Stability or social justice?

Political settlements in Nepal
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One of the persistent features of Nepali politics in the pre- and post-2006 periods has been the proclamation by various political actors, whether in government or outside, of their intention to create a more inclusive Nepal through accords, agreements, understandings and declarations.

The principal objective of these undertakings has always been to defuse a given situation, generally brought about either by the Maoist insurgency or by the various identity movements that emerged after the end of the ‘People’s War’ in 2006. These objectives have in almost all cases been met, even if the contents of the related compacts and announcements have only been partially respected. This article provides a narrative of how these different commitments have nonetheless gradually contributed to creating a more inclusive socio-political structure over time, even though their full promise is yet to be realised.

Laying the ground

As a country emerging from the deep political hibernation of the Panchayat period, Nepal’s political system in the early 1990s was buffeted by numerous demands from both the social and political spheres. On the social side was the rise of Janajati (indigenous), Dalit (‘low caste’) and women’s movements demanding an equal space in the polity. Despite the prominent role of Madhesis [from the southern Tarai plains] in Nepal’s post-war transition, the Madhesi social movement did not exist at this time [see article on social movements in Nepal on p.97]. On the political side, parties on the extreme left viewed the 1990 democratic political transition as incomplete, and continued to advocate a drastic makeover of Nepali politics and society, which included accommodating the demands of the social movements.

At the cusp of launching the ‘People’s War’ in 1996, the Communist Party of Nepal-Maoist (CPN-M) submitted a list of demands to the government. The ‘40-Point Demand’ contained elements of the leftist agenda such as land reforms. But it also had a heavy focus on ensuring the rights of women, Janajatis, Dalits and Madhesis though measures such as ending patriarchy, granting autonomy to ethnic communities [ie Janajatis], eliminating untouchability [relating to Dalits], ending discrimination against Madhesi, providing state recognition to all Nepali languages, and transforming Nepal into a secular country.

There are enough grounds to suggest that, even if the government of the day had begun serious negotiations on these matters, the Maoist insurgency would have taken place anyway. The worldviews of the Maoists and the mainstream political parties were poles apart, while the Maoists had already made preparations for an armed movement. The creation of the political environment that enabled the Maoists to give up arms and enter competitive politics was years away in the making, and eventually happened almost by chance – with the monarchy inadvertently playing a major facilitating role.
But the 10 years of the Maoist conflict also allowed for the social and political discourse to shift firmly in favour of those very demands made by the Maoists and the different social movements, until the Comprehensive Peace Accord (CPA) in 2006 committed the state to carry out an inclusive, democratic and progressive restructuring of the state by eliminating the current centralised and unitary form of the state in order to address the problems faced by women, Dalits, Adivasi Janajatis, Madhesis, oppressed, neglected and minority communities and backward regions by ending discrimination based on class, caste/ethnicity, language, gender, culture, religion and region (Article 3.5).

The acceptance by political leaders of such definitive language evolved over the course of the war. It came from their trying to understand the causes behind the Maoist movement and seeking ways to pre-empt its appeal. And, although for the most part many of the changes announced earlier on remained largely only on paper, they laid the basis for real reforms that became ever more progressive over time.

Among the first efforts were ‘task forces’ formed to suggest ways to resolve the Maoist conflict, set up under Prem Singh Dhami of the Communist Party of Nepal–Unified Marxist–Leninist (UML) in 1997 and Sher Bahadur Deuba of the Nepali Congress (NC) in 2000. The task forces’ reports sought to explain the Maoists and their actions, but they also recommended socio-economic reforms that somewhat reflected the Maoists’ agenda.

For example, the Dhami Commission recommended ‘socio-cultural package programmes’ to preserve and promote the religion, language and culture of groups that felt discriminated against, marginalised and exploited. Likewise, the Deuba Committee report stated that Janajatis ‘feel that they have been ruled over by the tagadhari [‘upper castes’] and there is some truth to that’, and that Janajatis and Dalits were disenchanted because they felt they had been sidelined in the decision-making process of the country. The insurgency had not extended to the Tarai at that time, and so the reports did not mention Madhesis, but only Janajatis, Dalits and women – the same groups that overwhelmingly formed the foot soldiers of the Maoist insurgency.

