberalisation, privatisation and globalisation and rather take an alternative path of development such as that which may emerge in Nepal.

Nepal is now ready to provide an alternative model of development based on UN human rights principles, the Paris Declaration and other emerging norms of the right to development. However, the question remains as to whether the IFIs and aid agencies will allow the dream of a new Nepal be translated into reality or whether they will try to make Nepal continue to follow the existing pattern of aid packages or even pull out from the country. Furthermore, will Nepal be allowed to govern itself with full sovereignty by its giant neighbour and a donor, India, whose main aim is to control the country geopolitically and to utilise its resources?