Introduction

Two steps forward, one step back
Alexander Ramsbotham and Deepak Thapa

How to support greater inclusion has been central to efforts to build peace in Nepal. Inclusion here is associated with social justice, in particular as it relates to identity. This focus on identity responds to the enduring dominance of established elites and the exclusion and discrimination that many marginalised Nepali communities have habitually suffered, which together acted as key drivers to sustain the Maoist insurgency from 1996 to 2006.

Conflict over inclusion has not been just a wartime or post-war phenomenon, however. Rather, the war and the peace process form an intense part of a longer process of evolving political settlement, as inclusive change has been variously advocated, incited, resisted and negotiated among different social and political groups – elite and non-elite – over many decades and in multiple forums.

As the post-war transition has evolved since the 2006 Comprehensive Peace Agreement (CPA), the fate of the inclusion agenda has been determined by the progressive and conservative blocs that make up Nepal’s politics and society, and the shifting alignments and alliances within and across these. Constitutional federalism has been a central focus of the reconfiguration of power in the post-conflict era, and hence for socio-political confrontation, too. This has been complicated by Nepal’s political geography and the diffusive impact of an insurgency waged primarily in the peripheries of the country by rebels advocating ethnic autonomy and decentralisation as essential jus ad bellum. Significant constituencies from either end of the political spectrum have approached negotiation over the federal design as a zero-sum transaction – most vehemently in relation to identity-based federalism as an objective of many marginalised communities to institutionalise guarantees for more equitable representation and distribution of resources. Political settlements have correspondingly evolved at the centre, in the periphery, and between the centre and periphery, through various mobilisations, deliberations and deals at state and sub-state levels.

International partners – regional neighbours, India and China, as well as western donors and the United Nations – have played important roles in supporting a peaceful and inclusive transition. But in general external actors have been less influential than most of them would have hoped, especially in the political sphere where international advocates of inclusion have struggled to avoid taking sides (or be seen to be taking sides) in the pervasive tussle between reformist and reactionary agendas. Their sway has also waned over time, a pattern that maps onto a wider trend, whereby the post-war power of the new, progressive, pro-inclusion forces that burst onto the political scene in the ‘transformation moment’ of the end of the war – the Maoists, but also identity-based parties and groups – has also gradually faded.

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Established elites have regained assurance and authority, meanwhile, and have been able to exploit periodic opportunities to institute checks on the advancement of inclusion, the latest such marker being the new 2015 Constitution, agreed in haste (somewhat paradoxically following six years’ deliberation) after the earthquake earlier that year. Many communities’ view that the new constitution does not fulfil their aspirations for greater representation or rights, and the fervency of the dissent that it has provoked, shows how live the inclusion issue remains for many Nepalis. Rather than marking the end of the war, the constitution may indicate the start of a new phase of intense political contestation.

One key component of the peace agenda that has cut across the dominant progressive/conservative political divide is transitional justice, as figures and institutions from either side are implicated. Here, the tension involves perpetrators and victims, and amnesty and accountability, with the result that transitional justice has perhaps seen the least traction in the peace process as a whole. This has had a profound, negative effect on the condition of Nepal’s peace, as impunity remains a fundamental expression of inequality.

About the publication
This 26th publication in Conciliation Resources’ Accord series is an output of the Political Settlements Research Programme (PSRP), a four-year research initiative by a north-south consortium of five organisations to examine how political settlements come about, how open and inclusive they are, and how internal and external actors shape them. In reviewing Nepal’s peace process, this Accord edition takes a special focus on the progress of inclusion and the function of power, and on the role of the peace process as a means to facilitate transition from negative to positive peace, or from horizontal (elite) to vertical (societal) inclusion.

New research by International IDEA and the PSRP (2016), *Sequencing Peace Agreements and Constitutions in the Political Settlement Process*, speaks to the Nepal experience. It emphasises the importance of sequencing in a political settlement process, and of continually reappraising the extent of underlying political agreements at each stage, with a clear plan to broker the necessary deals to facilitate progress. In post-war Nepal, the relationship between the peace and constitutional processes has been clear, but the understanding of how to support a political settlement process sequentially and incrementally has not. Almost immediately after the CPA, the failure of the 2007 Interim Constitution to commit to federalism sparked major protests by identity movements unhappy with the outcome, closely followed by a succession of renegotiations and amendments. Key components of the peace and inclusion agenda have subsequently been negotiated in the Constituent Assemblies, often alongside arrangements to share power.

