

# Accord

ISSUE 26

an international review of peace initiatives



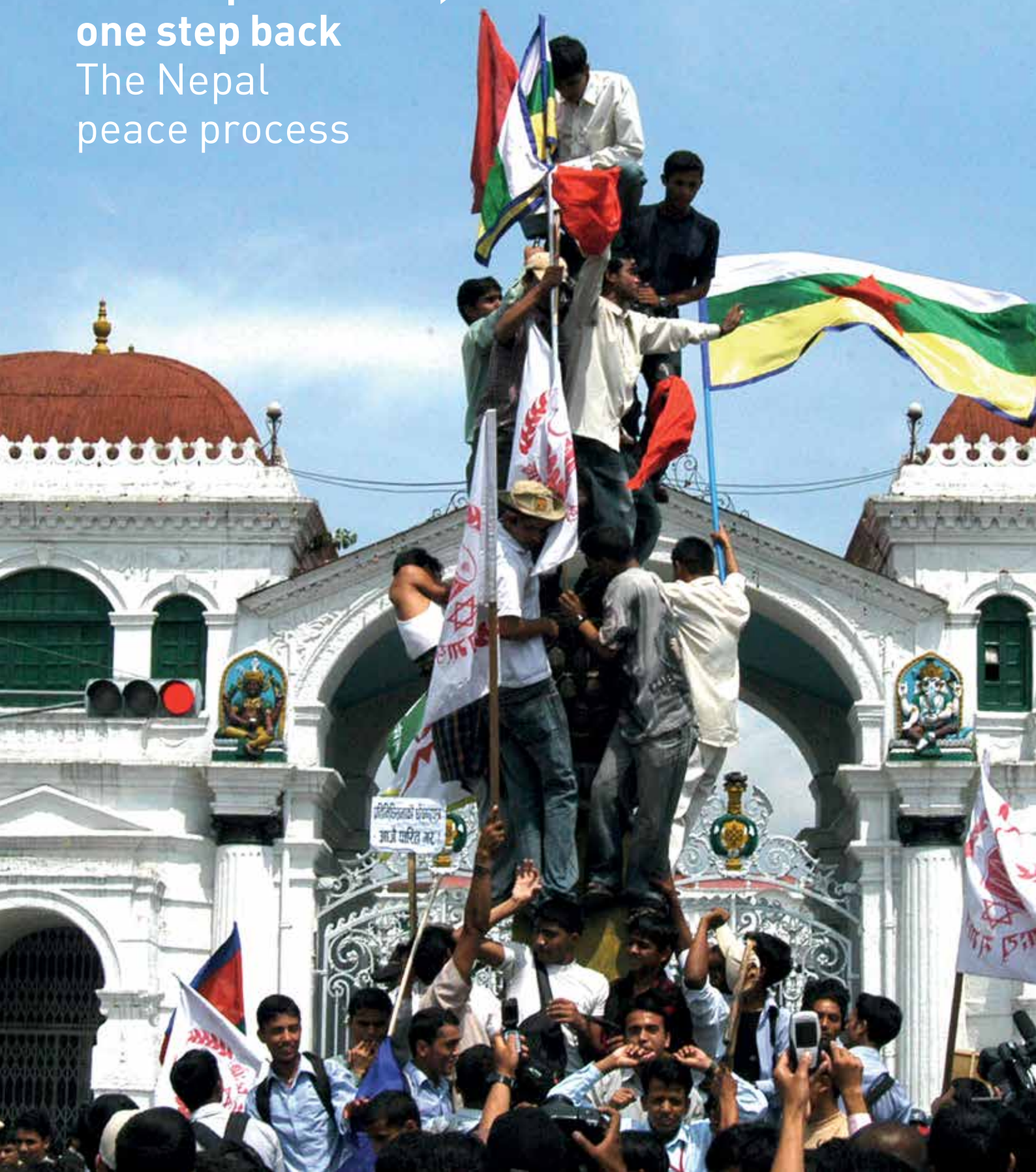
**CONCILIATION  
RESOURCES**

working together for peace

Editors

**Deepak Thapa and  
Alexander Ramsbotham**  
2017

## Two steps forward, one step back The Nepal peace process



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March 2017 // Editors

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# Acronyms

<b>APF</b> – Armed Police Force	<b>NA</b> – Nepali Army
<b>APM</b> – All-Party Mechanism	<b>NC</b> – Nepali Congress
<b>CCD</b> – Centre for Constitutional Dialogue	<b>NEFIN</b> – Nepal Federation of Indigenous Nationalities
<b>CCPDC</b> – Committee on Constitutional-Political Dialogue and Consensus	<b>NGO</b> – Non-Governmental Organisation
<b>CIEDP</b> – Commission of Investigation on Enforced Disappeared Persons	<b>NHRC</b> – National Human Rights Commission
<b>CPA</b> – Comprehensive Peace Accord	<b>NID</b> – National Investigation Department
<b>CPN-M</b> – Communist Party of Nepal-Maoist [later UCPN-M]	<b>NPC</b> – National Planning Commission
<b>CPN-MC</b> – Communist Party of Nepal-Maoist Centre [previously CPN-M, and then UCPN-M]	<b>NPTF</b> – Nepal Peace Trust Fund
<b>DFID</b> – Department for International Development	<b>NRA</b> – National Reconstruction Authority
<b>FLSC</b> – Federal Limbuwan State Council	<b>NSP</b> – Nepal Sadbhavana Party
<b>FPTP</b> – First Past the Post	<b>NTTPI</b> – Nepal Transition to Peace Institute
<b>GESI</b> – Gender Equality and Social Inclusion	<b>OHCHR</b> – United Nations Office of the High Commissioner for Human Rights
<b>HLSRC</b> – High-Level State Restructuring Commission	<b>PLA</b> – People’s Liberation Army
<b>JEP</b> – Janajati Empowerment Project	<b>PR</b> – Proportional Representation
<b>JMCC</b> – Joint Monitoring Coordination Committee	<b>RNA</b> – Royal Nepali Army
<b>JTMM</b> – Janatantrik Tarai Mukti Morcha	<b>RPP</b> – Rastriya Prajatantra Party
<b>KRM</b> – Khambuwan Rashtriya Morcha	<b>SP</b> – Sadbhavana Party
<b>LPC</b> – Local Peace Committee	<b>SPA</b> – Seven-Party Alliance
<b>LSGA</b> – Local Self-Governance Act	<b>SSP</b> – Special Security Plan
<b>MJF</b> – Madhesi Janadhikar Forum	<b>TEL</b> – Terrorist Exclusion List
<b>MJF-N</b> – Madhesi Janadhikar Forum Nepal	<b>TMLP</b> – Tarai Madhes Loktantrik Party
<b>MJF-D</b> – Madhesi Janadhikar Forum Democratic	<b>TRC</b> – Truth and Reconciliation Commission
<b>MJF-R</b> – Madhesi Janadhikar Forum Republican	<b>UCPN</b> – Unified Communist Party of Nepal-Maoist [previously CPN-M]
<b>MoPR</b> – Ministry of Peace and Reconstruction	<b>UNMIN</b> – UN Mission in Nepal
<b>MRMM</b> – Madhesi Rastriya Mukti Morcha	<b>UML</b> – Communist Party of Nepal–Unified Marxist-Leninist
	<b>VDC</b> – Village Development Committee



# 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 much 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.

“ **Constitutional federalism has been a central focus of the reconfiguration of power in the post-conflict era, and hence for socio-political confrontation** ”



Girija Prasad Koirala and Pushpa Kamal Dahal Prachanda sign the Comprehensive Peace Accord, 21 November 2006. © Ajay Joshi

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 Madhesis (from the Tarai plains). These groups initially welcomed the announcement of a secular state and moves towards a republic. But when the new Interim Constitution failed to acknowledge their interests for devolved federal governance and more inclusive representation, the first Madhes Movement was triggered in early 2007, demanding a commitment to federalism.

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 in post-war Nepal. 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.

**“ 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.”**

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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## Box 1: Nepal's war and political transition: a brief history

From 1846, the king of Nepal was reduced to a largely titular role after military officer Jung Bahadur Rana seized power in a coup, ushering in a prolonged era of hereditary rule by successive Rana prime ministers. The end of the Rana era a hundred years later came about through an armed uprising spearheaded by the recently formed Nepali Congress (NC) political party. But the 1951 Interim Constitution allowed the space for the monarchy to reassert itself.

After a brief interlude of democratic rule in 1959–60, King Mahendra took over and banned all political parties. A new constitution decreed by Mahendra in 1962 introduced the partyless 'Panchayat' political system – ostensibly a 'Nepali' version of democracy that in reality concentrated power in the palace. In 1990, a popular movement led to a return to multiparty democracy and a new constitution. The first 'People's Movement' was led by a coalition of political parties that included both the NC and the 'larger left movement'. But the failure to institute more fundamental reforms dismayed some members of the more radical left.

### War

The launch of the 'People's War' on 13 February 1996 by the Communist Party of Nepal–Maoist (CPN-M) was a violent expression of dissatisfaction with the pace, extent and direction of social and political change. Senior Maoist leader Baburam Bhattarai famously asserted that it was aimed at 'establishing a new socio-economic system and state'. The Maoists' 40-Point Demands presented to the government in the run-up to the war had called for an end to discrimination against women and of all class exploitation and prejudice – including the Hindu system of 'untouchability'.

The Maoists' social reform agenda and armed insurrection techniques attracted support from many impoverished people in the outlying hills and mountainous areas. Fighting remained relatively low-level until the end of the 1990s, and the government's response was also initially restricted to deploying the police rather than the military. Increasing awareness of ethnic inequality and discrimination fuelled the insurgency. The entry of the Royal Nepali Army in late 2001 was accompanied by a massive increase in violence. Ceasefires in 2001 and 2003 both collapsed.

In 2002, King Gyanendra dismissed the elected government and assumed direct political control before seizing absolute power in February 2005. This led Nepali political parties across the spectrum to join to form the Seven-Party Alliance (SPA), and together they began serious discussions with the insurgent CPN-M. With the support of New Delhi, the Maoists and the SPA settled on a *12-Point Understanding* in November 2005, which accepted parts of the stated Maoist agenda of social justice and state reform.

### Comprehensive Peace Accord

In the spring of 2006 diverse sections of society and political actors joined in a mass mobilisation – the second People's Movement. Daily rallies and demonstrations took place across the country for 19 days until King Gyanendra restored the parliament. Along with the return to power of the SPA, this triggered a succession of significant events: the end of all royal prerogatives; the declaration of Nepal as a secular country; the adoption of a ceasefire; the signing of the *Comprehensive Peace Accord* (CPA) between the SPA-led government and the Maoists; the adoption of the Interim Constitution; and the entry of the CPN-M into the newly renamed Legislature-Parliament.

As well as marking the official end to violence, the CPA dealt with issues of social and political transformation and inclusion. In particular, Clause 3.5 states that: 'In order to end discriminations based on class, ethnicity, language, gender, culture, religion and region and to address the problems of women, Dalit, indigenous people, ethnic minorities (Janajatis), Tarai communities (Madhesi), oppressed, neglected and minority communities and the backward areas by deconstructing the current centralised and unitary structure, the state shall be restructured in an inclusive, democratic and forward looking manner.'

Following the appointment by the United Nations of first a special envoy and then an Office of the Personal Representative of the Secretary-General, the UN Mission in Nepal (UNMIN) was set up in 2007 with the mandate to 'monitor the management of arms and armies' (ie the Nepali Army and the Maoist army), and to provide electoral observation for the first CA election.

### Post-war transition

The Interim Constitution adopted in January 2007 referred to secularism and republicanism, but not federalism. The Madhes Movement, a major protest by groups representing the Madhesi populations predominant in Nepal's southern Tarai plains, began almost immediately, leading to the amendment of the Interim Constitution to restructure Nepal along federal lines. Federalism was associated with devolution of power and greater political representation of marginalised groups. The electoral system was also amended after the second Madhes Movement a year later, to allow for a higher degree of proportional representation.

The Maoists emerged as the largest party in the election to the first Constituent Assembly (CA) in April 2008. They formed a government with the Communist Party of Nepal–Unified Marxist-Leninist (UML), traditionally one of Nepal's two largest parties along with the NC, and the new Madhes-based parties.

Tussles followed over the fate of the Maoist army, and then the failed attempt by Maoist Prime Minister Pushpa Kamal Dahal Prachanda to assert authority over the Nepali Army, which led to his resignation in May 2009. The Unified Communist Party of Nepal-Maoist (UCPN-M – renamed after the CPN-M's merger with another Maoist party in 2009) was ultimately not able to push for acceptance of its broader political agenda: a dignified transition for its fighters, civilian control of the army, a share of power in government, and social and political inclusion for marginalised groups. Nor could it change the balance of power that would help to achieve this.

UNMIN formally exited Nepal in January 2011 under growing resistance from the Nepali Army, the bureaucracy, and the NC and the UML, with the fate of the Maoist fighters in cantonments still unresolved. But the Joint Monitoring Coordination Committee (JMCC) that UNMIN headed had helped build trust between representatives of all sides involved in overseeing the armies. In early 2012, the Maoist People's Liberation Army, by now confined to cantonments for over six years, was finally disbanded. Fewer than 10 per cent of the originally registered 19,602 fighters were incorporated into the Nepali Army, a far cry from the 'integration' process envisioned by the Maoist leadership. But, over the years, the UCPN-M had steadily negotiated away its demands for PLA fighters as part of various power plays.

The parties were ultimately unable to agree on a constitution and the first CA was allowed to lapse in May 2012. A period of constitutionally dubious political arrangements followed, including the appointment of the sitting chief justice as prime minister. The UCPN-M underwent a vertical split following the failure of the first

CA, although many mainstream leaders remained in the parent party. The Maoists and Madhes-based parties performed badly in the election to the second CA in November 2013 as the more established parties regained ascendancy. The UCPN-M came in a distant third, while the newly formed Janajati-based parties also did very poorly.

## 2015 earthquakes

Following the devastating earthquakes of April and May 2015, the three major political parties – the NC, the UML and the UCPN-M – along with the largest Madhesi party, in the second CA the Madhesi Janadhikar Forum-Democratic (MJF-D), decided to fast-track the constitution.

July to September 2015 saw significant protests by major social groups as the new constitution began to take shape. Women's groups protested citizenship laws. Madhesi, Tharu and Janajati groups variously demanded demarcation of states and then the arrangement of delineation itself, challenged the exclusivist nature of the decision-making process, and disputed the withdrawal of provisions from the Interim Constitution relating to greater inclusion and proportional representation. The constitution was ultimately promulgated in September 2015 amid mass protests in the Tarai and threatened shutdowns in eastern Nepal and elsewhere. At least 46 people were killed in five weeks of unrest in August and September 2015.

The constitution was amended in January 2016 to ensure a higher degree of inclusion. The government introduced a second constitutional amendment proposal in November 2016 that sought to allay some of the concerns relating to provincial demarcation, although protests erupted almost immediately in affected districts and at the time of writing the amendment had yet to be passed.

# Section 1

## Peace process

This section traces the evolution of Nepal from a country mired in armed conflict to one where the absence of violence has more or less become the norm. It examines the gradual process by which a common understanding of the causes of the Maoist ‘People’s War’ was reached and of how these issues could be addressed. The challenges facing the peace process are dealt with in some detail, in particular the management of the Maoists’ army.

The peace process in Nepal began the day the Communist Party of Nepal–Maoist declared a ceasefire in the immediate aftermath of the success of the second People’s Movement in April 2006. Peace has generally held, despite occasional stumbles and the emergence of new forms of violence provoked both by the end of the war and by explicit or implicit promises made during the political transition. And even though disaffection runs deep in parts of the country, another round of sustained armed conflict is unlikely.

Political actors from both inside and outside government have **negotiated inclusive change in Nepal through a succession of different types of agreement** over many years – before, during and after the war. **Deepak Thapa** explains how such deals have responded to pressure from organised dissent and mobilisation, violent and non-violent, including the Maoist conflict. Guarantees agreed on paper have not always been upheld in practice and conspicuous gaps and persistent blockages remain, for example in terms of full proportionality of representation in state institutions. But collectively and incrementally they have contributed to building a more equitable state and society, and overall the inclusion ‘balance sheet’ shows positive progress.

The role of civil society in ushering in the 2006 People’s Movement cannot be overstated. Apart from helping to rehabilitate the reputation of political parties and to moderate the Maoists and the royal government, civil

leaders provided the moral force in the fight for peace. In an **interview with Accord**, civil society leader **Devendra Raj Panday** describes how Nepal’s **civil society movement** helped expedite the end of the war, connecting the political process to the people while mediating between the Maoists and the political parties and their respective agendas. Expanding common ground between the two sides also coincided with civil society’s own ambitions for change, which included restructuring the state and, to some extent, republicanism.

Another civil society leader, **Daman Nath Dhungana**, Chair of the **Nepal Transition to Peace Institute**, also spoke with **Accord in an interview**, giving his unique insights into the war, the political transition, the transformation of the state and the role of the political leadership. He warns that the narrow political basis of the new constitution implies future instability, and Nepalis might have to prepare for another phase of transition.

The transition from war to peace has involved the creation of a number of support structures, the impact of which has been mixed. A Peace Secretariat was established to reinforce peace talks between the Maoists and the Nepali state. After the end of the war, the **peace architecture** was expanded. According to **Bishnu Sapkota**, the elevation of the secretariat to a ministry was meant to increase its authority and traction, but as a result also opened it up to politicisation. The peace apparatus in place has since struggled to balance influence against impartiality.



India has been by far the most influential **international actor** in Nepal's peace process. New Delhi has had to calibrate its preference for political stability in Nepal with moderating the Maoists' more radical agenda and upholding the interests of the Madhesi community, not always successfully. Other international actors have generally been supportive of greater inclusion, but, as **Aditya Adhikari** points out, that approach has come up against increasingly strong and effective resistance from conservative elites in Nepal's establishment. Although denied a more political role, the UN performed the important function of promoting human rights and overseeing demobilisation of the Maoist fighters. Adhikari maintains that international influence in general has waned as the transition has progressed.

**Mandira Sharma** takes up the unfinished business of **transitional justice**. Political leaders seized on a distorted interpretation of the South African model, particularly in relation to amnesty, and tensions between amnesty and accountability have since dominated. The commissions for truth and reconciliation and for the disappeared took many years to establish. Victims of violence have made some gains in other forums such as the Supreme Court, but the neglect of the justice agenda has had a profound, negative effect on the quality of Nepal's peace. Sharma argues that the perpetuation of the environment of impunity contributes to the further exclusion of already marginalised groups in society.

A major concern within Nepal and internationally has always been how the Maoists would transition from a revolutionary force to one committed to a system that recognises democratic pluralism. Complicating the Maoists' transition was the fact that they had a battle-tested guerrilla army that had fought the Nepali Army to a stalemate.

The party leadership has had to undertake a delicate balancing act, and **Jhalak Subedi** describes how the **Maoists' have sought assimilation into Nepal's democratic political mainstream** while also defending their principles. He notes that these somewhat contradictory agendas have brought inevitable trade-offs, including internal splits and bargaining over power sharing. Inclusion has been an important gauge of the Maoists' ideological integrity and achievement, and they have been criticised for apparently abandoning their revolutionary roots in the new constitution. But the Maoists insist they are skilfully playing a longer political game that offsets upholding their agenda with attaining the power to push it through.

**Sudheer Sharma** discusses how **Nepal's security forces have navigated the post-war political transition** – in particular the Nepali Army. The army has largely tried to resist the post-2006 reforms relating to civilian control, democratisation and inclusion, as well as the integration of the Maoist army. It has supported some progressive changes, such as the move to a republic, and acceded to others, such as adopting the quota system for recruitment. But after the failure of their efforts to press for more fundamental restructuring of the military, even the Maoists appear to have given up, leaving the army powerful and largely autonomous.

The **post-war fate of the People's Liberation Army (PLA)** has echoed the limits of the Maoists' capacity to effect deeper political change in Nepal. The demobilisation process took five years, with disagreements centring around the integration of the PLA into the Nepali Army, the handover of Maoist armaments, and the mode of the ex-combatants' demobilisation. **Chiranjibi Bhandari** describes how PLA members were given the choice of integration, rehabilitation or retirement with a cash package, with the vast majority opting for the latter. But many former fighters feel abandoned by the party and still face the very discrimination they had fought to eradicate.

In an **interview with Accord**, **former PLA Division Commander Suk Bahadur Roka 'Sarad'** talks about how many fighters saw no future in the political process and left the cantonments over the many years of the demobilisation process. Today, much of the core of the party that fought during the 'People's War' has become disheartened, as the cadres who were ready to give up their lives on the front lines have found themselves sidelined in the 'New Nepal'. Others, including later entrants, now form the face of the party.

The post-war experiences of women PLA ex-fighters have been even more disappointing. **Former PLA Brigade Vice-Commander Lila Sharma 'Asmita'** points out to **Accord in another interview** that not a single woman was included in the negotiating teams, and repeated promises of greater women's participation in party decision-making have not materialised. An organisation she has set up with other colleagues aims to provide counselling, training and other support to their former comrades-in-arms.

Looking back at the past 10 years, **Deepak Thapa** asserts that there have been undoubted achievements in the **implementation of the CPA**, from avoiding a relapse into war to successive peaceful transfers of power, including to and from the Maoists. But there are significant omissions, too, the most conspicuous and tragic of which relates to the transitional justice agenda and the failure to uphold commitments to the victims of violence.

# Stability or social justice?

## Political settlements in Nepal

Deepak Thapa

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 through measures such as ending patriarchy, granting autonomy to ethnic communities (ie Janajatis), eliminating untouchability (relating to Dalits), ending discrimination against Madhesis, 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 Dhimi 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 Dhimi 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.

**“ 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.”**

### 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.

**“ 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.”**

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, Madhesi, 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 Madhesi, 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 Madhesi, 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, Madhesi, and also often Muslims.

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

<b>Agreement with Nepal Federation of Indigenous Nationalities and Indigenous Nationalities Joint Struggle Committee</b> 7 August 2007 (Janajati)	A state restructuring commission will soon be formed to present recommendations to the Constituent Assembly regarding a federal state structure based on ethnicity, language, geographic region, economic indicators and cultural distinctiveness while keeping national unity, integrity and sovereignty of Nepal at the forefront.
<b>Agreement with Federal Democratic National Front, Nepal</b> 2 March 2008 (Janajati)	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, Khumbuwan, Tamangsaling, Tharuhat as well as other indigenous nationalities, Dalits, backward classes and ethnicities.
<b>Agreement with Madhesi Janadhikar Forum</b> 30 August 2007 (Madhesi)	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.
<b>Agreement with United Democratic Madhesi Front</b> 28 February 2008 (Madhesi)	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.

## 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.

# Role of the citizen in Nepal's transition

## Interview with Devendra Raj Panday

Devendra Raj Panday played a key role in both the 1990 and 2006 People's Movements. He was one of the principal drivers of the Citizens' Movement for Democracy and Peace (CMDP), a civil society initiative that was instrumental in laying the ground for the 2006 movement. Earlier, following the success of the 1990 movement, he was the Minister of Finance in the interim government that oversaw the drafting of the 1990 Constitution. He started his career as a civil servant and resigned from government service as Secretary at the Ministry of Finance in 1980.

### On the monarchy

Since 1951, Nepali kings have always been waiting in the wings for politicians to make a mistake so that they can take over again. [King] Birendra was also one of them. I gave him the benefit of doubt since, while he professed to pursue development, he himself was a prisoner in the palace. But monarchs are monarchs after all. He was a ruler under the Panchayat system with its 'feudal tentacles'. And even in the multiparty system after 1990, the constitution had been drafted in such a way that he felt he could intervene once in a while.

But, the Shah dynasty ended the day the royal massacre happened in June 2001. There was no way it could last because symbolically the Vishnu [one of the Hindu trinity whose reincarnation Hindu kings are supposed to be] was dead. The narrative is that his son did it. We don't know what took place, but whatever happened doesn't happen in Vishnu's household. The traditional legitimacy the monarch had in Nepali society was lost that day.

### On the impetus for a civil society movement

In 2005 and 2006, in addition to the authoritarian regime that [King] Gyanendra had imposed on us, there was violence all over Nepal due to the Maoist 'People's War'. It was causing unnecessary deaths, disappearances of

people and humanitarian crimes. The Maoists were making all kinds of demands for a new constitution. Some of these were what we as civil society actors were also demanding, and we began to think of ways to bring them to the table to talk peace, to talk about regime change of a sort that would also be acceptable to the established parties.

When Gyanendra seized power in February 2005 it added energy to our enthusiasm. Those were the days when the basic demand of the Nepali Congress and the UML [Communist Party of Nepal-Unified Marxist-Leninist] was just the reinstatement of the parliament that was dissolved in 2002. That was not acceptable to the Maoists who wanted more, and we thought they were right, at least in that context.

### On civil society in the 2006 People's Movement

We faced challenges in making a clear demarcation between the parties and ourselves. The movement called for by the political parties did not pick up speed on its own. People were fed up with them, just as seems to be the case now. The civil society activists who used to come to our meetings were professionals wanting to talk shop, but we had to have mass meetings to mobilise people's support. We went to the people, from house to house. In many places, I remember people saying they would support us if it was *our* programme. And we had to explain who we were – civil



Devendra Raj Panday. © Kiran Panday

society actors who mediate concerns between the people and the parties; but we are not political parties, we do not run the government. Because we explained this and perhaps because of our actions, we got the support that we did.

The Citizens' Movement for Democracy and Peace created the grounds for political parties to take the lead in the struggle against the king. After our movement caught on, the mass meetings of the political parties also started becoming more vigorous with greater participation of the people. The parties got re-established once again, as we wanted them to. All along, our point was it is the political parties who run the government. We are civil society – to ensure human rights, peace and justice, and if the political parties err again, we have to rise again and correct them. That had been our line all along and that was how we acted.

### On the demand for a republic

At the CMDP meetings, the Nepali word for democracy, *loktantra* [rule by the demos], was deliberately chosen. Democracy was then known as *prajatantra* [rule by the subjects]. We questioned this: we are not subjects now, we are citizens! We had started thinking about Nepal as a republic from that time [2005], but if we had spelt it out from the very first day, half the people would not have come out in support. Many people had not made up their minds or at least had not thought through ending the monarchy. It was only that Gyanendra kept on facilitating it through his ignorance and arrogance. We used *loktantra* so that people who were for a republic would join the movement – but so too could those who were not. The transition from *loktantra* to *ganatantra* [republic] was easy.

### On the 'New Nepal'

In some ways, we were ahead of the political parties. We were not going to be happy with what Marxists call a change in the 'superstructure'. We had gone through that in 1990. There were other changes that we were looking for. Some of these coincided with the Maoist agenda – and that's what made us Maoists in the eyes of some of our detractors. As the movement grew and as our work with the Maoists and the Seven-Party Alliance proceeded, we stood for more than just a republican state, which we had not been for in the beginning in any case.

Restructuring the state was very much part of our agenda. We hadn't called it federalism yet, but rather the end of the unitary system. The problem was that power was centralised in the palace and in Kathmandu. We used to talk about inclusive state and sometimes inclusive democracy. We wanted to see the end of one particular *pahadi* [hill] caste group that had been running the show for centuries – the end of exploitation, as the Maoists would call it – and to see equality and justice. That is the 'New Nepal' we imagined.

But, later on, New Nepal just became an empty slogan. The restoration of the parliament in April 2006 was the watershed. From that point on, the parties rose and the New Nepal agenda went down. The Seven-Party Alliance got the reinstatement of parliament it wanted. For many of its leaders, this was mission accomplished. The war had ended. Gyanendra had sidelined himself. We were in a jam.

In our next meeting, we asked what would happen to the Constituent Assembly. What if it is not formed? What happens to the restructuring of the state? What if it is the 1990 Constitution all over again? The Maoists would not be able to do anything. Having come this far, they could not have gone back. That was the main issue, personally for me and for many of our friends in the group. We issued a statement the next day that our movement was to go on until the Constituent Assembly took place and a new constitution was framed. Only then would we wither away. From that point on, we were labelled Maoist sympathisers. Slowly, the political actors began moving away from us, especially when prominent citizens rose against us and began writing articles calling us Maoists and so on.

### On what happened to the New Nepal

The established parties had to fight the Maoists in elections and so understandably they had to do all they could to undermine them. For us, the agenda for change was more important, which itself was a fusion of liberal democracy and socialist democracy, along with the Maoist agenda of economic and socio-cultural change. That was what was



driving us in CMDP, but the established parties were not interested in any of that – though they would not admit it openly. Girija [Prasad Koirala, Nepali Congress president] to some extent was an exception. He had realised how far he had come. I think he had accepted the idea of change after many meetings with [Maoist leader] Prachanda and so many meetings with us. He was the principal driver of the *12-Point Agreement* [of 2005], and so he had a responsibility towards it as well.

The Maoists did not help either. They had arrived from the jungle to the parliament without knowing the rules of the game whatsoever. And then they brought their YCL [Young Communist League] into the streets, which brought such a divide among the people. The Maoists were still armed at the time [early 2007]. Every time I met Prachanda, I would tell him that they would have to learn how things worked and then earn the trust of the people through their social,

**“ I love being a citizen.  
That is the most powerful  
position in the world.”**

economic and cultural agenda. That meant having to re-work their ideology. But, they were carrying their old book while trying to play a new game with new rules.

#### **On the New Nepal agenda**

Many of the progressive words and phrases in the *12-Point Agreement* were there at the insistence of the Maoists. The Maoists' main point was that there was no inclusion in the 1990 Constitution. The people could demand their rights, but the supply side was completely dry (those are my words). In this situation the 1990 Constitution could not succeed. The Interim Constitution was also influenced by the Maoists. It is full of leftist language in the eyes of some. There was acceptance from all sides but only for the sake of agreement without internalising what that language really meant. That was the problem with many other agreements.

#### **On being an ordinary citizen**

Politicians have to run the party and have to provide the spoils of office to their supporters. I am not a politician. I am truly independent. I love being a citizen. That is the most powerful position in the world.

# Preparing for another transition?

## Interview with Daman Nath Dhungana

Daman Nath Dhungana became involved in the struggle for the restoration of democracy as a student leader immediately after the royal takeover of 1960. He is a lawyer by training who was a member of the constitution drafting committee in 1990. Elected to parliament on a Nepali Congress ticket, he was the Speaker of the first House of Representatives elected under the 1990 Constitution. He was deeply involved in facilitating peace talks between the government and the Maoists in 2001 and 2003, including advocating for a constituent assembly, and has been involved in different aspects of the peace process and political transition since 2006. He currently heads the peacebuilding organisation, Nepal Transition to Peace Institute.

### On the 'People's War'

Nepal has seen change at regular intervals, but before the change matures something else happens. We established order in the country in 1990 and set up a parliament with the king. That was the outcome of a people's movement. We agreed on a constitution with the participation of both the Nepali Congress [NC] and the communists, which was the mandate of the movement. But within a few years the Maoists raised arms against it. Their action was premature. After every change there are high expectations. If the parliamentary government of the time had not been able to meet those expectations, the parties would have been censured, but there was no need to call for a repeal of the constitution and get rid of the system itself. The unnecessary move by the Maoists also encouraged the palace to step in against democracy.

Some say there may have been some gains from the war: the country has become a republic; others say a progressive agenda has been introduced. We cannot ignore that. But, the question remains if it was necessary for so many deaths to take place.

### On the political transition

The agenda of the NC and the UML [Communist Party of Nepal–Unified Marxist-Leninist] was to restore the 1990 constitution. The Maoists were for throwing out the monarchy. The situation was such that the parliamentary forces yielded to the Maoists.

The achievements of the peace process have been three: first, the disarmament of the Maoists and the softening of their political doctrine; second, the end of the monarchy, which at times has not been compatible with democracy in our context; and third, the adoption of a constitution through a constituent assembly.

But the peace process was supposed to be more than that. It was also meant to heal the wounds of war, but neither have gross violators of human rights been brought to book, nor have victims and the dear ones of those disappeared been duly served through instruments of restorative justice such as the TRC [Truth and Reconciliation Commission] and the CIEDP [Commission of Investigation on Enforced Disappeared Persons]. Nor have we given much thought to the former combatants. These fighters are skilled in the use of arms, but we have done little to help them resume normal life. They are equally dissatisfied.

For years, we got entangled in a worthless debate on the integration of the Maoist fighters into the national army. If the fear was that such a trained force could become a source of instability, we did not consider if they could be disciplined by bringing them into the national army. The Maoists wanted all their fighters to join the army, which the other political parties were against. They could have formed a separate unit to be used in natural disasters and so on. Now, they are scattered all over

society and can become instruments of force at any time – not that I doubt their intentions.

### **On the transformation of the state**

Our CPA [*Comprehensive Peace Accord*] has remained idle. It talks about social transformation such as land reforms and the restructuring of the state. Just because the Maoists raised the issue does not mean it is wrong. We are a diverse society. Every group should have a chance to participate, have a sense of belonging, that the state is theirs. But the political parties, driven by nothing more than hunger for power, are not interested in that. The Maoists have carried that agenda but that's all they've done. They continue to compromise and that is because nothing from the Maoist agenda was internalised in the real sense by the Nepali Congress and the UML, both of which simply accepted the Maoist demands for the sake of accepting.

In the first CA [Constituent Assembly], the Maoists were so dominant that they could have created an environment for other parties to more easily accept their agenda. If they failed, they could have gone to the people, who had given them such a big mandate. The dominant force, the one that brings the change, shapes the constitution. Just as in 1990, when the king had to stay within the bounds we had set him, a similar opportunity had been given to the Maoists in the 2008 CA. But, the Maoists could not push forward with their agenda not only because the other parties opposed it, but because the ruling clique of the Khas Arya – in the new terminology – which is present even in the Maoist party, has not been ready to transfer power.

The state has to give power to the people to bring all communities together. If our model of federalism is not right, we should have a roundtable to discuss what kind of model is best. I often told [Maoist leader] Prachanda that even if they continued to compromise on their agenda, we would not give it up. I told him, you have a party to run, you need to go back to power. I am an individual. I don't have to compromise with anyone.

### **On the new constitution**

The highest expression of the popular mandate is the constitution. But the 2015 constitution has led to unrest in the Tarai [southern plains], which has now shifted to the hills. An amendment has been introduced and one side calls it treason, the other says it's essential. With all this, there is no sign that we will be able to deliver on the change we had promised the people. No restructuring, no progressive reforms in the interests of the poor and the marginalised, no democratisation of the state. If there is any way to respect all the sacrifice people had to bear because of the Maoist conflict, it is in pushing that agenda. When that agenda was agreed upon, everyone signed up.

Now, no one wants to own it, even though that was the promise made to the people.

