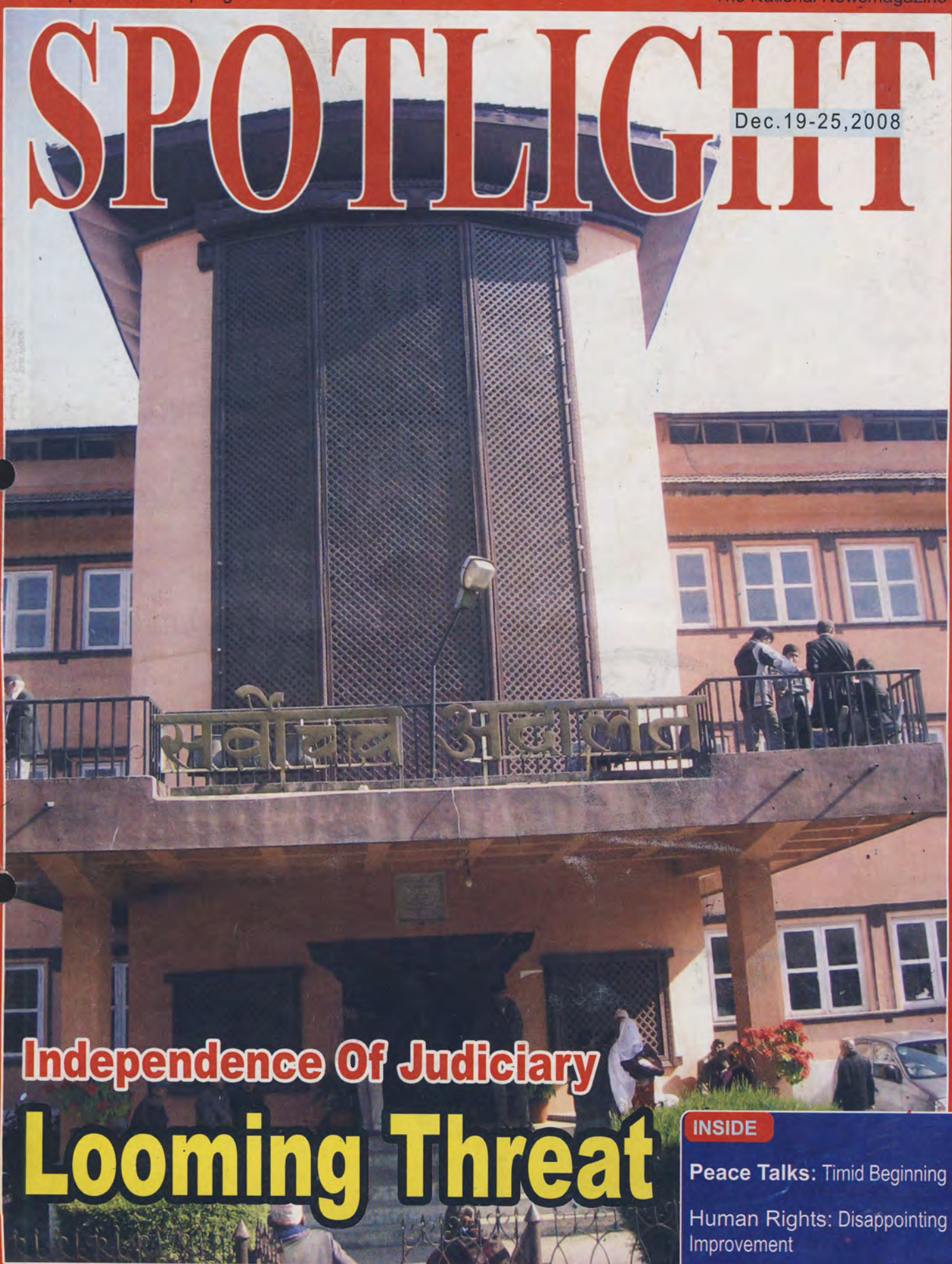


SPOTLIGHT

Dec. 19-25, 2008



Independence Of Judiciary

Looming Threat

INSIDE

Peace Talks: Timid Beginning

Human Rights: Disappointing Improvement

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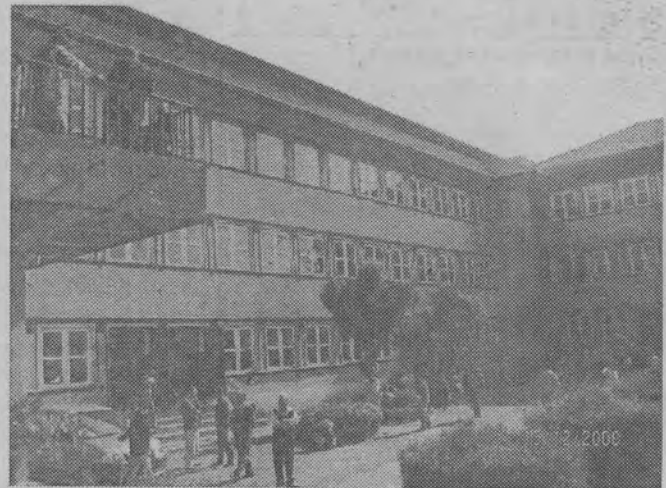
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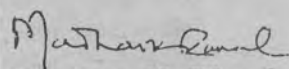


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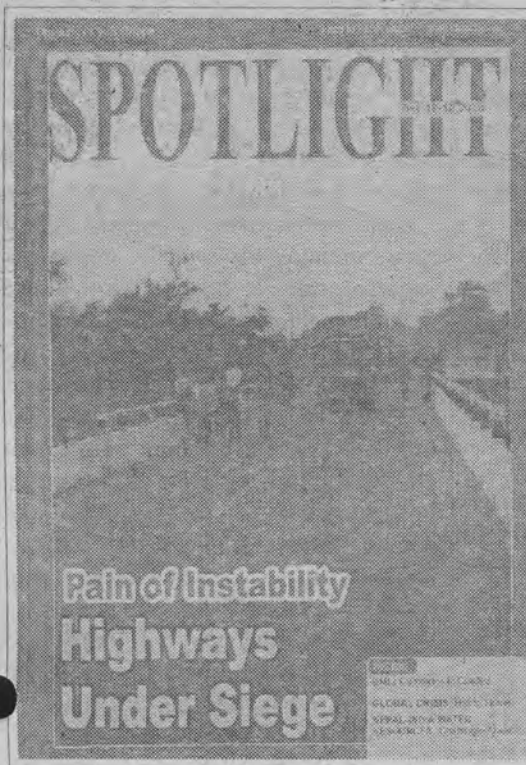
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Poush 04, 2065**Chief Editor And Publisher**
Madhav Kumar Rimal**Editor**
Sarita Rimal**Managing Editor**
Keshab Poudel**Senior Reporter**
Sanjaya Dhakal**Cover Design & Layout :**
Hari Krishna Bastakoti**Layout**
Jyoti Dangol (Singh)**Photographer**
Sandesh Manandhar**Legal Advisor**
Advocate Lok Bhakta Rana**Marketing**
Navin Kumar Maharjan
Madan Raj Poudel**Editorial Office**
GPO Box 7256, Maitidevi, Kathmandu
Tel (977-1) 4423127 Fax: (977-1)
4417845
Chief Editor's.: 4435594,
E-mail : spot@mail.com.np
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The threat by prime minister Pushpa Kamal Dahal to quit the government and take to arms again has not been able to generate any serious repercussions. Because no body believes him and everybody knows it is only a vacant threat. In less than four months the Maoists supreme has learnt that handling a gun is easier than handling a pen and those who are experts in toting guns can seldom use their grey cells wisely. Statecraft is a highly specialized and tricky subject and very few can master it. Prime minister Dahal must have come to know also that goodies of office and easy money quickly turn friends into foes and smooth running of the establishment becomes impossible. Moreover, when there are more than one partner in the government, the task becomes even more difficult despite the fact that the partners behave like lackeys. No Nepali politician has yet achieved the distinction of earning the love and respect of the countrymen as an honest and patriotic statesman. The greatness that Prachanda has achieved has also been thrust upon him and can be divested of at any moment. As such, it is not only essential but indispensable that any Nepali politician that wants to go down in history as patriot has to win the hearts of his poor Nepali countrymen. If any body likes to be a winning chess player, he has to act like a queen not a pawn. And it is only his own people who can turn him into a queen. Others will turn him into a pawn only. At the moment, Prachand looks like a pawn. Does he have the mettle to become a queen? Even after the honeymoon days are over the Maoist led coalition government has yet to win any kudos from any quarter. The Dalits, the Janjatis, the Madhesis, the students, the businessmen community, the civil servants and the common man, no section of the society is happy. There is furor even in the judiciary. There is continuous uprising, chakkajams, hartals, abductions, murders, total chaos and lawlessness. Is this how the Maoists will make the New Nepal? For them it is already New Nepal. They don't care what happens to the millions of poor Nepalis. They are also talking like their predecessors who promised to turn Nepal into a second Singapore or Switzerland but pushed it to become one of the poorest destabilized country in the world. They don't lose anything by taking the poor Nepalis for a ride to serve their own vile interests. It is the popular pastime of the politicians in the poor countries of the third world. It is being reported that prime minister Prachanda is shortly visiting some of friendly countries. As usual, he will carry a begging bowl. Since Nepal has become a beggar Nation, Nepali statesmen put themselves on their back if their bowl becomes full. They can neither realize nor care that the bigger the begging bowl, the lower the nation stoops, the smaller its stature becomes and the bigger humiliation its people have to face. No patriotic statesman of any country would resort to such behavior. But poor Nepal has yet to produce is yet to produce a patriotic statesman. Since there is nothing called genuine compassion in state to state relations, all donor nations expect a *quid pro quo* for their so called charitable acts. What can Nepal give in return for all the alms her politicians and statesmen beg for her? She can only trade in her culture, her beliefs, her pride and even her soul. And we have seen how our politicians and statesmen don't bat their eyelid even to do that. Prime minister Prachanda so far has failed to win the love and respect of his poor countrymen. He has deliberately maligned their sensitivities. We still believe the overwhelming patriotic population of Nepal will rise again to defend their religion, culture, and identity. The proud Gurkha has to come forward once again. He is the only Nepali who will never betray his motherland and sacrifice even his life to defend her. We do hope all those Nepalis who have their pride, dignity and honor will not fail to put together, even a small part of their savings they can afford and dedicate it to the service of their dear motherland. They will not let them go waste. We know our poor country does not appreciate the empty threat of resignation from its prime minister. It will really appreciate if the prime minister shows some genuine patriotism and love for the poor millions by rising above self and partisan interests and respecting the country's values and principles and above all its identity.



Madhav K. Rimal
Chief Editor & Publisher



Disruptive Environ

At a time when the country needs hard work and environment free of all kinds of disruptions, it is very unfortunate to see the frequent general strikes and road blocks organized by various political and non-political groups. It was sad to read the cover story (Pain of Instability: Highways under Siege (December 12-18). As people living in capital, they don't have to worry much about the political disorder, but people living in rural parts of Nepal have to face all kinds of difficulties. Your cover story highlighted how the country has been running and how the political instability is encouraging hostile situation.