Given the fluid political situation, changes of government coincided with the submission of both of the reports, and so they were shelved. But Sher Bahadur Deuba got his chance when he became prime minister in July 2001. Within three weeks of assuming office, Deuba presented his programme of reform to parliament. It included ‘a 25-year action plan to provide special opportunities and protection in education, employment, and [the] national development process to women, Dalits and Janajatis, who for centuries have been deprived of socio-economic, political rights and other developmental opportunities’. It further included the grandiose declaration that ‘[e]ffective from this moment, the practices of social discrimination and untouchability are declared as grave and punishable crimes’. Deuba also announced the formation of national commissions for women and Dalits and a ‘fully authorised academy for the preservation and development of religion, culture, and language’ of Janajatis.

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Forward-looking agenda
King Gyanendra dismissed Deuba in October 2002 for failing to hold elections to the parliament that Deuba himself had dissolved in May. Gyanendra then appointed two royalist politicians in succession to lead the government. By this time, the issue of social marginalisation as a key driver of the conflict had been universally accepted. Hence, in March 2003, the government led by Lokendra Bahadur Chand approved Nepal’s 10th Five-Year Plan, which established special programmes for women, Dalits and Janajatis, as well as for disabled people and people from remote regions – even at this point Madhesis had still not been identified as excluded.

A ceasefire had been announced in January 2003, and in April the Maoists presented their position for negotiations. This included the suggestion that ‘a forward-looking new state system and a new constitution’ would be necessary to find a political solution to the ongoing conflict. According to the Maoist proposal, the national legislature would have ‘proper representation of all classes, Janajatis, Dalits, women, linguistic and religious groups, regions and distinguished personalities’ and the government would also be representative of all these groups. Further, the constitution would guarantee the right to self-determination and autonomy for Janajatis, Madhesis and marginalised regions. And the country would become secular.
The political parties had by now been agitating against the king’s actions for months. Caught between the government appointed by the king and the Maoists, both of which were calling for progressive programmes, in July 2003 five parties, including the major faction of the NC (which had split into two following Deuba’s dissolution of the parliament) and the UML, came up with an 18-point ‘Forward-Looking Reform Agenda’ that was duly endorsed by a ‘special session’ of the dissolved House of Representatives. The reform agenda mainly centred on ways to reduce the powers of the king, but also included the following references to inclusion:

1. Increase the representation of women, Dalits and Janajatis in the parliament.

2. Transform the upper house of parliament into an assembly of women, Dalits and Janajatis, and prominent figures of the country.

3. Resolve the problem of citizenship in the Tarai.

4. End all kinds of discrimination against women; provide equal opportunities for women; and increase women’s representation in parliament and local elections to 33 per cent.

5. Protect, preserve and develop all religions, languages and cultures; and devise programmes to provide equal opportunities and equal access to marginalised groups, including through special treatment.

6. Criminalise the practice of untouchability.

7. Eliminate all forms of discriminations based on caste or ethnicity, geography, language, culture and religion.

In August 2003, the government, now led by Surya Bahadur Thapa, attempted to kick-start the stalled peace talks by responding to the Maoists’ April proposal. The government position was remarkable in that it included almost in toto the provisions related to inclusion in the parties’ 18-point agenda. But it also went further, explicitly pledging to: ensure proportional representation of Dalits and Janajatis in the upper house of parliament and at least 25 per cent in both houses; strengthen a plural society by promoting all religions and languages, including allowing the use of non-Nepali languages in local bodies; and introduce reservations for women, Dalits and Janajatis in education, government service and representative institutions. The government justified these steps by asserting that: ‘It is not possible to easily end the situation of ethnic and gender discrimination, exploitation and inequalities prevailing in Nepali society for centuries. The treatment of an extraordinary problem can only be found in extraordinary remedies.’

However, the ceasefire lasted only another 10 days and the country was engulfed in fighting once again. But in November 2003 the Thapa government made a significant statement that arguably set the standard for future action on inclusion. Announcing his government’s plans, Thapa declared:

*The concept of forward-looking state system presented by His Majesty’s Government during the third round of talks with the Maoists were not directed only to the Maoists. Forward-looking reforms in the present state system had already been extremely necessary both to end all kinds of inequalities, discrimination and exploitation in the society and to translate into action the changed expectations of the people. The forward-looking reforms concept prepared in the context of these realities do not have to be stalled merely because of an obstruction in talks with the Maoists.*

The plans included provisions for reservations in education and government service for women, Dalits and Janajatis, and for addressing the citizenship issue for Madhesis. In early 2004, a high-level committee formed under the finance minister recommended reservations not only in government jobs but also in areas such as education. This aspect of inclusion had been so ingrained that when King Gyanendra seized direct control of the government in February 2005, even his ‘regressive’ agenda had a clause promising affirmative action for women, Dalits and Janajatis in the state machinery.