No one in any of the parties, not even Prachanda, is prepared to implement this constitution in the sense that they are not ready to take on the ones who are opposed to these changes. For instance, the bureaucracy, the army, the police are all controlled by the same Khas Arya clique. These strong interest groups or institutions of the state are more influential than the people's representatives. No one can intervene forcefully in these established interests. And, even if the leaders have internalised these changes, they cannot stand firm. All our political leaders can do is issue directives but there is no way to ensure that those directives are followed.

**“ Nothing from the Maoist agenda was internalised in the real sense by the Nepali Congress and the UML, both of which simply accepted the Maoist demands for the sake of accepting.”**

There are indications that no one in the state agencies, the bureaucracy, the army, the police, academia, even the media, has whole-heartedly accepted the salient features of the constitution such as federalism and secularism. In an open society, everyone has the right to voice their opinion. But, in our context, is that freedom or anarchy? For instance, someone who is against federalism is made Deputy Prime Minister under a new constitution that has federalised the state.

### **On the political leadership**

Change has to be communicated to the people. It cannot be imposed from above. The acid test of any peace process lies in whether the dividends of peace actually reach the people. In the new constitution, secularism was brought by the four parties; federalism was brought by the four parties. They cannot give up such changes either, and any attempt at dropping the fundamental features of the constitution will lead to more conflict. It's almost as if we have to begin preparing for another transition. We don't know what shape that transition will take. We might not see much violence but social unrest will certainly follow, leading the nation into a state of perpetual conflict and instability.

Our politics is not guided by knowledge, in the sense of knowing the people's or the nation's larger interests, but

rather by expediency. Each leader will do whatever works at that moment, whatever helps the party or himself and his followers. Even mistakes will be forgiven by the people if a leader can demonstrate selflessness. Change alone is not enough, you need leaders who can guide that change using their knowledge, intellect, conscience, principles and morals. To truly get such leadership within the liberal democratic framework is the real challenge of the day. Also to manage the concerns of our two large neighbours [China and India] while also gaining their trust enough to bring them on our side on matters of national interest. Unless the new generation of leaders is able to internalise these qualities, it will be difficult for them to meet the many challenges of nation-building.



Daman Nath Dhungana © Kiran Panday

# Architecture of peace in Nepal

Bishnu Sapkota

The Nepal Government and the Maoist insurgents announced mutual ceasefires at key points in the war, in 2001 and again in 2003, with a great deal of hope. But in each instance, fighting resumed after three rounds of peace negotiations. Part of the problem was the lack of support structures for the talks: even basic elements such as the agenda, the minutes of discussions and proposals presented went undocumented.

In June 2003, as negotiations appeared to be headed nowhere, newly appointed Prime Minister Surya Bahadur Thapa formed the Peace Talks Coordination Secretariat – or the Peace Secretariat as it was later called. The Secretariat was the first formal institution of Nepal's peace infrastructure. Its primary purpose was to buttress the peace process, serving as the main coordinating body for the initiation and management of dialogue, both formal and informal. The Secretariat was subsequently elevated to the Ministry of Peace and Reconstruction (MoPR) in April 2007, following the formal end of the war in late 2006.

A number of other structures were also created to support the peace process and political transition: Local Peace Committees (LPCs), the Nepal Peace Trust Fund (NPTF), the Nepal Transition to Peace (NTPP), and the Centre for Constitutional Dialogue (CCD). The politicisation of some of the core elements of the peace architecture has been a common challenge to its effective operation, especially with the establishment of the MoPR. A related problem has been the lack of engagement with the architecture by senior Nepali leaders, who hold fundamental leverage over the political process and transition. This article assesses how these initiatives have functioned, what has worked and what has not, and the lessons that can be drawn.

## Secretariat to ministry

The *Comprehensive Peace Accord* (CPA) of 2006 provided for a National Peace and Rehabilitation Commission (NPRC), envisaged as an inclusive national body to oversee the implementation of the CPA and other aspects of the post-war transition, including the LPCs. But the government instead opted for the MoPR, as this formulation would give political parties control over the immense resources that would be mobilised for post-conflict rebuilding through the NPTF. The NPRC, on the other hand, would have had civil society representation and, hence, more independence from the government.

The MoPR has been a key instrument in the peace process, overseeing activities ranging from managing the NPTF to hosting committees monitoring the ceasefire code of conduct, and regarding the integration and rehabilitation of former Maoist combatants. The MoPR has also overseen the reconstruction of physical infrastructure damaged during the conflict, such as police posts, schools and government buildings. As a government ministry led by successive politicians affiliated to one or other political party, however, it has not escaped charges of partisanship. Whenever out of government, the major political parties have failed to cooperate with it and have shown little commitment towards its initiatives.

## Local Peace Committees

LPCs were envisaged as inclusive local authorities to manage post-conflict issues and promote peace, providing a strong, locally led institution to implement the CPA. Because the NPRC was never formed, the LPCs ended up effectively being district branches of the MoPR despite their stated role as autonomous peacebuilding mechanisms. Some LPCs worked well while others did not. In districts where there was effective leadership and an understanding of its role and mandate, the respective LPC became an impartial moral authority, trusted by district heads to resolve contentious issues; where the LPCs were overtly partisan, they failed to work.

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Locals from the remote mountain village of Burgaon in Humla district take part in an orientation session on the constitution and federalism organised by a UNDP programme in 2012. © Renu Kshetry/Support to Participatory Constitution Building in Nepal/UNDP

## Nepal Peace Trust Fund

The NPTF was a multi-donor funding mechanism to support reconstruction and peace promotion activities. It was managed by the MoPR with participation from other relevant government ministries and donors. The presence of the international community gave it legitimacy and it was highly successful in mobilising the required funds.

Its operational modality, however, could have been more transparent and the funding priorities more inclusive, and because ultimate executive authority remained with the MoPR, the NPTF was in practice a partisan body and neither parliament nor civil society have had any oversight role over it.

## Nepal Transition to Peace Initiative

The NTTPI was established in 2005 at a time when there was no other peace initiative in place to support a dialogue process that could bridge official and non-official representation – ie at the 'Track 1.5' level, connecting Track 1 and Track 2. Providing financial and technical support through a joint international effort, and led by two national civil society facilitators, Daman Nath Dhungana and Padma Ratna Tuladhar, the NTTPI worked with influential second-tier leaders from the major political parties. It helped set up formal dialogue channels between the Seven-Party Alliance (a coalition of political parties that negotiated the end of the war) and the Maoists.

Following the 2006 People's Movement, the NTTPI began working with all the major actors, holding structured meetings to work out details and generate options for deadlocks in the peace process, with international experts providing comparative insights from other contexts. These actors also provided technical support to the MoPR in the design and implementation of LPCs and drafted the initial terms of reference for structures such as the NPRC and the proposed Truth and Reconciliation Commission.

The NTTPI was most active from late 2005 to 2013. Although not all the agreements reached with the help of the NTTPI were implemented, when dialogue was struggling the NTTPI often brought actors together to try to re-open channels of communication, restore trust and create an environment for formal talks. Among its significant contributions is facilitating a series of dialogues, including a major meeting in Switzerland in 2011, which resulted in an agreement among the political parties on the form of government that was eventually adopted by the 2015 constitution. The 2011 meeting also forged consensus on a mixed electoral system while helping resolve differences over the use of the term 'pluralism', which was threatening to derail the constitution-drafting process during the first Constituent Assembly.

## Centre for Constitutional Dialogue

The CCD, inaugurated in 2009 and supported by UNDP, provided capacity-building support to the Constituent Assembly. It also made substantive technical inputs into the constitution-writing process and provided a participatory space for consultations on constitutional issues. However, as time went by, the CCD did not enjoy full engagement from the major political parties as it was increasingly perceived as favouring particular views and arrangements, particularly by encouraging discussion on the ethno-federal provinces proposed during the first Constituent Assembly.

## Looking forward and lessons

Nepal's peace process – like politics in Nepal in general – has ultimately been driven by its top leaders. Leaders with real power have in fact given little thought to what the various mechanisms to promote peace can really offer. Whenever trust among political leaders is at a high level, they tend to undermine or neglect the existing peace apparatus. Simply creating peace structures is not enough, however well conceived. Success is only possible if leading political figures engage with them and appreciate their roles in contributing to peace.

One of the key weaknesses of Nepal's peace structures is that they have often lacked a coherent approach for effective coordination. The absence of political will to create the NPRC was a significant blow to the entire process

since it undermined the role of the LPCs. The NPRC should have been a neutral and, hence, legitimate body to monitor the CPA, and even interpret it, if required. An inclusive Consultative Committee comprising political and civil society actors that had been formed to advise the MoPR also succumbed to political affiliation and was rendered similarly ineffective.

A major problem has been that when the initial euphoria and trust for peace recedes, as it often does, the role of peace actors becomes more vital in sustaining the process and bringing participation, ownership and legitimacy to national dialogue. The structures in place in Nepal to oversee the peace process have sadly often become another vehicle for political patronage. In the end, politicisation succeeded in sidelining peace actors and civil society, and their input into the transition.

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# International support for peace and transition in Nepal

Aditya Adhikari

External actors made various attempts to broker a negotiated settlement to the armed conflict in Nepal from quite early on. Each initiative failed, but together they succeeded in laying the basis for subsequent international involvement. By the time of the political transition and the end of the war in 2006, it seemed only natural for a number of extra-national players to become involved in supporting Nepal's peace process.

The extent of international partners' engagement varied, as did their influence. They worked together on occasion, but sometimes at cross-purposes. This article does not provide an exhaustive overview of external support for the peace process, which is well covered in the literature elsewhere (for example by Teresa Whitfield in 2012). Rather, it traces the evolving influence of selected international actors on the political process in Nepal, and how external leverage diminished as the process progressed and internal actors gained confidence and power.

## India

No international actor has had more influence on Nepal's peace process than India. Its size and proximity to Nepal gives it tremendous leverage, which Indian policymakers have rarely hesitated to use. Having cultivated relationships with the Nepali Congress (NC) and the Communist Party of Nepal-Unified Marxist-Leninist (UML) through the 1990s, India established direct links with the Maoists around 2002–03. At that point, the rebels were based in Indian territory and were keen to assure New Delhi that they would not act against its interests.

After King Gyanendra assumed direct control in Nepal in February 2005, Indian officials and politicians became willing to see a substantially diminished role for the monarchy. They even facilitated negotiations between the parliamentary parties and the Maoists, which led to the 2005 *12-Point Understanding* that preceded the *Comprehensive Peace Accord* (CPA). The parties and the Maoists were deeply appreciative of India's support and came to perceive New Delhi as a guarantor of the peace agreement. India's presence gave the parliamentary parties the confidence that they would be able to resist any royal resurgence while also containing the Maoists within the parliamentary order. For the Maoists, India offered international recognition and legitimacy.

The CPA identified the 'democratisation and restructuring' of the Nepali Army as a central tenet of the peace process. The Maoists insisted on comprehensive reform of the institution, including the induction of large numbers of Maoist combatants into its ranks. India dismissed this notion and insisted that, at most, a few thousand Maoist fighters could be recruited into the army. It would take





Maoist leaders, Baburam Bhattarai and Prachanda, with the UN Resident Coordinator in Nepal, Robert Piper, and head of UNMIN, Ian Martin, at UN House in Kathmandu, April 2008. © Kiran Panday

years of protracted negotiations before the parties finally agreed on the integration and rehabilitation of Maoist combatants. The final outcome was in close accordance with India's desire to see the structure of the Nepali Army unchanged, a condition New Delhi believed was crucial to ensuring stability in Nepal.

At the political level, relations between India and the Maoists started deteriorating almost as soon as the Maoist Chair, Pushpa Kamal Dahal Prachanda, became prime minister in 2008. New Delhi was unhappy that Prachanda had gone straight to Beijing following his inauguration, in violation of the long-standing tradition that saw Nepali leaders visit India first. But it was when Prachanda tried to sack the army chief in early 2009 that relations really started going downhill. India and Nepal's traditional parliamentary parties believed that the Maoists wanted to install a pliant army chief as a way to enable bulk integration of combatants into the army, facilitating what was believed would have been a Maoist takeover of the institution itself. India stood firmly behind the NC and the UML, and appeared also to have tacitly encouraged President Ram Baran Yadav to block the Maoists. Prachanda subsequently resigned and the government was replaced by a coalition headed by the UML's Madhav Kumar Nepal.

At the time of writing, the Maoists have split into a number of factions and have ceased to be a threat to the Nepali state. The largest, the Communist Party of Nepal-Maoist Centre (CPN-MC) led by Prachanda, is firmly enmeshed in parliamentary politics and no longer harbours any revolutionary dreams. From India's standpoint, its goal of neutralising the Maoists and co-opting them into the parliamentary system has been a success.

### Madhesi question

India's other major priority during the peace process has been to ensure accommodation of demands by Madhesi (from Nepal's southern Tarai plains) in the new constitution. Madhesi have close cultural and kinship links with Bihar and Uttar Pradesh states in North India, and India feared that unrest in the Tarai could spill over across the border. India has also long considered Madhesi leaders as key allies within Nepal who can be expected to further Indian interests. For these reasons, the establishment of a federal structure in Nepal acceptable to Madhesi was a primary goal for Indian policymakers.

In the early years of the peace process, India played a central role in consolidating Madhesi parties. In late 2007, it even encouraged a number of Madhesi leaders to quit the older parliamentary parties and form the Tarai Madhes Loktantrik Party (TMLP – Tarai Madhes Democratic Party). The TMLP was intended as a counterpoise to the Madhesi Janadhikar Forum (MJF – Madhesi People's Rights Forum), the major force behind the first Madhes movement in early 2007, in what seemed to be an attempt to divide Madhes mobilisation in order to control it more easily. Indian officials in Kathmandu also successfully pressured the Madhesi leadership and the Nepali government into reaching agreements that addressed Madhesi demands to a considerable extent.

Over the longer term, however, India had much less success in facilitating an agreement between Madhesi parties and the state. Despite India's efforts, Nepal's political parties were unable to concur on a federal structure by the May 2012 deadline to draft a new constitution, and the first Constituent Assembly was dissolved [see article on federalism, p.75].

The Madhesi parties performed poorly in the 2013 general election, losing much leverage in the second Constituent Assembly.

Although Indian Prime Minister Narendra Modi more recently urged the Nepali government to draft a constitution through 'consensus' (ie taking Madhesi demands into account), Madhesi parties rejected the federal model in the constitution that was finally agreed upon by Nepal's three major parties in September 2015. India supported a popular movement in the Tarai against the new constitution by restricting the transport of essential goods across the border, but the Nepali government did not give in. These events severely strained the relationship between the two countries. Although movement across the border was eased in February 2016, relations between the two countries only started thawing after the UML-led government was replaced by a coalition of the Maoists and the NC in August that year.

## China

China's involvement in Nepal's peace process has been indirect and discreet, in line with its policy of 'non-interference' and acknowledgement of India's primacy in Nepal. For decades, China has been chiefly concerned with seeking the Nepal government's recognition of Tibet as an integral part of China and preventing the growth of a pro-Tibet movement. In line with this policy, Beijing backed King Gyanendra's government after the royal takeover in 2005, and it was only in 2006 that the Chinese recognised that major shifts were under way and started engaging closely with first the political parties and later the Maoists.

A change in China's approach occurred in March 2008, when 'free-Tibet' protests erupted in Kathmandu. China subsequently intensified its efforts to find 'reliable partners' with the power and inclination to take care of its key security concerns. For a time, China cultivated the Maoists as a possible ally and, as mentioned above, even invited Prachanda to Beijing almost immediately after he took office as prime minister. But it did little to prevent the collapse of the Maoist-led government. Over the years, China continued to maintain ties with successive governments and offered aid to the Nepali Army.

The Chinese viewed the open border between India and Nepal as enabling Tibetan protestors to infiltrate Nepal. It was concerned that international organisations such as the UN Office of the High Commissioner for Human Rights (OHCHR), which set up office in Nepal during the conflict, could speak out about the treatment of Tibetans by the Nepali Government. China was also worried that a federal structure would lead to centripetal tendencies in a country that lay in the underbelly of Tibet, giving

western powers and pro-Tibet activists an enlarged space for operation. In a marked departure from its usual stance of non-interference, during meetings with Nepali politicians visiting Beijing at the time of the first Constituent Assembly, Chinese officials went so far as to express disapproval of the idea of federalising Nepal a number of times, a position that set China in potential opposition with India.

## United States

After 2001, the US began to view the Nepali state's fight against the Maoists as part of the 'global war on terror', with some senior officials at the embassy in Kathmandu influenced by a Cold-War era anti-communist mindset. Even though it condemned the 2005 royal takeover, the US remained strongly opposed to the emerging alliance between the Maoists and the parliamentary parties. The then-ambassador repeatedly warned the parties against allying with what he considered to be a violent communist group intent on authoritarian domination.

The American attitude was ambivalent even after the 2005 *12-Point Understanding*. Though it 'cautiously welcomed the new political understanding', it asked the parties to prevent the Maoists from fully entering politics until they had decisively laid down arms and abandoned all violence. The US later committed substantial financial support to the peace process through USAID and subsequent ambassadors demonstrated much less antipathy towards the Maoists. However, it was not until 2012 – six years after the peace process began – that Washington finally removed the Maoists from its Terrorist Exclusion List (TEL).

This approach made it difficult for the US to play an active role in Nepal's peace process. The Maoists' presence on the TEL meant that neither US officials (except for the most senior ones) nor NGOs supported directly by the US government were able to engage with them. On most important matters, the US was comfortable in following India's lead, a reflection of the new strategic partnership between the two countries.

## United Kingdom

As the conflict progressed, the UK, working through the Department for International Development (DFID), had come to appreciate that inequality and the marginalisation of various social groups had catalysed the Maoist insurgency. DFID began development programming to address underlying grievances. In 2004, for example, it started the Janajati Empowerment Project (JEP), which was aimed at ensuring greater social, political and economic inclusion for the country's indigenous groups. DFID's support for measures to ensure greater inclusion increased after the end of the war.



Over the years, however, the Nepali Government became increasingly hostile towards British attempts to push for democratic freedom and inclusion. In early 2015, the UK ambassador published a column in the local press arguing that Nepal's new constitution should include the right for all religious freedoms, including to convert. The government strongly objected to the article and the Ambassador subsequently left Nepal. Such incidents have made the UK, as well as other donors, more and more cautious in their engagement with the government, in particular on matters seen as political.

## United Nations

The establishment of an OHCHR office in Nepal in May 2005 led to a steady decrease in disappearances by the Nepali Army. Its call for the government to respect democratic rights earned the respect of the political parties and the Maoists, and both sides grew keen to have the UN involved in the peace process. India initially opposed such third-party involvement in its 'backyard'. But NC president Girija Prasad Koirala managed to convince Indian officials of the desirability of a UN political mission.

Even before the establishment of the UN Mission in Nepal (UNMIN) in 2007, the UN had played a key role in helping to determine the parameters for the management of Maoist combatants and the Nepali Army. A UN military advisor facilitated negotiations that led to the *Agreement on Monitoring the Management of Arms and Armies* (AMMAA) signed in late 2006. The mainstream political parties felt that the UN presence lent international legitimacy to the peace process and restricted both the Nepali Army and the Maoist People's Liberation Army (PLA) from violating the ceasefire. For the Maoists, the UN offered international recognition as a legitimate political actor.

**“The presence of India and UNMIN did help keep at bay potential spoilers, such as the royalist right.”**

Yet, the parties and the Maoists were keen to maintain national ownership of the peace process, and India remained wary of UN involvement. As a result, UNMIN was not given a direct role in facilitating negotiations. UNMIN's three responsibilities were: to verify Maoist combatants, monitor the two armies and report if they violated the AMMAA (for example, by operating outside of barracks and cantonments); to provide technical support to Nepal's Election Commission; and to deploy civil affairs officers across the country in order to

observe local political developments and provide support to a national independent monitoring mechanism.

UNMIN's electoral support came to an end with the 2008 elections. From then onwards, its sole responsibility was to monitor the two armies. Its limited mandate led to significant frustration within the UN system. As it was not given any direct role in negotiations regarding the integration and rehabilitation of Maoist combatants or security sector reform, UNMIN was forced simply to stand by during the seemingly intractable disagreements and interminable delays in the negotiation process.

Over time, substantial hostility towards UNMIN developed among the older parliamentary parties, the Nepali Army and India. UNMIN's position contradicted India's and that of the parliamentary parties. UNMIN repeatedly reminded them that the CPA spoke not just of the 'integration and rehabilitation' of Maoist combatants, but also of the 'democratisation and restructuring' of the Nepali Army. Senior UNMIN officials maintained that security sector reform was essential if a stable and inclusive peace was to be established. Such reminders severely irritated the older parliamentary parties, India and the army, and these groups accused the UN mission of being biased in favour of the Maoists.

UNMIN's opponents claimed it had verified as legitimate vastly inflated numbers of Maoist combatants. Of the more than 31,000 people who came to the cantonments, 19,602 were verified [see *article on the People's Liberation Army post-2006*, p.46]. Although in a leaked video Maoist leader Prachanda can be seen telling party members that their army consisted of around only 7,000–8,000 personnel at its peak, there are no grounds to believe that the verification process itself was mismanaged. According to the guidelines provided to UNMIN, everyone who had been a member of the Maoist army before 25 May 2006 and was over 18 years of age on that date was to be regarded as a legitimate combatant. What was often forgotten during the verification controversy was that the Maoists had recruited thousands of people in late 2005 and early 2006, with the tacit support of Girija Prasad Koirala.

The Nepali Army resented UNMIN's repeated appeals that it abide by the peace agreements. For example, UNMIN formally advised the prime minister and the army chief that an army recruitment drive in mid-2007 was a breach of the AMMAA. Over time, the army lobbied the government to remove peace agreement restrictions. In 2010, the Madhav Kumar Nepal-led government asked UNMIN to stop monitoring the army. The UN refused to accept this, asserting it was in violation of the original

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peace agreements. In 2011, the Nepal Government rejected an extension of UNMIN's mandate and the mission came to an end.

UNMIN's repeated calls for the inclusion of marginalised groups and women in the peace process were another reason for the hostility it faced from the mainstream political parties. In 2007, Madhesi groups had asked UNMIN to help mediate an agreement with the government. The parties and India strongly opposed meetings between UNMIN officials and Madhesi leaders, and accused UNMIN of trying to exceed its mandate. While UNMIN made no effort to seek a formal role in resolving the Madhesi crisis, it continued to call for broad-based inclusion in the peace process. In the early years of the peace process, UNMIN thus helped shape public discourse and especially the views of other members of the international community.

## **Conclusion**

Nepal's traditional parliamentary parties and the Maoists were both well disposed towards the international community in the early years of the peace process – when relations between the parties

and the former rebels were tenuous. Each side welcomed international involvement as a way of strengthening the process. The presence of India and UNMIN did, in fact, help keep at bay potential spoilers, such as the royalist right. They also helped prevent violations of the ceasefire. Had UNMIN not been present to monitor the two armies, severe tensions between the Maoists and the Nepali Army could well have emerged. Pressure from India and the US contributed to the gradual moderation in the Maoists' behaviour and their transition from a rebel force to a non-violent political party.

In addition, the relatively open political space at the time allowed some in the international community to advocate overtly for the inclusion of historically marginalised groups in the peace process and Nepal's political structures more generally. As the parties involved became more secure in their positions, their need for international support turned to resentment as calls for reforms by foreign officials now threatened their power. UNMIN was the first to bear the brunt of this resentment when it called for reforming the Nepali Army. International NGOs were similarly vilified when they advocated inclusive policies. Finally, India itself was attacked when it called for an inclusive constitutional settlement that addressed the demands of Madhesis and other marginalised groups. While India has once again gained a degree of leverage after the Nepal government changed in August 2016, there remains at the time of writing very little space for any other international role in sensitive political matters.

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# Transitional justice in Nepal

## Low priority, partial peace

Mandira Sharma

The concept of transitional justice entered the general discourse in Nepal only after the signing of the *Comprehensive Peace Accord* (CPA) in November 2006. Advocated by national and international organisations, transitional justice was meant to be a process to help Nepal deal with the legacy of past human rights violations through truth-seeking, prosecution, reparations and institutional reform. However, a holistic application of transitional justice, which has helped other conflict-affected societies move forward, has yet to be internalised in Nepal.

Transitional justice has been afforded the lowest priority in the peace process, and the debate and thinking required at different levels to make its procedure and outcome meaningful have been limited. The prevailing climate of impunity for political actors and their indifference to transitional justice, the lack of efficiency or shared strategy among international actors, the restricted reach, scope and resources, and the polarisation among victims and civil society organisations have all worked to frustrate the process.

### Transitional justice and the CPA

The CPA did not explicitly use the terminology of transitional justice but promised a High-Level Truth and Reconciliation Commission (TRC) to examine atrocities committed during the conflict, provide relief to victims, and pave the way for reconciliation. It is difficult to say precisely why the parties agreed to such a body, but it is clear that the idea of transitional justice gained some currency while the framework of the CPA was being negotiated.

Work by human rights activists and the National Human Rights Commission (NHRC) had previously

exposed the brutality of the conflict and prepared the ground for international interest in resolving the human rights crisis in Nepal. International support for a UN human rights monitoring mission also grew after human rights activists first mooted the idea in early 2002, even though it was thought to be an impossible endeavour at that time.

The royal coup of February 2005 convinced all the major political parties to support the establishment of a mission by the UN Office of the High Commissioner for Human Rights (OHCHR) in May that year, with a mandate to investigate and monitor cases of human rights violations. This was widely perceived as a blow to the royal regime, but it lifted the morale of human rights activists, who appeared to have achieved the impossible. It also laid the foundation for wider political change and encouraged human rights organisations to demand a comprehensive peace process that would deal with past human rights violations.

There was no formal international participation in the negotiation of the CPA. But different international actors actively supported the parties and the process, and

it is widely believed that international advisors were instrumental in convincing the parties to choose the TRC. After the landmark Supreme Court decision of June 2007 that gave clear directives to the government to investigate cases of disappearances during the war, the Commission of Investigation on Enforced Disappeared Persons (CIEDP) was then added to Nepal's transitional justice architecture.

### **Setting up the commissions: amnesty and accountability**

The standard response to human rights violations in Nepal has been to establish a commission of enquiry and pay *ex gratia* compensation to victims. Over the last few decades dozens of such commissions have been established, which have been used to defuse demands for accountability for human rights violations. In the same spirit of superficiality, the cabinet decided in 2007 to establish a TRC by executive decision and even handpicked the commissioners. The government later retracted the decision after widespread protests. Yet, it continued to ignore the demands of both the conflict victims and human rights organisations that the TRC be set up by a parliamentary law, so that its mandate and power, and the appointment of its commissioners could be defined by law, making it less vulnerable to political interference.

Another major demand of the victims and the human rights community was for the legal framework to be designed through a consultative process. It was hoped that the inherent limitations of transitional justice could also be balanced by allowing victims and larger society to participate in such a process. Instead, in 2008, the parties in government picked 'experts' (who, in fact, had no proficiency on the subject) to draft a TRC bill. This opaque process resulted in significant national embarrassment when victims and national and international organisations railed against the proposed amnesty. Their main objection related to the parties' attempt to include a blanket amnesty for the Maoists for actions committed 'to achieve political objectives', as well as those committed by security forces while 'performing their duty'.

Nepali political party leaders had drawn inspiration from the South African TRC model. But they used a distorted understanding of it, equating it with a mechanism to provide amnesty. The South African TRC did exchange amnesty for truth, but the trade-off was specifically designed to balance the legal and political demands of the time, while seeking to make it acceptable to a broad range of actors. Nepali leaders used a partial interpretation of this to match their own interests, but more importantly failed to grasp the significant changes that had occurred in the

global legal context since the South African TRC had tested conditional amnesty.

The lack of transparency regarding international assistance has also been controversial. In the absence of documentation, it is difficult to discern very precisely the role played by international partners early on in the transition. But this author experienced first-hand the rising levels of mistrust between human rights activists and victims on the one hand, and international actors advising the parties on the other. One such instance was when the 'Holland and Knight Memo' was leaked to activists in 2008. Issued by Holland and Knight, a US-based law firm working with a senior international peace advisor working in Nepal at the time, the 60-page document discussed key aspects of transitional justice. According to some human rights activists, the memo was meant to assure political parties that Nepal had no legal obligation to prosecute conflict-era cases of human rights violations, except in instances of torture (and here, committed only by the state apparatus, not by the Maoists) and genocide. And even in such cases, it outlined the possibility of amnesty accompanied by reparations to the victims.

**“ Work by human rights activists and the National Human Rights Commission had previously exposed the brutality of the conflict and prepared the ground for international interest in resolving the human rights crisis in Nepal. ”**

Echoing the concerns of local activists and victims, a number of international organisations responded to the memo, stating that the legal analysis in it was fundamentally flawed. This incident not only contributed to eroding trust between some international actors involved in the peace process and the Nepali human rights community, but some local human rights activists saw it as misinforming how Nepali political actors perceived the role of transitional justice and the TRC in the peace process.

Under intense pressure, the Ministry of Peace and Reconstruction (MoPR) finally agreed to hold consultations on the 2008 TRC bill. Although there were concerns over how these were designed and undertaken, the consultations were nevertheless seen as a positive

step and were supported by victims as well as national and international human rights organisations. The MoPR conducted 19 rounds of consultations in different parts of the country. It then drew up separate bills to establish the TRC and the CIEDP and presented these in the Legislature-Parliament in February 2010. The TRC draft provided it with wide powers and, importantly, prevented it from recommending amnesty for certain gross human rights violations, even as it opened up possibilities in other areas.

**“ Nepali political party leaders had drawn inspiration from the South African TRC model. But they used a distorted understanding of it, equating it with a mechanism to provide amnesty. ”**

Both bills received nearly a hundred amendment proposals from parliamentarians. But in late 2012 the government withdrew them, dismissing the entire process. Instead, in March 2013 the Ordinance on the Formation of a Commission for Truth and Reconciliation was promulgated, ostensibly because this was the only way to set up the body given the disparate positions of the different parties. However, victims challenged both the process and the content of the Ordinance, as it had removed the provision prohibiting the commission from recommending amnesty for those involved in certain egregious violations. The Supreme Court rejected the ordinance both for being unconstitutional and for contravening international standards on transitional justice.

In May 2014, seven and a half years after the CPA, the Government of Nepal passed the Commission on Investigation of Enforced Disappearances, Truth and Reconciliation Act (hereafter the Act), providing the legal framework for the TRC and CIEDP but without any regard for the previous decisions of the Supreme Court. Feeling betrayed by the process and by the intent of the political leaders, more than 230 victims from different districts challenged the Act in the Supreme Court, particularly since the Act was very similar to the Ordinance that the Supreme Court had already ruled against. Major human rights organisations backed the victims' petition and decided to boycott the transitional justice process, pending the Supreme Court decision. The UN and other major international human rights organisations

expressed dismay over the Act and how it had been reached, arguing that it was against international standards and best practice, and asked the government not to establish the commissions until the Supreme Court had decided the case.

However, the government and the parliamentary parties ignored these various calls and moved ahead with forming the two commissions. In February 2015, the Supreme Court found that the Act indeed violated the constitution and Nepal's international obligations, and ordered several amendments. In early 2016, the UN wrote officially to the government expressing its inability to support these mechanisms in the prevailing circumstances. International donors and major human rights organisations have kept their distance from the work of the TRC and CIEDP. Neither the amendments required by the Supreme Court nor the support requested by the commissions have since been offered.

### **Amnesty and accountability in practice**

The major concerns of the political parties have revolved around amnesty, and their intent has been to design the TRC as a vehicle to offer amnesty even to those involved in gross human rights violations. International law does not prohibit amnesty per se and amnesty does have a place in transitional justice, within permissible limits. But there has never been any serious discussion on how best to introduce amnesty and how to balance it with other duties and demands of the state.

Back in 2007, human rights organisations became aware of a tacit agreement among the political parties to forget the past and condone impunity. That was when Girija Prasad Koirala, prime minister when the CPA was signed, admitted to a group of human rights activists (including this author) that in response to the concerns raised by the Maoists and Nepali Army, the parties had agreed to provide immunity to all those involved in atrocities.

Political actors have worked hard to dilute efforts for a meaningful transitional justice process. The government has promoted alleged human rights violators to senior government positions, withdrawn criminal charges against alleged perpetrators by executive decree, defied court orders, expelled the OHCHR from the country, and refused to implement the recommendations of the NHRC. These actions have served not only to demoralise victims and human rights activists, but also to silence the call for a meaningful transitional justice process in the country more broadly.

At the same time, local human rights organisations have scored some meaningful victories. At times, the police



have refused to register cases related to the conflict on the grounds that a separate mechanism (ie the TRC), would deal with them. But with backing from the Supreme Court, human rights groups have been able to support victims to file more than 120 complaints (the First Information Report, the document prepared by the police upon receiving information about a cognisable offence having been committed) demanding criminal investigation in conflict-era cases of human rights violations that implicate high-ranking security officials and politicians. Although most of the cases are still pending with the police, a handful have made it to the Supreme Court, where the court has ordered prosecutions to proceed and in some instances has even issued arrest warrants. Building on these cases, many complaints have also successfully been brought before international forums such as the UN Human Rights Committee, as a result of which Nepal has been reminded time and again of its obligations and asked to investigate cases of serious human rights violations.

Likewise, some human rights initiatives have resulted in visa restrictions for alleged perpetrators. Notable examples have generated national headlines, such as the denial of a visa to a senior Maoist leader for his alleged involvement in the abduction and extrajudicial execution of a businessman, and the repatriation of a Nepali Army officer from a UN peacekeeping mission for his alleged involvement in the illegal arrest, disappearance, torture and extra-judicial killing of a female minor. An army officer was also arrested

**“ Many complaints have also successfully been brought before international forums such as the UN Human Rights Committee, as a result of which Nepal has been reminded time and again of its obligations and asked to investigate cases of serious human rights violations.”**

in the UK for his alleged involvement in torture in Nepal, and human rights organisations have shared incriminating dossiers with different embassies, requesting the initiation of criminal investigations in the respective countries. The combination of these activities has made political leaders aware of a real personal threat, and has provided some space for the transitional justice debate to expand.



Institutional reform is also a key aspect. An example of this is the Supreme Court order in August 2012 asking the government to enact the necessary laws to vet and suspend from public office those suspected of involvement in human rights violations, pending the outcome of cases against them. The Supreme Court had acted in response to a challenge to the appointment of a new head of the police force for his alleged complicity in one of the high profile cases of enforced disappearances and summary executions during the Maoist conflict. National and international actors have missed important opportunities to use the leverage resulting from these efforts. For example, vetting was not on the agenda while reintegrating the Maoist People's Liberation Army (PLA) into the Nepali Army, and the continuing presence of human rights violators in the military not only erodes public confidence but also enables serving perpetrators to block reforms.