*Juneli Shrestha
Via email*

Haunting Issue

This is a right issue that needed to be highlighted. I agree with you that the country's highways are now under complete disorder and run by anarchy. Recently, I went to Bhadrapur and I was stranded for a week since various groups called general strikes in different parts of the region. There is not a single day when the general strike was not called. Everyone is fed up with the situation but people and local administration in the district are helpless. The group who called the general strikes were mostly the former Maoist cadres. The young people aged between 16-20 years are controlling the movement in the highways. I don't understand what our civil society members and political leaders have been doing when the country is under complete control of anarchist. The time has come now to seat together and think coolly about the country's situation. As responsible citizens of this country, it is our duty to take stock of the situation.

*Dhiru Limbu
Dharan Via email*

Life Of Peace

You have rightly pointed out what common people who don't know much about Nepal's geo-strategically reality want from the government. Their hope to live in the peace and orderly society was dashed out and there is no immediate sign for returning of the peace in the country. The tragedy faced by the people living in the rural parts of Nepal is awesome. Political leaders must do something to give them hope in their life. No political party is going to gain anything from the culture of road blocking for indefinite period of time. Although I am living far away from Nepal, I can imagine the difficulties faced by common and poor people in Nepal. Is it not the duty of political leaders to take initiative to bring the change in the country? How long will we tolerate the culture of general strikes and disruptions of road?

*Sonam Lama
Perth, Australia
Via-email*

Interesting Article

Reading article like the conservation through cooperation (December 05-11) was interesting. The magazine like Spotlight needs to spend sometimes for writing about the poor people and wildlife from far western region. The approach of balancing conservation and livelihood is very difficult and complicated task. After reading your cover story, I realized that Western Terai Landscape Project has initiated many good programs in remote parts of Nepal for livelihood as well as conservation. As Nepal has been passing through a very critical phase of political instability, we need to bring people in conservation who can help sustain our past achievements. Finally, it is the local community who needs to take right approach.

*Pralad Dhungel
Via email*

Might Is Right

It seems that only big and powerful country has right to live and small and poor country do not have any such rights. When terrorists blasted bomb in Mumbai killing more than 150 people, there was widespread hue and cry. However, nobody mentions the killing taking place in Nepal's southern plain where terrorist outfits are openly killing people by taking shelter in India. In a similar way, India supported and supplied arms to Maoists who killed more than 15,000 people in Nepal. If United States and other western European have supported Indian cause, why do they fail to raise similar question to India? Does it mean a smaller country does not have right to live? What kind of world is this where only big countries can do whatever they like?

*Khusbu Rai
Via email*



Shares Drop 11.04 Points

A recent spike in rights issues along with the announcement of an increase in capital gains tax by the government caused the Nepal Stock Exchange (NEPSE) Index to drop 11.04 points this week. The index stood at 743.25 points when the stock market closed for the week on Thursday.

Brokers said they had expected the announcement of the adjusted base prices for rights issues and bonus shares made early this week to build some confidence among investors but the market went down instead. "The adjusted base rates for capital gains tax were better for investors than what they had anticipated. But investors are still reluctant to invest," a stock broker said. Meanwhile, according to a NEPSE official, investors have found the budget for Fiscal Year 2008/09 not quite impressive for them, and this is still affecting their confidence. They also say they feel the government has not taken any initiative to smoothen the situation, he said. *Compiled from reports*

Aid Utilization Low: UN

Nepal has been unable to utilize various types of assistance coming from other countries, said a top UN official. Speaking at a national seminar organized in the capital on contemporary development problems in Nepal on Friday (Dec 12), United Nations Resident and Humanitarian Coordinator for Nepal, Robert Piper said, "Nepal has not been able to utilize the assistance coming from other countries." Stressing that the government needs to retain young people who are vying to go to foreign countries, he said, "Nepal needs young people, they are the ones who have innovative ideas to change Nepal and

they are the ones who have knowledge on the solution of contemporary problems of the country." The seminar concluded by listing the contemporary development problems facing Nepal. These include political instability, mis-utilization and under-utilization of resources, regional and ethnicity disparity, brain-drain and absence of people centered development strategy by the government. *Compiled from reports*

World Bank Announces \$ 2 B FTF

The World Bank Group yesterday announced the creation of a \$2 billion fast-track facility (FTF) to speed up grants and long-term, interest-free loans to help the world's poorest countries cope with the impact of the global financial crisis. The International Development Association (IDA) Financial Crisis Response Fast-Track Facility, approved on Tuesday by the World Bank's board of executive directors, will allow rapid funding for social safety nets, infrastructure, education, and health. "In view of our Global Economic Prospects report, we want to help countries manage the downturn with rapid financing to help minimize its impacts and assist them in designing supportive policies," said World Bank Group president Robert B Zoellick. The facility would fast-track an initial \$2 billion of the \$42 billion of IDA15 resources available to 78 of the world's poorest countries over the coming three years. The facility will foster rapid World Bank response to the pressing needs of IDA countries based on more swift World Bank analysis of those needs. It will finance expenditures needed to maintain economic stability and sustain growth, address volatility, and protect the poor. Operational responses will include funding budget expenditures in infrastructure services, education, and health and social safety nets. *The Himalayan Times daily reports*

NHRC Rues Lack Of Action On Its Recommendations

Chairman of the National Human Rights Commission (NHRC) has slammed the government for not taking action

based on its recommendations. Addressing a function organized by the commission to mark the 60th anniversary of the Universal Declaration of Human Rights (UDHR), Wednesday (Dec 10), chairman Kedar Nath Upadhyaya said, "The lack of implementation of NHRC's recommendations and the continued indifference towards those recommendations have raised question over the utility and need of the commission itself." Similar concern was raised by Richard Bennett, chief of the Office of the High Commissioner for Human Rights (OHCHR), who urged the government to carry out the commission's implementation and end impunity. Prime Minister Pushpa Kamal Dahal 'Prachanda' who was present on the occasion, however, did not respond to the requests. He only made general statement regarding the government's commitment to protect human rights. Meanwhile, the NHRC has released a statement on the occasion of the International Human Rights Day terming the current situation in the country as being 'full of challenges for human rights.' It has pointed out that among the people disappeared by Maoists and the state during the conflict, the whereabouts of 970 persons were still unknown. It has said that the situation in Terai has complicated and deteriorated the human rights situation in the region. *Compiled from reports*

MJF Passes Gupta's Proposal; Convention Put Off

Putting off the date of party general convention scheduled for December 13-15, the central committee meeting of the Madhesi Janadhikar Forum concluded on Wednesday (Dec 10). The meeting unanimously passed the dissident proposal presented by Deputy Chairman of the party Jaya Prakash Prasad Gupta and decided to hold the general convention from January 17-19 in Birgunj. The CC meeting was stretched for four days following the dispute in the party regarding the date of convention and souring relationship between the MJF chairman and leader Gupta. Also, the meeting decided to amend the

political report, statute and directives for the party general convention put forth by MJF Chairman Upendra Yadav, based on Gupta's proposal. "The central committee meeting today rejected the communist-styled statute proposed by Yadav and but decided to include the statute, report and directives for the convention he proposed," Gupta said. Earlier Wednesday, presenting his proposal at the meeting in Birgunj, leader Gupta said the party has been trapped in disputes and division at present. "The directives issued by the General Convention Preparation Committee under coordinatorship of the party chairman have barred the entry of thousands of party and sympathizers to the party." Saying that many leaders who supported the party to achieve the present position have been compelled to go away from the party organization, Gupta, "Even the lawmakers, leaders of sister organizations don't know whether they can take part in the general convention. This is a very pitiable situation." Moreover, he claimed that when representatives for the convention were nominated from the centre, the party deputy chairman, the leader and deputy leader of the parliamentary party, the chief whip and other senior leaders were deliberately avoid kept away. The proposal of leader Gupta, a Nepali Congress renegade, says that there is no need for changing the party's name, the 'Entire Madhes One Province' demand is uncompromising, and the party should take up democratic political system among other. *eKantipur reports*

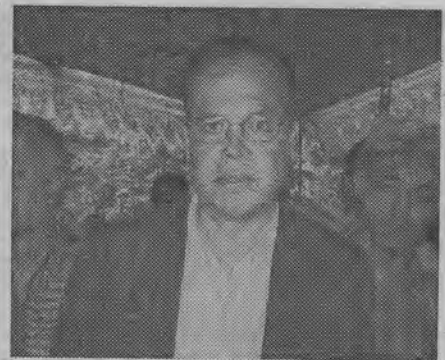
PABSON'S Stir Against Service Tax

Private and Boarding Schools' Organization of Nepal (PABSON) has launched nationwide protest from Wednesday (Dec 10) protesting against the government decision to impose five per cent education service tax to private schools. The agitating PABSON representatives picketed the district education offices throughout the country at 11 this morning and submitted memorandum to the respective District Education Officers. Likewise, the umbrella organization of private schools asked the government to make education

sector free from tax, citing that the Interim Constitution has already declared education as fundamental right of the public. PABSON has also warned to take action if any school issues invoice at the time when others are opposing the tax. "We have said that we disagree with the education service tax and we have said that we are ready to provide the support to the state in other ways," said Managing Director of PABSON TR Dhakal. While bringing in its fiscal budget for the year 2008/2009, the Maoist-led government had decided to collect five per cent education service tax from private educational institutions on their monthly fees. The government has said that it will use the service tax so collected for the benefit of the poor students of backward and remote areas. PABSON has demanded prioritization of education and appointment of authorized representatives of PABSON in all education related government offices. The agitating group of private schools has also said that they will intensify their stir until the government considers their demands. *Compiled from reports*

Nepal 'Not Interested' In Heading PCC

Former CPN (UML) general secretary Madhav Kumar Nepal has said he is not interested in heading the high-level political coordination committee (PCC). Nepal bemoaned the absence of "influential leaders" in the PCC, and said that it is not necessary to head a committee "just for the sake of it". He, however, said that he will "think about" being a part of PCC if the Prime Minister and the Deputy Prime Minister also agrees to be in it. Talking to journalists at Ganga Lal Heart Research Center in the capital Monday where he reached to learn about the health condition of NC president Girija Prasad Koirala, the UML strongman said he felt humiliated not seeing "leaders of his stature" in the committee for which his name was proposed as the chairperson by his party. The forthright denial to head the committee by UML leader Nepal comes a day after a meeting between senior leaders of CPN (Maoist) and CPN (UML) agreed in principle to appoint him as the PCC chairperson. In the meeting held at the Prime Minister's official residence in Baluwatar, CPN (UML) also proposed



having "senior representatives" from all parties in the committee. "I am confident Nepal will chair the committee," CPN (UML) general secretary Jhala Nath Khanal had told journalists after the meeting. He also argued that the Prime Minister should be in the PCC for its effective-functioning, something Nepal has also been insisting upon. *Compiled from reports*

Morang Panic-Stricken By YCL-YF Clashes

Continuous clashes between the youth fronts of two ruling parties have rattled a village in Morang district in eastern Nepal. The clash that ensued between the CPN-Maoist youth wing Young Communist League (YCL) and the CPN-UML affiliated Youth Force (YF) five days ago over collection of firewood from a community forest in Madanchowk has terrorized residents of Jante VDC. According to some locals, situation worsened after the YCL attacked the YF cadres and other locals in Jante and adjoining areas in the district. Around eighty males from Jante-9 have fled the village fearing YCL attack. The YCL activists have started inspecting every household. They have also announced to take action against some dozen of people including former chief of the VDC Upendra Ghimire and Somnath Niraula. Prabin Dhakal, 15, a ninth grade student at local Shree Secondary School, has also been compelled to leave the village when the YCL attacked him. The police escorted him to Letang. Most of the displaced are UML supporters. They are now taking refuge at houses of their relatives in Pathari, Letang, Birang Chowk, Itahari and Biratnagar. Meanwhile, the UML has charged that the Maoist combatants from Yangsheela cantonment came outside to terrorize the villagers. *eKantipur reports* ■



President Dr. Rambaran Yadav at a reception hosted by PM on the occasion of International Human Right Day

THE INTERIM CONSTITUTION HAS BEEN amended for the 6th time on Thursday (Dec 11). The draft of the amended constitution presented by Minister of Law, Justice and Constituent Assembly, Dev Gurung, at the meeting of the Constituent Assembly held in the capacity of legislative assembly was endorsed by a 2/3rd majority. Changes have been made in Article 51, 59 and 63 in the 6th amendment of the constitution. With the amendment in Article 51 (3), the authority to call the parliament session has been transferred to the President from the Prime Minister. Likewise, a sub-clause has been added in Article 63, which will allow Nepali citizens who turned 18 years at the end of Chaitra 2064 B.S, to vote in the upcoming by-elections. Altogether 424 votes were cast during the voting procedure and all were in favor of passing the amended version of the constitution.