**Towards the CPA and the Interim Constitution**

In a move to counter the royal takeover, on 8 May 2005 seven political parties, including both factions of the NC, and the UML, formed the Seven-Party Alliance (SPA) to lead the country towards ‘full democracy and lasting peace’. The SPA declared that, despite the great strides in governance, infrastructure development and enhanced social service delivery, the post-1990 political order in Nepal had not succeeded in ensuring that ‘women, Janajatis, Dalits, Madhesis, people from backwards regions, and the poor and the destitute experienced these changes because of shortcomings in making democracy deeper, wider, aspirational and inclusive’.

In its ‘forward-looking’ programme, the SPA committed to a restructuring the state to make it ‘participatory, representative and inclusive of the country’s social, cultural, geographic, caste/ethnic and linguistic diversity’. It further assured reservations to women, Dalits, ‘backward’ Janajati groups, Madhesis,
and ‘backward’ regions, and to resolving the citizenship problem.

By the time of the pivotal 12-Point Understanding between the SPA and the Maoists on 22 November 2005, the language of inclusion had become pretty much standard. Presaging the notion of what came to be known as the ‘New Nepal’, the agreement declared that ‘there is an imperative need for implementing the concept of full democracy through a forward-looking restructuring of the state to resolve the problems related to all sectors, including class, caste/ethnicity, gender, region, political, economic, social and cultural…’ and appealed to ‘people of all communities and regions’, to participate in the nationwide movement against the monarchy.

The second People’s Movement and the restoration of the House of Representatives in spring 2006 triggered another incremental step. An 18 May 2006 parliamentary proclamation affirmed the commitment to inclusive governance and restructuring of the state. The parliament also declared Nepal a secular state and undertook to resolve the citizenship problem as well as make the Nepali Army inclusive.

The next major decision came at a meeting of SPA and Maoist leaders on 8 November 2006, which formed the basis of the CPA (21 November). The agreement reiterated that the state would be restructured into an ‘inclusive, democratic and progressive one’ for the purpose of ending both its ‘centralised and unitary structure’ and ‘class, ethnic, linguistic, gender, cultural, religious and regional discrimination’. It also introduced the mixed electoral system and committed the parties to ensuring proportional representation of ‘oppressed castes/ethnicities and regions, Madhesis, women, Dalits and other groups’ while drawing up electoral lists.

The Interim Constitution, enacted in January 2007, carried over the language on state restructuring from these earlier documents. The CPA was actually included as one of the schedules of the Interim Constitution.

**Consolidating gains**

If the SPA and the Maoists believed that the enactment of the seemingly progressive Interim Constitution meant that their job was over, they were in for a rude awakening. Soon after the draft of the constitution became public, the Tarai was rocked by protests, while mass civic unrest gripped the region following its promulgation. Like the Madhesis, Janajatis also took to the streets.

The first amendment of the Interim Constitution in April 2007 was an attempt to meet the concurrent concerns raised by the First Madhes Movement and by Janajatis. For Madhesis, the constitutional commitment to end ‘the centralised and unitary structure’ of the state was not enough, and so the amendment explicitly referred to a federal structure. It also further promised access for excluded groups to state organs on the basis of proportional inclusion.

But subsequent progress towards the election of a constituent assembly and the larger goal of a new constitution was not smooth. Suspicious of the main political actors, different political and social movements continued to make demands on the state in a bid to explicate further ideas on federalism and inclusion. In fact, between July 2007, when the government started the process of signing agreements with various agitating groups, and the end of the first Constituent Assembly in May 2012, 43 such accords had been reached – sometimes multiple times with the same group.

Provincial boundaries had always proved to be a major point of contention and both Janajati and Madhesi groups tried to force the government to agree to their respective conceptions. Table 1 shows examples of the extent to which they were able to get the government to commit to these in the agreements – the first two are Janajati groups, and the latter two are Madhesi ones.