Another component of transitional justice is reparation. In this regard, the compensation scheme rolled out for conflict victims in 2007, and which continues even today, was seen as a way of incentivising victims' silence. When victims refused any compensation without accompanying truth, investigation and prosecution, it had to be renamed 'interim relief'. Billions of rupees have been distributed, but controversy persists along with discrimination, as victims of torture and sexual violence are not recognised as qualifying under the scheme.

## Conclusion

Tolerance of atrocities committed during the 1990 People's Movement, which precipitated the return of democracy in Nepal, has arguably contributed to impunity regarding the Maoist war – as well as helping to set the tone for post-war impunity. None of the allegations from the many reports of torture and extrajudicial killings in the Tarai in either 2007 or 2015 have been investigated, for example. Addressing the past with justice and accountability is the cornerstone of the future of democracy in Nepal, while impunity is the key manifestation of the inequality that is deeply rooted in Nepali society, since it helps to foster marginalisation of certain voices and communities.

The demand for transitional justice in Nepal has to be linked to the broader structural reforms that were promised in the CPA. The transitional justice elements of the peace process must be brought back on track, respecting the Supreme Court orders, Nepal's international obligations, and the needs and aspirations of the people. The discussion has to reach out to wider society, rather than being limited to some victims and human rights organisations. In the continuing absence of the rule of law, ordinary Nepalis will be afraid to take a stand against crimes committed by the powerful among them. The two-year mandate of the transitional justice commissions ends in early 2017, and their demise should open up new opportunities for a meaningful transitional justice process in the country.

Nepal's international partners need to demonstrably share a common strategy and vision with national partners wanting to promote peace in Nepal. Once very

active, Nepal's donor community has become increasingly indifferent to issues relating to peace and justice, which, at this precarious juncture, risks pushing the country deeper into crisis. Until opportunities are seized to reveal the truth, bring perpetrators to justice, provide reparation to victims, and reform institutions involved in past atrocities, no one can justifiably claim that Nepal's peace process is complete.

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# Transformation of the Maoists

## From revolutionaries to reformists?

Jhalak Subedi

In 2006, soon after he had surfaced in public following 25 years ‘underground’, I asked Chairman Pushpa Kamal Dahal Prachanda if the Maoists’ stated commitment to join peaceful politics was strategic or sincere. In other words, was the revolution still on or had it been abandoned? Prachanda answered: ‘[I]t will appear that sometimes we are going to the Left and sometimes to the Right ... We are walking on both legs. Sometimes the left foot leads, sometimes the right foot. It is only by walking on both our feet that we accomplished the ten years of struggle.’

The conversation was part of an interview I conducted for the Delhi-based magazine *Combat Law*. Although not in the published text, Prachanda also said that, after the 2005 *12-Point Understanding* agreed with the major Nepali political parties, the Maoists were ‘moving to the Right. If there is a need we will once again move to the Left. This is the revolutionary strategy.’ This suggested that the Maoists were planning to safeguard the power they had garnered through the armed movement and use this to push for social transformation as far as possible, including completing the revolution if the opportunity arose.

In the ten years since the 2006 *Comprehensive Peace Accord* that finally ended the war, the Maoists have entered parliament and then government; Constituent Assembly elections have been held; Nepal has been declared a republic; the Maoists’ People’s Liberation Army has been integrated into the Nepali Army and eventually disbanded; and a new constitution has been promulgated. Through these developments the Maoists have nearly erased their revolutionary image and integrated themselves into Nepal’s political elite. This article charts the transformation of

the Maoists, comparing their original agenda and the post-war path they have subsequently taken.

### Evolution of the revolution

The Communist Party of Nepal-Maoist (CPN-M) is an ideological heir of the Communist Party of Nepal, established in 1949. In the Nepali context, Maoism was to a large extent defined by principles of insurgent military strategy and continuous revolution. Prior to the establishment of the CPN-M, such principles had been adopted by the then-Communist Party of Nepal (Marxist-Leninist), and were first manifested in the Jhapa Movement of the early 1970s.

The forerunners of the CPN-M, the CPN (Masal) and the CPN (Mashal), held similar convictions and also believed that Chairman Mao Zedong’s death had led to a counter-revolution in China. They felt that the capture of the state was possible only by starting the revolution at the village level and organising the peasants. When the Nepali Maoists, at the time a comparatively small radical group, began the ‘People’s War’ in 1996, their fundamental understanding of the route to state power was similarly founded.



Baburam Bhattarai and Prachanda talk to the press at the prime minister's residence on the day of their arrival in Kathmandu, 16 June 2006.  
© Kiran Panday

The Maoists also came up with a momentous reassessment of Nepal's socio-political situation. Previously, Nepal's communists had considered issues of marginalisation, such as those associated with Janajatis (indigenous groups), Dalits ('low caste'), Madhesis (from the southern Tarai plains), and women, to be part and parcel of class discrimination as a whole, and that once class oppression had ended, the problems faced by such excluded groups would also be resolved. Yet, time and again, caste, ethnic and regional issues continued to surface separate from class within the communist movement. Beginning with the founding in 1949 of the CPN, almost all communist groupings gave considerable weight to such matters. Despite its current shift towards conservatism, at its Fourth Convention in August 1989 the Communist Party of Nepal-Marxist-Leninist (CPN-ML) – which later became the CPN-Unified Marxist-Leninist (UML) called for a number of measures, including: ensuring religious freedom by ending the hegemony of one religion; ending the hegemony of caste, language and dress; and ensuring the right to education in the mother tongue.

Prior to the Maoists, however, none of the communist factions had envisaged federalism as a means to grant recognition to ethnic identity. Redefining identity in the Nepali context to be an element of class struggle was key to the expansion of the Maoist cause. The participation of Dalits, Janajatis and women in the People's War was unprecedented in the history of Nepal's political movements. This became the centrepiece of the Maoist political and ideological intervention to solve Nepal's ethnic and regional problems. In the course of the war, the Maoists started looking at ethnic repression in Nepal as a historical problem created by oppressive state power, moving closer to the neo-Marxian understanding that other factors besides class can serve as the basis of subjugation.

Other issues raised by the Maoists to establish themselves as a 'revolutionary' force were not very

different from the other communist groups in Nepal, namely seizure of land from landlords and redistribution among the landless; adoption of worker-friendly policies, which would include wage increases for labourers in both the organised and unorganised sectors; opposition to the comprador class; the end of feudalism; special provisions for Dalits; the end of patriarchal exploitation of women; republicanism; and resistance to 'Indian imperialist influence'.

The progressive changes in Nepal's state structure since 2006 that resulted directly from the People's War included the following: Nepal's establishment as a republic; inclusive democracy with proportional representation; reserved quotas for women's representation; federalism; constitutional provision for identity-based autonomous or protected areas for minorities; education, health and housing as fundamental rights; and the increase in the participation of Dalits in politics. The major failure of the Maoists, though, was their inability to carry through their stated programme of establishing a 'people's democratic republic' and ethnically based states, and also of implementing revolutionary land reforms and class-based economic policies. This can partly be explained by ideological slippage and divisions within the Maoist movement, but it has primarily occurred through concessions made by the Maoists to Nepal's traditional establishment through political bargaining, the primary driving force that has defined the evolution of progressive change in post-war Nepal [see *article on constituent assembly processes and constitution making*, p.59].

## Politics of inclusive change

The *12-Point Understanding*, signed in New Delhi in November 2005, marked the beginning of a new political journey for Nepal and for the Maoists. The concord between the Maoists and the parliamentary powers reflected the high point of the Maoists' insurgent power, as well as a clear trade-off: the promotion of the Maoists' socio-economic agenda in return for their acceptance of political liberalism – albeit in the new form of an inclusive democracy and a federal state that would grant recognition to the country's special social characteristics. The agreement to institutionalise political changes signaled the willingness of the parliamentary parties to consider the restructuring of the state, including replacing the 1990 Constitution with one drafted by an elected constituent assembly.

The success of the April 2006 People's Movement led to the Maoists' entry into peaceful politics. A ceasefire was immediately put into effect, followed by the signing of the *Comprehensive Peace Accord* (CPA) a few months later. In January 2007, the 1990 Constitution was annulled and

an Interim Constitution was promulgated. An interim government was formed under the leadership of Nepali Congress President Girija Prasad Koirala. Koirala, however, had not inherently embraced the Maoist agenda of socio-economic transformation and his only point of concurrence with the Maoists was on the political front – to weaken the monarchy and, if it came to it, even to support republicanism. Not surprisingly, the government made no attempt to introduce any kind of social and economic change, all of which were presumed to be tasks for the period following the adoption of a new constitution. Since the Maoist leadership and some of their cadres were now part of this government, the process of the Maoists' assimilation into the elite had also begun.

The CPN-M emerged as the largest party in the first Constituent Assembly (CA) election, winning 50 per cent of the directly elected seats and more than 30 per cent under proportional representation. The first CA was the most inclusive in Nepal's history. Women, Janajatis, Madhesis, Dalits and other minorities had strong representation. The Maoists had derived their political power from a progressive agenda, but despite being the largest party in the CA, albeit without a majority, they were not able to form a government immediately. So began the process of bargaining with conservative forces, through which the Maoists' agenda in the new constitution became increasingly circumscribed.

Inclusion was an important aspect of the Maoists' political development. Inclusion here meant the creation of conditions for opportunities for marginalised social groups, including Janajatis, Madhesis, Dalits, women and communities from remote regions such as Karnali in the mid-west. Initially, the Maoists had envisioned ethnic provinces as well as autonomous and protected areas with special rights for groups that had lived there historically. They had mentioned a Madhes autonomous region and also special rights for Dalits. There had also been talk of a system of proportionality in representative institutions and of the adoption of a proportional inclusive appointment process in the state's administrative and judicial structures.

After the signing of the CPA, the Maoists used the direct or indirect threat of their armed combatants only twice to advance their political ends: first to support their demand to amend the Interim Constitution to include the provision that the first meeting of the CA would declare Nepal a republic; and second when they tried to influence voters and opposition parties during the election to the first CA by 'reminding' them that they were an armed group. But, the question of whether the constitution could be drafted without first disarming the Maoists emerged as a key focal point for political brokering.

Powerful conservative elites in Kathmandu and beyond supported the continued hegemony of 'high-caste' hill Bahuns. These included: elements within traditional political parties like the Nepali Congress (NC), the UML and the Rastriya Prajatantra Party; established landowners as well as the newly wealthy; high-ranking officials in the judiciary, the army and the bureaucracy; and business leaders, industrialists and intellectuals.

**“The concord between the Maoists and the parliamentary powers reflected the high point of the Maoists' insurgent power, as well as a clear trade-off”**

Different groups seeking to secure their respective vantage points ultimately began to target the CA itself, as they came to realise it would not draft a constitution sufficiently in their interests. A section of Kathmandu's middle class openly opposed the Maoists and were able to establish a discourse to re-brand identity-based federalism as a ploy to break up the country. Such resistance coalesced during the first CA through various organised movements and demonstrations. In 2012, even though the Maoists had by then been completely disarmed, the Supreme Court ruled against extending the term of the first CA and it was dissolved without having agreed on a new constitution.

Support for the idea of inclusion in the second CA election was much reduced, reflected in the fact that the Maoists came in as the third largest political force, behind the NC and the UML. Prachanda sought different ways to implement the Maoists' agenda, notably through building alliances. In response to increasing opposition to identity-based federalism by the ruling NC and UML, the Maoists organised street movements together with Madhesi and Janajati groups. However, internal splits and a perception that it had not been sufficiently proactive when it had been in power meant the CPN-M had lost an important source of support, and these movements were not able to gain significant traction. Prachanda increasingly resorted to bargaining away important provisos related to inclusion, in various attempts to maintain power and relevance.

## **Revolutionaries to reformists?**

The promulgation of Nepal's new constitution in September 2015 provides for a natural juncture to ask how far the new statute represents success in institutionalising what the 'People's War' had been all about: class liberation,



recognition of identity, the end of discrimination against Dalits, and women's liberation.

The negotiated compromise that enabled the Maoists to enter mainstream politics led to changes in power relationships and to conflicts between the traditional political elite and new political forces, nationally and locally. All political parties have provided for quotas for Dalits, Janajatis, Madhesis, women and people from underdeveloped regions, and the 2015 Constitution has guaranteed the participation of all at every level. The new constitution has, to a large extent, institutionalised this new power equation.

**“The fire of the Maoists’ armed struggle has been extinguished and the party has turned into one that believes in peaceful competition.”**

But the recent constitutional process has been criticised for a lack of public consultation, while the substance of the new statute contains compromises in relation to women's citizenship and political representation for marginalised communities, and has sparked protests in the Tarai and elsewhere. The Maoists acknowledge these contradictions and are also aware that the constitution has not fulfilled all of their agenda. In fact, they registered a total of 57 points of dissent on the present constitution. But the party has also noted, as in the Central Committee resolution of November 2015, that the adoption of the constitution ‘marks the end of one main tactical chapter raised by the great People's War and the historic people's movement’.

The revolutionary political party that had embarked upon the path of armed rebellion with an agenda of societal upheaval had, by the end of the constitution-drafting process, become a reformist power, through the peace process and the post-war transition. With the promulgation of the constitution, both the country's and Maoists' agendas have changed. There is disagreement though among the Maoists over the extent of both their achievements

and their failures, and over the reasons behind these different outcomes.

Baburam Bhattarai, a senior leader and ideologue of the ‘People's War’, has since abandoned the Maoists and founded a new political party. Talking to this author in February 2016, he asserted that he, ‘quit the Maoist party not because it was in the wrong until the promulgation of the constitution or even afterwards. I did not leave because of its agenda. I left because I believed that it would not be able shoulder its new responsibilities until it can break out of Prachanda's *bureaucratic Stalinism* and the web of corruption that has spread to the bottom of the party’.

Bhattarai's statement suggests that the Maoist party per se has not tilted too far to the right as much as its organisation and leadership have lost their way. The fire of Maoists' armed struggle has been extinguished and the party has turned into one that believes in peaceful competition. But it is well to remain aware that its political space is still on the left of the political spectrum.

When I reminded Prachanda in February 2016 of his ‘left-foot, right foot’ analogy of 10 years earlier, he responded matter-of-factly:

*We moved a considerable distance along the reformist path. But all of the constitutional provisions on Janajatis, women, Madhesis and Dalits were possible only through such a step. It is now time to take the left foot forward ... Until now, our emphasis has been on republicanism, federalism and inclusive electoral system. From here we will focus more on class issues and the party will move along the revolutionary path of class struggle.*

[Translated from the original Nepali by Manesh Shrestha]

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# Army and security forces after 2006

Sudheer Sharma

Two events in the past 20 years have had a big impact on Nepal's security sector: the Maoist insurgency (1996–2006), and the 2006 People's Movement. Together, these developments resulted in far-reaching changes in the overall structure and even role of the security forces.

Nepal's security sector consists of four different institutions: the Nepali Army, the Armed Police Force, the Nepal Police, and the National Investigation Department (NID). The Nepali Army is under the nominal authority of the Ministry of Defence while the other three sit under the Ministry of Home Affairs. The NID is an intelligence agency but since it is not so much in the public eye and has also generally been seen as ineffectual, it is less relevant to the discussion here.

## Dealing with the insurgency: from police to army

The Nepal Police tried to tackle the Maoists for the first five years of the conflict. But despite initial enthusiasm, it had become clear by the end of 2000 that the police had been more or less defeated, since they were neither trained nor equipped to take on a politically inspired and armed guerrilla force. Yet, the army could not be mobilised against the Maoists at this time for the simple reason that, although nominally subject to civilian authority, it was under the de facto control of the king and it was in the interest of the palace to allow the insurgency to fester, undermining democratic politics and the influence of the political parties.

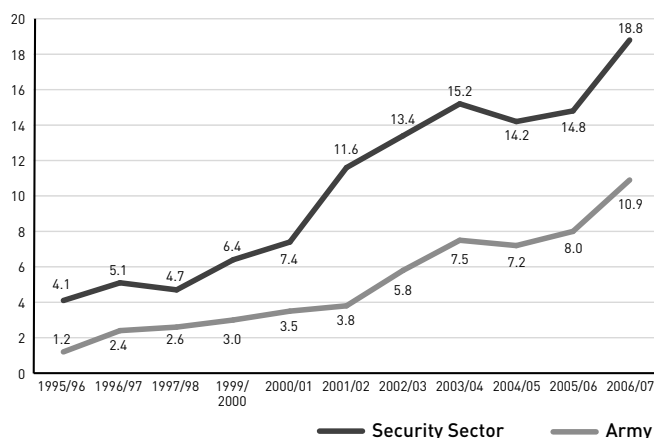
Hence, in 2001, the government decided to set up a paramilitary unit, the Armed Police Force (APF), to tackle the growing insurgency. Given the specific mandate of the APF to take on the rebels, the Maoists began targeting the new outfit and almost immediately put it on the

defensive. Actions such as the assassination of the founding chief of the APF in early 2003 helped the Maoists gain military ascendancy.

The Nepali Army entered the battlefield only after a direct Maoist attack on the military in November 2001. Thereafter, as part of its counter-insurgency strategy, the army brought the entire security sector under its umbrella following the concept of 'unified command', and for the remainder of the conflict the Nepal Police and the APF stayed in its shadow.

It was during the fight against the Maoists that the army expanded in both size and structure. Amidst comprehensive mobilisation of national resources and general international support, the army began an organisational restructuring, reviving a process that had stalled in 1990 following the restoration of democracy. The budgetary allocation for the army rose from less than a third of security sector expenditure in 1995–96 to nearly two-thirds in 2005–06 (Figure 1). The 54,000-strong force grew to 96,000, while the new organisational structure expanded correspondingly, from brigade-level to divisional commands. Six divisions were set up throughout the country and each of the 14 zones in Nepal housed at least one brigade.

The army also went on a spending spree. M-16 assault rifles from the United States and INSAS (Indian Small Arms System) replaced the standard issue Belgian FN 7.62 FAL (*Fusil Automatique Léger* – Light Automatic Rifle) of more than 30 years' vintage. Procurement also included



**Figure 1: Security Sector Budget: 1995/96–2005/06 (in billion NPR)**

Source: Deepak Thapa, *World Development Report 2011: Background Case Study, Nepal*, 2011.

a host of other automatic weapons, anti-mine vehicles, and night vision and bomb disposal equipment. The military air transport fleet expanded from around a dozen aircraft in 2001 to 27 three years later.

More significantly in terms of the broader power of the military, the deployment of the army in November 2001 coincided with the declaration of a national state of emergency and the introduction of an anti-terrorism law, which gave the army unchecked authority. Soon enough, the Nepali Army became complicit in the removal of a civilian government, not once but twice. When King Gyanendra sacked Prime Minister Sher Bahadur Deuba in October 2002 and staged a coup in February 2005, it was the army that stood firmly behind the monarch.

Paradoxically, it was this palace-army nexus that in fact brought the parliamentary parties and the Maoists together, and led to the accommodation enshrined in the *12-Point Understanding* of November 2005: 'to keep the Maoists' armed force and the Royal Army under the United Nations or a reliable international supervision during the process of the election of a constituent assembly after the end of the autocratic monarchy'. This historic agreement laid the basis for the 2006 People's Movement, the success of which enabled the reinstatement of the supremacy of the parliament, and, by extension, of civilian government.

## Towards civilian control

Within three weeks of the successful conclusion of the 2006 People's Movement, the heads of the Nepal Police, the APF and the NID were all sacked for their role in having tried to suppress it. No action was taken against the army chief of staff, but the legal framework was gradually amended with the objective of severing the special relationship between the army and the palace, thereby ensuring that the military would never again be part of any attempt at political change.

First, a declaration on 18 May 2006 by the reinstated House of Representatives not only stripped the king of all his powers, but also initiated legal and constitutional efforts to bring the army under civilian control. Thus, the 'Royal Nepali Army' became the 'Nepali Army'. Other changes, such as abolishing the royal title of supreme commander, and the appointment of the army chief of staff by the cabinet instead of the king, were also part of the declaration.

Later, in September 2006, the Army Act of 1959 was annulled and a new act was promulgated. The military secretariat at the royal palace was dissolved and thus the traditional relationship between the army and the king was successfully broken. Specific provisions were further spelt out in the Interim Constitution of 2007 to bring the army under the full control of the cabinet. Notably, the National Security Council under the prime minister for the first time did not include the army chief of staff – although this was changed in the 2015 constitution.

## Evolving political role

The Nepali Army, alongside the rest of the country, has been affected by the post-war transition. Throughout, the army has sought to resist constraints on its power and autonomy. The November 2006 *Comprehensive Peace Accord* (CPA) placed Maoist fighters and their weapons in cantonments under the supervision of the UN, but also required the Nepali Army to remain in barracks, with the same number of weapons as the Maoists' also stored under the watch of the UN.

Even though the storage of the Nepali Army's weapons was only symbolic, since they had far more weapons still in the open, this proved to be a source of persistent discontent with the military. Likewise, the provision in the 28 November 2006 *Agreement on Monitoring of Management of Arms and Armies* (AMMAA) allowing UN monitors 'access to any and all Nepali Army barracks for purposes of monitoring whether Nepali Army forces or weapons are being used for or against any party' did not go down well since it meant outside involvement in the army's internal operations. The CPA also barred fresh recruitment by the army and procurement of new military equipment.

The army was not happy with the UN Mission in Nepal (UNMIN), set up in January 2007, and its role in monitoring the management of arms and armed personnel of both the Nepali Army and the Maoist army, in line with the provisions of the CPA. The exit of the mission increasingly became the army's primary objective. In January 2011, the government led by Madhav Kumar Nepal of the Communist Party of Nepal-Unified Marxist-Leninist (UML) refused to extend UNMIN's tenure, even though the peace process



The army leadership waiting for their chief at Army Day celebrations in Kathmandu, March 2011. © Min Ratna Bajracharya

had not yet concluded, and so the UN body was forced to withdraw. The army's next priority was the disarmament of the guerrillas living in the cantonments, which was achieved in April 2012.

**“ As part of its counter-insurgency strategy, the army brought the entire security sector under its umbrella following the concept of ‘unified command’.”**

To give the Nepali Army its due credit, the country's transformation into a republic would not have been so smooth without its implicit support. The army had its own reasons for not obstructing the move to a republican dispensation. Realising that most Nepalis were against the king and that the international community, including India, also supported a republic, it did not want to take any risks. Its own past experience of being used as a tool of the king's ambitions, and the palace's failure to find alternatives when the international community stopped supplies of military hardware even as the fight against the Maoists continued, are also likely to have played a role.

Nevertheless, at the height of the most intense debates on issues such as republicanism, federalism and secularism, then-Army chief Rukmangad Katuwal

resisted the transformation agenda. In 2008 he took the extraordinary and highly controversial step of submitting written suggestions to the Constituent Assembly that such matters be decided through a referendum. Yet, apart from that one instance, the army did not openly take any position on political matters. Its main concern remained the disarmament of the Maoists.

There were two reasons for this. First, the Nepali Army was not happy that the Maoists' People's Liberation Army (PLA) had been given equal status in the CPA and AMMAA. Second, it felt that the Maoists could still potentially use the PLA to capture state power. After the formation of the Maoist-led government following the first CA election in 2008, antagonism between the Maoists and the Nepali Army began to increase. Katuwal remained uncharacteristically active throughout his tenure, while the Maoists tried to influence the army in different ways under the leadership of Pushpa Kamal Dahal Prachanda.

This hostility set the stage for a clash between the Maoist government and the army, culminating in the government's extreme step of trying to remove Katuwal. President Ram Baran Yadav revoked the Maoist move, however. Armed with the presidential order of reinstatement – which had in fact been issued in contravention of the Interim Constitution, since such a move was the prerogative of the cabinet – Katuwal continued as army chief. Prime Minister Prachanda decided to resign, in an echo of a similar episode from 2001 when Prime Minister Giirja Prasad Koirala had handed in his notice after the army had disregarded his instructions to take action against the Maoists. But, at that time the army was being shielded by



the monarchy, whereas in the latter case, the army had stood up to the government of a republican Nepal.

Thus, even though the Interim Constitution had brought the army under government control, in practice it appeared to be under the 'command' of the president, just as it had previously answered to the palace. After the Katuwal episode, the Nepali Army developed a sense of defiance towards government decisions or instructions. This suggests that the implementation of the principles of democratisation, inclusiveness and restructuring of the army is likely to remain a challenge in the days to come.

## Democratisation and inclusion

Article 144 of the Interim Constitution enjoined the government to 'prepare and enforce a detailed action plan on the democratisation of the Nepali Army', which would also decide on its size. In December 2009, the government formed a 'Committee for the Recommendation for the Formulation of the Plan for the Democratisation of the Army and Improvement of the Security Apparatus', with then-Defence Minister Bidhya Devi Bhandari (now the President of Nepal) as the convenor and four other ministers as members. This committee submitted a 'Detailed Plan for the Democratisation of the Nepali Army' in August 2010, but since the report has not been made public there has been no discussion on its contents.

If the principal aspect of democratisation of the army is complete civilian control over it, the first condition had to be ending dual control between the government and the president – as had become evident during the Prachanda-Katuwal confrontation. This shortcoming has been redressed in the 2015 Constitution, with the cabinet granted complete authority to mobilise the army – albeit at the recommendation of the National Security Council, which is itself under parliament's control. There is also the obligatory provision for the president to announce the mobilisation of the army, and parliament having to ratify such an action within a month. Likewise, the president appoints and removes the army chief, but only at the recommendation of the cabinet.

The Interim Constitution required the army to be 'national and inclusive' in character. Inclusiveness is linked to the idea that all of Nepal's social groups should have access to all levels of the army and thereby develop it as a nationally representative institution. In the past, the leadership of the army has always gone to officers hailing from Kathmandu-based elite families. Up until 2016, there have been only three army chiefs from non-elite backgrounds, all of whom came to office after the 2006 People's Movement. One of these was even a Janajati (a member of one of the recognised indigenous groups), which is significant

given the substantial participation of Janajatis historically in the Nepali Army.

Continuing the spirit of the Interim Constitution, the 2015 Constitution also states categorically that federal law shall guarantee the participation of women, Dalits ('low caste'), Janajatis and Madhesi (from the southern Tarai plains), along with other population groups 'on the basis of principles of equality and inclusion'. Although the relevant laws to pursue such a policy have not been drafted, it is noteworthy that an institution that represents among the most illiberal aspects of the Nepali state has begun to accept certain aspects of inclusion, including adopting the quota system now mandatory for all government recruitment.

The increase in the number of women and the establishment of separate ethnicity-based battalions for under-represented communities stand as further evidence of the army's readiness to own the concept of inclusion. Recruitment of women into operational branches of the army such as the infantry, as opposed to the earlier concentration in more technical branches, began in 2004 – although the shattering of gender barriers was first instigated by the significant participation of women on the Maoist side during the war. The army's ultimate goal is to have a total female strength of 5 per cent, and going by the data available at August 2016, it is currently around 1,000 short of that target. This compares with women currently representing only 2.5 per cent of the Indian Army, according to *The Guardian* (2016); 3 per cent of UN military peacekeepers, according to the UN (2016); and 15 per cent of the United States military, according to the *Huffington Post* (2016).

The army has also acquiesced in the political decision that was part of the *8-Point Agreement* with the United Democratic Madhesi Front in 2008. The agreement committed the government to 'ensure proportional, inclusive and mass recruitment of Madhesi and other communities to give the Nepali Army national form and make it inclusive'. Subsequently, separate battalions were raised for people of Tarai origin and for eastern Nepal Janajatis of Kirat background.

## Where next for army restructuring?

The size of the Nepali Army doubled in the four years or so that it fought the Maoists. Now that the conflict is over, it is pertinent to ask if the country needs such a large army during peacetime; whether the country can afford it; and, if so, what form the army should take. Restructuring of the army is linked to these fundamental questions.

The Maoists had proposed the formation of a national army by amalgamating the Nepali Army and the PLA. This did



not happen and neither were the Maoists able to force the issue. Instead, the disarmament of the Maoists was completed with the symbolic integration of only around 1,400 Maoist combatants into the Nepali Army [see *article on the People's Liberation Army after 2006*, p.46]. Despite general agreement on the need to restructure the Nepali Army, the political leadership appears quite unclear on how this should be done. After having tried and failed, the Maoists have subsequently shown little interest.

Since the main political parties are not committed to introducing structural reforms, the Nepali Army remains the most powerful, well-organised and, to some extent, the most autonomous institution of the Nepali state. It also represents one of the few national institutions that has not changed much in the post-2006 period. But in a context where the restructuring of the entire state is continuing, the restructuring of the army is all the more imperative,

particularly given its close links with the monarchy until recently. In fact, without the restructuring of the military, the restructuring of the state will not be complete. The professionalisation and modernisation of the military institution is possible only if this process can be moved in the right direction.

[Translated from the original Nepali by Manesh Shrestha]

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# People's Liberation Army post-2006: integration, rehabilitation or retirement?

Chiranjibi Bhandari

How to contain, disarm, rehabilitate and reintegrate members of the Maoist People's Liberation Army (PLA) were key questions after the end of the decade-long Maoist conflict in November 2006. But the principal actors remained divided on the modalities of the demilitarisation process and it took nearly five years before agreement could be reached on the ultimate fate of the PLA soldiers.

## Statutory provisions for demilitarisation

Three major peace process documents came one after another at the end of the war that were central to the post-war fate of the Maoist rebel fighters: the *Comprehensive Peace Accord* (CPA – 21 November 2006); the *Agreement on the Monitoring of the Management of Arms and Armies* (AMMAA – 8 December 2006); and the Interim Constitution of Nepal (15 January 2007). All of these dealt with the future of the 'Maoist Army' (as the PLA was referred to). Section 4 of the CPA addressed the 'Management of Army and Arms' while the AMMAA detailed the procedural and technical provisions related to that. Both agreements were included as Schedule 4 of the Interim Constitution.

Between February and March 2007, seven cantonments and 21 sub-cantonments were set up across the country to house the Maoist fighters. Arms monitors from the United Nations Mission in Nepal (UNMIN) were deployed to supervise the management of arms and armed personnel of both the Nepali Army and the PLA. Thereafter began the verification process by UNMIN of all combatants in the cantonments. UNMIN also chaired the Joint Monitoring Coordination Committee (JMCC), the body consisting of members of the Nepali Army and the PLA that was responsible for ensuring compliance with the CPA and the AMMAA by both sides.

The CPA and the Interim Constitution also had a provision for a special committee to 'supervise, integrate and rehabilitate' the combatants of the Maoist Army. The cross-party Special Committee for Supervision, Integration and Rehabilitation of Maoist Army Combatants was formed after the election to the first Constituent Assembly in April 2008.

The significance of the Special Committee's role increased dramatically with the withdrawal of UNMIN on 15 January 2011 at the behest of the government [see article on

*international support for peace and transition in Nepal p.27*].

A crisis was averted when an agreement was reached between the government and the Unified Communist Party of Nepal-Maoist (UCPN-M) on the eve of UNMIN's withdrawal, granting the oversight role for monitoring of combatants, cantonments and weapons to the Special Committee. Accordingly, on 22 January 2011, all the combatants came under the charge of the Special Committee.

## Endless differences

The fate of the ex-combatants in the cantonments was subject to debate and discussion for close to five years, with both sides refusing to compromise on their respective stances. The major issues of contention revolved around the integration of the PLA into the Nepali Army, the handover of Maoist armaments and the mode of rehabilitation. Table 2 outlines the contrasting positions held by the two sides.

“ The concept of voluntary retirement was unique and is not part of common international practice. ”

Despite continuing differences, there was some progress such as the December 2009 agreement on the discharge of minors and late recruits (see Table 3 for definitions). Accordingly, over January and February 2010, 4,008 combatants were disqualified due to their age or time of recruitment. Other disagreements were finally resolved in November 2011 with the *Seven-Point Agreement*, which outlined three options for ex-combatants: 1) integration into the Nepali Army; 2) rehabilitation; and 3) voluntary retirement. The agreement also specified that up to 6,500

**Table 1: Agreements and activities related to the PLA**

Agreements/Activities	Date signed
King Gyanendra concedes power and reinstates House of Representatives	24 April 2006
CPN-Maoist declares unilateral three-month ceasefire	27 April 2006
Girija Prasad Koirala takes office as prime minister and invites Maoists for talks	30 April 2006
Agreement on Code of Conduct for Ceasefire	26 May 2006
Government and Maoists invite UN to manage arms and troops	4 July 2006
<i>Six-Point Agreement</i> between Seven-Party Alliance and CPN-Maoist on arms management and other political issues	8 November 2006
<i>Comprehensive Peace Accord</i> (CPA)	21 November 2006
<i>Agreement on the Monitoring of the Management of Arms and Armies</i> (AMMAA)	8 December 2006
Interim Constitution promulgated	15 January 2007
United Nations Mission in Nepal (UNMIN) established	23 January 2007
Verification of Maoist combatants	15 June to 27 December 2007
Formation of Special Committee for Supervision, Integration and Rehabilitation of Maoist Army Combatants	28 October 2008
Formation of Technical Committee of Special Committee	16 April 2009
Agreement to discharge disqualified combatants	16 December 2009
Discharge process	7 January to 8 February 2010
UCPN-M formal handover of cantonments to Special Committee	22 January 2011
<i>Seven-Point Agreement</i>	01 November 2011
Distribution of first and second instalments of voluntary retirement package	1 to 14 January 2012; 31 October to 10 November 2012
Integration process into the Nepali Army	5 July to 20 November 2012
Special Committee dissolved	12 April 2013

Maoist combatants would be integrated into the Nepali Army, but only if they fulfilled its ‘fixed standards’ for entry – although there was some relaxation of these standards in terms of age, educational attainment and marital status.

### Integration, rehabilitation or retirement?

By the time of the *Seven-Point Agreement*, the number of combatants had decreased considerably. A total of 32,250 combatants had entered the cantonments at the beginning

**Table 2: Contrasting positions vis-à-vis the PLA**

Issue	UCPN-M	Other political parties
Number	The maximum possible number into the Nepali Army	The minimum possible number into the Nepali Army
Modality	Entry into the Nepali Army as a group	Entry into the Nepali Army as individuals
Norms	Assumption of PLA as an established army, so no need to follow the Nepali Army’s recruitment criteria	Nepali Army’s basic criteria need to be met to enter the army
Determination of rank	Recognition of existing PLA rank	Nepali Army to determine rank, following the completion of necessary basic training course
Model of rehabilitation and voluntary retirement	Voluntary retirement scheme with attractive cash package	Priority on rehabilitation, focusing on capacity and skill development of combatants for dignified life in society
Arms handover	After completing the peace process	Before the combatants integrate into the Nepali Army

of the peace process. Only 19,602 had got through the verification process conducted by UNMIN: 8,640 were absent during verification and a further 4,008 were disqualified for being minors (2,973) or late recruits (1,035). When the regrouping process began along the three options outlined in the *Seven-Point Agreement* (integration, rehabilitation and voluntary retirement), 94 combatants were recorded as being dead, suspended or having deserted. A further 2,456 were found missing, a fact that led to some tensions at the political level, particularly on the perceived misuse of allowances that had been provided on the basis of the headcount of combatants.