IN A TRAGIC TURN OUT a school bus carrying students has plunged 50 feet below the road in Kharkhare near Gaidakot of Nawalparasi district, Thursday (Dec 11) night, killing 23 people – mostly students. The bus was returning from a picnic trip when the tragedy occurred. Around five dozen students have been injured in the accident. The students belonged to Hill Bird secondary school of Bharatpur, Chitwan. Police and local people rushed to the accident site to rescue the students trapped in the bus. The accident had occurred at around 9 pm.

AROUND 70 INDUSTRIAL UNITS IN BIRGUNJ corridor have been shut down by the workers from Thursday (Dec 11) demanding wage hike of Rs 1300 per month. The fresh strike was imposed days after the trade unions, government and Federation of Nepalese Chamber of Commerce and Industry (FNCCI) had reached an understanding on the issue of minimum wage. The FNCCI has slammed the strike and warned that they would not pay wage if the workers impose strike. It has warned to impose 'no work, no pay' norm. On the other hand, the workers have said they would not back down unless their wage is hiked.

THE CABINET MEETING ON Wednesday (Dec 10) decided to form a high-level Scientific Land Reforms Commission (SLRC) in the leadership of Haribol Gajurel, who is also a Maoist central member. According to Minister for Information and Communications Krishna Bahadur Mahara, Wednesday's meeting took the decision to form a seven-member commission that

will also include a representative from the members of the agitating landless people. The other members of the commission will be finalized after further discussions among the ruling-party leaders. The meeting also decided to form a commission to look after the implementation of the agreements signed by the governments with various groups. Besides the decision, the cabinet also passed the guidelines for the operation of various government programs such as the self-employment trust, management and operation of cooperative board, peace and development programs based on public participation and establishment and operation of services. It has been understood that the

guidelines for investment board will be finalized after the concerned committee's approval. The CPN-Maoist and CPN-UML Tuesday had agreed to form four commissions—Truth and Reconciliation Commission (TRC), State Restructuring Commission (SRC), Commission for Investigation of the Disappeared Persons (CIDP) and Scientific Land Reforms Commission (SLRC).

THE ELECTION COMMISSION (EC) has initiated action against five political parties that contested the constituent assembly elections under the proportional representation (PR) system but failed to submit expenditure details. In a statement on Wednesday (Dec 10), EC said legal action has been initiated against five political parties – Nepal Sadbhawana Party (Anandi Devi), Lok Kalyankari Janata Party Nepal, Samajbadi Party Nepal, Muskan Sena Nepal Party and Rastrabadi Yuva Morcha. According to the commission, only 28 parties submitted the details of their expenditure in elections under PR quota within the given timeframe (June 11). 13 parties submitted details with reasons for delay while eight submitted their details late without any reasons. According to the details submitted to the commission, CPN (UML) had the biggest expenditure (Rs 13.6 million) followed by Rastriya Prajatantra Party (Rs 6.5 million) Nepali Congress (Rs 5.8 million) and CPN (Maoist) (Rs 3.7 million). The fourth largest party in the parliament Madhesi Janadhikar Forum has mentioned its PR election cost at Rs 810,000.

THE MINISTRY OF FOREIGN AFFAIRS has asked all Nepali citizens to carry official documents that could verify their identities while traveling to India. Issuing a press release on Monday (Dec 8), the Ministry urged Nepalis planning to travel India to carry documents like passport, citizenship certificate or driving license. The Ministry's appeal follows the recent terrorist attacks in Mumbai, the financial capital of neighboring India. "After recent incidents in India, the Indian administration has tightened the internal security," read the statement, hinting at the bloody Mumbai attacks. "We have got information that a person is compulsorily asked to present identity card with photograph in hotel, while traveling, and going for treatment and getting admitted to hospital," it said and appealed Nepalis to carry government-issued card for their verification in India. Nepalis and Indians are allowed to enter both the countries without any document and people have been traveling freely in each other's countries through the open-border. ■

TRUE MARTYR OF SOUTH ASIA: BHAKTI THAPA

Mrs. Laxmi Thapa

Bhakti Thapa joined the unification campaign in 1789 at a time when further advance of the Nepalese force to the west was completely blocked for more than two years by then powerful kingdom of Jumla. It is said that Jumla had collected an army of twenty-two thousand men to face the Gorkhalis, a force far superior to anything the Gorkhalis could put in the field at that time. In the first major military operation itself Bhakti Thapa had demonstrated his exceptionally brilliant skill in launching a very successful operation under the most adverse condition that was sure to astonish anyone. He changed the strategy of the predecessors and led an attack on Jumla from the difficult north route. The result was a swift victory and the life of many people was also saved.

Within a very short period of just two years from 1789 to 1791 the western boundary of the Great Nepal had extended nearly as far as the Sutlez River (now India). Bhakti Thapa had played crucial role in such rapid expansion of the Great Nepal. At that very time Nepal was attacked by China from the north. During that period China was ruled by the most powerful Emperor Chiang Lung of the Manchu Dynasty.

Among the Manchu emperors Kang Hu Shi and Chiang Lung are considered to be the most influential. Emperor Kang Hu Shi ruled China from 1661 to 1722. He was contemporary with the Louis XIV of France, Peter the Great of Russia and Aurangazeb of India. Similarly, Emperor Chiang Lung ruled from 1736 to 1796. During his reign countries like Burma, Korea were under the influence of China.

Nepal in Great Danger

Chinese invasion was directed straight towards Kathmandu. The main attack was centered on Kyrung which is almost to the north of the Kathmandu valley. The Chinese attack was anticipated well in advance. As a result, Nepal had withdrawn most of its troops and commanders from the west to defend the capital Kathmandu against the Chinese invasion. It was the most critical period in the history of the newly born Great Nepal.

The existence of the Great Nepal was in great danger. The country was under the threat of falling apart. In many areas the rulers of the old regimes, who were disgruntled at the creation of the Great Nepal, had begun to stir up unrest. According to *sainikithas of Nepal* Bhakti Thapa stationed in Kumaun virtually single handedly succeeded in quelling the unrest fomented by the rulers of the old regime in the vast western regions which were

very recently merged into the Great Nepal despite the fact that he was made supreme commander and administrator of the vast territory stretching from Chepe-Marshyangdi to almost Sutlez River only in 1794. The *sainikithas* describes that Bhakti Thapa was constantly on a move from one end of this vast region to the other end to prevent the Great Nepal from falling apart.

Nepal and China realized that it would not be in the interest of either of the countries to prolong the war. A compromise solution was found to resolve the disputes that led to outbreak of the war. The fighting ended. According to L. Stiller there was no real winner. Immediately after the signing of peace treaty with China, Bhakti Thapa headquartered in Kumaun (now India) became the governor and chief commander of the whole region from the Chepe-Marshyangdi to almost the Sutlez River (in India).

Britain Suspicious About Nepal's Motives

Chinese invasion must have come as a terrible shock to newly emerged Great Nepal. Government in Kathmandu must have got into a panic. At that time Nepal prayed to British India for help to mediate between Nepal and China. But Britain virtually turned a deaf ear.

The process of expansion of the Great Nepal was too rapid. It was natural for the British Government to be greatly alarmed. So British rulers might not have in reality any intention of helping Nepal. We can draw such conclusion from the circumstances surrounding the visit of the Kirkpatrick to Kathmandu in 1793. British governor general in India had agreed to send Kirkpatrick to mediate in Nepal-China dispute. Kirkpatrick did not even set out for Nepal until after the war had been successfully terminated by the Nepal-China agreement. The governor general was requested not to send Kirkpatrick since the war had been amicably concluded. Surprisingly the governor general was seen adamant on sending a man to Kathmandu. So Kirkpatrick visited Kathmandu for no specific official purpose. The intention of Kirkpatrick's visit could hardly be anything else but to watch closely Nepal's speedy preparation for the next phase of the unification campaign that had officially led to the emergence of Bhakti Thapa as its head.

During the visit Kirkpatrick found that Nepal was trying to reinvigorate the attack in the west. The circumstances under which the visit of the Kirkpatrick to Kathmandu took place clearly shows that the British rulers in India were all the time watching Nepal with great suspicion. At that time British rulers in India were adopting every possible method to enlarge the territory under their control. The way new territories were brought under the British control and ruled had provoked even

the British public. British Parliament had gone completely against it.

Anglo-Nepal War

The British actively began preparation for the war from the time when F.R. Hastings- Earl of Moira landed in India as Governor General and Commander-in- Chief in 1813. The actual declaration of war against Nepal is recorded as 1 November, 1814, though the war began from middle of October. The decision to declare war had been made six months earlier so the territorial dispute appears to be only a pretext. British force had marched into Nepal across a frontier of more than 1500 km to attack at several points at the same time. The eastern British flank was moving north from the Teesta area whereas the farthest western flank from the Sutlej river area. It was virtually a modern type warfare extended over a period of three calendar years and necessitating to protect the entire region bordering the enemy held territory. The British invasion force, in comparison with Nepalese, had absolute superiority in cavalry, pioneers, and at

least the superiority of 10 times in infantry and 100 times in artillery. They also had the advantage of maneuverability in movement

In early months of the war the initial British invasion was completely beaten off. British offensive ended in complete failure. Nepalese force stationed within the shelter of the fortress were not only able to defend their position against an invading enemy many times superior in strength but they even shocked them by their dreadful counteroffensive that used to be accompanied by big losses on British side. The British rule in India was at a risk of falling apart. Unfortunately at that time the Sikhs and Marathas did not join Nepal in liberating the whole of the South Asian Continent from the grip of the European domination

After the initial defeats the British changed their strategy to avoid their casualties. They started to deploy long range guns to level our fortifications. This strategy paid off. The British were able to advance into the territory under our control. They even used elephants to carry heavy guns across the mountains. As a result, the ability of the Nepalese force to defend the territory under their control was steadily declining. They were forced to pull back. There was breakdown in control and command system.

Towards the middle of the 1815 Amar Singh Thapa, chief of the Nepalese force fighting in the western front was confined within a small area of the Malaun fort. The fate of Nepal was going to be in the hand of the Governor General Lord Hastings, unashamedly imperialistic and who became famous for having established the British Empire in India more firmly than before.

Prelude to Deothal Battle

Towards the sunset of the April 15th evening Bhakti Thapa and the army units under him arrived at the Malaun fort from their station at Surajgarh without being noticed by the British army units scattered around the Malaun fortress. The subsequent events help to explain that he might have come to persuade Amar Singh Thapa to pursue more aggressive methods to deter the enemy from overrunning the motherland.