The extent of progress from negative to positive peace in Nepal has been as much to do with the implementation of agreements as with their content. A recurring pattern has permeated both the war and the peace process, which sees political actors promise a more inclusive nation and state through various accords and pronouncements, with the main aim of pacifying disorder linked either to the insurgency or to post-war agitation. Concessions to inclusive language in various agreements are then made to secure progress for stability, rather than necessarily representing sincere commitments to inclusive change. Ambitions have almost always been met in terms of the agreements themselves, but their provisions have subsequently only been partially respected or fulfilled.

The publication itself is divided into three main sections, looking at the peace process, at the political process, and at inclusion, with an analysis of the political impact of the earthquake in a final concluding section. Individual section introductions are included at the beginning of each, which outline their respective focuses and articles. Here, we introduce some key background issues under each section heading, and also provide an overview of the war and the post-war transition.
Peace process

The Maoists launched their ‘People’s War’ in 1996 with the stated aim of redistributing power away from traditional elites. Inclusion has a pre-war political history in Nepal, but the Maoists were the first major political group to push it strategically. This stemmed from their analysis of multiple forms of discrimination in Nepal that fed into inequality and class resentment. The Maoist heartland in the Mid-West and other mid-hill areas in which the party exerted a high degree of control during the conflict were home to various Janajati (indigenous) groups that had been discriminated against on the basis of their cultural practices and language. The Maoists recruited extensively from these groups for both the party and the People’s Liberation Army [PLA].

As the war progressed, the interests of a diverse and usually discordant group of actors found common cause in opposing the king and the royal regime. The behaviour of the monarchy fed this trend, from the royal massacre in 2001 that shattered the idealised image of the palace, to when King Gyanendra’s sidelined political parties in 2002 and seized absolute power in 2005. In the intervening years, the Maoist cause steadily gained strength due to a heightened sense of grievance around issues such as unequal access to development and systemic discrimination on the basis of social identity.

The end of the war in 2006 brought significant change. The post-conflict political landscape opened up to new elements, including the Maoists, who entered the political mainstream via the peace process, but also saw the rise of various identity-based forces. The CPA legitimised a new kind of political actor whose right to participate came from representing an explicitly progressive political agenda. In practice, though, real participation was extended only to groups that could mobilise politically, such as those representing Madhes (from the Tarai plains). These groups initially welcomed the announcement of the new Interim Constitution, which stated the aim of redistributing power away from traditional elites. Inclusion has a pre-war political history in Nepal, but the Maoists were the first major political group to push it strategically. This stemmed from their analysis of multiple forms of discrimination in Nepal that fed into inequality and class resentment.

Some of the power centres of the old state soon reasserted their autonomy and influence, however. The Nepali Army, for example, styled itself the custodian of national sovereignty and a bulwark against the unpredictability and corruption of a democratic political system. Other legacies of power included the bureaucracy and judicial system, both of which appeared to resist attempts to promote inclusion of historically marginalised groups in state institutions.

For the first years of the peace process, from 2006 to 2012, international donor partners referred heavily to the language of social inclusion and targeted programming for historically marginalised communities and regions. But, donors as a whole have been seen to be inconsistent in their support for inclusion. Some donor projects aimed at inclusion and federalism came to be heavily criticised by parts of Nepal’s traditional establishment for having stoked ethnic sentiment or promoted ethnic federalism, and donors subsequently backed away from the inclusion agenda.

Political process

The elected Constituent Assembly [CA] was supposed to provide the primary democratic forum in which to renegotiate the administration of power. But the first CA lapsed in 2012 without having agreed on a new constitution because of profound differences over the nature of federalism, inclusion and representation. Discontent in the first CA took many forms: the centralisation of decision-making power in the hands of a few senior leaders; the use of party whips to impose their wishes; and the dismissal of dissent within parties. These were also reflected in the functioning of the second CA, elected in 2013.