Of those remaining, initially 9,702 chose integration into the Nepali Army and 7,344 voluntary retirement; only six opted for rehabilitation. These choices also reflected a simmering internal rift within the UCPN-M, between factions led by party leader Prachanda (which favoured integration) and Vice-Chair Mohan Baidya Kiran (which favoured voluntary retirement). The latter saw integration in the terms agreed as a humiliating choice for ex-combatants and a new form of recruitment for the national army. The number of those in favour of joining the army declined still further after the Special Committee allowed combatants to take the final decision over their own fate: in the second and

third rounds of the process, only 3,123 and then 1,460 decided to go for integration. Indeed 38 of these later chose voluntary retirement due to health or other reasons. The final tally of ex-combatants who opted for the army was only 1,422 (104 of whom were women), while 15,630 sought to reintegrate back into society.

The concept of voluntary retirement was unique and is not part of common international practice. International actors and donor agencies had in fact rejected such an option given the experience of the lethal combination of money, guns and combatants in other post-conflict societies. Their emphasis was more on the rehabilitation package that consisted of around three dozen schemes related to formal and vocational education.

“ Given international donors’ hesitancy about the cash package, the Government of Nepal had to come up with the funds from the national treasury.”

**Table 3: Ex-combatant facts and figures**

Registration and verification process by UNMIN	Total	Male	Female
Number of registered combatants	32,250		
Absent during the verification process (automatically disqualified)	8,640		
Disqualified combatants (minors and late recruits)	4,008	2,791	1,217
<i>Minors (born after 25 May 1988)</i>	2,973	1,987	986
<i>Late recruits (who joined the PLA after 25 May 2006)</i>	1,035	804	231
Number of combatants verified	19,602	15,756	3,846
Number of weapons registered and stored in the containers	3,475		
Number of combatants in 2011, after verification by the Special Committee	Total	Male	Female
Number of combatants absent in the regrouping process	2,456		
Dead, suspended and deserted	94		
Total number of combatants present during the categorisation process	17,052	13,494	3,558
Total number of combatants selected for integration (percentage)	1,422 (8.3%)	1,318 (9.8%)	104 (2.9%)
Total number of combatants opting for voluntary retirement (percentage)	15,624 (91.6%)	12,170 (90.2%)	3,454 (97.1%)
Total number of combatants opting for rehabilitation (percentage)	6 (0.04%)	6 (0.04%)	0 (0%)

Source: UNMIN, 2007 and the Secretariat of Special Committee, 2012



Maoist combatants celebrate the 8th PLA day at the Hattikhori cantonment in Nawalparasi district, February 2009. © Kiran Panday

The rehabilitation option proved to be the least attractive, however, with just six ex-combatants choosing it. And, contrary to the assumptions and expectations of both national and international stakeholders, voluntary retirement proved to be overwhelmingly popular, with 90 per cent of the ex-combatants deciding to take the one-time cash payments that ranged from NPR 500,000–800,000 (approximately USD \$5,000–8,000) depending on rank. Given international donors' hesitancy about the cash package, the Government of Nepal had to come up with the funds from the national treasury.

Despite all the delays in the demilitarisation process for the PLA, Maoist former combatants were successfully demobilised. And, unlike in many other post-conflict societies, there has been no violation of the peace process; nor was there any challenge from the ex-combatants to decisions made by the government or the Special Committee. At present, a number of former members of the PLA are active in all the Maoist political factions, but a significant majority are not and appear quite alienated from party politics, primarily as a result of the many fissures seen in the party they had fought for.

It is believed that 15 to 20 per cent of the ex-fighters are working as migrant labourers in the Gulf and other countries. Of those who have settled down in Nepal, most reside near the cantonments that were home to them for five years, and where there are better facilities and livelihood options compared to their own places of origin. Yet, there are questions about continued discrimination against ex-combatants and the problem of integrating them into the very social order dominated by exclusion on the basis of caste, class and gender, which these former guerrillas sought to fundamentally transform and dismantle. [see interviews with Suk Bahadur Roka and Lila Sharma on pp.50 and 52]

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# Post-war Nepal – view from the PLA

## Interview with Suk Bahadur Roka

After Pushpa Kamal Dahal Prachanda became prime minister in 2008, he relinquished his position as Commander of the Maoist People's Liberation Army (PLA). Taking over from him was Nanda Bahadur Pun, arguably the most well-known of the four Deputy Commanders of the PLA. In 2015, after the promulgation of the new constitution, Pun was elected the second Vice-President of the country. Joining him as his Principal Private Secretary was Suk Bahadur Roka 'Sarad'. Roka was in charge of the 5th Division Cantonment in Rolpa, and later the 2nd Division Cantonment in Sindhuli after the PLA had been distributed among seven cantonments and 21 satellite camps in 2006. He hails from Jelbang in Rolpa, the village which experienced the highest number of killings in Nepal during the Maoist insurgency. Actively involved in Maoist politics since 1990, Roka went underground in 1995 following police operations in Rolpa.

### On PLA cantoning

When it was agreed that there would be an election to the Constituent Assembly, the Nepali Congress and the [Communist Party of Nepal–Unified Marxist-Leninist] UML were worried about our arms. In the Kamidanda meeting [27–31 August 2006] we agreed that we would stay in temporary camps, but on condition that the Nepali Army returned to barracks during the election.

### On the situation of two armies

Each time the people had been deprived of their rights it was done with the help of the army. That's why the army had to be reformed. Now, the king and the army are no longer part of the same institution: the army has become more professional and has been brought under the parliament. There cannot be two armies. But the old army needed a new structure into which the new army [the PLA] could be integrated.

Today, the army has become the backbone of the state again. Let's hope that what used to happen in the past – the monarchy and the army working together to take away the rights of the people – will not happen in the future. But the democratisation of the army has to continue. It takes time to change the culture of any institution.

### On PLA recruitment after 2006 ceasefire

I cannot speak for other places, but in Rolpa at that

time the people who joined up were not 'brand new' recruits – they had served in the village militia or in other formations but were not attached to the main forces. There had been fighting everywhere and so everyone who joined had had such experience. Being chased by the police and the army was normal in those days.

The idea was to keep the force intact. There was no talk of integration at the time. The Constituent Assembly was not certain either. There could be a breakdown of talks and when that happened we would have to fight again.

### On deserters from the cantonments

Around 200 left from the 5th Division and 300 from the 2nd Division. Initially, it was people not used to army life who quit, but later people who had fought left, too. In the end, the majority of deserters were fighters who did not see any future for themselves. The war had ended. Some actually said straight to my face: call us if the fighting begins again but we're now going home.

The monthly allowance was 3,000 rupees [around USD 30] with only food provided, not even clothes. Outside the cantonment even as a labourer they would be able to earn 7–8,000 rupees [USD 60–80]. When 500,000 rupees [USD 5,000] was later offered for retirement, people regretted having left earlier. But, except for those who were abroad, had been prosecuted for criminal offences, or did not get

the information, anyone who came back to the camp was readmitted. After all, we knew they had fought. When they had left, we did not have money. And, if the state is going to provide the money, why not?

#### **On PLA involvement in negotiations**

We were hardly ever consulted. For instance, after the integration, some of those who had opted to join the Nepali Army decided to leave, either because they were not able to complete the training or because they did not want to stay. Without asking either us or the army, the top leaders of the parties decided that PLA members who had joined the army would receive only half the amount offered to those who had taken voluntary retirement. Apparently, some people even questioned why they should be given anything at all. What crime had they committed to be penalised in such a way?

**“ In the end, the majority of deserters were fighters who did not see any future for themselves. The war had ended. Some actually said straight to my face: call us if the fighting begins again but we’re now going home.”**

#### **On integration**

When [Maoist leader] Prachanda came with the integration package, we told him to do whatever he wanted. He was our commander and is now our leader, so we had to follow him. We did not say anything in public. Just like the army has to follow the command of the state, the PLA also had to go with what the party orders. We were never allowed a voice; there were no consultations with us. We did not go to the media either, because we did not want to disrupt the peace process. I left my camp and did not go back even for the integration process. My heart was broken by how things were decided.

#### **On the 2013 election**

In the last election, I told Prachanda that the party was going to lose for four reasons. First, the requirement for voter IDs, which our core supporters in the villages did not have. Second, the split [in the party in 2012] had had such a deep impact that no one had a positive opinion of the Maoists. If the other faction were to call for a boycott, we would lose votes. If they were to take part in the elections, our vote would be divided. Third, where would the funds for the election campaign come from? Those



who fought in the conflict had nothing with which to fund the campaign. And the party had no money. So, it was going to be only the rich from our party who would fight the election. That would dilute our party's identity and a party without an identity of its own would not win. Fourth, our cadres were disheartened.

Prachanda would not believe me and instead asked me where I wanted to stand for the election from. I told him, 'I have gone around with a gun. Why should people love me, and why should they vote for me?' I haven't lived in Rolpa since 1998. And there are people like Mahara, Ananta, Onsari, Pasang, Jhakku, [senior Maoist leaders from Rolpa] and others from parties that have joined us. I would never stand a chance. Also, an election campaign would cost four or five million rupees. I told him, 'Comrade, if I had four or five million rupees, I would build a house and not get involved in all these hassles.' I told him, 'Comrade, don't worry about me. Worry about whether we'll win or lose the election.'

#### **On the current state of the party**

The biggest problem now is that the PLA fighters are mostly from peasant backgrounds: during the conflict, being able to fight was sufficient qualification; in today's politics, only those with an education are considered qualified. This is the main schism within the party. I myself would not be in my position if I did not have a bachelor's degree. Other division commanders do not. Of all those integrated in the army, not a single officer comes from Rolpa for the simple reason that they don't have an SLC [school leaving certificate] or degree.

The collapse in commitment within the party stems from the fact that the cadre who were in the frontline ready to give up their lives are now on the sidelines, and they are disheartened. They are the roots of the party. Without watering the roots, no matter how big the plant is, it will not grow.

# PLA women's experiences of war and peace

## Interview with Lila Sharma

Lila Sharma 'Asmita' is head of the Former PLA Women's Academy, an organisation set up to help former women fighters of the Maoist People's Liberation Army (PLA). She was a Brigade Vice-Commander in the PLA at the time the combatants entered the cantonments. Born and raised in Dang district, just south of the Maoist heartland of Rolpa, she was the first woman to rise to the rank of battalion commander in the Maoist 'base areas' of mid-western Nepal.

### **On PLA recruitment after ceasefire**

We enticed people into the PLA by saying that if they enlisted, they could later join the Nepali Army. At that time, anyone who helped us, people who cooked food for us, provided shelter or guided us along the trails, all asked us to take their children. When we were coming from the Gandak region, I had a force of 100–125. By the time I entered the Sangram barrack in Dang, I was leading 500.

### **On joining the Young Communist League (YCL)**

We were persuaded to enter the cantonments by being told that the Constituent Assembly was our primary agenda. One group would stay outside to force the CA election should the other parties oppose it. The other group would be involved in training in the cantonments. The question was, who would stay outside? It was decided that the more active among us would come out. So, I with a few of my female colleagues came out in the open as the YCL. We decided not to join the verification process and, after setting up the brigade barracks in Dang, I left the cantonment.

The commanders chose some of us for a political role, and we chose those below us. Of course, we also took into account people's wishes. We selected those who were good at organising, who understood politics.

The ones who had fought in the war generally had to be forced to stay back in the cantonments. They asked if the whole point of joining the fight was for a government job. But the ones who entered the PLA in droves after the People's Movement did not want to come out.

### **On the political developments**

I rejected an offer to become a candidate in the first CA election. I didn't want to go into government, to become a CA member or a minister. My commitment was to the revolution. I am still in the party but I really do not have a deep interest in it now. All the sacrifice, the tears of our comrades, comrades who have been wounded or disabled – there is no sensitivity towards that. There is little reason now to be satisfied with Nepal's political culture – from the Nepali Congress, to the UML [Communist Party of Nepal–Unified Marxist-Leninist], the Maoists or smaller parties.

Since the Kharipati meeting [the national assembly of Maoist cadres in 2008] I have been in agreement with the agenda of Kiran [*nom de guerre* of Mohan Baidya, who led off a splinter Maoist faction in 2012]. I believe that Prachanda Ba [literally, the honorific, father] has deviated from our goal; the party has to change its ways.

### On women and the party

There were many women at all levels during the war. But after the peace process started, only those who could talk politics and deal with the media became established. These were generally the men, who were now free since they had wives to look after the children at home, to cook the food. During the war, men and women shared responsibilities, but it turns out that this was not because the men had become enlightened, but because of the situation.

During the war, we gave up everything. I got married after the peace process started, when I was nearing 30. Women in the PLA started getting married then, and immediately started having children. That meant they had to stay at home to look after the family while the men were free to do other things. That's the reason there are very few women active in the party today.

### On women's influence post-2006

Not a single woman was included in the negotiating teams at the political level. Neither were any women included in the PLA and Nepali Army teams negotiating the integration process. Prachanda never disagrees with us when we meet him about increasing women's role. Just a few days ago, we had a meeting of the central committee and he said the participation of women would be raised to 33 per cent. But all the while the central committee has been expanded, and women still make up less than 10 per cent. I think there is the feeling that women are perhaps not capable of the job. And, to some extent, it is also true that there are very few women at the grassroots. All the women who joined during the war have since become disheartened and have detached themselves. Very few of the women who were in the PLA are still in touch with the party.

### On the breakdown of marriages after 2006

When we started out in Dang, there were few of us women, but many men of marriageable age. We used to receive many proposals. Who could we choose? I could not marry outside the PLA because the villagers would not accept me for being a Maoist. Neither could the men marry outside. When there was no one else, a Bahun man married a Kami woman, a Kami man married a Bahun woman. What else could we do?

Marriages between Dalits ('low caste') and non-Dalits have broken down, but so have all kinds of unions. Let me use a metaphor. Yesterday, there was a room in which everyone lived together – men and women. You had to choose from among them. Now, everyone has come into the open and found there is a great variety outside. As a result, women



have found other partners, and men have too. That is the reality.

### On the Ex-PLA Women's Academy

At one of the meetings of women who had been in the PLA [in 2014], we all agreed that we had achieved nothing. We had sacrificed everything: mother, father, husband, children. We still have bullets in our body, we are disabled, we are still injured. We decided to set up an organisation through which we would preserve our history since we are living proof that women are capable of fighting. So, we decided to set up a museum for ourselves.

There was also the question of who is a PLA woman and who is not. For us, the UN's verification is not important. For us, anyone who fought, even if it was for just two months, they are ex-PLA. In our estimation, in total – counting every woman who worked over the 10 years of the fighting, who left after being wounded, and so on – there are around 10,000 of us.

Not only would the organisation help ex-PLA women but also work against violence against women in society. My friends did not believe the party would provide any help. But we hoped to seek funds to help the women and their children. We have not been successful so far but we have set our priorities and have also made plans and policies.

We have identified five issues. First, the biggest need for women at the moment is counselling. Second, training to make them self-reliant. Third, work to end violence against women, particularly rape. Fourth, seek cheap loans and help women to become entrepreneurs. Fifth, find schools that are willing to help the children of those who are fully incapable, such as when both parents have been paralysed after being injured in the war.

# Looking back at the CPA: an inventory of implementation

Deepak Thapa

The Maoist conflict effectively ended when the Maoists declared a ceasefire on 27 April 2006, just three days after the victorious close to the second People's Movement. But it was not until seven months later that hostilities formally ceased with the 21 November signing of the *Comprehensive Peace Accord* (CPA) between the Government of Nepal and the Communist Party of Nepal-Maoist (CPN-M). For that reason, the CPA is considered the most important document in Nepal's post-2006 peace process.

Given that it laid out the terms and conditions to bring the conflict to an end, the CPA is fairly exhaustive. Its various sections deal with different aspects of the conflict, and much of it is devoted to matters such as outlining how a ceasefire would operate, how human rights standards would be adhered to, how differences would be settled, and how the CPA itself would be implemented.

But on a couple of crucial matters the CPA is quite incomplete. The first relates to the issue of the two mutually antagonistic armed forces. The CPA lays out just the broad contours of how the Maoist's People's Liberation Army (PLA) and the Nepali Army would operate. The actual modalities were spelt out in the Agreement on Monitoring and Management of Arms and Armies (AMMAA), which was finalised on 8 December 2006. These two agreements are inextricably linked, made clear from the fact that they were coupled as Schedule-4 in the Interim Constitution 2007.

The second is that the CPA deals only rather cursorily with the even more important question of what it terms 'the Political-Economic-Social Transformation and Conflict Management'. It recognises that such a transformation is necessary for an end to the conflict, but provides few details on how an inclusive system of governance is to be created through restructuring of the state. That commitment in the CPA is made in reference to various earlier pacts reached between the Seven Party Alliance (SPA – formed in 2005 by seven major political parties following the royal takeover of government) and the Maoists, including the *12-Point Understanding* of November 2005, and the *8 November 2006 6-Point Understanding* [see article on peace accords, p. 13]. The latter is a more substantial document in this regard, and is acknowledged as such in the CPA: 'The decision taken by the meeting of high level leaders of the Seven Political Parties and the CPN-Maoist on November 8, 2006 shall be the main policy basis for long term peace' (Article 6.2).

But the CPA is still consequential since it has been the main document that has guided the peace process throughout the long transitional period.

## Most promises kept?

Given the complexity of issues at the time the CPA was signed, any inventory of its provisions has to acknowledge that Nepal has been spared a relapse into war. In that sense, despite infractions by both the PLA and the Nepali Army, the CPA and the AMMAA were able to keep the two armed parties in check. The country has also witnessed a peaceful transfer of power numerous times, including by and to the Maoists, and has also been through the chaotic adoption of a new constitution. Yet, the peace has still held. But it is also true that the spirit of the CPA was able to prevail because of the scores of deals made afterwards – among and between political parties, and between the government and various violent and non-violent dissenting groups. Thus, the promises inherent in the CPA are now reflected, if somewhat imperfectly, in the new constitution and different government policies.

“These achievements have been marred by instances such as the curtailment of women's right to pass citizenship on to their offspring and the weakening of the spirit of secularism.”

The expectation of the CPA that the election to the Constituent Assembly would be held by 15 June 2007 was, in retrospect, somewhat optimistic, and indeed proved premature by almost a year. But the preliminary groundwork required for the election, primarily the





Distribution of citizenship papers in Bhardaha in the Tarai district of Saptari, January 2008. © Min Ratna Bajracharya

adoption of the Interim Constitution and the formation of the Interim Legislature-Parliament, took place fairly seamlessly.

The most significant aspect of the CPA was the reiteration of the commitment to the 'inclusive, democratic and progressive restructuring of the state by eliminating the current centralised and unitary form' (Article 3.5). Neither the CPA nor the Interim Constitution that followed explicitly mentioned federalism in the context of replacing the centralised state, even though the CPA provision was widely interpreted to mean that. The First Madhes Movement in early 2007 ensured through constitutional amendment that state restructuring would include federalisation into different provinces. It is the differing conceptions of a federal Nepal that have stood in the way of a complete realisation of that objective so far.

The record on inclusion and the end of discrimination envisaged by the CPA has been mixed, but tilts towards the positive. More than 50 legal provisions that discriminated against women have been amended, caste-based discrimination has been criminalised, local languages have been given official sanction, reserved quotas have been introduced in education and in government service, separate commissions have been mentioned in the

2015 Constitution for different marginalised groups, and secularism has been retained. Yet, these achievements have been marred by instances such as the curtailment of women's right to pass citizenship on to their offspring and the weakening of the spirit of secularism by unnecessarily providing a limiting definition of what secularism means.

The CPA also contains aspirational language that reflects the worldview of the Maoists, such as protecting and promoting national industries and resources, and more generally creating a conducive environment to increase investment and generate employment, and granting all citizens the right to education, health, shelter, employment and food. Both the Interim Constitution and the 2015 Constitution mentioned free basic health care and education up to the secondary level, but while basic health services have been provided, free education has only extended to the primary level. Other provisions have just remained commitments on paper, such as prosecuting corrupt holders of public office.

### Big omission

There is one area, however, where the CPA has not lived up to its promise, and that is on the issue of transitional justice. The CPA provides for a High-Level Truth and Reconciliation Commission (TRC) to investigate grave

violations of human rights and crimes against humanity in the course of the conflict, with the objective of enabling social reconciliation after a period of horrific impunity. While the omission of accounting for the thousands of people who were forcibly disappeared during the war was soon rectified by court order, it took nearly eight years before the TRC and the Commission of Investigation on Enforced Disappeared Persons were set up [*see article on transitional justice, p.32*].

It is not yet clear what form justice for victims of the conflict will take. The law that enacted the commissions has been criticised in-country and internationally for promoting

impunity. Despite repeated assurances, all evidence indicates that it is not a priority area for the government or the major parties that have come to power, almost all of which are implicated in the manner in which the war was conducted. This is evident both from the delay in establishing the two commissions, and the way in which successive governments have been less than forthcoming in allocating the necessary resources. International pressure certainly played a key role in ensuring that these transitional justice mechanisms were finally put in place. But, equally compelling was the fact the TRC was clearly provisioned in the CPA, a document that is not possible for any of the major political parties to disown.

# Section 2

## Political process

The quid pro quo of the peace deal between the Maoists and the Seven-Party Alliance (SPA) representing the Nepali state has provided the backdrop for all politics in the post-2006 period: the rebels would enter into competitive politics, while the SPA conceded to an elected Constituent Assembly to write a new constitution.

And although there were indications that a 'New Nepal' would have to accommodate many new political forces, in their final negotiations towards the CPA, the two sides failed to anticipate the rise of identity groups, in particular, Madhesis (from the Tarai plains) and Janajatis (indigenous groups). Discussions in the political sphere have since revolved mainly around accommodating the demands of these groups, on questions such as federal design, the electoral system, or greater inclusion in state bodies. But progress has been uneven as stronger, more established interest groups have managed to successfully undercut calls for a more inclusive state.

The first **Constituent Assembly** (CA) elected in 2008 transformed the balance of power in favour of new political forces. Its inclusive composition notwithstanding, the first CA was unable to agree on a new constitution and the basic parameters of an inclusive state. **Krishna Hachhethu** asserts that, by the time of the second CA in 2013, more traditional parties and forces had regained their influence. Differences between progressive and conservative agendas dictated negotiations on key issues. Ultimately, the new formal decision-making architecture of the CAs has not been able to contain the influence of traditional, informal power structures, as major decisions have continued to be made by male leaders of the major parties, outside of the purview of the CA.

**Dipendra Jha compares Nepal's 2007 and 2015 constitutions** and the trajectory of commitments made to social inclusion. He focuses on key issues of quotas for

marginalised communities, guarantees of representation for the Tarai, and implementation. He argues that the fact that Madhesis and Tharus boycotted the recent constitution-making process, while Janajatis also opposed key provisions, exposes the shortcomings of the new statute. The extent of marginalised communities' frustration will make resistance to change difficult to sustain in the long term.

**Sujeet Karn traces the evolution of Nepali political parties.** Post-war tension between the agendas of the new and the more traditional parties has defined the development of Nepal's political settlement to date, albeit through different permutations within the respective blocs. Factionalism and ruptures have affected almost all parties, driven by personality clashes and opportunism as much as ideological differences, and this fragmentation has restricted the capacity of the new political forces to achieve progressive change.

Nepal's peace agreements demanded a more inclusive **electoral system**. But the parties could not agree on an arrangement that was purely proportional. **Kåre Vollen** explains that the resultant mixed system of proportional representation and first-past-the-post has brought some progress for greater representation of groups that have historically been electorally marginalised. But the way compromises have been brokered has meant that privileged communities, including some Madhesi castes and Janajatis, have been able to maintain important and consequential advantages while continuing to exclude the truly marginalised.





Crowds begin celebrating outside the Constituent Assembly in anticipation of Nepal being declared a republic, 28 May 2008. © Kiran Panday

The 2015 Constitution affirmed Nepal's commitment to **federalism**. But, as **Krishna Khanal** stresses, the failure to uphold the interests of especially Madhesi communities in relation to the configuration of federal provinces leaves major questions unanswered. Federalism has been the main vehicle by which to reconfigure the power structure of the Nepali polity and so has been especially divisive – seen by some as a zero-sum transaction between the apparently contradictory aspirations of advancing inclusive representation and sustaining national unity. Khanal contends that further compromises will be needed to amend the new constitution in the future.

The history of the federalism debate in Nepal can be traced back to the 1951 political transition that marked the end of the Rana dynasty and Nepal's first taste of democratic politics. **Deepak Thapa** annotates a series of bespoke **maps to illustrate the progression of the federal agenda in Nepal**. The combination of chronology and cartography provides insights into Nepal's changing political geography, and how various interest groups' priorities have shaped the evolution of federal restructuring up to the present day.

Struggles for democracy in Nepal were not initially directed at the **monarchy**, but as the Maoist war progressed the palace became increasingly assertive and autocratic in the political sphere. **Gagan Thapa** states that the 2001 royal massacre was pivotal in undermining the legitimacy of King Gyanendra's rule, thereby helping to validate the Maoists' cause and, ultimately, hasten the end of the war and the onset of the Nepali republic.

**Bandita Sijapati** laments that **local governance** has been both neglected and instrumentalised in post-conflict Nepal. The Maoists had targeted local bodies as part of their policy to replace the 'old state' with 'people's governments'. Post-war interim measures – the All-Party Mechanism and Local Peace Committees – have either failed to engage political power and therefore lacked leverage, or have succumbed to recurring patterns of clientelism and partisanship. Continuing failure to address local governance will undermine the foundations of state legitimacy and capacity that are the building blocks of peaceful change.

# Legislating inclusion

## Post-war constitution making in Nepal

Krishna Hachhethu

Agreement on a new constitution has been a key objective of the Nepali peace process and a measure of progress on inclusion. The trajectory of constitution-making during the first and second Constituent Assemblies (CAs I and II) in Nepal in 2008–12 and 2013–15 has been determined by the nature of the social contract and the political compromises reached. This article traces the four main dimensions to the drafting of the constitution: context, participation, negotiation and outcome.

### Context

The Interim Constitution of 2007 (and its various amendments) conceded that the Nepali state had been exclusionary in terms of caste, ethnicity, language, religion, region and gender. It provided directive principles for the new constitution to lay the foundations for substantive equality among Nepal's diverse social groups. This unprecedented admission by the state arose from four main events that marked a manifest change in Nepal's dispensation: 1) the Maoist insurgency (1996–2006); 2) the April 2006 popular uprising (the People's Movement); 3) the November 2006 *Comprehensive Peace Accord*; and 4) the post-war explosion of ethnic movements, particularly the successful Madhes uprisings of 2007 and 2008 [see article on social movements, p.97].

The April 2008 election for CA I brought a sea change in the balance of power, in favour of new political and ethnic forces. The Communist Party of Nepal-Maoist (CPN-M – later the Unified Communist Party of Nepal-Maoist, UCPN-M) emerged as the largest party with 238 of 601 seats. The traditional parties, the Nepali Congress (NC) and the Communist Party of Nepal–Unified Marxist-Leninist (UML), came a distant second and third, with 115 and 108 seats respectively. The four Madhes-based parties together had a substantial 87 seats.

There was also a distinct shift in the social composition of the CA. Representation of the dominant Khas Arya group (comprising the 'upper caste' Hindu groups with origins in the hills) declined from the nearly two-thirds it enjoyed in the three parliaments of the 1990s, to around one-third in CA I. Representation of many marginalised groups increased: for Janajatis (indigenous groups) from approximately 25 to 36 per cent; Madhesis (excluding Janajati from the Tarai plains) from 12 to 24 per cent; and Dalits ('low caste') from practically nil to eight per cent. The biggest jump was seen in women's representation, from five to 33 per cent.

**“By the time of CA II, mirroring changes in Nepal's political settlement, there was a palpable shift in international priorities to favour stability over inclusion.”**

The presence of so many advocates for change in CA I was also reflected in its agenda, which deliberated many progressive, inclusive and even radical issues. These



included, among others, secularism, multilingualism, identity-based federalism, self-determination, collective rights for ethnic groups, preferential rights for marginalised groups, inclusive electoral design and proportional representation. But, despite the extension of its tenure from the original two years to four, CA I could not find an acceptable compromise between progressive and conservative priorities and failed to deliver a new constitution.

In the meantime, the context had changed. The caste, ethnic and political composition of CA II was quite different to its predecessor, due to developments such as the rise of ethnic movements led by Bahun-Chhetris to counter Janajati and Madhesi influence. The Khas Arya (which refers collectively to Bahuns and Chhetris along with the other 'high-caste' communities, Thakuris and Sanyasis) increased their seats from around 33 to 42 per cent in CA II. Concomitantly, representation of Janajati, Madhesi, Dalits and women went down quite substantially – from 215 to 189; 145 to 120; 49 to 41; and 197 to 176, respectively [see *article on the electoral system*, p. 72].

The November 2013 CA II election upheld the trend in Nepal of voting against incumbency. During CA I, the government had changed four times before a non-party government was put in place to hold the CA II elections. The UCPN-M and the UML roughly split leadership of those governments between them, while Madhes-based parties were represented throughout. However, given the hopes for tangible progressive change with which the UCPN-M and the Madhes-based parties had been elected, disenchantment with their performance was stronger and was manifested clearly in the CA II election results.

The traditional parties, the NC and the UML, shared a common position on major contentious issues on the proposed constitution and stormed back to power in CA II with a combined 389 seats (NC 206 and UML 183) – just 12 short of the 'magic number' needed for a two-thirds majority that would allow them to pass the new constitution themselves. Some other parties that are considered equally or more conservative on issues of ethnic identity and inclusion secured among them 52 seats. The newer political forces that had gained ground after the end of the war got only 146 seats: UCPN-M 84, Madhes-based parties 50, and parties representing Janajatis 12.

## Participation

There was a marked drop in public participation in the constitutional process between the first and second Constituent Assemblies. Among Nepalis seeking a break from the past, CA I had engendered hope of a kind not seen previously. Its mission of creating a 'New Nepal'

and institutionalising the transformation of the basic attributes of the Nepali state – from a kingdom to a republic; from Hindu to secular state; from a unitary to a federal system; and from an exclusionary polity to inclusive democracy – generated enthusiastic engagement of people from different walks of life, especially from marginalised communities. CA I also made concerted efforts to engage civil society and experts in both the content and process of constitution-making. For instance, 549,763 written submissions were received by CA I during a 25-day nationwide public outreach in February-March 2009. All of this was missing in CA II: public participation was negligible, and there were no serious initiatives to engage either expert opinion or civil society.

Whereas CA I had been open to comparative knowledge on constitution-making from other parts of the world, over time international support was increasingly portrayed as nurturing ethnic activism and, by extension, societal discord. By the time of CA II, mirroring changes in Nepal's political settlement, there was a palpable shift in international priorities to favour stability over inclusion.

CA I was more receptive to the collective voice of its members and allowed a role for both a formal women's caucus, and informal caucuses of Janajatis and Dalits. Positions taken by especially the Janajati caucus at times defied the wishes of senior leaders of the political parties. For instance, when the Committee for Restructuring of the State and Division of State Powers sought to take decisions by majority vote, the Janajati and Madhesi committee members representing the UML went against the party line. They voted in favour of an identity-based federal model for Nepal comprising 14 provinces, along with the right of the titular ethnic group to the post of chief minister of the respective province for the first two terms. In fact, in May 2012 the Janajati caucus, chaired by prominent UML leader Prithvi Subba Gurung, revolted against a political understanding of the major parties, including his own, and stalled an initiative to demarcate and name the federal provinces.

CA II prohibited caucuses altogether while the sudden acceleration of the constitutional process following the earthquakes of April 2015 imposed constraints on participation and deliberation. A first draft of the new constitution was submitted on 28 June 2015. Only two days were set aside for public consultations, on 20 and 21 July. A revised draft was then submitted on 22 August. General discussions on this lasted just five days (23–27 August), after which only seven days (30 August to 5 September) were given for the submission of proposed amendments. 'Voice voting' on a total of 308 articles was completed in



Newly elected members of the first Constituent Assembly take the oath of office, 27 May 2008. © Kiran Panday

four days (13–16 September), and then the new constitution was finally promulgated on 20 September 2015.

## Negotiation

The procedure for drafting the constitution was laid out in the 2007 Interim Constitution: decision by consensus, and failing that by a two-thirds majority of the CA. There was also a space in between these two processes for parliamentary party leaders to intervene to seek consensus. Ultimately, though, decision-making lay with the senior leadership of the major political parties – NC, UML, UCPN-M and the Madhes-based parties – outside the purview of either of the CAs. Both the 22-Point Agreement of 15 May 2012 (CA I), which nearly led to a constitution, and the 16-Point Agreement of 8 June 2015 (CA II), which actually did, resulted from such high-level bargaining.

In the CA itself, consensus proved elusive from the very beginning. Apart from the Committee for Protection of Fundamental Rights of Minority and Marginalised Communities in CA I, and the Review Committee (formally known as Committee on Constitution Records Study and Determination) of CA II, all the other committee reports resulted from a majority decision. The removal of the monarchy as a common enemy after the end of the war made it much harder to forge a mutual position. Polarisation among political parties further contributed to the failure to achieve consensus, including over power sharing during the making and unmaking of governments,

and key constitutional issues, such as the type of government, federalism and the electoral system.

Although both the CAs broadly reflected Nepal's social and ideological diversity, negotiations were largely split between one (more conservative) side led by the traditional parties (NC and UML) and the other (more progressive) side led by the UCPN-M in alliance with Madhes-based parties, and, in the case of CA I, the Janajati caucus. This neat bifurcation began with the thematic committees, and moved up through the Constitutional Committee of CA I, and the Committee on Constitutional-Political Dialogue and Consensus (CCPDC) of CA II – both of which comprised representatives of all political parties in the respective CAs and included their senior leadership.

**“CA II effectively disallowed any kind of caucusing, for instance by the NC, the UML and the UCPN-M issuing party whips against proposing amendments to the draft constitution and also during voting.”**

Differences between the two sides came to a head around major contentious issues: the form of government – parliamentary versus presidential versus a mixed system; the electoral system – first-past-the-post (FPTP) versus proportional representation (PR) versus a mixed system; territorial federalism versus identity-based federalism; whether or not to maintain a Constitutional Court; and provincial representation in the Upper House of the national parliament – an equal number from each province or based on population size.