The Battle

The following day in the morning Bhakti Thapa at the age of 74 led a most daring counterattack against the British force entrenched at Deothal. Historians have presented the description of this battle at great length. It was 3.15 a.m. when a force of just about 400 under Bhakti Thapa marched out of the Malaun fort, to a slow but steady beat of a drum. The British column under Thompson had taken position at Deothal on reverse slopes. The cannons of 6 pounders were properly concealed. There

The following day in the morning Bhakti Thapa at the age of 74 led a most daring counterattack against the British force entrenched at Deothal. Historians have presented the description of this battle at great length.

were two Indian battalions, the Grenadiers companies of the Light Battalions and some 1000 Irregulars. The British strength was up to about 3,500 troops and weapons.

Bhakti Thapa and his followers in the counterattack had vowed to fight to the death. Bhakti Thapa had even handed his infant grandson in the custody of the Amar Singh Thapa just before going to the battlefield. Bhakti Thapa laid down his life in the battlefield. Every one who fought from the Nepalese side was either killed or wounded.

Needless to say that the British commanders were thoroughly shaken by the bravery of Bhakti Thapa in the Deothal Battle. Bhakti Thapa became a legend even in the eyes of British historians. One of the historians CB Khanduri writes quoting various contemporary British historians "The euphemism of the BRAVEST OF THE BRAVES had been used by Napoleon for Marshal Ney, whose bravery during the retreat from Moscow in 1812 was one of the highest. BRAVE LES BRAVE, said Napoleon of him. British then used this citation for the Gurkhas during and after the Anglo-Nepal War. Such was the bravery shown by Bhakti Thapa that the next legend of the Bravest of the Braves had been created on the day - 16 April, 1815 at Deothal."

The Great Defender of Nepal

"Until there was life in the body of Bhakti Thapa Nepal's territory was in a state of great expansion. Soon after his death the Great Nepal crumbled." This is an excerpt from the *sainikitihas* which is based on the book "Vikramjit Hasrat, History of Nepal (Punjab: V. V. Research Institute, 1970)". ■



Right Activist: Right or wrong

HUMAN RIGHTS

Dismal Picture

Despite the end of active violence, the human rights situation is yet to improve as desired. NHRC has complained about youth activities and withdrawal of some cases by the government

By A CORRESPONDENT

Even though the active decade-long conflict has ended in the country, the widespread human rights abuses are yet to subside as desired by the common people.

This year when the country observed the international human rights day, people were once again reminded about the immense challenges facing the human rights situation.

Chairman of the National Human Rights Commission (NHRC) has slammed the government for not taking action based on its recommendations.

Addressing a function organized by the commission to mark the 60th anniversary of the Universal Declaration of Human Rights (UDHR), Wednesday (Dec 10), chairman Kedar Nath Upadhyaya said, "The lack of implementation of NHRC's recommendations and the continued indifference towards those recommendations have raised question over the utility and need of the

commission itself."

Similar concern was raised by Richard Bennett, chief of the Office of the High Commissioner for Human Rights (OHCHR), who urged the government to carry out the commission's implementation and end impunity.

Prime Minister Pushpa Kamal Dahal 'Prachanda' who was present on the occasion, however, did not respond to the requests. He only made general statement regarding the government's commitment to protect human rights.

The NHRC chief has raised serious objections at the activities of youth wings like YCL and Youth Force of Maoists and UML, respectively.

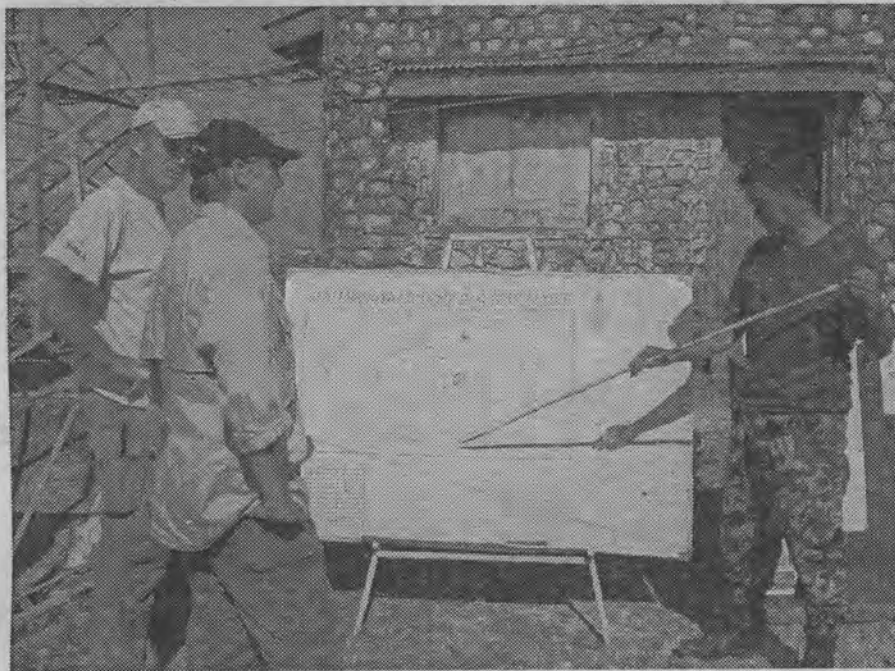
"The formation and functioning of the sister organizations of the different political parties, despite having objective to work for public welfare and political program, have created the atmosphere of the killings, violence and fear among

the people instead of making them aware of the importance of human rights, democracy, rule of law, independent judiciary, press and media. By taking the law in their own hands, they have been found indulged in serious crimes violating the human rights. Impunity has been promoted because of the protection of these crimes and criminals by the political parties," Upadhyaya said.

He has also drawn a serious exception of the government's recent decision to withdraw cases on its own.

"The Commission is determined to have a serious review on consequences of the impunity emerged after the withdrawal of the cases by the government and its predecessor. The Commission will also look into the matters relating to the withdrawal of cases recommended by the Commission for legal actions. I would like to inform this august gathering that the government of Nepal has submitted a list of the withdrawn cases to the Commission upon its request," he said.

Meanwhile, the NHRC has released a statement on the occasion of the International Human Rights Day terming the current situation in the country as being 'full of challenges for human rights.' It has pointed out that among the people disappeared by Maoists and the state during the conflict, the whereabouts of 970 persons were still unknown. It has said that the situation in Terai has complicated and deteriorated the human rights situation in the region. ■



Anti-mine Action : Safety concern

ANTI-MINE CAMPAIGN

Action Resumes

Nepalese Army and UN mine action team recommence demining ensuring safety for common people and preventing unwarranted casualties

By A CORRESPONDENT

Even after three years of end of active violent conflict, Nepal is suffering from its aftermath. Every so often, there are news reports of people especially children falling prey to land mines planted by the warring sides during the conflict period.

Many people have died and many more have been maimed due to mine explosions.

However, efforts to clear the lands from such mines have also been made since the end of the conflict.

And now, with the help of UN experts, the Nepalese Army (NA) has resumed the operation to clear landmines in several places.

The Nepalese Army, assisted by the UN Mine Action Team, has recommenced demining after a five-

month break due to the monsoon season. Nepalese Army engineers redeployed in Jaalbhanjyang, in the Tanahun district, and Kopche, in the eastern region of Nepal, at the beginning of December.

The mines in Jaalbhanjyang were originally laid on a steep hillside by the army to protect a strategic telecommunications tower during the decade-long civil war. The minefield has already claimed the life of a 10-year-old boy and injured a deminer.

Once the mines have been cleared, 150 local people will be able to use the land for grazing cattle. The clearance will also allow access to the local temple, which is adjacent to the tower.

UN Mine Action Team Programme Manager in Nepal, Stephen Robinson, said the Nepalese Army had the

opportunity to make Nepal a mine impact free country within the next three years.

"The Nepalese Army understands the need to clear the minefields for both humanitarian reasons, and as required by the Comprehensive Peace Agreement and the Agreement on Monitoring the Management of Arms and Armies," Robinson said.

"The Nepalese Army is rapidly developing the skills and expertise for mine clearance. Ultimately, the Army has the potential to apply these skills to benefit the international community by deploying as United Nations deminers in other mine-afflicted countries, such as Sudan," he said.

The UN Mine Action Team is a policy-making body consisting of 10 UN agencies, chaired by the United Nations Mine Action Service (UNMAS). In Nepal, the team is comprised of UNMAS and UNICEF.

The program in Nepal is unique, as it is the first time that the UN Mine Action Team is operational in a country. Until now, UNMAS has operated through the United Nations Mission in Nepal (UNMIN). UNICEF and UNMAS expect to develop their Nepalese counterparts within the next two to three years. The Nepalese government should then be able to address the residual explosive remnants contamination with minimal UN support.

"UNICEF is working with the Ministry of Education to infuse mine risk education in the school curriculum. We are also supporting an information system for victims of national mine and improvised explosive devices," said UNICEF Nepal Mine Action Project Officer Hugues Laurence.

Five minefields have been cleared in Nepal during 2008. There are 48 military pattern minefields remaining, as well as a number of protective fields consisting of improvised explosive devices. ■



CHINESE ENVOY

Northern Winds

The new Chinese ambassador Qiu Guohong says the stable Nepal is crucial for stability of Tibet and Southern China

By SANJAYADHAKAL

The new Chinese ambassador Qiu Guohong has said that the friendly and stable Nepal is important for the stability of southern China and Tibetan autonomous region.

Addressing his first press conference in the capital, Friday (December 12), Guohong added that Nepal was also important trade link for parts of China.

"Nepal is also a very important potential trade passage for middle and western part of China. Nepal can also serve as an important economic bridge linking China and South Asia," he said.

He reiterated Chinese position vis-à-vis its policy supporting sovereignty and integrity of Nepal. When asked if

China perceives threat to Nepal's sovereignty, the envoy replied, "If in future Nepal faces problems, then China will support the effort of Nepalese government and people's efforts to safeguard its independence, sovereignty and territorial integrity."

Responding to a query on how China wants to support in the process of army integration, he said, "Chinese government and people have shown concern in drafting of new constitution and integration and rehabilitation of Maoist combatants. Respecting the choice of Nepali people, Chinese government will provide positive support to peace process. Right now, we don't have any specific proposal in providing assistance on peace process."

He also trashed media reports about China providing military training to Maoist commander Nanda Kishore Pun 'Pasang.'

"I have never heard of such training program. There is no plan to train the person mentioned," he said.

About the Chinese willingness to provide security assistance he said, "If the government of Nepal has specific demand for this kind of assistance, Chinese government will consider. But I have not received any request from Nepal government."

The ambassador was quick to add that China has no intention to provide lethal weapons to Nepal. "There can be different modalities for closer cooperation in security such as sharing of information. But China will never provide offensive weapon to any country," he said.

On the issue of extension of tenure of United Nations Mission in Nepal (UNMIN), the Chinese ambassador said that his country would respect the decision of the government of Nepal.

"There is no India factor in the China's growing relations with Nepal. Nepal-China relations should run parallel with Nepal-India relations," he said.

He also said that though removal of monarchy was the decision of the Nepali people, which the Chinese government respects, China cannot deny the contributions made by former Kings. "Of course, we cannot deny the very important contributions previous and late Kings have made to further develop the bilateral relations."