The overriding theme in almost all the agreements, however, was inclusion. Particular concerns of each group were reflected respectively, such as resolving the issue of citizenship in the agreements with Madhesi groups, ratifying International Labour Organisation Convention 169 on indigenous peoples for Janajatis, and declaring a public holiday on the birthday of the Prophet Mohammed for Muslims. But the agreements also assert that the state should be inclusive of all marginalised communities and clearly identify every target group. Thus, whether it is the agreement with the Joint Muslim National Struggle Committee, the Federal Democratic National Front, Nepal, or the Madhesi Janadhikar Forum (Madhesi People’s Rights Forum), each mentions women, Dalits, Janajatis, Madhesis, and also often Muslims.
Two steps forward, one step back: the Nepal peace process

Progress towards an inclusive state

A number of legal and policy provisions have been introduced between the 2006 CPA and the 2015 Constitution that reflect the spirit of many of the commitments to inclusion made by the state and the political parties. There are two major outstanding issues: the first is about full proportionality of representation in state institutions, a goal that is likely to take years to achieve, if ever; and the second is the intractable challenge of recognising identity as the major principle behind federal boundary delineation.

But progress towards an inclusive state is quite definite. In terms of direct government policy, the Three-Year Interim Plan (2007/08 – 2009/10: the 11th Plan) approved in December 2007, moves beyond the 10th Plan to state the rationale for inclusion:

Inclusion means to fulfill the physical, emotional and basic needs of all the people, groups or castes. It has to be achieved by respecting their dignity and their own culture and also reducing the disparities between excluded and advantaged groups and by reducing the gap in the existing opportunities and access. In addition to this, it is to help to build a just society by ensuring rightful sharing of power and resources for their active participation as a citizen.

The Plan envisaged raising the human development index (HDI) of Dalits, Janajatis, Madhesis and Muslims by 10 per cent over the three-year period. This would be achieved by adopting strategies such as: 1) mainstreaming excluded communities in the development process; 2) increasing their access to resources; 3) ensuring their proportional representation in all decision-making processes and structures of the state; 4) launching special targeted programmes; and 5) adopting positive discrimination policies. That not all of these targets were achieved does not detract from the spirit with which they were introduced. The 12th and 13th Plans were not as expansive, but inclusion, now reconfigured as Gender Equality and Social Inclusion, features in a major way in all the development programmes [see article on inclusive development on p. 114].

There is other evidence of concrete advances as well. One example is the principle of proportionality adopted in the two CAs, and a slightly reduced version in the upcoming federal and provincial legislatures. So are the introduction of quotas, albeit not in proportion to population, for excluded communities in government service and education; the amendment of laws to foster gender equality; the legal prohibition on discrimination on the basis of caste; or the introduction of interpreters in district courts to help litigants who cannot speak Nepali. These are all examples of how much the country has changed – for the better.

Table 1: Federalism in agreements between the government, and Janajati and Madhesi groups

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<tr>
<th>Agreement with Nepal Federation of Indigenous Nationalities and Indigenous Nationalities Joint Struggle Committee 7 August 2007 (Janajati)</th>
<th>A state restructuring commission will soon be formed to present recommendations to the Constituent Assembly regarding a federal state structure based on ethnicity, language, geographical region, economic indicators and cultural distinctiveness while keeping national unity, integrity and sovereignty of Nepal at the forefront.</th>
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<tr>
<td>Agreement with Federal Democratic National Front, Nepal 2 March 2008 (Janajati)</td>
<td>By keeping Nepal’s sovereignty, national unity and integrity intact, provision shall be made for scientific autonomous federal republic states by the Constituent Assembly based on the historical backgrounds, languages, geographical regions and economic resources and viability of Limbuwan, Khambuwan, Tamangsalung, Tharuhat as well as other indigenous nationalities, Dalits, backward classes and ethnicities.</td>
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<tr>
<td>Agreement with Madhesi Janadhistrik Forum 30 August 2007 (Madhesi)</td>
<td>Arrangements will be made for a federal state with regional autonomy while the sovereignty, national unity and integrity of Nepal will be kept intact during the restructuring of the state.</td>
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<tr>
<td>Agreement with United Democratic Madhesi Front 28 February 2008 (Madhesi)</td>
<td>By accepting the Madhesi people’s call for an autonomous Madhes and other people’s desire for a federal structure with autonomous regions, Nepal shall become a federal democratic republic.</td>
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