The Constitutional Committee of CA I and the CCPDC of CA II both formed sub-committees to resolve points of contention between the parties in the thematic committees. The five-member Dispute Resolution Sub-Committee of CA I was headed by Pushpa Kamal Dahal Prachanda, UCPN-M Chair, and included the senior leaders from the NC, UML, the Madhes-based parties, and one small party, the CPN (United). It was able to resolve some differences, such as on a bicameral parliament at the national level and unicameral assembly at the provincial, and overall reduced the number of contentious issues from 288 to 117.

The remaining 117 contentious issues were handed over to the CCPDC in CA II, headed by senior UCPN-M leader Baburam Bhattarai. The new nine-member Dispute Resolution Sub-Committee was headed by Laxman Lal Karna from one of the Madhes-based parties, and consisted of second-tier leaders of both big and small parties. It was able to come up with recommendations to resolve many of the outstanding issues – for example, proposing equal weight to FPTP and PR in the distribution of parliamentary seats, maintaining a Constitutional Court for a limited period, and proportional representation of all the aggregated social groups in both elected and non-elected state apparatus, including the judiciary. But still it could not suggest a solution to the federal design.

In any case, the CCPDC rejected these recommendations and tensions between progressive and conservative agendas continued to undermine progress. For example, in November 2014 the NC and the UML, along with some smaller parties, presented an alternative proposal that pushed for FPTP instead of a mixed electoral system, for a parliamentary system, and for territorially based federalism with seven provinces.

In CA I, the different caucuses comprising CA members across political parties were able to include identity-related rights in the reports of the CA committees. But CA II effectively disallowed any kind of caucusing, for instance by the NC, the UML and the UCPN-M issuing party whips against proposing amendments to the draft constitution and also during voting. This was despite the fact that, although

the party whip was recognised in the CA's function as the Legislature-Parliament, the CA rules had no provisions for the whip in the constitutional business of the CA. Some CA members from the NC initially defied the whip but later had to relent. Hence, the role of Madhesi, Janajati and Dalit CA members along with women representatives was confined to serving as lobbying groups within their respective parties.

## Outcomes

The May 2012 22-Point Agreement had sought compromises on key disputed issues, specifically: a mixed government system; a mixed electoral system with greater weight for FPTP (60 per cent) compared to PR (40 per cent); and the provision of a Constitutional Court for limited period. On federalism, the agreement suggested 11 provinces while deferring decision on names and boundaries to a federal commission. However, the ruling UCPN-M subsequently backtracked on the agreement, under pressure from the Janajati caucus and the Madhes-based parties over the failure to decide on the federal structure, as well as from Maoist hardliners over an associated deal to hand over leadership of the government to the NC after promulgation of the new constitution.

The 16-Point Agreement of June 2015 upheld many of the terms of its May 2012 predecessor, while diverging on key issues such as the adoption of a parliamentary system, and reducing the number of federal provinces to eight – although again it deferred decision on demarcation and denomination respectively to a provincial assembly and a federal commission. Since this deferral contravened Article 138 of the Interim Constitution, which states that the CA 'shall determine the number, boundary, names and structures of the autonomous provinces', and which was also confirmed by a Supreme Court decision, the senior leaders of the major political parties eventually agreed on seven provinces.

Subsequent negotiations in the circuitous journey to the 2015 Constitution further compromised constitutional commitments to support inclusion [see *article comparing the 2007 and 2015 constitutions*, p.64]. This trend has been especially stark in the progress of federal design. Identity as the primary basis for constituting federal units was retained up to the June 2015 agreement, but was subsequently severely weakened. The provision of autonomous regions as ethno-political territories, previously listed as 'agreed' by the Committee for Study of Constitution Records and Determination, was not considered at all in the draft of 2015 Constitution, while the jurisdiction of provinces was also reduced. The agreement of June 2015 succeeded where previous attempts had

failed, largely because the ruling coalition of the NC, the UML and other like-minded parties had a combined strength of 407 seats in CA II, more than required to push through a constitution, whereas the coalition of the UCPN-M and Madhes-based parties in CA I had only 325 seats, or 54 per cent.

The new constitution of Nepal is paradoxical. It was adopted by 85 per cent of the CA membership, far beyond the threshold of formal and legal legitimacy, but many Janajatis and Madhesis feel strongly that the charter is restrictive on questions of identity, minority rights and inclusion. The breadth of ownership of the constitution is also highly contested for the following reasons:

1. An alliance of 33 registered parties led by the CPN-M, a splinter group of the UCPN-M, boycotted the CA II election.
2. Nine of the 31 parties with representatives in the CA II dissociated themselves from the constitution-making process from the moment of the 16-Point Agreement.
3. A total of 64 of the 73 members of the Committee on Constitution Drafting registered dissenting opinions individually and collectively: some of these were against republicanism, secularism and federalism, but most related to ethnic rights, identity-based federalism, proportional representation and other issues to do with inclusion.
4. The constitution was promulgated during major unrest over the constitution in the Tarai, home to more than half the country's population, which was characterised by violent agitation, curfews, declaration of riot-hit areas, the deployment of security forces, including the army, and shootings.
5. The constitution was actually drafted by a small group of 15 influential men from the three major parties, all of whom but one were from the Khas Arya group. This group consisted of a troika of senior leaders plus two politician-cum-legal experts each from the NC, UML, and UCPN-M, with the rest of the CA membership having no say in the drafting.

**“ Identity as the primary basis for constituting federal units was retained up to the June 2015 agreement, but was subsequently severely weakened.”**

For some, the promulgation of the new constitution is the final destination of Nepal's peace process. This has some limited veracity in relation to the Maoist insurgency – although major gaps are evident even here, in relation to transitional justice, for example. But there remains significant risk of the revival of ethnic movements by Janajatis and Madhesis in the future. Hence, despite its apparent formal legitimacy, the new constitution needs to be amended to respect the voices of identity and inclusion – in order to broaden that legitimacy and consolidate peace for all Nepalis.

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# Comparing the 2007 and 2015 constitutions

Dipendra Jha

Nepal is a multi-ethnic, multi-lingual and multicultural country with a population comprising diverse social groups. Among the multitude of castes and ethnicities, certain communities have been marginalised for centuries, namely Dalits ('low caste'), Madhesi (from the southern Tarai plains), Janajatis (indigenous groups) and Muslims, along with women from all sections of society.

The decade-long Maoist insurgency and the Madhes movements of 2007 and 2008 made significant steps in addressing the issue of marginalisation of under-represented communities, which was reflected in the principle of proportional inclusion in state structures enshrined in the 2007 Interim Constitution of Nepal and its various amendments.

Following the election for the second Constituent Assembly (CA) in 2013, Madhesi and Janajati forces urged that the Interim Constitution provide the basis for the new constitution, to expand on the rights of the people already granted by it. By contrast, the more traditional of Nepal's political parties, the Nepali Congress (NC) and the Communist Party of Nepal-Unified Marxist-Leninist (UML), viewed the Interim Constitution as only a temporary arrangement that could not dictate the terms of the CA.

Many Madhesi and Janajatis feel that the new constitution promulgated in September 2015 backtracked on important aspects of social justice in the Interim Constitution. This article compares Nepal's 2007 and 2015 constitutions in terms of commitments to social inclusion, focusing on key issues of reservations (quotas) for marginalised communities, guarantees of representation for the Tarai region, and implementation.

## **Institutional inclusion: reservations**

The 2006 *Comprehensive Peace Accord* (CPA) between the government and the Unified Communist Party of Nepal-Maoist (UCPN-M) called for an end to discrimination and exclusion based on caste, ethnicity and gender, but also

for state reform. Echoing the CPA, the Interim Constitution emphasised the state's responsibility to carry out 'an inclusive, democratic and progressive restructuring of the state ... by eliminating class, caste, linguistic, gender, cultural, religious and regional discrimination' (Article 34.5).

Marginalised groups had lobbied for reservations during the 1990 constitution-making process but were ignored at the time. The only form of reservation provided for some communities under the 1990 Constitution of the Kingdom of Nepal was in the 60-member Upper House of the Parliament, whereby Article 50 guaranteed reservations for three women, three Dalits and nine representatives from 'backward' minorities. None of the four previous constitutions (1948, 1951, 1959 and 1962) had provided for any kind of reservations for marginalised groups either in government jobs or political positions.

The Interim Constitution introduced the right to social inclusion for the first time in Nepal's constitutional history. Under Article 21 on the 'Right to Social Justice', it specified that: 'Women, Dalits, Adivasi Janajati, Madhesi, oppressed groups, poor farmers and labourers, who are economically, socially or educationally backward, shall have the right to



participate in state structures on the basis of principles of proportional inclusion.’

Many, although not all, Nepali laws were subsequently amended to provide reserved quotas for marginalised communities, beginning with the 2007 amendments to the Civil Service Act, which resulted in increased representation of marginalised groups in the public sector. The Government of Nepal also introduced a number of measures for the inclusion of marginalised groups in its plans, policies and programmes. The recommendations from the various thematic committees of the first Constituent Assembly further reinforced the agenda of making the state more inclusive.

### Reservations and the Khas Arya

Citizens’ rights to equality, justice and non-discrimination are ingrained principles that reaffirm the idea of inclusion in Nepal’s 2015 Constitution, which in some areas has carried over relevant provisions from the Interim Constitution. For instance, the new constitution guarantees 33 per cent representation for women in the House of Representatives, the lower chamber of Parliament, and also in provincial legislatures. It also provides for ‘proportionate inclusion’ in government service (Article 285), which, in principle, would mean that the government would begin to reflect the country’s social diversity.

However, the new constitution also dilutes important commitments to greater inclusion by increasing the number of groups qualifying for reservations, and by using vague language that can be interpreted in different ways. Some marginalised communities have been pushing for revisions that can better uphold their interests. But the provision on the ‘Right to Social Justice’ in the new constitution identifies many more ‘clusters’ for reservation, a significant proportion of which are poorly defined, while the incorporation of the Khas Arya (a historically advantaged, ‘upper caste’ group) among the new groups qualifying for reservations adds a more specific complication.

Initially, a total of 17 groups were mentioned in the new constitution as deserving special attention: ‘Women, Dalit, indigenous people, Adivasi Janajati, Madhesi, Tharu, minorities, persons with disabilities, marginalised communities, Muslims, backward classes, gender and sexual minorities, youth, farmers, labourers, oppressed or citizens of backward regions, and indigent Khas Arya shall have the right to participate in state bodies on the basis of principles of inclusion’ (Article 42).

Heeding the demands of Madhesi and Janajatis, the first amendment of the constitution in January 2016 changed ‘principles of inclusion’ to ‘principles of proportional inclusion’. Previously, ‘proportionate inclusion’ had been guaranteed only to women (Article 38) and Dalits (Article 40). The amendment also removed ‘youth’ and the superfluous ‘indigenous people’ (already covered by Adivasi Janajati), and re-ordered the groups as: ‘Women, Dalit, Adivasi Janajati, Madhesi, Tharu, Muslims, backward classes, minorities, marginalised communities, persons with disabilities, gender and sexual minorities, farmers, labourers, oppressed or citizens of backward regions, and indigent Khas Arya’. Article 42 also includes the qualifier ‘who are economically, socially or educationally backward’ for the above groups, although it is not clear to which groups such a description applies or if it meant for all.

**“ The 2015 Constitution has also provided reservations to the already dominant Khas Arya, a group that is overwhelmingly represented in all state structures.”**

Besides cluttering the list with undefined groups such as ‘backward classes’, ‘minorities’ and ‘marginalised communities’, all of which terms are also applicable to the historically marginalised, Article 20 shows how the 2015 Constitution has also provided reservations to the already dominant Khas Arya, a group that is overwhelmingly represented in all state structures. The addition of the Khas Arya stands against the principle of proportional inclusion and implies a potential reduction of positions reserved for marginalised communities as well as for women. Further, none of the communities other than the Khas Arya has been defined under the Constitution of 2015 (Article 176.6), effectively giving constitutional validity to the four groups described as belonging to this category while denying such validity to the more than a hundred that belong to the marginalised. This was a blatant instance of the Khas Arya, who were in leading positions in all the major parties represented in the Constituent Assembly, misusing their power to fulfil their own needs.

Hence, under the new constitution, the Khas Arya community can lay claim to the reservation facility under five of the 15 eligible categories – as women, as labourers, as farmers, as belonging to backward regions, and as ‘indigent’ Khas Arya (as well as disabled people and gender and sexual minorities). It is true that poverty affects all communities, including the Khas Arya, but rather

than address this through a programme aimed at poverty reduction, the 2015 Constitution has instead envisaged the reservation policy as a means towards that end, instead of recognising reservations as being aimed at empowering marginalised communities.

The 2015 Constitution has also provided for a National Inclusion Commission whose ‘functions, duties and powers’ state that it is to engage in various activities for the welfare of ‘the Khas Arya, backward classes, persons with disabilities, senior citizens, labourers, farmers, minorities and marginalised communities, people from Karnali and the poor’. Once again, the Khas Arya have been clearly identified whereas more excluded groups have been lost in a long list of undefined categories of people.

## Representation and the Tarai

The Interim Constitution had ensured that the Tarai, which is home to half of Nepal’s population, would secure seats in the CA in proportion to the region’s population under the first-past-the-post (FPTP) part of the election. Nepal’s electoral system is split between FPTP and proportional representation (PR). In relation to inclusion more broadly, under the terms of the Interim Constitution, 58 per cent of the membership of both Constituent Assemblies was elected through PR – a deliberate design meant to increase the representation of marginalised communities. The new constitution has reduced this proportion to 40 in the federal parliament as well as the provincial legislatures.

The mandate given to the Constituency Delimitation Commission under the Interim Constitution was to ‘determine the number of members to be elected on the basis of the population of each district ... maintaining as far as practicable proportionality between the

number of members and the population of the districts’ (Article 154A.6). Under the present constitutional dispensation, the number of constituencies has a higher significance since 60 per cent of the legislative seats at both the federal and provincial levels will be elected directly through the FPTP system.

The new constitution weakened this commitment, whereby the Constituency Delimitation Commission would ‘consider geography and population as the basis for representation, and maintain as far as practicable the equal ratio or proportionality between geography, population and the number of members’ (Article 286.5). The equal weight given to geography and population would mean the Tarai, which covers only 17 per cent of the country’s territory but holds 50 per cent of the population, would lose out. The first amendment made the basis of delineation to be population first, and only then geography, in order to provide more seats to the Tarai. But because each district is also to have at least one electoral constituency and with the hills and mountains accounting for 55 of the country’s 75 districts, it is yet unclear whether or not the southern plains will get seats in proportion to their population [*see article on federalism, p.75*].

Further, the time period to re-delineate electoral districts has also been doubled from every 10 years in the Interim Constitution, following the decennial census, to every 20 years in the new statute. This arrangement is likely to reduce representation from the Tarai over time, given the migration patterns of people from the hills to the Tarai; the percentage of Pahadis (people of hill origin) living in the Tarai rose from six to 36 per cent between 1952 and 2011.

Representation in the Upper House of Parliament (National Assembly) is also a challenge. The new

**Table 1: Social diversity in the judicial sector (until March 2016)**

Courts	Total Judges	Women	Bahun-Chhetri	Dalit	Madhesi	Muslim	Janajati
Supreme Court	21	3 (14%)	15 (71%)	0	2 (10%)	0	4 (19%)
Appellate Court (Chief Judge)	16	1 (6%)	12 (75%)	0	1 (6%)	0	3 (19%)
Appellate Court (Justice)	80	4 (5%)	58 (73%)	1 (1%)	7 (9%)	4 (5%)	10 (13%)
District Court	180	1 (1%)	163 (91%)	0	3 (2%)	1 (1%)	13 (7%)

**Note:** The percentage totals add up to more than 100 due to the fact that women belong to all the social groups mentioned in the subsequent columns.

Source: Judicial Council, *Bulletin* (in Nepali), Push 3, 2072, Year 12, Issue 12 (December 18, 2015), and Judicial Commission’s nomination of new justices to Supreme Court on 1 March 2016.

constitution states that each of the agreed seven federal provinces shall send eight representatives to the National Assembly (including, encouragingly, at least three women, one Dalit, and one representing people with disabilities or a minority community). But it also means that Province 2, the only province that comprises exclusively Tarai districts and which has a population size of 5.4 million, will have the same representation in the National Assembly as Province 6, with just 1.5 million people.

## Implementation of the constitution

The new constitution appears to guarantee proportionate inclusion in all state structures. But commitments to implementing this provision are still very limited, while actual performance since the constitution was promulgated does not instil confidence for the future. 'Proportionate inclusion' is referred to only twice in general, in Articles 42 and 285, and then twice specifically with regard to women and Dalits, in Articles 38 and 40. In relation to the government, the new constitution simply states that both federal and provincial cabinets shall be formed 'in accordance with the inclusive principle'. But the two governments established since its promulgation have not promoted this principle, suggesting that it will not, in fact, be followed faithfully in the future.

The new constitution at least declares that the 'inclusive principle' would be followed in appointments to constitutional organs and in nominating ambassadors, while political parties would also be required to follow it. But even this weak assurance has not been mentioned in the case of the judiciary, and the nomination of justices to the country's Supreme Court in March 2016, six months after the promulgation of the constitution, was an example of utter disregard of the 'inclusive principle'. This is particularly stark given that the judiciary displays a distinct lack of diversity, as illustrated in Table 1.

## Conclusion

Nepal's quest for a new constitution needs to be understood in the context of its people's long struggle for democracy that started in the 1940s, and for inclusive democracy that started in the early 1990s. The 2015 Constitution of Nepal was needed because previous statutes did not meet the aspirations of the citizenry. But the fact that Madhesi and Tharus boycotted the recent constitution-making process,

while Janajatis have also opposed various provisions, exposes the major shortcomings with the new constitution as a guarantee of social inclusion.

Important assurances of inclusion that were enshrined in the Interim Constitution have subsequently been clawed back in the new statute. The Directive Principles are illustrative of this regression. In the Interim Constitution, the Directive Principles asserted that one of the objectives of the state was to enable marginalised groups to 'participate in all organs of the State structure on the basis of proportional inclusion' (Part 4 – as agreed in the first amendment). The Directive Principles of the 2015 Constitution, however, simply declare that the objective of the state shall be 'a just system in all aspects of the national life through the rule of law, values and norms of fundamental rights and human rights, gender equality, proportional inclusion, participation and social justice'. Further, the Preamble in the new constitution mentions building 'an egalitarian society founded on the principles of proportional inclusion and participation'. This dilutes the provision of social inclusion from a legal perspective, because a proportionally inclusive *state* carries an *obligation* for the state, whereas proportionally inclusive *society* has no such connotation.

There are deep divisions over special constitutional provisions to help excluded groups – between on the one hand, the Khas Arya group, which broadly enjoys greater access to power, and on the other, Madhesi, Tharus, Janajatis, Dalits and women, who do not. Influential leaders of some major political parties are against the system of reservations. But it will be very difficult for the major parties to refuse reservation policies in the long term, as the prospect of strong and prolonged opposition from marginalised communities would pose a challenge to the survival of the constitution itself.

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# Political parties, old and new

Sujeet Karn

Nepal's political parties were handed a mammoth task following the restoration of democracy in 1990, having been sidelined by the monarchy for three decades. There were high expectations that the parties would work towards a united and prosperous Nepal with the guarantee of freedom and equality for all citizens.

But it soon became apparent that they were ill-equipped for such a responsibility. Erratic politics post-1990 and the Maoist insurgency from 1996 encouraged the king of Nepal to assert himself politically. The country reacted with the April 2006 People's Movement, the second such uprising against the monarchy in a generation. The movement was able to oust the king and re-establish the supremacy of the people.

The most potent symbol of the political parties' return to power came on 18 May 2006, when the restored House of Representatives issued a declaration that essentially eliminated the king's influence. In November 2006, the Seven-Party Alliance (SPA) of major political parties and the Communist Party of Nepal-Maoist (CPN-M) signed the *Comprehensive Peace Accord* (CPA). This paved the way for the enactment of the Interim Constitution and elections to a Constituent Assembly (CA), and the explicit exclusion the monarchy from the political system. Given that the palace had had at least a nominal role in all the previous five constitutions of Nepal.

This article traces the evolution of political parties after 2006. Given the large number of active parties in Nepal, with 25 represented in the first CA and 30 in the second, and many more that did not qualify, it deals with only the major parties and others that are significant in some way to the post-war transition. It does not look in depth into the factionalism that has been prevalent in almost all of the parties, and which has led to frequent splits and subsequent mergers among them, because these schisms have mostly been caused by personality clashes and opportunism rather than by ideological differences.

One exception has been the CPN-M, which has undergone numerous divisions since 2006, with all splinter groups accusing the main party of having deviated from the ideals that underpinned the 'People's War'.

The discussion divides the parties into two groups: 'old' parties that existed before the 2006 transition, and 'new' parties that have been founded since then.

## Old parties

Democratic politics in Nepal has its roots in India. The Nepali Congress (NC) and the Communist Party of Nepal (CPN) – the progenitor of all of Nepal's communist factions, including the two currently main ones, the CPN–Unified Marxist-Leninist (UML), and the CPN-Maoist Centre (CPN-MC) – were both founded in India in the late 1940s. With the impetus provided by a sense of political awakening in a newly independent India, Nepali political activists behind the parties had the express objective of overthrowing the Rana oligarchy and establishing democracy in Nepal.

Following the success of the anti-Rana movement in 1950–51, a number of other parties emerged to take

advantage of the more open political atmosphere. But it took until 1959 before the first elections were held, in which the NC won a two-thirds majority and formed Nepal's first democratic government. In less than two years, however, the king ended the democratic exercise and ushered in 30 years of direct monarchical rule under the partyless Panchayat system.

The advent of multiparty democracy in 1990 opened up space once again for political competition and a number of new parties were formed, including the Rastriya Prajatantra Party (RPP), established by monarchists associated with the Panchayat system. The three general elections held in the 1990s, however, proved to be largely a two-party tussle between the NC and the UML.

### **Nepali Congress (NC)**

Due to its long history of democratic struggle, the NC claims the mantle of chief protagonist of multiparty democracy in Nepal. With a stated ideology of 'democratic socialism', the NC has in fact adhered to liberal centre-right policies, even after 2006. Despite having been thwarted twice by the monarchy, in 1960 and again in 2002, and marred by continuous infighting, the NC has made a significant contribution to Nepal's political transformation towards a secular, republican polity. Many NC leaders have expressed scepticism towards federalism and secularism, but the party has been flexible since the 2006 transition, and has, at least in principle, embraced progressive agendas such as proportional representation and positive discrimination for marginalised groups.

The NC came second (to the Maoists) in the first CA (2008–12), but made a comeback as the largest party in the second CA (2013–15) and led the government until the promulgation of the new constitution in September 2015. During the drafting of the constitution, the NC allied with other elite powers to protect their traditional power bases and backtracked from many of the progressive commitments stipulated in the 2007 Interim Constitution.

### **Communist Party of Nepal–Unified Marxist-Leninist (UML)**

When it was formed in 1991 through the merger of two major communist factions, the UML was seen as advocating radical change. In 1993, it adopted the 'People's Multiparty Democracy' political programme to create a space for an ostensibly communist party within a multiparty system. This contrasted with its earlier, more established communist ideal of a 'New People's Democracy'. The UML has since behaved more like a social democratic than a communist party, while retaining its name for the sake of historical legacy.

The UML has avoided taking a conclusive stance on federalism beyond broad endorsement. But it took a rigid position against using identity as the basis for delineating federal boundaries, which led some senior leaders, mainly belonging to Janajati (indigenous) groups, to desert the party following the dissolution of the first CA in 2012. However, this approach did not hurt the UML electorally and in fact seemed to contribute to a much better performance in the 2013 CA elections, in which it emerged as the second largest party.

“ Due to its long history of democratic struggle, the NC claims the mantle of chief protagonist of multiparty democracy in Nepal.”

### **Rastriya Prajatantra Party (RPP)**

True to its origins as the pro-Panchayat party, the RPP remains the epitome of conservative politics in Nepal. It fought both the 2008 and 2013 CA elections as two separate factions. The more conservative RPP-Nepal came fourth in the 2013 ballot, just behind the Maoists. The RPP has sporadically stood for the return of the monarchy, and the RPP-Nepal was the only party to vote against the motion to declare Nepal a republic in May 2008. But while it has vacillated on the monarchy, it has been unambiguous and persistent in its calls for Nepal to revert to a Hindu state, which seems to have been a major resource for the RPP-Nepal's electoral success in 2013. The two factions merged in November 2016.

### **CPN-Maoist Centre (CPN-MC)**

The former CPN-M is now known as the CPN-MC. It is the latest name of the party that emerged after 1990 as the CPN-Unity Centre through the merger of two major factions of an influential strand of Nepal's communist movement. While the party itself remained underground, it contested elections through the United People's Front Nepal, and came third in the 1991 poll. By 1994 the CPN-Unity Centre had split. The more radical faction adopted the name CPN-Maoist in 1995, and launched the 'People's War' a year later. After the end of the conflict in 2006, the CPN-M re-entered parliamentary politics and joined the Interim Legislature-Parliament and later the government. It took part in the 2008 CA election advocating a platform of radical change and became the largest party in the first CA.

In January 2009, the CPN-M merged with a faction of the earlier CPN-Unity Centre and became the Unified



CPN-M (UCPN-M). Like other parties, the Maoists were riven by factionalism – divided between pragmatists, and the hardliners who continued to call for radical steps to transform Nepali state and society. Soon after the first CA was dissolved in 2012, a number of influential leaders, including the Vice-Chair, left the party to (re)form the CPN-M – the latest in a long line of such splinters, as previous splits since 2006 had usually involved a fairly prominent leader walking out to form what they claimed to be the ‘real’ CPN-M, in protest at the mother party deviating from its original, revolutionary rationale. But the 2012 split was far more consequential, since it drew away the cadre of committed party hardliners, who then campaigned against the UCPN-M in the 2013 CA election (even while boycotting it), contributing to the poor showing of the main party.

The breakaway CPN-M, which began calling itself the CPN-Revolutionary Maoist, underwent a further split in 2014 with an even more radical faction claiming to be the CPN-M. Meanwhile, the UCPN-M suffered a major blow when one of the most visible faces of the Maoist party, former Prime Minister Baburam Bhattarai, quit the party just days after the promulgation of the new constitution in September 2015. He has since established a new political party, Naya Shakti (‘New Power’). Meanwhile, in May 2016, the UCPN-M merged with nine other Maoist parties – all of which were post-2016 splinters – and renamed itself the CPN-Maoist Centre. This included some of the biggest leaders of the CPN-Revolutionary Maoist, although the latter also continues a separate existence and, along with the CPN-M, remains one of two main Maoist factions outside the CPN-MC [see *article on the transformation of the Maoists for a detailed discussion of Maoist policies and programmes after 2006*, p.37].

## New parties

In the period after 2006, the older parties have been through substantial changes in their organisational structures, policies and programmes, electoral support bases, geographical spread and functioning. For instance, most have set aside seats for different excluded groups in various tiers of their parties. But they have also had to contend with new parties that emerged through appeals to regional and ethnic identity groups. A number of these new forces have been instrumental in shaping the post-2006 political landscape, introducing alternative discourses for the state and how it should be restructured.

Most prominent among these are the parties based in the southern Tarai plains. The Nepal Sadbhavana Party was the sole party advocating the rights of Madhesis throughout the 1990s and early 2000s, but since 2006 a plethora of Madhes-based parties have come to the fore. Madhesi

parties secured 87 out of 601 seats in the first CA to form a powerful bloc, particularly compared with the NC and the UML, which had just over 100 seats each. In the second CA, the Madhesi parties performed very badly and won only half as many seats – partly due to the splits that had appeared in every Madhesi party in the interim.

“**The Nepal Sadbhavana Party was the sole party advocating the rights of Madhesis throughout the 1990s and early 2000s, but since 2006 a plethora of Madhes-based parties have come to the fore.**”

### Madhesi Janadhikar Forum Nepal

#### (MJF-N – Madhesi People’s Rights Forum, Nepal)

The MJF-N started out as an advocacy movement to raise awareness of Madhesi issues in the early 2000s. By 2007 it had developed a functioning network of grassroots activists, and it led the first Madhes Movement in 2007 [see *article on social movements*, p.97]. It registered as a political party just before the 2008 CA election and was able to attract a number of Madhesi and Tharu leaders from the bigger parties. The MJF-N won an impressive 54 seats in the election, the largest return among the Madhesi parties.

Over the course of the first CA, however, the party suffered two major splits – into the MJF-Democratic (MJF-D) in 2009 and the MJF-Republican (MJF-R) in 2011 – and was reduced to just 12 seats. A further split followed the dissolution of the first CA, as another leader walked out to form the Rastriya Madhes Samajwadi Party (National Madhes Socialist Party). The different factions of MJF-N were able to garner a combined total of just 27 seats in the second CA, and, in an even bigger blow, the MJF-N itself won fewer seats than the breakaway MJF-D.

### Tarai Madhes Loktantrik Party

#### (TMLP – Tarai Madhes Democratic Party)

To align with the larger identity struggle of Madhesis, some prominent Madhesi leaders from established parties came together to form the TMLP in December 2007. The party performed relatively well in the first CA, winning 21 seats. In 2010, a faction of the party split to form the Tarai Madhes Loktantrik Party-Nepal (later renamed the Tarai Madhes Sadbhavana Party), leaving the TMLP considerably weakened. In the Second CA, the TMLP won only 11 seats.

### **Nepal Sadbhavana Party (NSP – Nepal Goodwill Party)**

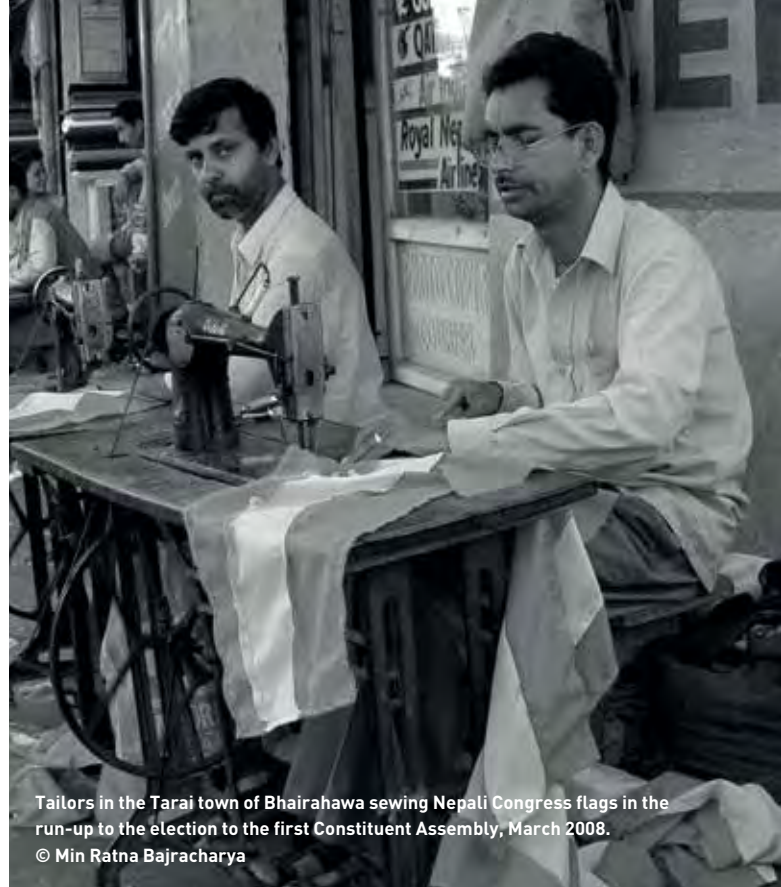
The other major party in the Tarai is the NSP, or rather the various factions that it has now split into. It has an older history than the new parties, and was beset by factionalism following the death of its founding leader, Gajendra Narayan Singh. Like the other Madhesi parties, these different factions saw their share of seats decline between the first and second CAs, from 12 to seven. Following various splits and mergers, there are currently three strands of the party: the NSP, the Sadbhavana Party (SP) and the Nepal Sadbhavana Party (Gajendra).

### **Other parties**

Other parties formed since 2006 include the Sanghiya Samajwadi Party (Federal Socialist Party), established by Janajati leaders disenchanted with the UML's position on federalism. It performed dismally in the second CA election, winning just five seats. In June 2015, it merged with the MJF-N and the little-known Khas Samabesi Party (Khas Inclusive Party) to become the Sanghiya Samajwadi Forum-Nepal, bringing a section of Madhesi and Janajati political activists under a common platform, particularly on the issue of inclusion and identity-based federalism.

Some parties have the specific goal of creating homelands for particular Janajati groups, among the more prominent of which are: the Tharuhat Tarai Party Nepal, which stands for a separate Tharuhat state for Tharus in the western Tarai; the Tamsaling Nepal National Party, for a Tamsaling state for Tamangs in the central Nepal hills; and the Khumbuwan National Front and the Kirat People's Workers Party, looking to establish Khambuwan as a homeland for the Rais in the eastern hills of Nepal. The struggle for Limbuwan, historically the homeland of the Limbus further east, is led by the Federal Limbuwan State Council (FLSC), arguably the strongest among the Janajati movements, but which, too, has split into a number of factions. At present, an alliance called the Federal Limbuwan Party-Nepal is active in that part of the country.

The curse of factionalism has also affected small parties. For instance, the oldest Janajati party, the Rastriya Janamukti Party (National People's Liberation Party), had failed to win any seats in any of the three parliamentary elections of the 1990s. It managed to get two seats in each of the CAs, but in the second, both CA members abandoned the party and formed the Rastriya Janamukti Party-Democratic. Likewise, during the first CA, a number of Janajati parties had formed the Federal Republic National Forum. But, even with just two members elected in the CA, the party still split into two.



Tailors in the Tarai town of Bhairahawa sewing Nepali Congress flags in the run-up to the election to the first Constituent Assembly, March 2008.

© Min Ratna Bajracharya

Political parties have entered alliances at a particular junctures to amplify their voices. The most effective of these has been the Samyukta Loktantrik Madhesi Morcha, or United Democratic Madhesi Front (UDMF). Formed in early 2008 by the MJF-N, TMLP and SP, leading up to the second Madhes Movement, the UDMF was a vehicle for the three parties to collaborate as and when required. The UDMF spearheaded the protests in the Tarai against the promulgation of the constitution in 2015. It has since expanded to include breakaway factions of the three parties as well.

Alliances have always dissolved and regrouped, and any attempt to list them in full is doomed to be almost instantly out-dated.