The ambassador added that he will try in his tenure to increase economic relations between the two countries. He said he wished to increase bilateral trade from existing \$400 million per year to \$ 4000 million in coming years. He added that despite the effects China is facing due to international financial crisis, he will try to increase yearly assistance to Nepal, which currently stands at around one billion rupees.

The Chinese ambassador said that he has handed over an invitation by Chinese premier Wen Jiabao inviting Prime Minister Pushpa Kamal Dahal 'Prachanda' to visit China early next year. ■

INDEPENDENCE OF JUDICIARY

Under Threat, Again

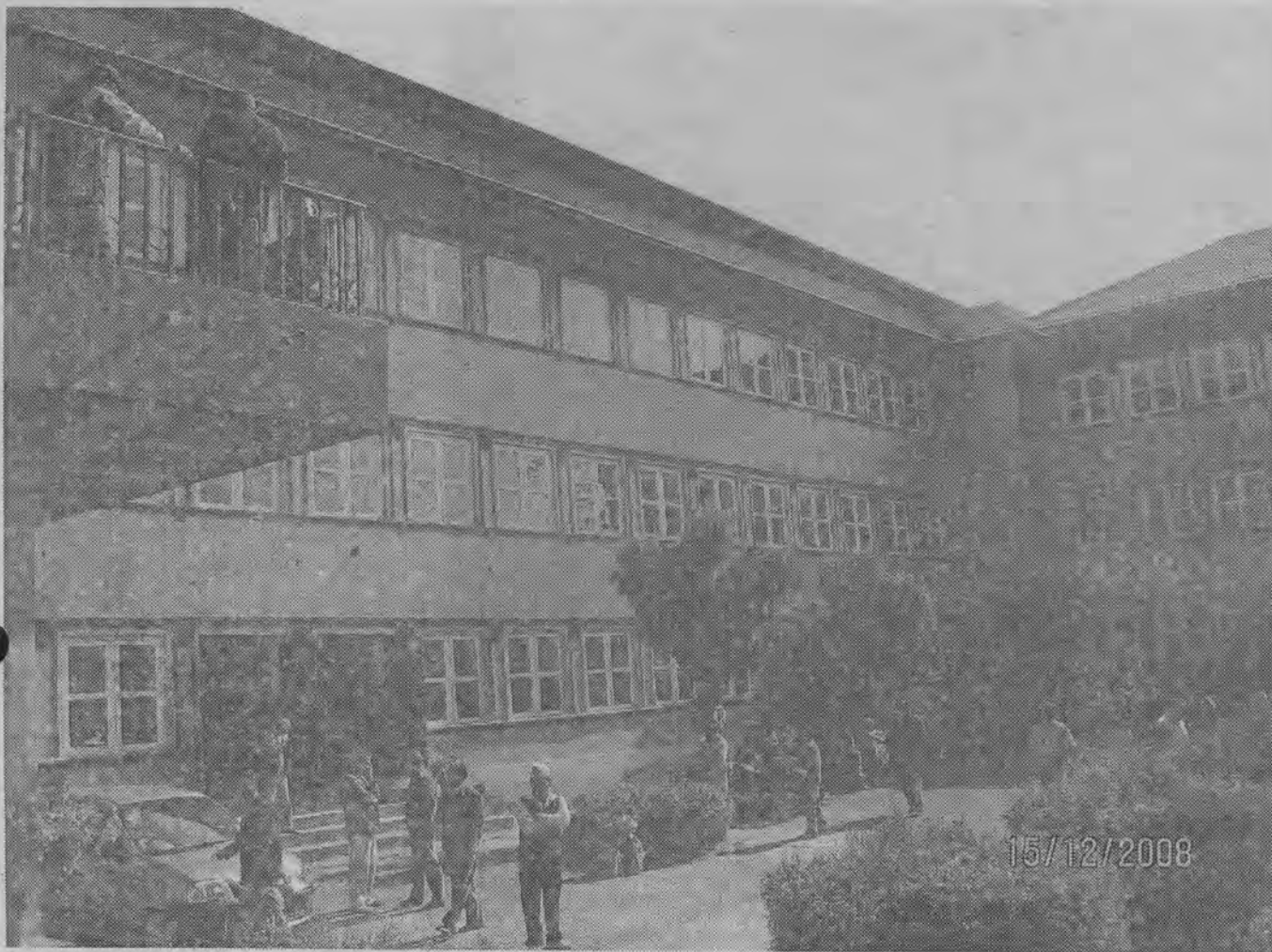
As there is a vacancy for over three dozen judges in Supreme Court, Appellate Courts and District Courts, Maoists are in a rush to fill them with people close to them. However, Maoist considers the presence of senior advocate Motikazi Sthapit, as a member at Judicial Council (JC) - as its main hurdle in achieving this job. Thus, the Maoists have pressured him to resign. Since there is a clear constitutional provision regarding the tenure of JC member Sthapit, Maoists cannot remove him through any executive order. At a time when country's almost all institutions, which were built over last five decades of democratic experiments, have already been shaken badly one after another in the last two and a half years of Loktantra, Maoists, who virtually destroyed developmental infrastructures, grass root democratic institutions by committing number of atrocities against the local representatives, are now finally in the process of dismantling the values and ideals of independence of judiciary - the last safeguard for individual freedom and liberal democracy. If Maoists are allowed to have free hand in JC, it will hurt the independence of judiciary, which is going to be a major setback to liberal democracy

KESHABPOUDEL

"In the changed political context, Motikazi Sthapit, member of Judicial Council, should resign respecting the mandate given by people to us," Minister for Law, Justice and Constituent Assembly Affairs Dev

Gurung told SPOTLIGHT. "I don't understand why our friends in opposition and some lawyers affiliated to Nepali Congress are blowing this simple issue as a major crisis," said minister Gurung.

For minister Gurung, who came to power by committing all kinds of atrocities and violating all civilized manners, constitution, precedence and law do not count much. As he often reportedly said he came to power with



Supreme Court : Under threat

certain objective: to destroy all the state institutions which they failed to accomplish during their twelve years long violent struggle.

"Because of the row in the JC, we are unable to appoint judges in vacant positions in the various courts," said Gurung. "We will take necessary decision soon to settle the controversy." Gurung, however, did not clarify what the decisions will be. It is natural for minister Gurung and his comrades to impose their will through coercion or force rather than following the constitutional ways.

What Is Judicial Council?

The Interim Constitution has created a Judicial Council as an exclusive authority for dealing with some of the most important issues relating to an independent judiciary. This is very unique system of Nepal. The framer of

the constitution created this body hoping that the process of nomination for appointment of judges must bolster the independent and impartial image of the judiciary and not serve to undermine it.

The council was given a wide range of power to allow it to keep the moral standards of the judiciary high and maintain the dignity of judicial independence. Meetings of the council are convened by the chief justice either on his own initiative or at the request of at least two members of the council to discuss the agenda prepared by them. The provisions make the presence of the law minister on the council largely ceremonial since he can always be outvoted by the three Supreme Court judges on the council.

Sthapit's Controversy

Renowned senior advocate and former attorney general Sthapit was appointed one and half years ago in accordance with the 113(1)(d) of Interim Constitution as a jurist by prime minister for the fixed tenure of four years. There is a constitutional provision that such person may be removed from office on the same grounds and in the same manner as provided for the removal of a judge of the Supreme Court. (See box 1)

The fifth amendment of interim constitution has further strengthened the JC member. When Sthapit was appointed by prime minister, he also exercised the power of head of the state including receiving credentials of ambassadors, appointment of ambassadors and members of constitutional bodies. After the fifth amendment of interim



PM Dahal: Unknown

constitution in June, a member of judicial council is now appointed by president under recommendation of prime minister.

"The constitution has not given any authority to anybody even to president or prime minister to ask for his resignation. How can a minister, who is just an ex-officio member, ask for his resignation? This position was created to guarantee the independence of judiciary. Since the article 113 (2) fixes the tenure of member of council and 113 (3) has provision for removal, it is the only two third majority of members of legislative parliament who can remove him. Maoists just want to appoint their own ideologically oriented followers to destroy the independence of judiciary," said advocate Madhav Kumar Basnet.

Other independent lawyers, too, agree with this argument. "As the institution of Judicial Council is created by Constitution, there are constitutional provisions for appointment, tenure and

removal of the members. Among five members of council three are ex-officio members who do not have fixed tenure but two members have fixed tenure of four years," said constitutional lawyer Bhimarjun Acharya. "Fundamental question regarding this debate, how can an ex-officio member of the council demand resignation of a person - whose tenure is fixed by constitution? This provision has been placed there to make judiciary independent. There is no role of executive in appointment of judges as judges are appointed under the nomination of Judicial Council."

As Maoist minister Gurung is holding a long list of newly aspirant pro-Maoist cadres for the position of judges, he requires majority in the council. If minister Gurung is able to appoint his own henchman in the position of Motikazi Sthapit, he can manipulate the remaining member in the fold to take the decision on the basis of majority.

"The stand taken by Motikazi Sthapit is not for his personal benefit but guided by his commitment to the constitution for which he has taken oath," said Acharya. "If he resigns, other judges, too, will be coerced to do so. The most important thing at this crucial juncture is the question of safeguarding the independence of judiciary."

Although Sthapit's issue was raised in the Legislative Parliament by the leading member Radheshyam Adhikary and others, Minister Gurung continues putting all kinds of mental pressure upon Sthapit to resign.

"As he is in the last leg of his career, Motikazi Sthapit as an individual has nothing to lose even if he is forced to resign but his resignation will harm the independence of judiciary," said Basnet.

Lawyers argue that the issue raised now, therefore, that the person appointed by a prime minister of a party has to immediately resign after the change of government is a notion directly against the concept of judicial independence.

"The supremacy of party in the appointment process against the concept of autonomous recommendatory body does not respect the very fundamental concept of independence of judiciary. Therefore, the key issue now reflects the direct ideological concept- classical communism vis-a-vis democratic norms respecting the independent of judiciary. It has to be remembered that the controversy of constitutional incorporation of parliamentary hearing has a remote linkage with the notion of judicial independence maintained under appointment process through the recommendation of an independent and autonomous entity like judicial council, which has the representation of parliamentary members and the government through the minister of law and justice," said a lawyer.

Such arguments were raised in a recently filed petition in the supreme

court by amicus curie while the hearing was conducted by the Supreme Court against incorporation of parliamentary hearing through the constitutional amendments and references were made about similar arguments presented by the Canadian and Australian jurists against proposed changes in their judicial appointment process also.

"Similar controversy has arisen with regard to appointment process in Canada and Australia also. The jurists of these countries have strongly resisted against introduction of parliamentary hearing in the appointment process under an American model simply because the process adopted to appoint through an independent commission, in itself, incorporates parliamentary representations also, which American mode does not," said Dr. Surya Dhungel, a constitutional expert.

Means for Removal

"If the Maoist minister wants Sthapit's removal, why does he not table the motion for impeachment? The resignation is not a voluntary thing that one can coerce someone to do whose tenure is already fixed by constitution," said a legal analyst.

Once a person is appointed, his position is guaranteed by constitution not by anybody's whim. Even with the



Sthapit : Right stand at right time

change of PM, it cannot affect the person. "It is surprising that at this controversial period, a prime minister wanted to see a person who is strongly taking a position based on inherent constitutional responsibilities vested on him."

Surprisingly, nobody is questioning the justification and legitimacy of mysterious call from the prime minister who never tried to see him before this incident took place. Should prime minister call him? Nobody has challenged the

prime minister.

If the government or prime minister is seriously considering removing him, he should convince the legislative parliament on the motion for impeachment.