Although all constitutional provisions were to be agreed through a two-thirds majority of the CA, all contentious issues were decided through consensus among the leadership of the major political parties. One result of this has been a constant series of trade-offs in negotiations over issues such as the number of federal provinces. It also affected ‘power sharing’, which in Nepal describes the formation of alliances and governments rather than any constitutional arrangements.

Since neither the 2008 nor the 2013 CA election yielded a clear winner, Nepal’s political landscape has been marked by the formation of alliances. The two major traditional parties, the Nepali Congress (NC) and Communist Party of Nepal–Unified Marxist-Leninist (UML), were allied by default, due more to their shared antagonism to the Maoist party and the federalism agenda than any particular fellow-feeling. The counter has been what might be called a ‘progressive alliance’ of Madhesi and Janajati groups along with, at times, the Maoists.

These alliances, which mapped on to the disagreement over federalism, took shape after the first CA election in 2008. They continued when the Maoist party, the largest in the first CA, quit the government in early 2009, and were strengthened in the months leading up to the first CA’s demise in mid-2012. The 2013 election to the second CA reversed the balance of power, with the NC and UML
together now representing an easy majority, and the Maoists, Madhesi and Janajati forces (all split into multiple political parties) having little, if any, way to challenge a two-thirds majority that the NC-UML combined could garner with the support of rightist forces.

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By virtue of the mixed electoral system adopted, the two CAs expanded the political space for women. But the successful push for quotas for women in the CA had limited impact on the negotiation process. Nearly all political parties lack powerful women leaders and do little to encourage women to rise up the ranks – except by virtue of birth or marriage. Where a CA member has specific (eg legal) expertise, they may be appointed to serve on various expert committees, but they are not empowered to truly negotiate and make concessions, only to hold the party line.

Inclusion
Inclusion is strongly linked to post-war demands for federalism as delivering self-government for various groups. But given Nepal’s complex ethnic mosaic, this issue goes further. For example, inclusion is particularly important for Dalit (‘low caste’) groups, which, while constituting 13 per cent of the population, are spread across nearly all of the country’s 75 districts, and whose needs cannot therefore be met by a move to territorial ethnic self-government.

Social movements have accompanied significant instances of social and political change in Nepal – notably the first and second People’s Movements in 1990 and 2006, and the subsequent Madhes and other identity movements. Different non-elite constituencies have used a number of methods in a variety of combinations to affect change in Nepal, such as bandhs (shutdowns); tactical alliances with larger political forces; alliances with other small groups and the use of interest caucuses; use of the courts and the judiciary; and threats of violence and radicalised discourse. But changes wrought by such movements have had limited impact on formal structures. Popular agitation, in fact, has done little fundamentally to alter the nature and functioning of political structures, although street mobilisation has succeeded in compelling the accommodation of specific actors and even some issues.

Violence has been important in shaping the post-war political settlement in Nepal – by the state against civilians, by the Maoists against civilians and the state, and by various agitating groups. It has been applied in different ways. Street agitations can turn violent, often in response to the disproportionate use of force by state security forces to quell protests, or, less frequently, when opposing groups meet. Bandhs are nearly always enforced with violence or its threat, targeted at those who fail to comply with the shutdown, rather than in clashes with state security forces or political opponents.

Since the end of the first CA in 2012, there has been a major reaction against inclusion and federalism among the traditional political parties, and certain parts of the media, the bureaucracy, judiciary, and civil society. Inclusion is dismissed as an external agenda, as weakening Nepali sovereignty, and as nationally divisive.

The spring 2015 earthquake shocked political leaders into agreeing on a new constitution. But the constitutional process has been heavily criticised for both a lack of public consultation and the absence of more broad-based acceptance. This reflects a larger failure to ensure public participation in Nepali politics that has helped to sustain the significance of informal or ‘street’ politics, and the role of sometimes violent mass mobilisation in demanding change.

[Some of this article is adapted from ‘Peace, power and inclusive change in Nepal’, Accord Spotlight (2016)]

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