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# Electoral systems and political representation in post-war Nepal

Kåre Vollan

The Maoist insurgency in Nepal was an ideological conflict between the government and the Maoists, but it was also driven by the social and political exclusion of large identity groups.

The *Comprehensive Peace Accord (CPA)* signed on 21 November 2006 and the Interim Constitution of January 2007 included a number of elements for more equitable sharing of power, such as devolution of authority (a federal structure), fair representation of groups, decision-making rules (including veto powers), and coalition governments.

These elements were covered either as temporary directives for the interim period up to when a new constitution would be promulgated, or as a permanent basis for the formation of the new state. The CPA referred back to previous accords, including the agreement of 8 November 2006 (*Six-Point Agreement*), which institutionalised an interim government and parliament in which the Maoists were allocated 73 of the 330 seats – equivalent to approximately 22 per cent representation.

The multi-party democracy that had been introduced in the 1990 Constitution was based on a first-past-the-post (FPTP) voting system, with one candidate elected per constituency. Such a system gave an advantage to the largest parties – with parties also frequently nominating the most electable candidates, which in Nepal often means men from social elites. Representatives of marginalised groups – Janajatis (indigenous groups) and Madhesi (from the Tarai plains) – succeeded in being elected, but not in proportion to their population. Dalits ('low caste'), some 'middle-caste' Madhesi, and a large number of Janajati groups were largely excluded.

The peace agreements prescribed a more inclusive electoral system, but the parties were unable to agree on one that was purely proportional. The resulting compromise, first recorded in the 8 November 2006 agreement, was for a mixed system for the election of a Constituent Assembly that was to both write a new constitution and act as interim parliament. The electoral system was to consist of both FPTP and proportional representation (PR), with the latter intended to increase the representation of otherwise excluded or marginalised groups. This article discusses how post-war political representation has progressed in the interim period and in the 2015 Constitution.

## Interim period

The electoral system for the Constituent Assembly described in the Interim Constitution referred to the excluded groups that had been identified in the CPA. The mixed system it specified consisted of 240 members elected in single-member constituencies by FPTP and 335 elected through PR. Article 63(4) described how inclusiveness would be pursued for each system: in selecting FPTP candidates political parties would 'take into account the principle of inclusiveness', while in selecting PR candidates they would 'ensure proportional representation of women, Dalit, oppressed communities/ indigenous peoples, backward regions, Madhesi and other groups, as provided in law'.

The electoral law of June 2007 laid out requirements for candidate lists and how the results of voting would be translated into seats. However, 'other groups' was interpreted to mean all groups not explicitly identified, which included the elite hill castes that had dominated Nepali political life for centuries, and not as 'other excluded groups', such as Muslims. In other words, the hill castes that would already be grossly over-represented through FPTP were also given a quota in the PR election.

Two elections were held for two different Constituent Assemblies in the interim period, in 2008 and 2013. Both these polls confirmed that hill (effectively 'upper') caste men have a large advantage in the FPTP election, whereas the quotas in the PR elections worked to some extent as intended. Dalits and women won larger representation in the PR elections, although the PR quota for hill castes and men effectively capped their representation. The hill castes increased their share of FPTP candidates from 41 to 55 per cent between 2008 and 2013. In PR, they got around their proportional share, as expected. Dalits won 2.9 per cent of FPTP seats in 2008 and just 0.8 per cent

in 2013, showing that they need special arrangements to support their parliamentary representation.

While the analysis broadly shows hill castes are politically included, and Dalits and Muslims excluded, closer and longer-term study (see Table 2) also reveals significant variation in inclusion or exclusion within Janajati groups and Madhesi castes. The 2011 Census enumerated 125 castes or ethnic groups that can be classified within these larger categories. Detailed examination of these data by the author (see Vollan 2015) shows how these groups have fared in FPTP elections since 1991, and which groups need affirmative action in national elections and which do not.

The analysis shows that the included groups (ie hill castes as well as some Janajati and some Madhesi groups) that make up around 55 per cent of the population won between 87 and 91 per cent of seats in four of the five FPTP national elections between 1991 and 2013. The exception was in 2008, when their share dropped to 78 per cent, mainly due to the strong showing by the Maoists, who had a more diverse set of candidates even in the FPTP part of the election. The excluded groups who make up the remaining 45 per cent of the population, on the other hand, won between nine and 13 per cent of the seats, again except in the 2008 when they won 22 per cent – although this was still only around half of their proportional share.

This suggests that the proportional quotas would have been more effective if targeted towards the politically excluded groups, rather than to all groups, including the hill castes. Since the quotas in 2008 and 2013 were extremely complicated for parties to adhere to, more targeted quotas



Voting during the second Constituent Assembly election. © Shruti Shrestha

would also help simplify the system. One alternative would have been to simply require 45 per cent of those elected to come from politically excluded groups.

## 2015 Constitution

The 2015 Constitution was an opportunity to simplify the representation of groups in the PR elections by defining special representation only for otherwise excluded groups. There are various possible explanations as to why this did not happen. Madhesi castes and Janajatis might have been afraid that their total share would go down if only those subgroups in need of a quota were given one. There was also clearly an element of the 'cream' of each group protecting their existing privileges. For instance, the Yadavs of the Madhesi caste group would argue strongly for Madhesi representation in comparison to hill castes,

**Table 1: Share of group representation in Constituent Assembly, 2008 and 2013 (%)**

Group	2008				2013				2011 Census share of population
	FPTP		PR		FPTP		PR		
	Share total	Share women	Share total	Share women	Share total	Share women	Share total	Share women	
Hill caste	41.3	6.7	28.1	13.4	55	0.8	30.4	14.3	31.3
Hill and mountain Janajati	25.4	2.9	26.9	13.4	19.2	0.8	26.6	12.5	27.2
Tarai Janajatis	7.1	0.4	8.4	3.9	8.8	1.3	9.6	5.4	8.7
Madhesi caste	20.8	1.3	20.6	9.3	14.2	0.8	18.2	8.4	15
Hill Dalit	2.5	0.8	8.7	3.9	0.4	0	7.8	3.9	8.6
Madhesi Dalits	0.4	0	4.5	3	0.4	0	3.3	2.1	4.7
Religious groups (Muslims and Sikhs)	2.5	0.4	3	1.2	2.1	0.4	4.2	1.8	4.5
Total	100	12.5	100	48.1	100	4.2	100	48.4	100



**Table 2: Representation of excluded and included groups from FPTP election results 1991 to 2013, against the population ratio (2011 Census)**

Group	1991	1994	1999	2008 FPTP	2013 FPTP	Share of the population according to the census 2011
<b>EXCLUDED GROUPS</b>						
Hill Dalits	0.5	0	0	2.5	0.4	8.6
Hill and mountain Janajatis, excluded only	5.9	5.4	4.9	9.2	5.4	16.1
Madhesi castes, excluded only	2.0	1	4.9	5.4	3.8	9.2
Madhesi Dalits	0	0	0	0.4	0.4	4.7
Tarai Janajatis, excluded only	0.5	0	0.5	1.7	0.8	2.1
Religious groups (Muslims and Sikhs)	2.4	2.4	2	2.5	2.1	4.5
<b>Total excluded groups</b>	<b>11.2</b>	<b>8.8</b>	<b>12.2</b>	<b>21.7</b>	<b>12.9</b>	<b>45.1</b>
<b>INCLUDED GROUPS</b>						
Hill caste	53.7	62.4	58.1	41.3	55	31.3
Hill and mountain Janajatis, included only	19.5	12.7	16.6	16.3	13.8	11.2
Madhesi castes, included only	7.3	9.3	9.3	15.4	10.4	5.8
Tarai Janajatis (only Tharus), included	8.3	6.8	3.9	5.4	7.9	6.6
<b>Total included groups</b>	<b>88.8</b>	<b>91.2</b>	<b>87.8</b>	<b>78.3</b>	<b>87.1</b>	<b>54.9</b>

but would be less willing to share their representation among all 28 Madhesi castes.

The new constitution has retained a mixed parallel system, but now with a majority (60 per cent) of FPTP seats, which reduces its inclusiveness. The principle of quotas for everybody was kept intact for PR while expanding the list of groups to include Muslims and Tharus – the latter being another politically excluded group. Without removing the privileged groups from the quota system, the new PR provision in fact makes the system even more complicated, while rendering the targeting of excluded groups ineffective.

## Conclusion

The quota provisions introduced in the Interim Constitution made the Constituent Assemblies of 2008 and 2013 more diverse than any previous parliament in Nepal, particularly for Dalits and women. Group consciousness was high in the first Constituent Assembly, and women and Janajatis formed strong

caucuses across parties. Elements of inclusion were prominent in the thematic committees drafting concept papers to inform assembly deliberations in 2008 and 2009. But, as time went by, and the final provisions were negotiated, inclusiveness and representation became less important. It remains to be seen if the complicated quota system will be implemented in good faith and will be sustainable over time.

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# Federal discourse

Krishna Khanal

With the promulgation of the new constitution on 20 September 2015, Nepal has embarked firmly on the path towards federalism – which is now unequivocally part of the country’s constitutional destiny and critical to its political future. However, unless the interests of Madhesi communities from the Tarai plains are adequately accounted for, the journey will remain tortuous.

The first amendment of the new constitution, agreed on 23 January 2016, tried to address some of the concerns of the Samyukta Loktantrik Madhesi Morcha (UDMF – United Democratic Madhesi Front), but did not meet its principal demand regarding a revision of the provincial setup.

The Tarai occupies a pivotal position in Nepal’s federal discourse – as the only region that could be distinctly delineated into two or three ethno-regional entities; as home to over half the population, two thirds of whom are Madhesi; and abutting India to the south, with very strong ties across the border. Madhesi concerns are therefore both strategic and very sensitive.

## Rise of federalism in Nepal

Federalism became integral to Nepal’s political discourse soon after the success of the Second People’s Movement of April 2006. The idea of federalism in Nepal is, however, not that new. The Tarai Congress, a Madhes-based regional political party, first floated it in the early 1950s with the advent of democracy following the overthrow of the Rana oligarchy. The call for federalism was revived in 1990 after the downfall of the partyless Panchayat political system and the restoration of democracy. Once again, the call came from a Madhes-based political party, the Nepal Sadbhavana Party (Nepal Goodwill Party), but the Janajati-oriented Rastriya Janamukti Party (National People’s Liberation Party) and other Janajati (indigenous peoples) groups also raised similar demands. While these efforts failed to capture the political imagination, the 1990 Constitution did at least recognise the country’s ethnic and linguistic diversity.

The current debate on federalism gained momentum from 1996 with the Maoist insurgency. The rebels’ political mobilisation centred on the promise of ethnic

self-determination, regional autonomy and an end to discrimination based on caste, ethnicity, language and religion. In 2004, at the height of the insurgency, the Maoists actually declared the division of the country into nine ‘autonomous regions’. Seven of these were named after the ethnicity or languages of the largest local communities and the Maoists even formed ‘Autonomous People’s Governments’.

But none of the Maoist documents during the insurgency period refers explicitly to federalism, indicating that they had not given it much thought as an organising principle of the state. Nor was federalism even mentioned in the core documents of the peace process, such as the *Comprehensive Peace Accord* 2006 (CPA) and the first iteration of the Interim Constitution 2007.

The decision to adopt federalism as the way ahead resulted from Madhes concerns. The Madhesi Janadhikar Forum (Madhesi People’s Rights Forum), at the time a rights-based NGO working for the Madhesi community, protested against the Interim Constitution’s failure to spell out federalism or to grant the Tarai proportional representation in the proposed Constituent Assembly (CA). The resulting Madhes Movement (along with a movement by the Janajatis) ultimately forced the state to accept federalism as the basis of state restructuring, and to revise the constituencies in the Tarai as per the population ratio [see article on social movements, p.97].

The Fifth Amendment to the Interim Constitution in July 2008 further clarified the modality of the federal restructuring of the state, as follows:

*Accepting the aspirations of indigenous ethnic groups and the people of the backward and other regions, and the people of Madhes, for autonomous provinces, Nepal shall be a Federal Democratic Republic. The provinces shall be autonomous with full rights. The Constituent Assembly shall determine the number, boundary, names and structures of the autonomous provinces and the distribution of powers and resources, while maintaining the sovereignty, unity and integrity of Nepal. (Article 138–1A)*

Political parties, Janajati groups, civil society organisations, and even individual citizens all floated different models of federalism, ranging from extremist ethno-regional, to much milder approaches. The Unified Communist Party of Nepal–Maoist (UCPN–M) and Janajati activists demanded the formation of provinces along ethnic lines – to establish some sort of ‘ethnic homelands’ based on their historic territories and with the provision of *agradhikar* (the right of the titular ethnic community to head the government in the respective provinces). Others argued that the provinces should reflect the mixed settlement patterns of the population and Nepal’s economic and development reality.

## Elusive consensus

There were three major challenges to incorporating federalism in Nepal’s new constitution. First, there were no clear regional blocks for political and administrative purposes. Second, a multi-level division of power and distribution of jurisdictional authority had to be created. And third, the new federal structure needed to maintain coherence with the broader principles and values of a democratic polity, namely that everybody has the same rights.

## First Constituent Assembly

When the Committee on Restructuring the State and Distribution of State Power (State Restructuring Committee) of CA I prepared its preliminary draft on federalism, it had no problem dealing with principles. It unanimously approved the concept of a federal Nepal that underlined ‘identity’ and ‘viability’ as the two main foundations for carving out provinces. ‘Identity’ was defined as having five components: ethnicity, language, culture, contiguous geography and territorial alignment of the ethnic population, and historical continuity. ‘Viability’ consisted of economic interrelationships, status of infrastructure development, availability of natural resources, and administrative convenience. The Committee agreed on a three-tier structure of

government – federal, provincial and local – and also listed their respective powers and responsibilities. Other modalities of federal polity such as division of power, inter-provincial relationship and dispute resolution procedures, were agreed as well.

However, the parties were strongly divided over the provinces’ names and boundaries. The State Restructuring Committee’s report, adopted by majority vote, provided for 14 provinces based largely on the ethnic criteria. Even a group with a population of one per cent of the national total was linked to a potential province while groups that would not be able feasibly to administer their own province were to be given autonomous regions with independent jurisdiction for self-governance. The committee also proposed special preferential rights to the principal ethnic group to head the government in its respective province and autonomous region. The 14-province model was heavily criticised as propagating ethnic federalism in Nepal and was rejected by the more traditional political parties, the Nepali Congress (NC) and the Communist Party of Nepal–Unified Marxist–Leninist (UML).

The High Level State Restructuring Commission (HLSRC) provided for by the Interim Constitution was formed very late, long after the State Restructuring Committee had submitted its report. The HLSRC members were selected along party lines and they remained divided accordingly. The nine-member commission consisted of two each from the major political parties, UCPN–M, NC, UML and the Madhesi Front, while the chair was selected by consensus. In terms of social background, HLSRC comprised three from the Khas Arya group (‘upper caste’ Hindu communities with origins in the hills), three Janajatis, two Madhesis and one Dalit (‘low caste’).

This composition left the three Khas Arya members, representing the NC and the UML (the second UML nominee was a Madhesi), in a minority. As a result, the HLSRC could not produce a consensus report and its recommendations were also highly controversial. Indeed, the minority group from within the HLSRC submitted a separate report. The majority report had proposed 10 provinces to be based on identity and one non-territorial province for the Dalit community, to be spread across all 75 Nepali districts. The majority report reflected the UCPN–M and the Madhesi parties’ positions, while the minority report mirrored the NC’s and the UML’s. Although the majority report had dropped the idea of preferential rights in heading the provincial governments, the boundaries and names of the proposed provinces along with the idea of a non-territorial one were still much disputed. This sparked prolonged unrest in the far-western region and a nation-wide protest by the



President Ram Baran Yadav symbolically touches the new constitution to his forehead in a gesture denoting the highest reverence before promulgating it on 20 September 2015. Standing by his side is the Speaker of the Constituent Assembly, Subhas Chandra Nembang © Kiran Panday

‘upper caste’ Bahun, Chhetri, and Thakuri, while Madhesi and Janajati groups also held counter-protests in favour of identity-based provinces as recommended by the State Restructuring Committee and HLSRC.

The leaders of the major political parties met several times to resolve these disputes. Neither the CA Committee’s 14-province model nor the HLSRC’s 10-province version was acceptable to all the parties. At the same time, a caucus of Janajatis within the CA had been exerting pressure on the party leaders to adopt one or the other. Towards the end of the first CA’s tenure, the three big parties – UCPN-M, NC and UML – agreed on an 11-province model with the boundaries to be decided on the recommendations of a future government commission. But the insistence on a complete provincial design by Madhesi and Janajati representatives remained the major obstacle and CA I came to an end without delivering a constitution.

### **Second Constituent Assembly and the New Constitution**

In the second Constituent Assembly, elected in November 2013, the NC emerged as the largest party followed by the UML, with the UCPN-M a distant third and the Madhesi parties further behind. The first CA had seen strong ethnic caucuses, even if only informally, whereas the second CA did not allow caucuses at all. The changed political equation had a visible impact on constitutional negotiation although the differences on federal design continued to persist.

Responding to the devastation caused by the earthquake in April 2015, the major political parties, including UCPN-M, felt the urgency to end the uncertainty in constitution-making in order to facilitate reconstruction. The NC, UML,

UCPN-M and a faction of the Madhesi Front reached a 16-Point Agreement in June that settled the differences on the major contents of the constitution. It agreed that there would be eight provinces, but with the boundaries to be settled later through a commission.

Following public consultations, which were more of a formality than a substantive and systematic exercise, and a Supreme Court decision that the constitution would have to demarcate the provinces prior to adoption, the party leaders came up with a six-province model. But, following protests from the most ‘backward’ (disadvantaged) Karnali region and a few districts from the Mid-western Development Region, they revised it to seven provinces. The Madhesi Janadhikar Forum-Democratic, which had been party to the 16-Point Agreement, walked out on that decision and boycotted the CA process thereafter, including the adoption of the constitution.

Despite protests by Madhes-based parties and a few Janajati groups, the constitution was passed by an overwhelming majority of the CA. The seven provinces keep almost all the current 75 districts intact, while the naming of the provinces has been devolved to the provincial assemblies. It has adopted a three-tier state structure – federal, provincial and local – with residual power kept at the centre. In general, the distribution of powers is tilted in favour of a strong centre and the polity may thus be termed a form of centralised federalism. However, accepting a vital principle of an advanced federal system, the constitution has provided for a double majority while amending the constitution on matters affecting provincial boundaries and powers – ie a simple majority in the respective provincial assembly and a two-thirds majority in the federal parliament.

When it was promulgated on 20 September 2015, the constitution received divided support. The Madhesi Front rejected it principally on three grounds: 1) on the demarcation of provinces; 2) on constituency delineation; and 3) on the issue of inclusion.

The demarcation divided the 20 districts of the Tarai among five provinces. The eastern Tarai districts were placed in Province 1, which is dominated by the eastern hill districts. Likewise, Province 3, principally of the hills of the central region, included one Tarai district. Two districts were joined with the hill districts of the far-west region that made up Province 7, while Province 5 coupled Tarai and hill districts from the mid-western and western regions. Only Province 2 consisted exclusively of Tarai districts [see *special feature mapping the evolution of federal design*, p.80].

The Madhesi parties viewed such a division as perpetuating the domination of the Tarai by the hill populations, and therefore not meeting the aspirations of the Madhesi people. The Madhesi Front had been demanding that none of the Tarai districts should be placed in hill provinces. For public consumption they had been calling for one single province to be made up of all the 20 districts of the Tarai, but were in fact prepared to negotiate the number.

Similarly, the constitution favoured geography over population in terms of electoral constituencies. This raised fears among the Madhesi Front that the representation of Madhesis in the federal parliament would not be proportionate to their population strength, given that the Tarai accounts for only 17 per cent of Nepal's territory but is home to half the population. As for inclusion, the Front took issue with the fact that the new constitution had backtracked even from the provisions in the Interim Constitution.

## Whose federalism?

Federalism remains the most contested post-war political issue in Nepal. Opinion has been divided between 'ethnic' versus 'non-ethnic' federalism, with the split largely mirroring progressive and conservative blocs – although, as explained below, there were significant differences within these. Where Madhesis and Janajatis saw ethnic federalism as the answer to all their woes through their 'right to self-determination', the dominant Khas Arya saw it as a threat. The Khas Arya are scattered across the country and the prevailing (non-ethnic) district boundaries allowed them a sizeable presence in most provinces. The status quo effectively enabled them to retain their hold over the power structure of the provinces. The Khas Arya preference, therefore, was for fewer provinces, keeping the districts intact, and preferably following a north-south

geographic alignment. They pointed to the development potential of larger provinces and also to the reduced cost of governance as their rationale.

Although not the first to do so, it was the UCPN-M that forcefully propagated the ethnicity-based approach to province formation, a position it held throughout the CA deliberations. But it had failed to grasp the fundamental concepts of federalism and was attracted more by the popular appeal of such a concept among certain communities. As communists, the Maoists were manifestly opposed to pluralism, but they also claimed to be the most ardent advocates of federalism. In Nepal, federalism equates with diversity, and so without a commitment to pluralism federalism has no substantive meaning. Meanwhile Madhes-centric parties proposed one Madhes province for the entire Tarai region, from east to west, and were not really concerned with whatever happened in the hills and the mountains.

The more traditional NC and UML stood on the opposite side. The NC sought a small number of provinces (six or seven) to be based on geographic features and demography, not ethnicity. The party could just as easily have argued the case for federalism, the principles of which align well with its democratic foundations. But it never encouraged its cadres and supporters in this direction, despite the electoral potential of upholding the interests of its traditional Madhesi support base. The UML was divided, but the dominant leadership opted for the NC approach. Although initially appearing sympathetic to the identity concerns of hill Janajatis, the senior UML leadership ultimately united to oppose any consideration of ethnicity in the federalism debate. Right-wing parties either demanded that the issue be referred to a national referendum or aligned with the NC.

The reluctant embrace of federalism by the NC and the UML can be explained on a number of grounds. First, the idea of federalism was completely new for both since, despite sporadic calls, the issue had never been seriously considered in the context of Nepal before the war. Even after the Interim Constitution was amended to that effect, neither party could think beyond regional devolution of powers such as reorganising the existing five development regions. Neither party held any internal debate on why federalism had been demanded so strongly or on how its objective conditions could help consolidate nationalism by engendering a wider sense of belonging. Second, the leadership of both parties has always been from the dominant hill Bahun and Chhetri communities and they believed that carving out provinces with identity as the principal criteria would come at a political cost of losing support from their own communities. And, third,

these leaders took the very mixed settlement patterns, particularly in the hills, as a strength that negated identity as the basis for provinces.

### **International support**

The international community has provided technical and other expertise to support the constitutional process in Nepal. But, encouraged partly by Nepali ethnic activists in Kathmandu, it has tended to see Nepali society as deeply divided, and federalism as the panacea. In fact, Nepali society has never experienced high levels of ethnic conflict. Grievances have been focused on state policy and behaviour, not against any community per se. This failure to distinguish between diversity and division played into internal political schisms in Nepal, and NC and UML leaders were able to blame the international community for provoking ethnic tensions. Moreover, the international community in Kathmandu did not have a uniform view. Influential donors such as Denmark, Norway and the United Kingdom did not prioritise federalism, and this enabled the NC and the UML to adopt a more conservative stance.

Geopolitics has been influential in the recent developments in federalism and both India and China have had a much more visible impact. Given its sensitivity on Tibet, China had always warned against ethnic provinces and the constitution's seven-province model seems satisfactory to China. India, on the other hand, has had strong interests on federalism in relation to the Tarai, as well as on other aspects of state restructuring such as preferring a parliamentary form of government. India has not outlined its position with regard to the provinces, only stressing that all stakeholders should be taken into consideration and openly supporting the Madhesi Front and its demands on that score. In January 2016, the Nepali Government amended the constitution to make some changes on issues of constituency delimitation and inclusion, following which India seemed relatively satisfied and the blockade that had been imposed along the border in support of the demands of the Madhesi Front immediately after the promulgation of the new constitution was lifted.

### **Future challenges**

Much could have been done at the beginning of the peace process to set the pace of the transition towards federalism. The CPA and the Interim Constitution called for restructuring of the state in order to end inequality and discrimination existent in the Nepali polity. Had the State Restructuring Commission been formed soon after the promulgation of the Interim Constitution, it would have

steered the federalism debate along a more coherent and professional basis while also allowing the CA to focus on the framework of federalism.

Many Nepalis have also seen the federal project as zero-sum. Janajati and Madhesi activists felt that anything less than achieving their full aspirations would represent total failure. On the other side, the conservative Khas Arya political elite and intellectuals believed that federalism would undermine national unity and interests if the identity aspirations of Janajatis and Madhesis were accepted.

Federalism has represented the key means by which to change the power structure of the Nepali polity. The first amendment to the new constitution has gone some way to address Madhesi and Janajati concerns over inclusion and representation, but not provincial demarcation. The second amendment proposal brought by the government in November 2016 consists of three major points relating to federalism: 1) revision of the boundary of Province 5, ie, to detach the six Tarai districts from the hills; 2) revision of the basis of representation in the Upper House so that that 35 of the 56 seats would be divided among the provinces in proportion to population, instead of the existing provision for equal representation; and 3) listing national languages and official languages as per the recommendations of the National Language Commission.

The proposed amendment seems the most that can be expected in the context of the present political equation in the legislature, and however minimal it may look from the perspective of the Madhesi Front, it may just satisfy the Madhesis to begin with. But much depends on where it goes next. Nepal cannot afford the newly declared constitution to be a failure or marred by mutually defeating positions. Reviewing and reorganising provinces is a natural course for any emerging federal polity, and if that is what it takes to bring on board all Nepalis, then the principal architects of this constitution, the NC, the UML and the UCPN-M, have no real choice but to follow that path.

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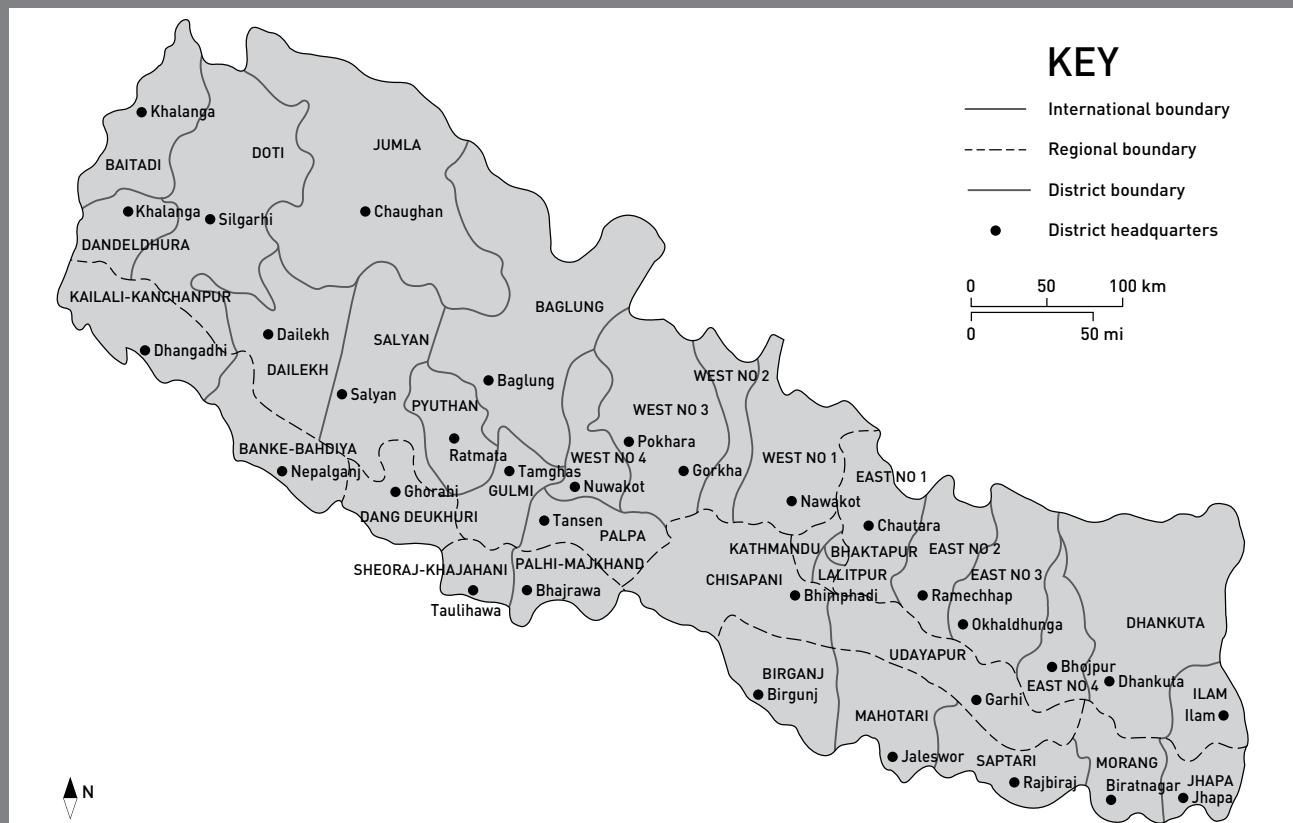


# Mapping federalism in Nepal

Deepak Thapa

### Box 1: Background – administrative geography of Nepal

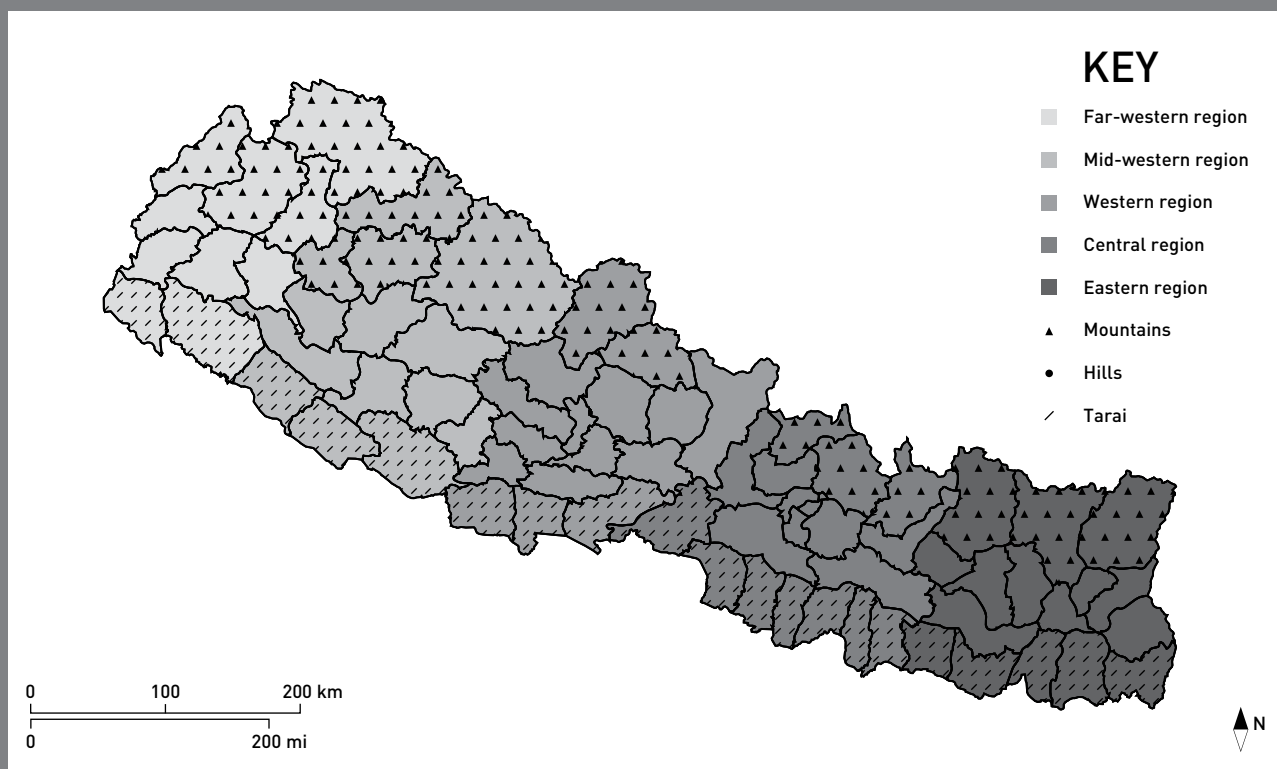
### Box Map 1: Pre-1963 Administrative Division of Nepal



Nepal was divided into 35 administrative districts until 1963 when it received its current administrative structure of 75 districts. These districts are distributed among 14 zones. The zones do not have any function in governance and are mainly used as sub-national units by government departments.

In 1972, adopting a regional development approach, the country was divided into four development regions, each running north to south: Eastern, Central, Western and Far-Western. In 1982, the Far-Western Region was split into the Mid-Western and Far-Western Regions, making a total of five. The development regions, like the zones, have had few administrative functions besides serving as another sub-national layer between the centre and the districts.

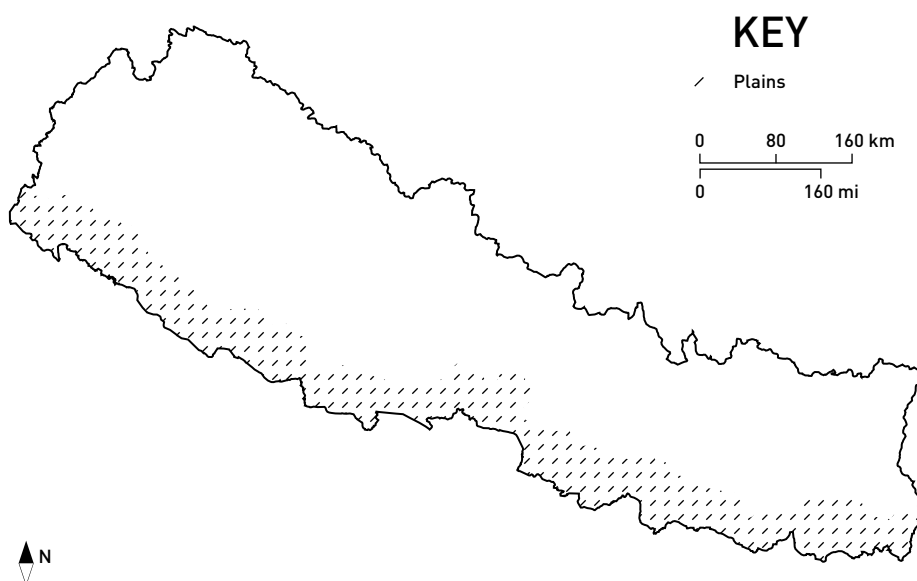
## Box Map 2: Nepal's administrative divisions before federalisation in 2015



The first ever mention of a form of federalism in Nepal was in the early 1950s. The Nepal Tarai Congress established in 1951 in the fluid political situation that followed the collapse of the Rana regime, listed among its objectives recognising Hindi as a state language, employing people from the Tarai in public service, and establishing the Tarai as an autonomous region. After

the consolidation of the Nepali state by the central administration after 1953, the Tarai Congress dropped its demand for regional autonomy. Its idea of an autonomous Tarai failed to make any headway in the popular imagination, but its call was to find resonance decades later. Map 1 provides an indication of what Nepal would have looked like in the imagination of the Tarai Congress.