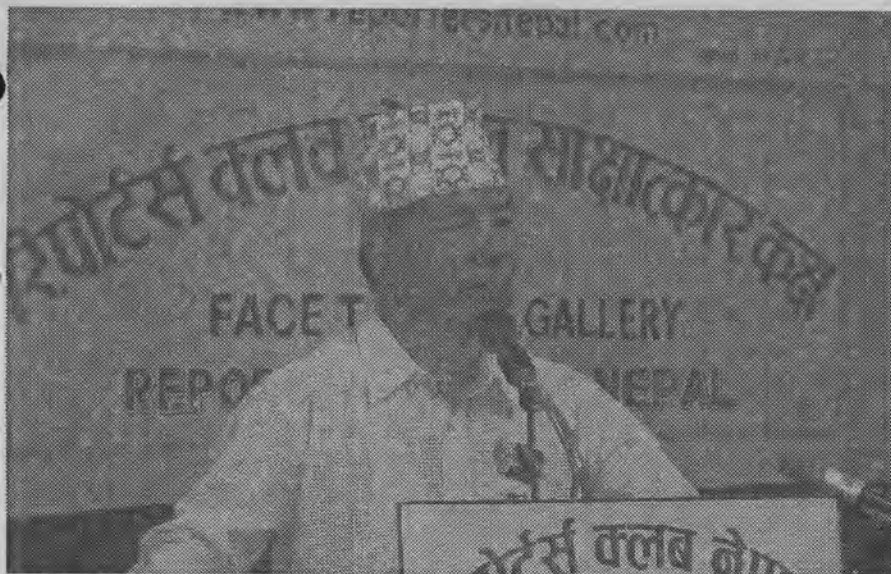
Question of Sthapit

Senior advocate Sthapit had been attorney general during three prime ministers Krishna Prasad Bhattarai, Girija Prasad Koirala and Sher Bahadur Deuba after the political change of 1990. As attorney general does not have any fixed tenure, Sthapit resigned instantly following the change in the government. But, his membership in Judicial Council has fixed tenure, therefore, he has taken a constitutional stand.

"His stand is constitutionally correct. But he is bound to meet prime minister if he invites him for discussion," said Agni Kharel.

Others differ. "Since Sthapit's position is created by constitution, it is against the spirit of constitution to go to prime minister's residence to listen to his sermon," said advocate Basnet. "To safeguard the constitution, he is taking right stand."

As the dispute surfaced, Maoist



Minister Gurung : Controversial remark

minister is pressuring Sthapit to meet the prime minister.

At this controversial juncture, Sthapit's visit to meet prime minister could be taken as begging for his position. If PM asks him to favor his nominee, what would he do? "His stand not to meet the prime minister is constitutionally correct. Once he meets prime minister, his independence will diminish," said advocate Acharya.

Maoist Stand

Maoists argue that Sthapit needs to resign on the ground of change of the government. "Sthapit was appointed by then prime minister Girija Prasad Koirala and he should resign following the change of government." The question of tenure is not applicable since he is appointed on political ground," said Raman Shrestha, secretary of Nepal Bar Association.

"There is no justification to make such a hue and cry. Sthapit should have resigned quietly paving the way for new appointment," said Maoist CA member and advocate Khim Lal Devkota. "We will take necessary step. Even if it requires tabling of the impeachment motion, we can table the motion for impeachment."

About a dozen lawyers with Maoist affiliation are now trying to create the environment that JC member is a political appointee. "Since Motikazi Sthapit was appointed on the recommendation of prime minister, he must resign in the changed context," said advocate Mukti Pradhan. Maoist lawyers seem to be preparing to force Sthapit to resign.

"Since he was appointed by previous prime minister, Sthapit should go. Along with constitutional, there also involves political questions," said Raman Shrestha, general secretary of NBA. Dominated by followers of CPN-Maoist, Nepal Bar Association is yet to pronounce its official stand. When former king took similar stand, they had rushed to condemn him.

Although the debate has already surfaced in public, the NBA has not made its stand clear: whether it stands in favor of government or for independence of judiciary. Bar president Bishwokanta Mainali's stand seems to be neutral but secretary of NBA Raman Shrestha, who is a Maoist cadre, is supporting the minister.

"The judiciary of Nepal is grappling with the issue of independence ever since the 1990 Constitution was pulled down. This is not the first time that this issue has come up with all the bitterness. Institutionally, it is difficult for the judiciary in the prevailing situation to remain impartial, given the overbearing political environment, and the ongoing acculturation. In this situation, it is not

a senior lawyer like Sthapit to tender his resignation in the interest of the larger public good. The intention of the government is loud and clear: it wants an indoctrinated judiciary."

The ongoing attempt against senior advocate and member of Judicial Council Sthapit by Maoist minister is not a personal issue but something that can have a long term implications on independent of judiciary. If Sthapit is compelled to resign under coercion, many other judges in the courts may have to face similar situation.

The whole concept of constituting judicial council to recommend the name of judges is mainly to ensure the independence of judges in the appointment process. Once a council

Judicial Council

Article 113 (1): There shall be judicial council to make recommendations and give advice in accordance with this constitution concerning the appointment of, transfer of, disciplinary action against, and dismissal of judges, and other matters relating to judicial administration, which shall consist of the following as the chairpersons and members:

- a) *The Chief Justice - Chairperson*
 - b) *The minister of justice - member*
 - c) *Senior-most judge of the Supreme Court -Member*
 - d) *A person to be appointed by president under the recommendation of prime minister from among jurists (Fifth amendment)*
 - e) *A senior advocate, or an advocate who has at least twenty years experience to be appointed by the chief justice on the recommendation of the Nepal Bar Association.*
- (2) *The term of office of the members referred to in sub-clauses (d) and (e) of clause (1) shall be four years and their remuneration and privileges shall be the same as those of a judge of the Supreme court.*
- (3) *The members referred to in sub-clause (d) and (e) of clause (1) above, may be removed from office on the same grounds and in the same manner as provided for the removal of judge of the Supreme Court.*

easy for the judiciary to make its decisions accepted by the parties and the public, and stand free from undue interference. The issue of undue interference is subtle and nuanced," said Dr Bipin Adhikari, constitutional expert "The case of Sthapit falls under this category. The government has no compelling reasons, which can persuade

member has been appointed, no matter whether he/she is appointed by prime minister or anyone else, his tenure is guaranteed by the constitution itself so that the member does not have to be in any form influenced by person who appoints him. So he/she is made free from the influxes of person who appoint him. ■



Outfit Leader Yadav : Over ground

TERAI TALKS

Timid Beginning

The government began talks with a small Terai outfit three months after it formed a committee to hold dialogue to peacefully settle the problems in southern plains

By SANJAYADHAKAL

Ever since it was formed on the eve of Dashain, the government's peace talks committee had gone to great lengths to claim that they will hold talks with Terai armed outfits.

First they said the talks will be held before Dashain festival. Then they corrected it to 'immediately after Dashain festival.'

Again, they said the talks would materialize after Tihar festival and then they stretched it to saying after Chhath festival.

Then began another round of date-mongering but nothing came out.

Desperate to show their seriousness, the government talks team held the first formal talks with an armed outfit of Terai on Thursday (December 11) irrespective of the fact that the group they had chosen for the first official tete-à-tete is a small and relatively unknown one.

This fact was further underlined by the commotion that greeted the arrival of the five-member team of MVK in Singhdurbar for the talks.

As nobody knew the outfit and its leaders, cameramen and journo scrambled to get their photos and sound bytes. The situation turned into a high drama as nobody knew who among the group of people that got off from a government officials-chaperoned vehicle were actually the MVK leaders.

A five-member team of Madhesi Virus Killers led by its coordinator Jaya Prakash Yadav held talks with government team led by Minister for Peace and Reconstruction Janardan Sharma Prabhakar at the Ministry of Peace and Reconstruction in Singhdurbar.

After the one and a half hour talks, Minister said, "We have agreed to categorize their demands into those that

can be fulfilled by Constituent Assembly and those that can be met by the government. We have agreed to sit again on mutually agreed date."

Amused at the impressive turn out of journalists to cover his visit, the MVK coordinator Yadav said that his organization wanted to be a part in building new Nepal.

"We have come forward by believing that armed outfits should also be involved in writing new constitution," he said. There are dozens of armed outfit in Terai. The government has said it will hold talks with all of them to sort out the problem peacefully.

In a separate press meet held subsequently, Yadav went on to demand that there should be one Madhes province and that his combatants, which he numbered at around 3000, should be integrated into national force.

Meanwhile, the prospects of the talks were immediately played down by none other than a government minister himself.

A day after the government talks team held talks with an armed outfit operating in Terai, a senior minister in the cabinet doubted the success of the effort.

Minister for Agriculture and Cooperatives and senior leader of Madhesi Janadhikar Forum (MJF) Jaya Prakash Gupta said, "The way the government team held the talks without adequate homework, I doubt it will be successful."

Gupta also took a swipe at what he called as contradictory actions by the government. "The Peace Minister is holding peace talks in Kathmandu while Home Minister is coordinating security response in Biratnagar. This shows the government is not serious about talks," he said, referring to the presence of Deputy Prime Minister and Home Minister Bamdev Gautam in Biratnagar.

The remarks from Minister Gupta have exposed the unity within the government – at least on the issue of peace talks with Terai armed outfits. The MJF is one of the big three partners of the ruling coalition led by the Maoists, which includes six parties in total. ■

“Only Two-Third Majority Of Parliament Can Remove Sthapit”

-Radheshyam Adhikari

Former president of Nepal Bar Association and senior advocate **RADHESHYAMADHIKARI** is a well known lawyer and now a member of Constituent Assembly. Having served more than seven years as a member of legislature, Adhikari has proved himself as a good parliamentarian. At a time when there is a controversy after Minister for Law and Justice sought resignation of senior advocate Motikazi Sthapit, a member of Judicial Council, Adhikari spoke to **KESHAB POUDEL** on various issues regarding the present controversy. Excerpts:

The article 113 (1), (2) and (3) of Interim Constitution specifically mention about appointment process, tenure of members and ways for removal.

You have raised the current controversy in Judicial Council (JC) at the Legislative Parliament. What is this fuss all about?

It is a matter of serious concern for all who have been preaching for independence of judiciary. Actually, newspapers have been carrying the news for last one week about Minister of Law and Justice Dev Gurung's act of demanding resignation of Motikazi Sthapit, member of JC. Even some members of ruling Maoist party defended in the parliament about minister Gurung's act. After listing all their perception, I finally realized that it is my duty to clarify the constitutional status and constitutional position of member Sthapit.

Maoists have been saying that Sthapit was appointed by previous prime minister Girija Prasad Koirala and he needs to resign in the changed context just like attorney general. What do you say?

Why should Sthapit resign as he was appointed as per the interim constitution for four year tenure? Minister Gurung and Maoist lawmakers are trying to politicize it. Of course, Sthapit was appointed by earlier prime minister but the member of JC has fixed tenure of four years. The issue is constitutional and not political. There is no question about who appointed Sthapit but he was appointed as per the interim constitution. Since there is clear provision about the JC member, Sthapit need not resign on coercion of a law minister who is merely one of the members of JC.

Do you mean Interim Constitution fixes the tenure of member of judicial council and defines his role?

The article 113 (1), (2) and (3) of Interim Constitution specifically mention about appointment process, tenure of members and ways for removal. There is no ambiguity in the issue. According to article 113, president shall appoint a jurist as a member of judicial council on the recommendation of prime minister. The article also makes it clear that he shall be removed through the same process as is applicable in the removal of other judges of Supreme Court or through the impeachment by the Legislative Parliament. Only two third majority of Legislative Parliament has the right to remove him.

Can the present law and justice minister Dev Gurung demand the resignation of Judicial Council member Motikazi Sthapit?

He cannot ask for resignation since the member of JC is not under the jurisdiction of the minister of law and justice. Sthapit's position is created by constitution not by a minister or a cabinet.

What about prime minister? Can he ask Motikazi Sthapit to resign?

I have already mentioned to you that Motikazi Sthapit is holding a constitutional post and constitution has provisions to remove him. Even prime minister does not have any fixed tenure. He cannot demand the resignation since he does not have the right to do so.

What constitutional options prime minister has to remove a member of judicial council?

According to article 113 of interim constitution, there is a provision of impeachment. The member of judicial council can be removed through the impeachment motion if passed by two thirds of members of Legislative parliament. This means only the legislative parliament has the right to remove the member once he/she is appointed.

How do you see the act of Minister Gurung, then? Is he interfering with the independence of judiciary?

It is very unfortunate to see such incident. The act of minister of law and justice Dev Gurung violates the spirit of independence of judiciary. Since our constitution does not give any right to minister representing as a member of cabinet in the JC on the process of appointment, transfer and recommendation of judges. The right to appoint judges vests on the JC. The five member JC, in which three are ex-officio members, takes collective decisions. If someone tries to manipulate this, it will undermine the independence of judiciary. If the minister is allowed to act as per his wish, the judiciary will be more like a branch of executive.

Don't you think a person appointed under the recommendation of prime minister needs to resign on the moral ground when new prime minister comes to power?

That is a wrong notion in the context of JC. As it is clearly mentioned in the constitution, among five members of JC, one is appointed from among the jurists on the recommendation of prime minister by president. Moreover, after the appointment, the constitution fixes the tenure for four years. To make him free from executive, the



right to remove JC member is given to Legislative Parliament. I don't understand the logic of morality and change of government. The position of JC member has nothing to do with change of prime minister.

What do you mean by it?

Prime minister has dual roles: individual and institutional. The prime minister as an institution recommends a name of jurist to appoint as a member of JC. So his role here is just institution of prime minister.

What about the Attorney General who resigns after the change of government?

The position of attorney general and JC member is different. The constitution has different provisions for both these positions. In the same constitution, the tenure of Attorney General is given on the wishes of prime minister. However, the constitution fixes tenure of member of JC as four years. The article 134(3 c) says the office of the Attorney General shall be deemed vacant if the prime minister removes him/ her from the office. This is not the same with JC member.

Why are there so much constitutional safeguards for members of JC?

One must understand concept behind the formation of Judicial Council as it is there in the constitution to make judiciary free of interference

from executive. JC is there in constitution to pursue the idea of independence of judiciary.

As a minister of law and justice, what role does minister Gurung have in JC?

His role is just as an ex-officio member of JC. The status of law and justice minister in the Judicial Council is equal to other members. Law and justice minister is made a member of judicial council not to interfere in independence of judiciary but to encourage the independence of judiciary and facilitate it.

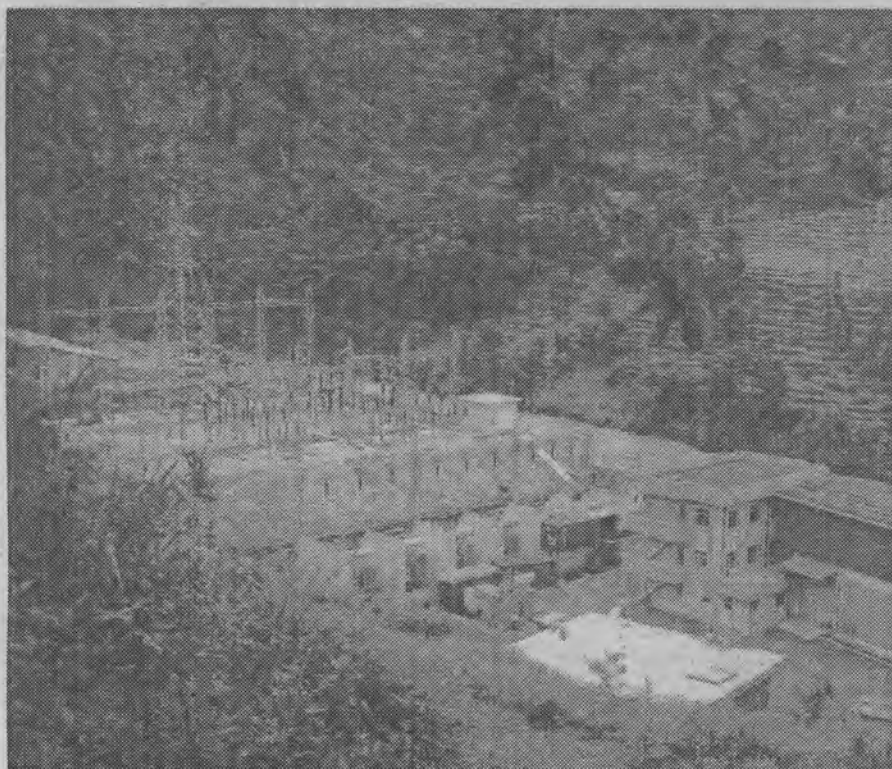
What about Motikazi Sthapit? Will he resign?

If Motikazi Sthapit tenders his resignation in this crucial situation, it will be against the oath taken by him in accordance with constitution and people. Although he was appointed on the recommendation of prime minister, he cannot act as an agent of prime minister. He is bound to honour his oath to constitution and people.

But, some suggest that Sthapit should meet prime minister if he is invited for consultation. How do you look at it?

So far as meeting with prime minister is concerned, it is going to create misunderstanding about his role if Sthapit calls on prime minister. Sthapit's stand is correct and he does not need to go there. Sthapit cannot be punished on the ground that he declined to meet prime minister at his crucial juncture. This kind of meeting will harm the independence of judiciary. ■

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Middle Marsyangdi : German support

COMPLETION OF MIDDLE MARSYANGDI Power to National Grid

The country has been facing long hours of power cut. The completion of Middle Marsyangdi hydel project provides only some relief

By A CORRESPONDENT

At a time when the country has been celebrating five decades of Nepal-German cooperation, the completion of Middle Marsyangdi Project adds a feather in the long friendship between the two countries.

From road to urban development and power to health and agriculture, Germany has been supporting Nepal in all sectors and poor people of Nepal have benefited a lot from the projects completed under German cooperation.

Earlier, Germany supported in building 69 MW hydro power project

which has been constantly supplying the power to Nepal. The project was completed in 1988 when the country had been facing acute shortage of power. After completing the 70 MW strong Middle Marsyangdi Hydel Project, second largest after the Kali Gandaki A, Nepal will get much needed power to maintain the supply.

Although the construction of project will not reduce the power cut hour drastically now, it will at least reduce the load shedding hour by few hours.

The 70 MW Mid-Marsyangdi

Hydroelectricity Project finally started operation from Sunday, (Dec 14) – at the double the cost and double the duration than initially estimated.

Prime Minister Pushpa Kamal Dahal formally inaugurated the German funded project at a ceremony held in Lamjung, western Nepal, marking the 50th anniversary of the establishment of diplomatic ties between Nepal and Germany, which had helped in its construction.

The project, which had started in June 2001 with joint investments of the government of Nepal and Germany and Nepal Electricity Authority, was scheduled for completion by December 2004.

But the project was plagued with problems right from the start. First construction of the project was halted in 2003 after project contractors went on an indefinite strike citing lack of security after Maoists killed two of its workers.

The second biggest hydel project in the country is also the most-expensive hydropower project in terms of per unit cost as it was completed at almost double the cost of what was estimated.

Germany has borne 85 percent of the total construction cost while government and the NEA covered the remaining 15 percent.

The hydro-electricity project is commencing operations at a time when the country is facing serious power shortages with consumers in the country having to face up to 7 hours of load shedding every day.

However, this project will not help bring down load shedding hours considerably.

“This is because of great imbalance between supply and demand,” said Uttar Kumar Shrestha, managing director of NEA.

“We currently have the installed capacity of 619 MW. In the dry season, only 400 MW power is generated while the peak demand stands at around 750 MW. Therefore, the inevitability of load shedding,” he said. ■

The Terrorism Menace

- Ram Krishna Thapa

The blasts that recently rocked Mumbai- the number one city in India, causing heavy losses in lives and property have generated world wide condemnations. Like the 9/11 of the United States, it also exposed the failures of the government to take the needed cognizance of the tip offs. They also laid bare the lacunae in the overall security set up. Since the terrorists were all Muslims with assumed Pakistani connections, the involvement of the Pakistani government was taken for granted. It is said the one terrorist that was nabbed made some damnable confessions that clearly pointed to the Pakistani authorities. Since all kinds of methods are used in obtaining such confessions, much caution has to be taken to accept them in toto. Would it be reasonable to blame the Saudi Arabian government for the terrorist acts of the Osama Bin Laden? Moreover, the big hue and cry by the Indian publicity media has compelled the big powers to pressurize Pakistan and even compel the United Nations to impose sanctions on some activist groups in Pakistan. The terrorists have made life miserable for the innocent peoples who are paying for the sins they never committed. The terrorism virus has so widely spread all over the world and it is so strongly entrenched that no power, howsoever mighty, can eradicate it totally. Despite the fact that American politics has taken a revolutionary twist and the American society too is poised to take a new direction, there are no dearth of conservative hardliners who

knowingly or unknowingly might pep up terrorism by their intolerance. Besides, the American neo-Muslims with growing sympathy for their Muslim brotherhood around them might also pose a serious threat.

Since terrorism is sustained by a long standing historical perspective in the triangular animosity between the Jews, Christians and Muslims whether the world will ever be free from it no body on earth can say. In recent years this scourge, instead of being mitigated, has been boosted by the increasing clash of regional and global interests. The sad happening on 9/11 not only hurt the American ego besides inflicting terrible damages but also impelled the US administrators to take recourse to actions that created a Frankenstein of international terrorism that is sure to terrorize the world for a

Despite the fact that American politics has taken a revolutionary twist and the American society too is poised to take a new direction, there are no dearth of conservative hardliners who knowingly or unknowingly might pep up terrorism by their intolerance.

long time to come. Nearer the mother country too terrorism is supposed to be spreading its wings. The Kashmiris and other Islamic fanatics that abound in South Asia, the Tamils in Sri Lanka., the Maoists in Nepal and India and the unconfirmed reports that Free Tibet movement is being supplied with all kinds of lethal and non-lethal support from India-American axis group could plunge the South Asian region into an

unending conflagration. India's unbridled ambition that has propelled her to pursue a misguided policy towards her smaller neighbors has only contributed to aggravate the persisting mistrust. It is high time India made sincere self- introspection and sportingly accepted her failure to knit South Asia into a compact unit which could prove to be a bulwark to achieve her ambitious goals. Terrorism in South Asia is doing greater harm to India and she must make honest efforts to root out this evil if her hungry millions are to be given a better life. But, first they must understand that terrorism cannot be jointly fought in the environment of distrust and enmity and no country alone can successfully fight this scourge not even the United States of America. We, the NRNs in the U.S., do still love our mother country and would not hesitate to help her restore peace and stability. We did not like the American policy of looking at Nepal through Indian eyes. As such, we are expectantly waiting for Barrack Obama to take over. We are hopeful the Obama administration would definitely bring in necessary changes in the policies and treat the smaller nations of South Asia too with due respect. Indeed, Obama would have to preserve his country's interests. But, he would certainly find ways and means to inspire greater confidence and trust in the smaller and weaker nations of the world. Only creating a network of anti-China nation is not going to solve the world problems and that would not be the way to tackle global terrorism.