**Map 1: Autonomous Tarai according to the Tarai Congress (1950s)**



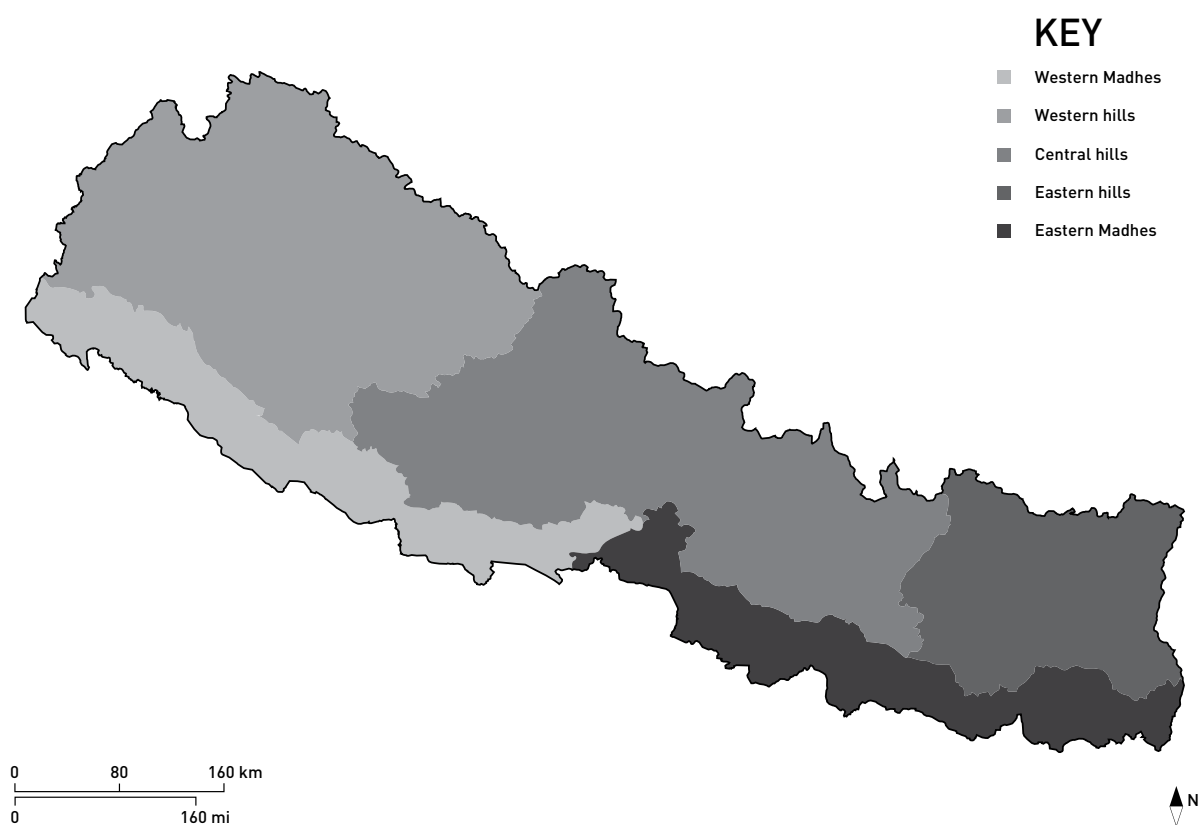
Following the restoration of democracy in 1990, there were several demands for Nepal to be devolved into a federal structure. A number of Janajati proto-parties came up with models dividing Nepal along ethnic lines, although most considered only the major groups. Among the political parties of any significance, it was only the Tarai-based Nepal Sadbhavana Party (NSP – Nepal Goodwill Party) that clearly articulated such a demand. As stated in NSP’s 1991 election manifesto:

*Since Nepal is multi-lingual, multi-ethnic and a country of different ethnicities, in order to strengthen national unity and ensure proportionate participation in the administration, Nepal Sadbhavana Party believes that there should be a constitutional provision for a federal government. This party is in favour of declaring autonomous regions in the Tarai as in the hills and*

*mountains on the basis of common language, dress, culture and geography. This is so that the majority of the marginalised groups in the hills and mountains and Madhes in the Tarai can adequately participate in the governance and administration at the provincial level and ensure the preservation and development of their language, dress and culture.*

The NSP later called for federating Nepal into five provinces: Eastern Madhes, Western Madhes, Eastern Hills, Central Hills and Western Hills. Either because it did not see any possibility of its demands being taken seriously by the other parties or because the notion was still in its infancy, the party did not elaborate further on actual geographical boundaries. Going solely by the description provided, it can be conjectured that NSP’s proposal might have looked something like Map 2.

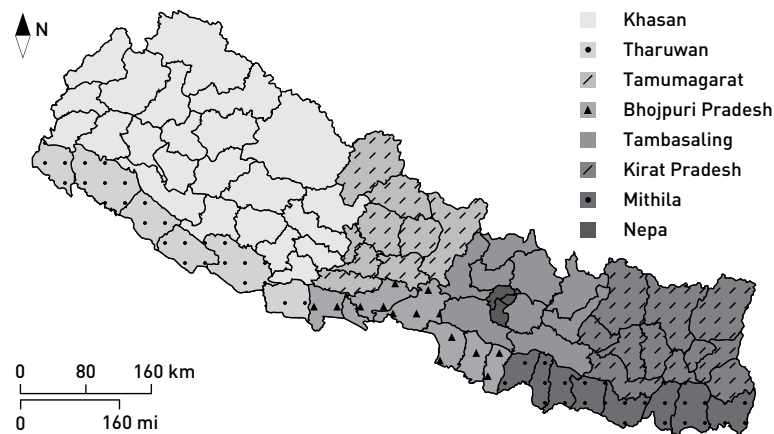
**Map 2: Federal Nepal by Nepal Sadbhavana Party (1991)**



The idea of federalism dwindled and did not become part of Nepal’s political discourse for nearly a decade and a half. But, a widely cited book from the year 2000 by social activist Govinda Neupane injected a new dimension. Entitled *Nepalko Jatiya Prasna: Samajik Banot and Sajhedariko Sambhavana (The Nationalities’ Question in Nepal: Social Convergence and Partnership Building through Multiculturalism and Federalism*, as translated by the author), the book’s cover depicted a federal Nepal that

recognised the historical origins of the major social groups and divided the country into geographical entities with more or less the same population size in each. Neupane’s proposal is all the more remarkable given that he was one of the founding members of the Communist Party of Nepal–Marxist–Leninist (CPN–ML), the forerunner of today’s Communist Party of Nepal–Unified Marxist–Leninist (UML), which has come out most strongly against the recognition of identity as a basis of federalism.

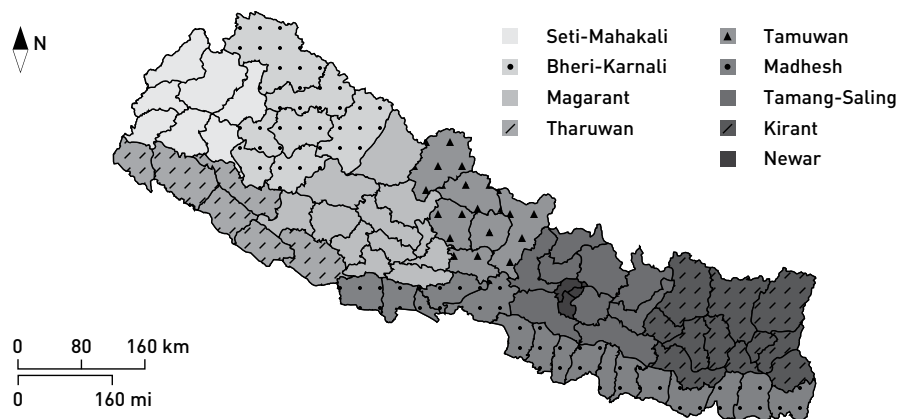
**Map 3: Govinda Neupane's model of federalism (2000)**



Then, in January and February of 2004, the Maoists made headlines when they declared the division of the country into nine autonomous regions and the formation of 'autonomous people's governments'. Seven of the declared regions were ethnic in nature in that the names reflected the historical origins of some of the country's major Janajati and Madhesi groups, while two – Seti-Mahakali and Bheri-Karnali – were not similarly named, even though these are regions historically associated with what are now

called the Khas Arya ('upper caste' groups with origins in the hills). Following the Chinese model of autonomous regions, the Maoists did not term this arrangement a federal structure. For some time, these 'governments' raised taxes and on occasion even authorised functions such as land transactions. They were formally disbanded only with the promulgation of the Interim Constitution and the formation of the Interim Legislature-Parliament in January 2007.

**Map 4: Autonomous regions declared by the Communist Party of Nepal-Maoist (2004)**

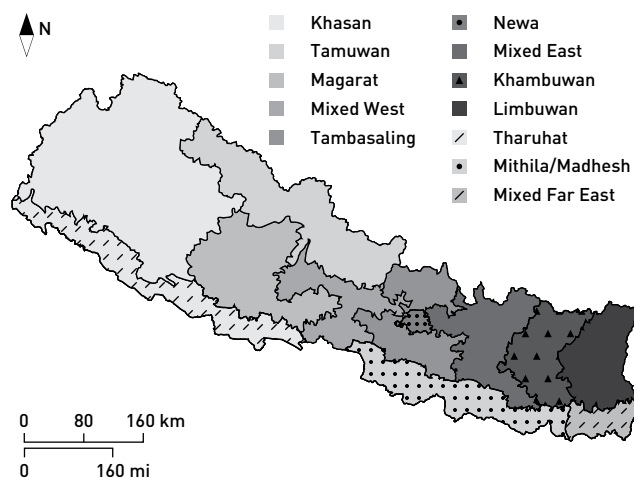


Federalism was formally incorporated into the Nepali polity in 2007 with the first amendment of the Interim Constitution, but the Maoists' 2004 demarcation appears to have influenced how the restructuring of the states was going to proceed. Various political parties, identity groups and individuals began suggesting how the country could be divided as part of the state restructuring exercise. Experts weighed in with considerations of demography and sustainability, with the models strongly influenced by the social background of the various experts (Map 5 shows a preference for identity, and Map 6 for other factors). Identity groups came up with models dealing with only

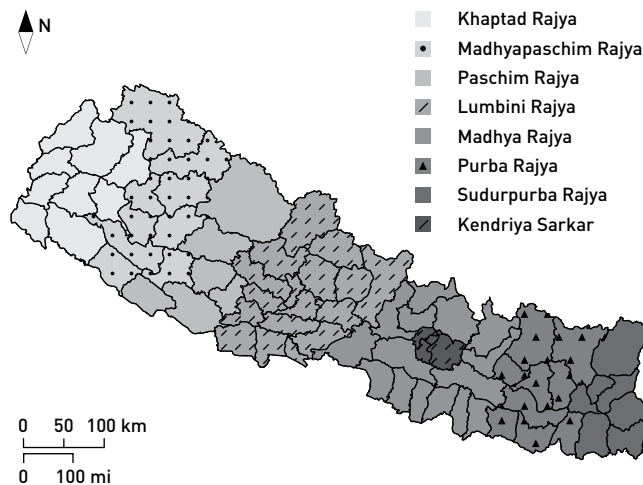
their own interests (Maps 7 and 8). Political parties had an eye on their constituencies, and Map 9 shows the two factions of the Nepal Sadbhavana Party (Nepal Goodwill Party) mirroring an identity group and seemingly quite oblivious of the heated debates on federalism taking place in the highlands of Nepal. The Maoists stood by their conception of ethnic homelands and by the time of the first Constituent Assembly (CA) election in 2008, the Maoist party had proposed 11 autonomous states, consisting of two regional and nine ethnic ones, with the Madhes ethnic state subdivided further into three linguistic units (Map 10).

## Maps 5 to 10: Examples of federal models proposed by experts, political parties and identity groups (2006 to 2008)

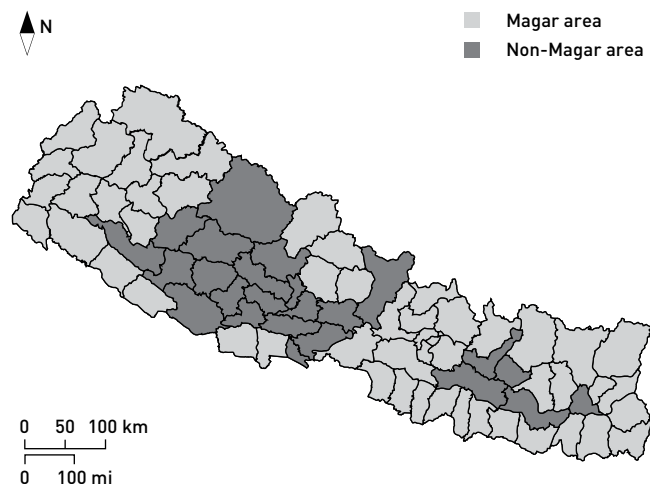
**Map 5: Federal structure proposed by geographer Mangal Siddhi Manandhar et al**



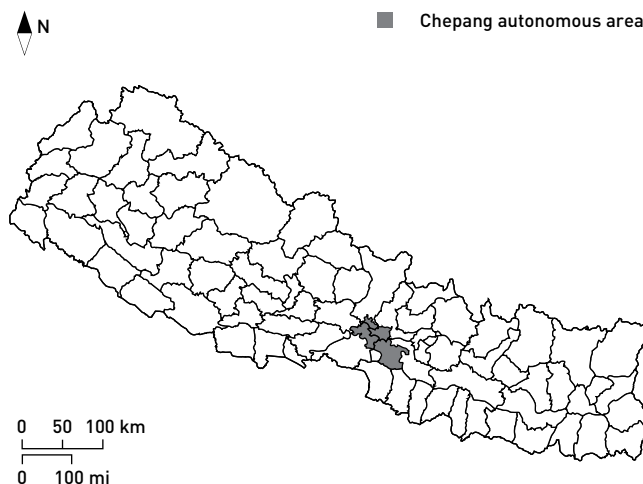
**Map 6: Federal structure proposed by lawyer Chadra Kanta Gyawali**



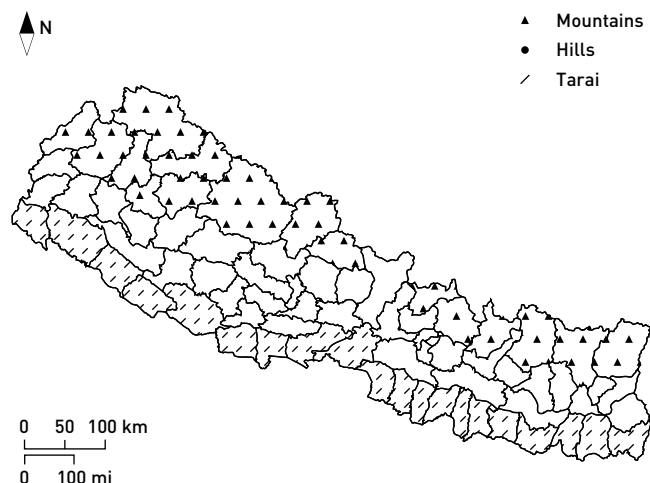
**Map 7: Federal unit proposed by Nepal Magar Association**



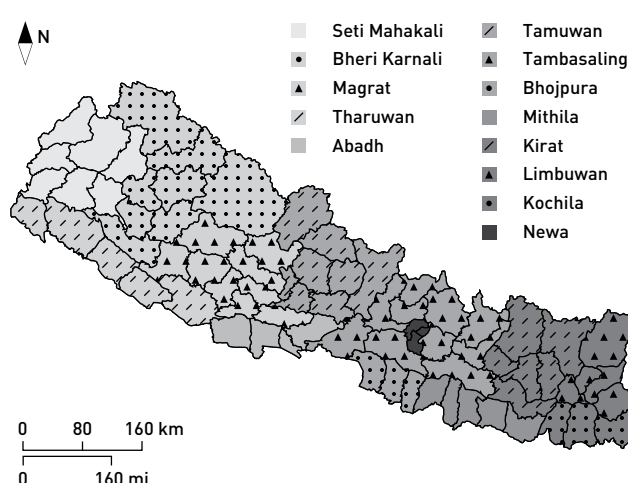
**Map 8: Federal unit proposed by Nepal Chepang Association**



**Map 9: Federal structure proposed by Nepal Sadbhavana Party-Ananda Devi and Sadbhavana Party-Mahato**



**Map 10: Federal structure proposed by CPN-Maoist**



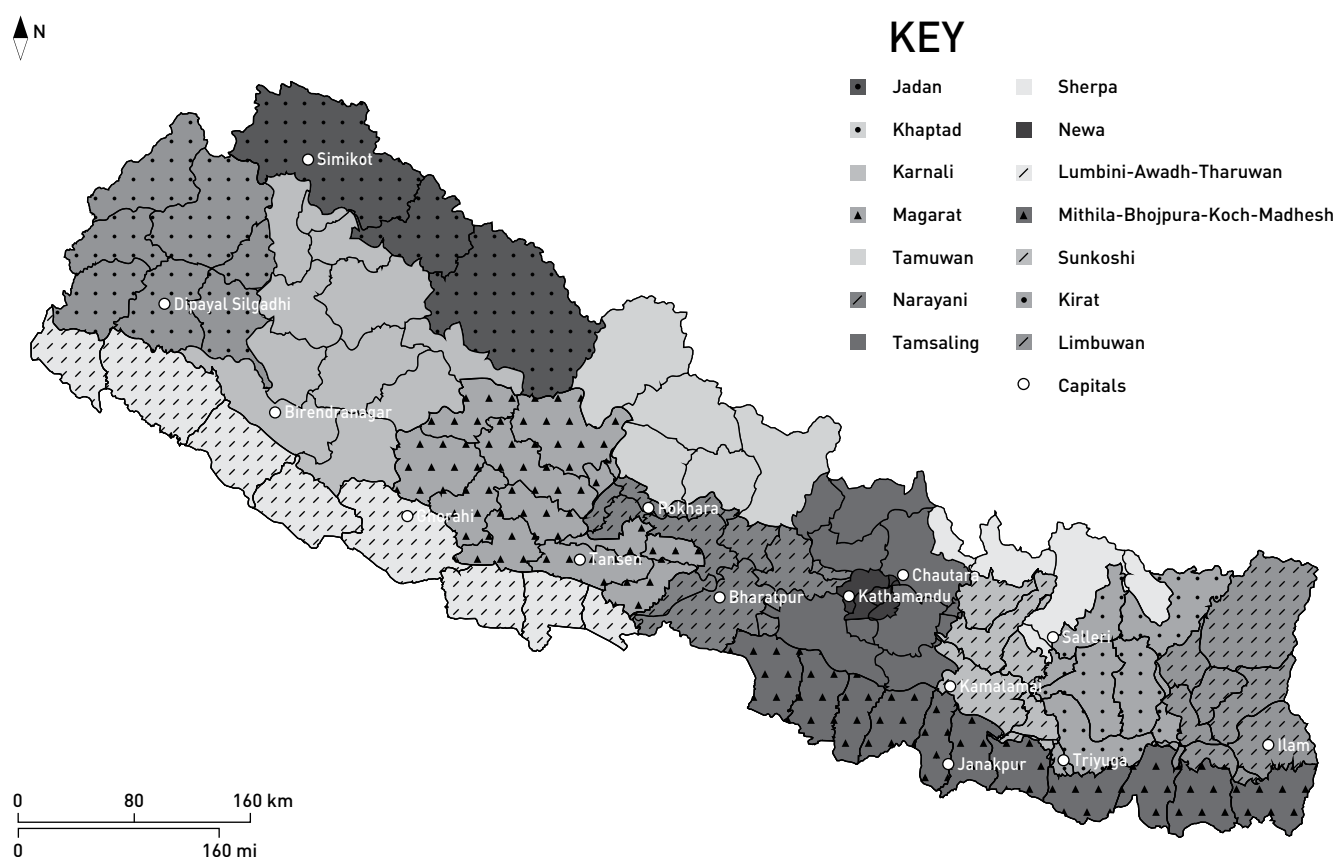


## Constituent Assemblies

The Committee for Restructuring of the State and Distribution of State Powers of the first Constituent Assembly was one of 14 committees tasked with providing inputs into the new constitution. The final report of the Committee, submitted to the CA in January 2010, proposed 14 provinces. Unlike other committee reports that were endorsed unanimously, this was approved by majority vote (a distinction that needs to be noted since disagreement on federal boundaries has continued to mar the political process through 2016). In coming up with the 14 provinces, the State Restructuring Committee considered five bases of 'identity' (ethnic/communal, linguistic, cultural, geographical/continuity of regional identity, and continuity of historical identity), and four of 'capability' (economic inter-relationship and capability, infrastructure development and potential, availability of natural resources and means, and administrative accessibility).

According to the committee's report, it received 24 different submissions on federal demarcation from different parties and CA members in the course of its deliberations. The Nepali Congress (NC) was the only major party that did not have a position on federal boundaries, although it can be assumed that the two submissions by one of its senior leaders reflected its stance. The Madhesi parties continued to display their obsession with only the Tarai, and three of the major Madhesi forces in the first CA, the two factions of the Madhesi Janadhikar Forum (Madhesi People's Rights Forum) and the Tarai-Madhes Loktantrik Party, submitted proposals that looked no different from the Tarai Congress's conception shown in Map 1. The Nepal Sadbhavana Party retained its earlier proposal (Map 9), with the only difference being a proposed division of the Tarai into five sub-regions.

**Map 11: 14-point federal model proposed by the CA State Restructuring Committee (2010)**

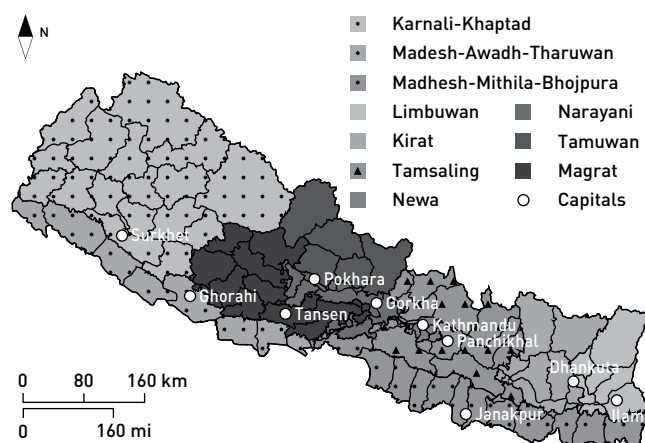


Since the CA could not agree on the report of the State Restructuring Committee, in December 2011 the government formed the High-Level State Restructuring Commission set out in the Interim Constitution. The commission was tasked with providing recommendations on state restructuring by considering the different views presented by 'political parties, different organisations, civil society, stakeholders and intellectuals'.

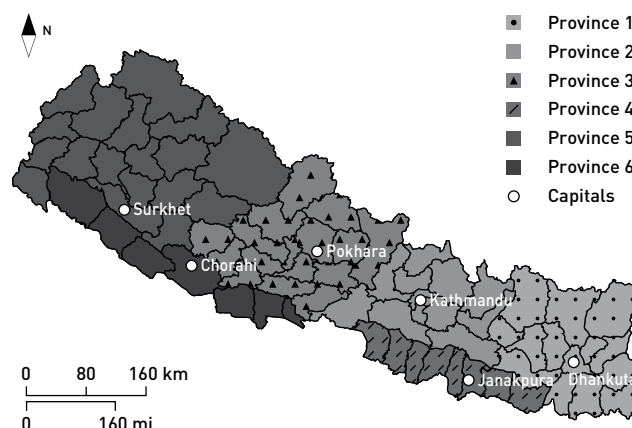
As is the usual practice, each of the four major parties – the Unified Communist Party of Nepal–Maoist (UCPN–M), the NC, the UML, and the Samyukta Loktantrik Madhesi Morcha (or United Democratic Madhesi Front) – appointed two members each to the commission. Following criticism that there were no Dalits among the eight appointees, a neutral Dalit intellectual was appointed two weeks later as coordinator (and subsequently chair) of the commission.

When submitting its report to the government on 31 January 2012, the commission was split along ethnic lines. The official report was backed by the six members not from the Khas Arya group (which functions effectively as the 'upper caste' elite) and proposed a 10-province model. The three commission members belonging to the Khas Arya group (and representing the NC and UML), on the other hand, submitted a minority report that proposed a six-province model. The latter generally follows the contours of the development regions, apart from placing most Tarai districts into two provinces while merging the two western-most regions. Both reports considered the above-mentioned nine bases (identity and capability) for their respective proposals, but while the official report privileged identity over capability in delineating the boundaries, the report of the minority group granted precedence to capability instead.

**Map 12: 10-province model proposed by State Restructuring Commission (Jan 2012)**

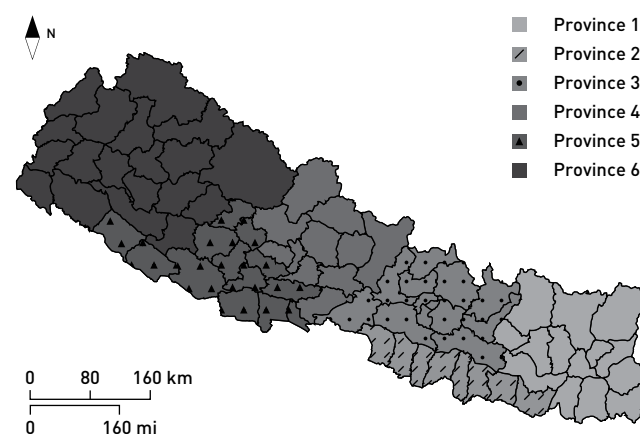


**Map 13: 6-province model proposed by minority group within State Restructuring Commission (Jan 2012)**



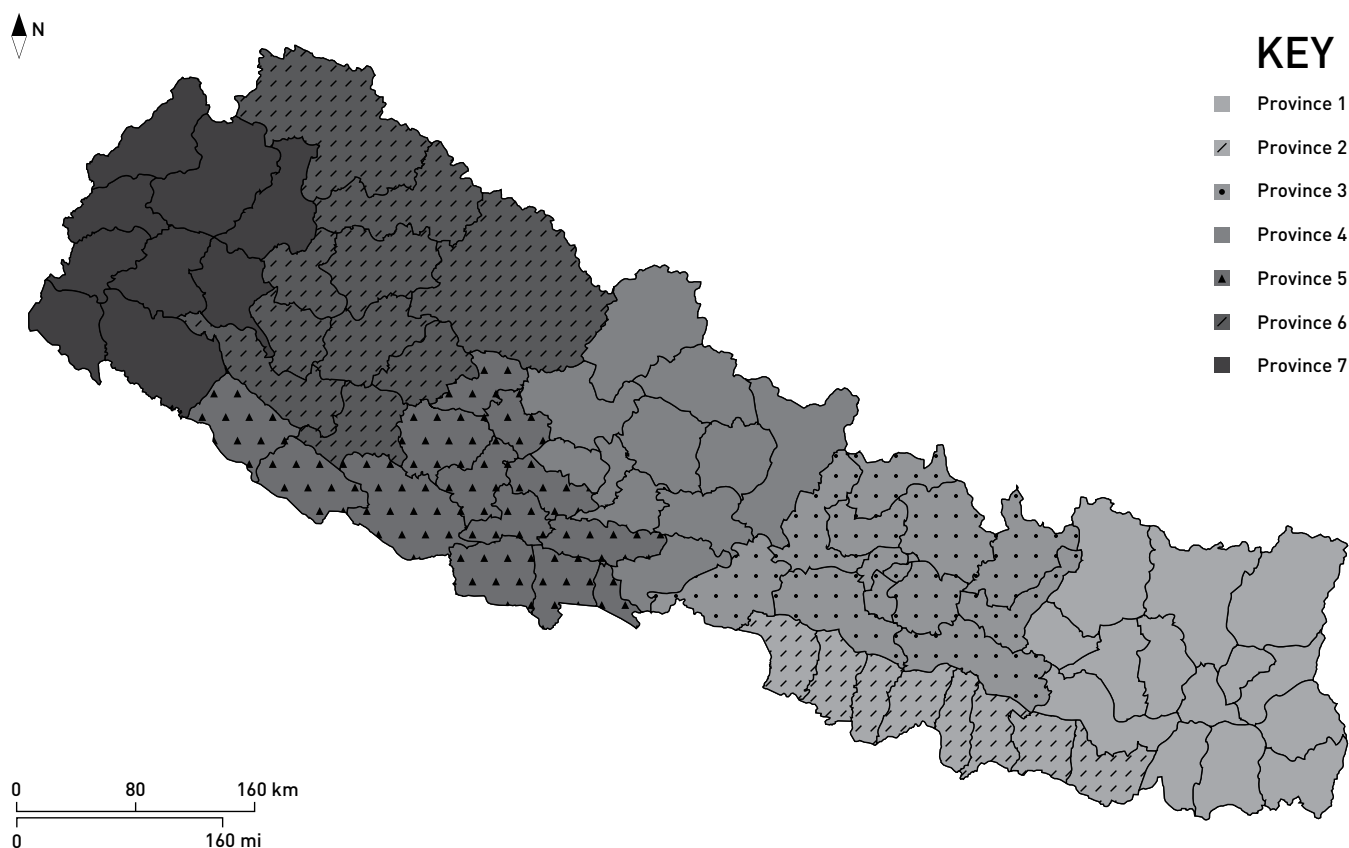
The deadlock over federal boundaries carried over to the second CA and some headway was made after the political compact following the April 2015 earthquake. On 30 June 2015, the preliminary draft of the constitution was presented, envisaging eight provinces that would be delineated by a federal commission at a later date. On 8 August, the four major parties agreed another deal reducing the number of provinces to six, with the names to be decided by the provincial legislatures. Civil unrest broke out immediately in the Mid-Western Region at its proposed bifurcation and two people were killed when police opened fire.

**Map 14: 6-province model agreed upon by the major political parties (August 2015)**



In response to the protests, the four political parties decided on 21 August to divide the proposed Province 6 into two, making a seven-province model. Despite the sometimes violent demonstrations that continued in various parts of the Tarai against the proposed delineation and the deaths of dozens of people, this was the model that was finally adopted when the new constitution was promulgated on 20 September 2015.

Map 15: 7-province model agreed upon by the major political parties (August 2015)



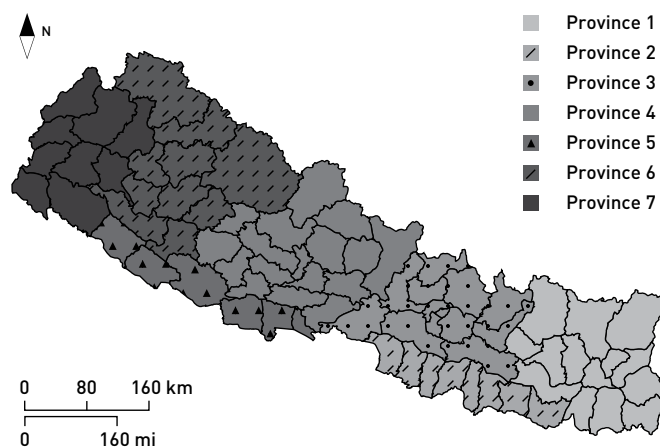
Apart from the inclusion of some hill districts from the Western and Mid-Western Regions in Province 4, the provision of Provinces 6 and 7, and the transfer of one district from Province 5, the six- and seven-province proposals look remarkably similar to the minority report of the State Restructuring Commission.

Dissatisfaction with the provincial boundaries has continued to run high in the Tarai after the new constitution was adopted and more deaths occurred during crackdowns on demonstrations. The Madhes-based parties have remained adamant that no elections will take place without revision of the federal boundaries. On 29 November 2016, the ruling coalition of the CPN-Maoist Centre and the NC introduced a constitutional amendment that separated the hill districts from Province Number 5 and merged them with Province Number 4 to transform Province 5 into a wholly Tarai province. Protests broke out immediately in the districts that had been detached from Province 5. At the time of writing the amendment had not yet been passed.

#### Sources

Map 1: Harka Gurung, *Nepal: Atlas & Statistics* (Kathmandu: Himal Books, 2006)  
 Map 3: Govinda Neupane, *Nepalko Jatiya Prasna: Samajik Banot and Sajhedariko Sambhavana* (Kathmandu: Centre for Development Studies, 2000)

Map 16: Proposed amendment to provincial boundaries (November 2016)



Map 4: 'Maobaad bata Jatibaad tira', *Himal Khabarpatrika*, 16–30 Fagun 2060.

Maps 5 to 10: Pitamber Sharma and Narendra Khanal, *Towards a Federal Nepal: An Assessment of Proposed Models* (Kathmandu: Himal Books, 2009)

All maps redrawn by Soapbox.

# Decline and fall of the monarchy

Gagan Thapa

The crowning of Prithvi Narayan Shah of Gorkha as King of Kathmandu on 25 September 1768 is generally considered the birth of the modern Nepali state. After his death, his eldest son succeeded him but died within three years, leaving Prithvi Narayan's 30-month-old grandson on the throne. This began a practice of 'baby kings', with the country actually administered by one group of courtiers or another until the end of the feudal order in 1950–51.

The early struggles for democracy in Nepal around the middle of the 20th century were, therefore, not directed against the king, who had no more than a ceremonial role, but against the 'shogunate' of the Rana dynasty of leaders that held real power. The earliest documents of the Nepali Congress, the political party that spearheaded the armed movement against the Rana regime, identified two alternatives for the post-Rana political order: first, a constitutional monarchy coexisting with an elected government; and the second, prepared in case the Crown should resist the first, a fully republican model. It is no surprise, therefore, that the monarchy was quick to ally itself with the democratic movement that ended the Rana regime in 1951.

All the major political movements from the 1940s to 1990 aimed to establish a democratic political order that would include the king in a constitutional role. Even the communists accepted this when they participated in the political processes that led to the advent of democracy in 1951 and again in 1990. Some fringe leftist groups had called for Nepal to become a republic as early as the 1970s, but republican sentiments remained marginal until much later.