Thapa lives and works in Texas -

United States

BOOK

Public Administration

Tulsi Narayan Shrestha's book discusses the importance of public accountability in the Nepalese administration

By A CORRESPONDENT

Although Nepal's administration has already gone through various stages, it is yet to have a mechanism to make the administrator accountable to the country and people. Nepal's administration is politicized in such a manner that there is very little thing that remains to prove it as an accountable institution.

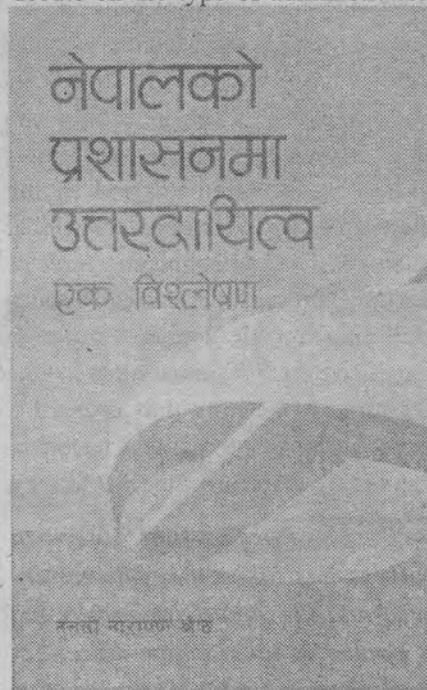
Whoever may come to power, his or her first step is to involve in the various process of administration. Politicians transfer the administrative officers on their whim turning them as a civil servant accountable to them.

Despite legal provisions, administrators are removed and transferred in accordance with the whim of ministers. This makes Nepal's administration must unstable and undependable.

In this context, Tulsi Narayan Shrestha's book is very helpful and eye opener. Shrestha also examines the gap between theoretical and practical aspects of the administration and its theories on accountability. The gap between the theory and practical aspect is another important component of this book.

Nepal's recorded history shows that the country has about 1500 year long history of record keeping. From early Licchivi rulers to the present rulers of Loktantra, there are certain common things among them. This common approach is about exercising arbitrary authority to exploit the administration.

Since Nepal has been going through a phase of making new constitution through a Constituent Assembly, this is the right time to debate on the type of administration



**Nepalko
Prashasanma Uttardaitwa: Yek
Bishleshan**

**Public Accountability in
Nepal's Administration: An
Analysis**

By Tulsi Narayan Shrestha

Price: Rs. 125.00

Pages: 102

Published by: Author

Nepal will have and where to make the administration accountable.

Having long experience in teaching and learning in Nepal's administration,

Shrestha has already contributed a number of books on Nepal's administration system as well as its role in Nepal's nation building. This is Shrestha's another contribution which discusses about the question of accountability.

Although many books have already been published on Nepal's administrative system, this is first of its kind which focuses on accountability part. As Nepal's civil service is facing very painful phase, the publication of this book at this juncture is very important.

Divided into various chapters, Shrestha has made every effort to see the stages of public administrations. He also suggests the areas where there is a need to take certain reforms on the question of public accountability.

After entering into modern system following the political change of 1951, Nepal's administration started its journey toward institutionalization. In early days of modernization, the role and accountability of Nepal's administration was made very unclear.

There was ambiguity on the part of the role of administrator. Shrestha discusses all the issues intensively and showed the various models of Nepal's administrative system. Along with discussing theoretical issues, he also discussed practical aspects of Nepal.

Based on intensive research and literature review, the author accommodates all aspects of Nepal's evolution of administration system and role of various functionaries. After pointing so many lacunae, he also recommended some suggestions to improve the situation.

At a time when the country has been passing through a phase of transformation, Shrestha's book gives some insights and ways to improve the efficiency of administration making it accountable and responsible to the people. ■

“The weapons that were in the hands of the [then] king have not come in the hands of people yet. They are still in the middle, if they are taken back by the feudal lords the people should revolt.”

Prime Minister Pushpa Kamal Dahal 'Prachanda,' addressing a function of progressive writers.

“The lack of implementation of NHRC's recommendations and the continued indifference towards those recommendations have raised question over the utility and need of the commission itself.”

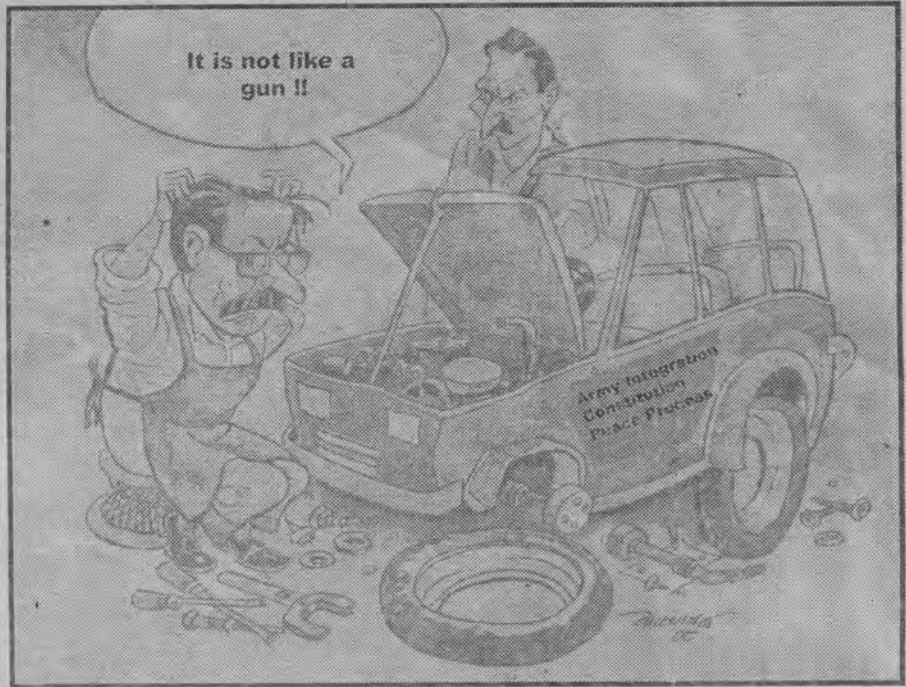
Kedar Nath Upadhyaya, chairman of National Human Rights Commission (NHRC), addressing a function organized to mark the International Human Rights Day.

“We have agreed to categorize their demands into those that can be fulfilled by Constituent Assembly and those that can be met by the government. We have agreed to sit again on mutually agreed date.”

Janardan Sharma 'Prabhakar,' Minister for Peace and Reconstruction, after holding talks with representatives of Madhesi Virus Killers.

“We have come forward by believing that armed outfits should also be involved in writing new constitution.”

Jaya Prakash Yadav, coordinator of Madhesi Virus Killers, after his team held talks with the government.



“The way the government team held the talks without adequate homework, I doubt it will be successful.”

Jaya Prakash Gupta, Minister for Agriculture and Cooperatives and senior leader of Madhesi Janadhikar Forum (MJF).

“If they continue to flout the rule of law, the government will take action against them. No one has the authority to unleash a reign of terror. They won't be excused simply because they are an offshoot of the ruling coalition.”

Bamdev Gautam, Deputy Prime Minister and Home Minister, demanding disbanding of YCL and Youth Force.

“The Youth Force has been formed to establish peace. It will continue to work to help the government.”

Jhal Nath Khanal, general secretary of Unified Marxist-Leninist (UML).

“Chinese government and people have shown concern in drafting of new constitution and integration and rehabilitation of Maoist combatants. Respecting the choice of Nepali people, Chinese government will provide positive support to peace process. Right now, we don't have any specific proposal in providing assistance on peace process.”

Qiu Guohong, Chinese ambassador to Nepal, speaking at an interaction held by Reporters' Club.

TRANSITION

PASSED: The bill to introduce Sixth Amendment in the Interim Constitution by the Constituent Assembly in its capacity as legislative parliament.

FORMED: Scientific Land Reforms Commission, headed by Maoist leader Haribol Gajurel, by the cabinet.

DISCHARGED: Former Prime Minister and president of main opposition Nepali Congress (NC), Girija Prasad Koirala, from Shahid Ganga Lal Heart Center, where he was hospitalized for three days after suffering from pneumonia.

ASKED: The Foreign Ministry has asked Nepali citizens to carry their photo ID cards while traveling in India in view of increased security in India following ter-

rorist attack in Mumbai.

DIED: Twenty-three people, mostly young students of Hill Bird school, after a school bus carrying them from picnic spot, met with a tragic accident in Nawalparasi.

APPOINTED: Bamdev Chhetri, a Maoist leader, as the chairman of Agriculture Development Bank Limited (ADBL).

KIMFF

International Angle

Like in the past, Kathmandu International Film Festival attracted a large number of film fans as well as good films of various countries

By A CORRESPONDENT

Films are mirrors of social transformation, it records conflicts and other minute things about social events. There naturally come the social relations, surroundings and so many other things one can see in various parts of the world through movies.

Organized by Himal Association, the Kathmandu International Mountain Film Festival attracted many international as well as Nepali documentaries and films prepared to show various moments of the country.

Inaugurated by Minister for Information and Communication Krishna Bahadur Mahara, the film festival lasted for five days from December 15-21.

During the five days, 66 films were displayed. The films covered whole

range of topics and issues from conflict, culture, wildlife, environment, globalization, gender, life style and others areas which are normally not touched by commercial films.

Under the various categories, 34 films were screened in non-competitive section and 20 in the international competitive category and 12 films in Nepal Panorama section. Screened on 11 December, Nepalese film Yudha Chitra (Frames of War) portrayed the devastating consequences of Nepal's 15 years long conflict.

The film was well directed and well written which won the heart of Nepalese. Similarly, the British film "The Day after Peace" was also a very interesting film.

Most of the international films

screened at the film festival also depicted the tragic part of human life as well as the issues based on environmental duress and wildlife. In terms of quality of direction as well as the shooting, the international films were better in terms of their technical capabilities as well as other directorial aspects. But Nepalese films, too, were quite good.

After watching Nepalese films and documentaries, one can see a lot of improvement and changes in different fields. Nepalese films and documentaries describe the contemporary social, cultural and environmental challenges faced by Nepalese society. Like international films, Nepalese films were also made on the areas which commercial movies completely ignored.

Directed by Subarna Thapa, a 20-minutes-long Nepali film Malami wowed many audience. It was based on a story on how in rural areas the youths are more and more foreign and urban oriented. This picture described the grim scenario of migration of youth and their aspiration to go out for better future.

As large number of youths move to urban and foreign country, there is dearth of youths in village who are required to carry the dead body for cremation. One can see this reality in this film.

All the films were screened in Rastriya Sabagriha and Nepal Tourism Board.

Along with film festival, there is also a photo exhibition of mountain porter by British photographer Nick Meshan. Winner of Olympic Award, photographer Nick's photos includes depiction of Nepalese mountain porters who support trekkers and mountaineers without expecting anything. Nick's photos displayed at the exhibition depicted the difficulties and challenges faced by mountain porters of Nepal. ■

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