## Royal massacre

The royal massacre in June 2001 was the single most important turning point in the history of the monarchy. The kings of Nepal have always claimed a divine right to rule as avatars of the Hindu deity, Vishnu. Since ancient times they have carried titles that placed them among the gods and established them as the protectors of *dharma* (the righteous order). Many religious ceremonies involved the presence of the king alongside the deities in either physical or symbolic form.

The royal household was also shrouded in mystery. A blissful image was projected to the public while strict secrecy was maintained over the private lives of the royals.

Thus, many people struggled to accept the revelation that Crown Prince Dipendra, who had until then been viewed as a youth icon, was actually a drug-addicted psychopath responsible for killing his father, King Birendra, and the rest of his immediate family. The manner in which the incident catapulted King Gyanendra to the throne seemed more like an elaborate conspiracy than the work of a rogue royal gunman. The episode radically changed the way the royal family was viewed, but also irrevocably undermined the legitimacy of King Gyanendra's rule.

## Maoist insurgency

A number of communist groups have existed at the far left of Nepal's political spectrum since before 1990. Some of these even contested the 1991 general election, and one, the Communist Party of Nepal (Unity Centre), a newly formed grouping of these hardliners, emerged as the third largest party in the first post-1990 parliament [see *article on political parties*, p.68]. However, one faction ultimately concluded that parliamentary competition would not help them realise their ideological ambitions, broke away and called themselves Maoists, and launched an armed rebellion in 1996.

For the first five years of the insurgency, the Maoist rebels remained a small band of under-equipped guerillas raiding weakly defended police posts in remote villages. Their presence was limited mainly to six districts in the mid-western hills. Political events following the royal massacre saw them quickly expand their influence across the country, and the rapid growth of the insurgency coincided with the fracturing of the legitimacy of the monarchy.

## Social changes

Economic growth accompanied economic liberalisation in Nepal through the 1990s. This was concentrated mainly in the service sector, however, in which less than 10 per cent of the workforce was employed, primarily in a few



Child outside the Constituent Assembly as people wait for the declaration of Nepal as a republic, 28 May 2008. © Kiran Panday

cities. This trend led to a widening of the gap between both the rich and the poor, and cities and villages, which was reflected in a rise in the country's Gini Index (a measure of inequality) from 0.3 to 0.35 between 1985 and 1995.

The 1990s also saw mass migrations of people from the villages to the cities and from the hills and mountains to the plains. This was the result of the opening up of the post-1990 political space, an expanding transport infrastructure, and the growing insurgency, among other factors. It resulted in a much more diverse population in the large cities and contributed to the breakdown of some established – and conservative – social structures: women gradually stepped out of their traditional roles, while Kathmandu saw the rise of several movements working for a greater understanding of progressive issues such as women's rights, Dalit ('low caste') oppression and Janajati (indigenous) identity. School attendance also expanded, with almost as many girls as boys attending, while the proliferation of mass media meant that this young and educated population was more politically conscious than earlier generations.

All of these factors would prove decisive in the evolution of politics in Nepal in the 2000s, in particular in relation to the role of the king.

### Two coups and the 12-Point Understanding

With his party riven by factional fighting, Prime Minister Sher Bahadur Deuba dissolved Parliament in May 2002 with two years still to go. A few months later he recommended postponing the constitutionally mandated parliamentary elections because of the increasingly

violent Maoist insurgency. The failure to hold elections gave King Gyanendra a convenient excuse to dismiss Deuba, effectively ending parliamentary democracy. The king then appointed and removed the next three prime ministers at will before taking direct control of the government in February 2005, as Chair of the Council of Ministers. He promised a return to democracy within three years, by which time peace and security would be restored.

The 2005 coup precipitated two significant developments: first, the creation of a broad partnership among the mainstream political parties, known as the Seven-Party Alliance (SPA); second, it brought the Maoists and the mainstream parties closer together, since the republican agenda espoused by the insurgents was now no longer taboo – even though the *12-Point Understanding* reached between the SPA and the Maoists in November 2005 called for no more than an end to 'authoritarian monarchy'.

“Political events following the royal massacre saw the Maoists quickly expand their influence across the country, and the rapid growth of the insurgency coincided with the fracturing of the legitimacy of the monarchy.”

By this point, the increasingly autocratic royal regime had become isolated internationally, while the relationship



Deposed king, Gyanendra Shah, speaking at a press conference just before quitting the Narayanhiti Royal Palace, 14 days after the nation was declared a republic, June 2008. © Kiran Panday



between the major political forces and the Maoists carried a promise of peace that the regime had failed to deliver. It was against this backdrop that the People's Movement of April 2006 took place.

## **Republic**

The king's restoration of the dissolved parliament on 24 April 2006 effectively represented his total surrender. Notwithstanding the Maoist insurgency, for which establishing a republican order was not an essential goal, it is remarkable that the 2006 People's Movement triggered the end of the monarchy, with minimal bloodshed. Since then, Gyanendra has also never overtly tried to alter the course of political events – even when the Constituent Assembly formally abolished the monarchy in May 2008.

For the moment, there seems little possibility that the monarchy could make a return. There is some dissatisfaction

with secularism among sections of the population and what they perceive to be the proliferation of Christian missionaries, and an element of the Hindu right is also attempting to link the Hindu fundamentalist agenda with the reinstatement of the monarchy, a strategy that suits pro-monarchy forces very well. On the whole, however, the monarchy is very unlikely to make a comeback owing to its badly damaged public image – and in particular to the dubious circumstances in which the last king came to the throne.

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**Gagan Thapa is a member of the Central Working Committee of the Nepali Congress party. He came into national prominence as the General Secretary of the Nepal Students' Union, affiliated to the Nepali Congress, and was one of the earliest proponents of overthrowing the monarchy during the civic agitation following the king's takeover in 2002. A member of both the 2008 and 2013 Constituent Assemblies, he is currently the Minister for Health of Nepal.**

# Local governance

## Local governance and inclusive peace in Nepal

Bandita Sijapati

**Strong and inclusive local governance is a vital building block for countries in post-conflict transition. But when Nepal emerged from the Maoist conflict in 2006, there had been no local elections for more than four years, and there have been none since.**

Successive governments have introduced various interim measures to provide some semblance of decentralised governance, but the continuing failure to provide locally elected representation has eroded state legitimacy and prevented communities from realising peace dividends such as enhanced service delivery and inclusive and democratic participation at the local level – factors that are essential for consolidating long-term peace.

### **Local governance: roles, responsibilities and prospects**

The Local Self-Governance Act (LSGA) 1999 provides the basis for local governance in Nepal. In keeping with the spirit of the restoration of multiparty democracy in 1990, the LSGA was enacted to promote people's participation in local governance through the decentralisation of authority. The LSGA provided local bodies – District Development Committees, and Municipalities or Village Development Committees (VDCs) – with significant autonomy. But, at the time of their dissolution in 2002, local government institutions were weak, beset by problems of insufficient devolution of power and authority, weak institutional capacity, inadequate fiscal decentralisation and resource constraints – to name but a few.

It did not help that the LSGA and its regulations (framed in 2000) were introduced at a time the insurgency was rapidly expanding, and the Maoists' policy of displacing the 'old state' with the 'people's government' meant that local bodies were being specifically targeted. In many conflict-affected districts, VDC offices were attacked, elected representatives were forced to leave their villages, and government functionaries, primarily the

VDC Secretaries, were compelled to operate from district headquarters. By 2002, there was a clear governance vacuum in Maoist-controlled areas, with no local-level representation of the state.

From the perspective of advancing inclusive and participatory democracy, the possibilities for local governance bodies to support the peace process are far-reaching. As the key interface between state and citizens, local bodies have been the subject of measures to make them more inclusive, participatory and democratic. The LSGA and the related Local Government Financial Administration Regulations 1999 (amended in 2007) require that all local bodies give priority to 'user groups' while implementing projects that involve funds less than NPR 6.5 million. These regulations also necessitate that 33 per cent of user groups' membership are women.

“**The Maoists' policy of displacing the 'old state' with the 'people's government' meant that local bodies were being specifically targeted.**”

## Local governance post-2006

Guidelines issued by the government in the post-2006 period also mention that during budget allocation and while making investments, local bodies should give priority to policies and programmes that promote gender equality and social inclusion (see *article on inclusive development*, p. 114). Further, all projects implemented through the Local Governance and Community Development Programme have in-built requirements for including Dalits ('low caste'), Janajatis (indigenous peoples) and women. There has been ample evidence suggesting that, compared to central government institutions, local bodies are more representative, accountable and participatory. There have been exceptions, and outcomes have generally been less than might be desired. But local bodies offer opportunities to respond to the socio-economic needs of affected populations in post-conflict Nepal: establishing inclusive forms of governance; giving voice to local populations, including previously marginalised groups, and enhancing their participation in the peacebuilding process; and alleviating tensions that evolved over the 10 years of armed conflict. As a result, the need to hold local elections and restore local bodies has been repeatedly highlighted by both national and international actors.

But despite their importance to long-term peace and democratic consolidation, local governance issues have received comparatively little attention in Nepal's peace process. The last local elections were held in 1997. By the time the term of the local bodies came to an end in July 2002, the Maoist conflict was at its height and the possibility of holding fresh elections was slim. Although the tenure of local administrations could have been extended by one more year, the Nepali Congress (NC) government of the time chose not to.

After the dissolution of elected local bodies, the government authorised civil servants to assume the functions of elected officials in addition to their clerical duties. These civil servants lacked not only the capacity but also the public authority and legitimacy of elected representatives. Further, in much of rural Nepal, VDC Secretaries, targeted by the Maoist rebels, had already fled their duty areas and were essentially carrying out their new roles *in absentia*. An attempt was made to hold municipal elections in 2005, but the political parties opposed this. They feared that elections held during this time of the royal takeover of government would not only sideline them but also delegitimise the electoral process as a whole.

In the post-2006 period, the *Comprehensive Peace Accord* (CPA) focused on elections to the Constituent Assembly and the reintegration of ex-combatants. Local government was accorded a much lower precedence, although one pre-CPA

agreement had mentioned that interim local bodies would be formed though an understanding between the ruling Seven-Party Alliance (SPA) and the Communist Party of Nepal–Maoist (CPN-M). The need to hold periodic elections (including, presumably, local elections) was couched in the CPA under broad language: 'Adopt a political system that fully abides by the universally accepted principles of fundamental human rights, multiparty competitive democratic system ... periodic elections, monitoring by civil society, complete press freedom ...' (Article 3.4). In Constituent Assembly discussions relating to governance, local elections were considered subordinate to issues of state restructuring. Later, with federalism being incorporated into the Interim Constitution, the issue of local bodies was further subsumed within the larger (and as yet not fully resolved) discussion on delineating provinces.

## All-Party Mechanism

The primary response from the government so far to reconstitute local bodies has been the 2008 interim measure, the All-Party Mechanism (APM). APMs were to comprise one representative from each of the seven parties in the SPA, and one from the CPN-M. In fact, this grouping initially comprised eight parties, but with the merger of the two Nepali Congress (NC) factions in September 2007, the number came down to seven. APMs were also to include other political parties that had acquired more than 10 per cent of a district's votes, cast either in the first-past-the-post or the proportional representation component of the Constituent Assembly election.

Despite the formation of APMs, a directive issued by the Ministry of Local Development (now the Ministry of Federal Affairs and Local Development) made it clear that civil servants appointed by the central government were to be the mainstay of the interim arrangement in municipal and VDC bodies. The directive recommended that municipal and VDC council decisions be made in consultation with APMs, although this was not mandatory.

The APMs lacked uniformity, in terms of the number of parties represented in them, their roles, and their relationship with government-appointed civil servants. In some cases, APMs were dominated by the three major political parties – the NC, the Communist Party of Nepal–Unified Marxist-Leninist (UML) and the Maoists – while representatives from other political parties had no say on decisions taken. In some districts, participation in the 2008 Constituent Assembly elections was considered a sufficient precondition for inclusion in the APM, whether or not the parties had won the requisite 10 per cent of the votes.

Membership of APMs also expanded and shrank depending on splits and mergers of political parties, or the periodic

emergence of new parties such as the various incarnations of the Madhesi Janadhikar Forum (Madhesi People's Rights Forum), the Federal Limbuwan State Council, the Tharuwan parties, and other fringe groups. Such variations created further confusion and difficulties in making decisions – not to mention reaching consensus. Further, relationships between political parties and civil servants were almost always strained. Sometimes local administrators – Local Development Officers at the district level, the Executive Officers in municipalities, and VDC Secretaries – exerted significant influence over local governance, often overriding political parties, civil society groups and the general public. In other cases, civil servants were relegated to at best a marginal role.

There were also significant problems regarding the public accountability of political parties. In the absence of elected representatives, APM members were answerable only to their parties and not to the people. As a result, clientelism and nepotism flourished, with members of political parties seeking to appropriate municipal or VDC funds for partisan interests, while civil servants were accused of exercising minimal accountability towards civil society and the broader public. With local institutions functioning effectively as extensions of central government, avenues for downward accountability were also severely compromised.

Amid charges of widespread misuse of local funds, the government disbanded APMs in January 2012, since when no alternative arrangements have been put in place. The failure to hold elections has meant that civil servants continue to assume the functions of locally elected representation, and no mechanisms have been devised to restore legitimacy, build capacity or provide supervision. And, despite having been dissolved, APMs are in fact still active in some places, further eroding trust in state institutions since they lack any formal mandate.

According to the 2015 Constitution, the current arrangement for local governance will continue until new elections can be held. The Constitution has provided for a federal commission to determine the number of local bodies, and successive governments have indicated that local elections will be held before provincial and federal ballots. But with the federal boundary delineation still contested, elected local governance is once again being overshadowed by central politics.

## Local Peace Committees

The CPA did not explicitly focus on local governance, but it did identify priority areas for social, economic and political transformation. After the war, the government established the Ministry of Peace and Reconstruction (MoPR) with a

mandate to manage the peace process, including setting up peace mechanisms at both national and local levels. To support the MoPR, the government and donors established the Nepal Peace Trust Fund (NPTF) in January 2008. Among others, one of the functions of the NPTF was to promote and consolidate peacebuilding initiatives and processes through the formation of Local Peace Committees (LPCs). Accordingly, in 2010, the MoPR formulated the Local Peace Committee Directive [see *article on Nepal's peace architecture, p.24*].

**“ In the absence of elected representatives, APM members were answerable only to their parties and not to the people.”**

LPCs exist at district, municipality and VDC level across the country with fairly well-defined terms of reference for each. Broadly, the responsibilities for each tier of LPCs relates to the following: assisting in implementing the CPA and promoting the peace process; monitoring implementation of the MoPR's Relief and Reconstruction Programme; supporting data collection on conflict victims; promoting local peacebuilding initiatives, especially through reconciliation, healing and trust-building; monitoring local political and social developments; and disseminating information on issues affecting local peace processes.

The experience of LPCs suggests that they have in general not been able to fully accomplish their mandates. Rather, their roles have been limited mainly to the distribution of relief funds and conducting a small number of awareness-raising initiatives, which together represent less than half of their overall responsibilities. There are examples of LPCs operating effectively in some conflict-affected districts: to mediate local conflicts; to establish good working relations with local administrations, civil society actors, marginalised groups and other stakeholders; to support local peacebuilding initiatives; and, lately, to collect complaints for submission to the Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons. But the general consensus is that they have largely failed to carry out their responsibilities.

A few key factors have restricted the effectiveness of LPCs. First, LPC members are only partially aware of their role, with most tending to believe it is limited to reviewing and verifying applications from conflict victims for interim relief, rather than actively supporting conflict resolution. Second, political parties are generally over-represented

in LPCs, while women, civil society, indigenous groups, and direct victims of the conflict are under-represented, despite being provided formal roles and responsibilities. Such forms of elite capture by political parties have raised doubts about the possibility of LPCs providing useful spaces for marginalised groups to raise concerns.

There have also been reports of discrimination and exclusion in providing services to conflict victims. Some of these irregularities have to do with the flawed political system in Nepal in general, and especially the initial registration of 'conflict-affected people'. Political parties led this process, and individuals with political connections were able to register as conflict-affected even in obviously dubious cases, while genuine victims who were less familiar with administrative procedures were unable to register. But LPCs have largely been incapable of rectifying such errors.

**“ Political parties are generally over-represented in LPCs, while women, civil society, indigenous groups, and direct victims of the conflict are under-represented, despite being provided formal roles and responsibilities. ”**

The LPCs in general are also constrained by a lack of resources, thus affecting their ability to plan for and implement activities as per their mandate. Simultaneously, there have been reports of LPCs planning for activities that are beyond their roles and responsibilities. But the main reason behind LPCs' limited success rests on the failure of the political process in which, due to constant political struggles and bickering among major political parties, the provisions of the CPA have been implemented selectively, as LPCs, like local governance more broadly, have been sidelined in favour of the national-level interests of the political leadership.

## Conclusion

Local governance has not received the priority it deserves in Nepal's peace process and wider political transformation – especially in comparison to federal state restructuring, drafting a new constitution, the form of governance and electoral system, and reintegrating Maoist combatants. The post-conflict period has seen successive governments experiment with other transitional mechanisms such as LPCs. But where similar structures have had varying degrees of success in other conflict-affected societies, the record in Nepal has been mixed at best.

Besides strengthening links between communities and the state, local governance must also provide more effective service delivery, transparency and accountability, all of which are vital for long-lasting peace and stability. The absence of elections for local bodies has become all the more evident given that the already fragile peace process is being further strained by ongoing political competition at the national level.

Interim measures – APMs, LPCs – have failed to engage political power and therefore have lacked traction, and have also succumbed to recurring patterns of clientalism and partisanship. These challenges for local governance are likely not only to continue to stall the peace process, but also to weaken the very foundations of state legitimacy and capacity in Nepal that could underpin a viable way forward for peaceful change.

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# Section 3

## Inclusion

The much-feared relapse into conflict has been staved off mainly because Nepal's transformation since 2006 has been unprecedented. Although far from complete, elements of a more inclusive polity and society have been institutionalised to a significant degree. The declaration of Nepal as a secular state soon after the 2006 People's Movement was an early precursor, but the periodic introduction of policies aimed at providing equal opportunities to all the people of Nepal have also been instrumental.

The push for inclusion pre-dates the Maoist conflict by decades. At the forefront have been Nepal's vibrant **social movements**, which have been significant forces in Nepal's socio-political landscape, challenging the prevalent political power structures and informal institutions.

**Mukta Singh Tamang** describes the evolution of four major mobilisations – by women, Janajatis (indigenous groups), Dalits ('low caste') and Madhesis (from the Tarai plains). The agendas and strategies of these movements have differed according to their specific histories. All have succeeded in effecting significant change in different ways. Inclusion has provided a common thread connecting their causes, which have otherwise been largely disparate and sometimes contradictory. Gains have been hard won against persistent resistance. But the movements have been less effective due to splits both among and within them. As the struggle for ethnic, class, cultural and gender equality progresses, these movements might look to more coordinated strategies to advance their agendas, individually and collectively.

**Deepak Thapa** describes how **post-war armed groups** have operated at the margins of politics and criminality. Governments have adopted both hard and soft policies in response, but such groups have had a limited impact on Nepal's transition.

**Chiara Letizia** outlines how Hinduism became embedded in Nepal's national identity and was used to administer the dominance of the established elite, such as through the caste system. Accordingly, for many communities **secularism** has been associated with emancipation, and has been a focal point for dispute and dialogue between progressive and conservative forces – for example in the relationship between religion and the state. The new constitution confirms Nepal as 'secular', although its equivocal definition leaves the door open to future contestation.

**Mohna Ansari**, a **member of the National Human Rights Commission** explains in an **interview with Accord** the NHRC's role in protecting rights and promoting transitional justice. She stresses the importance of Nepal's international human rights commitments, but also the problems with implementation of instruments such as the Convention on the Elimination of All Forms of Discrimination against Women vis-à-vis the new constitution that denies women full citizenship rights.

**Lynn Bennett** stresses that mistakes have been made in failing to incentivise inclusion throughout Nepal's bureaucracy, or to support advocates of inclusion among the traditional political elite. **Inclusion has now**



Running helter-skelter away from the police in Kathmandu during the Second People's Movement, April 2006. © Kiran Panday

been 're-branded' to prioritise gender equality as a way to navigate resistance to the more politicised aspects of the agenda. De-emphasising caste, ethnicity or regional identity as the basis for enhancing social mobility has helped to make social inclusion more acceptable and broadly impactful, but there is a real risk that its non-gender aspects will get lost.

**Yam Bahadur Kisan** describes how the Nepali state gradually opened up to the idea of inclusion as the war intensified. Inclusion was a key bargaining point in the peace talks as a core grievance of the Maoists, and was prominent in different ways in a number of peace agreements. Legislative commitments have helped to establish a more **inclusive Nepali state**, such as through the Civil Service Act, but the 2015 Constitution exposes how important gains have also been tempered by ambiguity and contradictions.

**Shankar Sharma, former Vice-Chair of the National Planning Commission**, tells **Accord in an interview** how social inclusion entered the national development agenda as a result of the 'People's War' and an attempt to deal with the root causes that were propelling it.

National and donor priorities began to align around inclusion mid-way through the fighting. At the same time, inclusion was operationalised through the involvement of communities in development programming, to identify and implement projects.

The idea of inclusion has had both advocates and opponents, and **Shradha Ghale** describes how a **backlash against inclusion** has gathered momentum as the peace process has progressed. This has also embroiled the Maoists, with some Nepalis accusing them of having abandoned the inclusion agenda and the marginalised communities they purport to represent.

Hundreds of thousands of Nepalis work abroad. **Amrita Limbu** explains that, as the war advanced, **migration** became an increasingly proactive state policy, as a response to domestic underdevelopment and equally as an alternative recruitment opportunity to the growing Maoist insurgency. Today remittances make up a significant proportion of Nepal's GDP and are having important social impacts, and their benefits have also flowed in large measure to economically marginalised communities.

# Social movements and inclusive peace in Nepal

Mukta S. Tamang

Over the last two decades, a number of collective actions by different social groups have given rise to social movements as significant forces in the Nepali socio-political landscape. In their efforts to influence a new future for the country, these movements have explicitly challenged the prevalent political power structure in Nepal that has been dominated largely by males belonging to a section of the hill Bahun and Chhetri ('high caste') groups, while also contesting the imposition of symbols, rituals and meanings that legitimise inequality in the country.

Four major mobilisations have made significant strides in rallying their constituents to attract the attention of the state: by women; by Dalits ('low caste'); by Madhesis (from the southern Tarai plains); and by Adivasi Janajati (indigenous peoples). Other social movements have protested against specific issues of injustice and discrimination, including anti-slavery movements opposing various forms of bonded labour – *kamaiya*, *kamlahari* and *haliya* – and the peasants' movement led by landless farmers. More recent examples of mobilisation have reacted to and resisted inclusive change. These latter instances reflect an attempt to reassert the dominant ideology and institutions, and include the identity movement associated with the Khas Arya ('upper caste' Hindu groups with origins in the hills – see below), the pro-monarchy movement, and the ultra-nationalist movement.

The Second People's Movement of 2006 heralded important changes in Nepal, particularly the *Comprehensive Peace Accord* (CPA) later that year

agreed between the Communist Party of Nepal-Maoist (CPN-M) and the Seven-Party Alliance (SPA) of political parties, and the promulgation of an Interim Constitution in 2007. Nepali political parties agreed to the restructuring of the state and to electing a representative Constituent Assembly that would write a new constitution. Mobilisation by marginalised social groups was elemental in introducing issues pertinent to their respective interests in both the CPA and the Interim Constitution, including in relation to proportional inclusion in state structures.

This article outlines the evolution of the four major social movements mentioned above: their key agendas and strategies that led up to the 2006 People's Movement and beyond; their successes and failures; the fissures among the different movements; and the challenges they face. The social movements' calls for equality, justice and inclusion have had a positive role in deepening democracy and inclusive peace in Nepal, but there remains work to be done to prevent a slide back into acrimonious division.

## **Evolving social movements – agendas and strategies**

Janajatis, Dalits, Madhesis and women have led the current wave of social movements. These groups participated in the First People's Movement of 1990 that brought about the reinstatement of democracy and opened up space for organised collective action. Prior to that, when the autocratic monarchy was firmly in power and was severely suppressing dissent, social movements had been disparate. But after 1990, the articulation of their agendas against long-standing grievances and their mechanisms of mobilisation became more robust. Mainstream political parties at that time remained largely oblivious to the growing aspirations of these movements or viewed them as peripheral. They were focused primarily on regime change and opening up space for party politics, using the rhetoric of class liberation and development. The parties saw issues of language, gender, caste and ethnic equality as secondary and believed that social equilibrium would come automatically with modernisation.

Nevertheless, social movements in the 1990s were pioneering in transforming Nepal's public debate and raised issues fundamental to deepening democracy: social and economic inequality, linguistic and cultural rights, secularism, caste- and ethnicity-based discrimination, and recognition of diversity and identity. The first victory of social mobilisation could be seen in the recognition of Nepal as a multi-ethnic and multi-lingual country in the 1990 Constitution. But despite this, the actual materialisation of the principle of diversity remained disappointing. The Janajati and Madhesi movements, therefore, demanded the federal restructuring of the state as a counter to centralisation and a guarantee of regional autonomy.

Strategies adopted by social movements over the past 25 years have gone from gentle pleading to nationwide strikes and acts of outright rebellion. While the different social groups share a common narrative and collective memory of marginalisation, their distinctive experiences and relationships with the state have translated into unique trajectories of resistance. The priorities, commonalities, variations, alliances as well as cleavages among different social movements are best understood in their respective historical contexts.

## **Women's movement: gender equality and inclusion**

The women's movement began in earnest from the 1950s alongside the wider political push for democracy. It has now expanded to include a larger section of women and a broad-based agenda of gender equality and social inclusion. Over time it has also incorporated a sharper

analysis of the persistent patriarchy in Nepal, as well as the intersection of differentiated experiences of women belonging to historically marginalised communities.

The first attempts at resistance by women go back as early as the beginning of the twentieth century. The Nari Samiti (Women's Committee) was formed in 1918 by the social reformer and religious ascetic, Yogmaya, is believed to have played a crucial role in the abolition in 1920 of *sati* – the tradition of Hindu women being burnt alive on the funeral pyre with their dead husbands. Yogmaya also advocated the abolition of untouchability.

Political parties established in the 1940s to fight against the autocratic Rana rule set up women's wings and, although women's participation in the parties remained largely nominal, their involvement in political struggle marked an important threshold. The big victory of voting rights for women was achieved in 1951, but these organisations also raised other important issues such as the right to education for girls, the end of child marriage and polygamy, and freedom for widows to remarry.

Like all movements, the women's movement during the partyless Panchayat period remained tightly controlled. Many women leaders were simply co-opted by the state-sponsored All Nepal Women's Organisation. After the 1990 political change, the women's movement became divided along political lines. Also, practically all the women's wings of the political parties and other state-supported women's organisations were led by the wives and relatives of powerful politicians and bureaucrats, and predictably represented the 'upper-caste' elites of Nepali society.

The work of women scholars and professionals nevertheless contributed substantially to raising the profile of the situation of Nepali women and the need for changes in government policies and programmes. The milestone 1981 study by Meena Acharya and Lynn Bennett, *The Status of Women in Nepal*, provided first-hand information on the role and status of women in households and society for developmental planning.

The availability of foreign funding led to the proliferation of NGOs after 1990, and, notwithstanding all the associated strengths and weaknesses, this external support became an important part of women's mobilisation. Women's groups were formed, and income-generating activities and awareness-raising were extended even to remote corners of the country. NGO activities also fostered research on and media advocacy for the rights of women.

Nepal ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)





Women members line up at the opening of the first Constituent Assembly, 27 May 2008. © Kiran Panday

in 1992 without reservation, marking a landmark for women's rights in Nepal. Increased engagement with the international human rights community helped to legitimise and expand the horizons of campaigning for women's rights. The adoption of the 1995 Beijing Declaration and Platform for Action was significant for both state and non-state actors. The subsequent UN mechanism for periodic review of CEDAW and the Beijing Declaration proved to be an important way of keeping up the momentum of the movement as well as monitoring progress on the promises made for promoting women's empowerment.

The involvement of a substantial number of young women from rural Nepal in the Communist Party of Nepal-Maoist's (CPN-M) 'People's War' was another significant point in the history of women's mobilisation. Many Janajati and Dalit women joined the war in the hope of emancipation from gender-based oppression, but they were also attracted by the agenda of ethnic equality, the end of untouchability, linguistic and cultural rights and equal access to education, employment and development choices. Women's participation in the Maoist movement helped alter the conventional view about Nepali women as lacking capacity to speak and fight for themselves [see *interview with Lila Sharma on p.52*].

Nepal's women's movement faces challenges, however, such as how to accommodate heterogeneity among women in terms of caste, ethnicity, culture and regions, and the different impact women's social backgrounds

have on their lives and prospects. For example, only recently has been there growing recognition of the fact that Dalit, Madhesi and Janajati women suffer from patriarchy as well as these other forms of discrimination arising out of their identity.

### **Adivasi Janajati movements: from anti-imperialism to self-determination**

Adivasi Janajati, or 'indigenous nationalities', are also referred to as ethnic groups in Nepal and comprise around 40 per cent of the total population of the country. Mobilisation by Janajatis can be divided chronologically into four major stages of resistance along the timeline of state formation. The first anti-state movements by various Janajati groups came in response to the expansion of the Gorkha Empire from the mid-18th century, which used the land of native communities as grants to reward and support its political leaders and soldiers. Three attempts at rebellions around the turn of the 19th century can be seen as prototypes of Janajati social movements – to resist appropriation of their land but also to reclaim autonomy.

The second stage was during the Rana period up to the early 1950s, when, despite the brutality of the regime in suppressing any form of opposition, isolated incidents of rebellion by Janajatis often led by charismatic millenarianist leaders can be considered expressions of freedom from domination.





Dalit activists demanding reserved quotas in technical education, Kathmandu, December 2008. © Kiran Panday

The third phase of resistance was during the autocratic Shah monarchy in the latter half of the 20th century. The Panchayat system introduced by King Mahendra in 1960 not only suppressed alternative voices but also proactively pushed the notion of homogenisation for the sake of 'national unity'. Janajatis, like other groups, were expected to assimilate into the political and social mainstream, and to internalise the culture, religion, language and ethos of dominant groups in order to become 'Nepali'.

The nature of the regime meant that resistance by different Janajati groups became clandestine. Many of their activities on political and cultural rights were disguised in the form of cultural celebration, religious service or underground political organising. Resistance was mostly framed in a vocabulary acceptable to the authorities. Paradoxically, despite its promotion of 'Nepaliness', the Panchayat system also recognised cultural diversity through its promotion of the notion of Nepal as a 'garden of all castes', and through state-sponsored cultural programmes that celebrated songs, dance and music of different ethnic communities. Janajati activists often disguised their movement under this 'garden' rubric, and several Janajati organisations were established during this period to ostensibly provide social services to their respective constituencies.

The fourth stage began with the restoration of democracy in 1990. Janajati leaders and activists played an important role in the 1990 People's Movement. The Nepal Federation of Nationalities, later renamed the Nepal Federation of Indigenous Nationalities (NEFIN), was established in 1991 and brought together various Janajati organisations under one umbrella. The pre-1990 movements had been sporadic and restricted to specific ethnic groups, and so NEFIN opened up the possibility of a pan-Janajati solidarity. NEFIN was also instrumental in defining various indigenous peoples. And, in 2001, 59 groups were codified as Adivasi/Janajati by the Act to set up the National Foundation for Development of Indigenous Nationalities.

Between 1990 and 2006, the Janajati movement demanded recognition, reparation and justice for inequality and discrimination based on caste and ethnicity while also calling for more proportionate representation. The movement further campaigned for the right to self-determination for Janajatis. Activists used meetings, seminars, workshops, rallies, demonstrations, and research and writing to engage their rural constituencies as well as the government. They also became part of international networks such as the Asian Indigenous People's Pact and the UN Permanent Forum on Indigenous Issues.

## **Dalit movement: from fighting untouchability to dissolution of the whole caste system**

Dalit refers to the part of the population that had been categorised as 'low-caste untouchables' in Nepal. Dalits make up about 13 per cent of the total population. In the late 1930s various protests were organised against the practice of untouchability. These were mostly localised events and did not gain much traction nationally. Dalit mobilisation took a different turn following the advent of democracy in 1951, with an especially significant episode in 1954 when more than 1,000 Dalit men and women tried to enter the famous Pashupati Temple in Kathmandu. The government tried to suppress the demonstration and 750 protesters were arrested, including more than 400 women. But after three months of campaigning, the government agreed to remove the notice at the entrance of the temple

**“ Janajati activists often disguised their movement under this 'garden' rubric, and several Janajati organisations were established during this period to ostensibly provide social services to their respective constituencies.”**

that declared: 'No Entry for Untouchables'. The term 'Dalit' ('oppressed'), having been used for the first time in Nepal during the Pashupati temple mobilisation, gradually gave rise to a unified Dalit movement in the country.

Dalit students organised against the Panchayat system and submitted suggestions to the 1975 Constitution Reform Commission, that the practice of untouchability be outlawed and that Dalits be given quotas in education and jobs. But the Dalit movement generally achieved greater leverage in eliminating untouchability through attempts to enter Hindu temples, demanding access to drinking water taps and springs, and organising feasts that included different caste groups.

New strategies of mobilisation emerged after the reintroduction of democracy in 1990, particularly through the establishment of a number of Dalit NGOs. These looked beyond untouchability to encompass broader economic and political aspirations, such as the right to land, access to employment, quotas in education and the civil service, and, above all, the right to dignity. Many Dalit activists saw the perpetuation of state-sponsored Hinduism as a key cause of their continued subjugation,

and joined the movement to demand secularism and religious freedom.

With the remarkably high participation of Dalit youths in the Maoist movement, the Dalit agenda spread to the remotest corners of the country. Backed by the Maoists with their call for an egalitarian society, atrocities based on untouchability were radically challenged in a way never previously experienced in Nepal. Although tangible positive change remained negligible in the post-1990 era, the broader agenda of Dalit emancipation was still encouraging in terms of raising Dalit awareness and the strong articulation of Dalit concerns: socio-economic equality, political participation and religious freedom; and the healing of past wounds caused by centuries of oppression in the name of untouchability.

**“ Backed by the Maoists with their call for an egalitarian society, atrocities based on untouchability were radically challenged in a way never previously experienced in Nepal.”**

## **Madhes uprising: for autonomy and dignity**

'Madhesi' is the term used to refer to people with origins in the region of Madhes or Tarai, the southern plains of Nepal. More specifically it connotes the people from the plains who are under the fold of the Hindu caste system, but in a broader sense it also encompasses Tarai Janajatis, Muslims (almost all of whom live in the Tarai) and other linguistic minorities in the region. Madhesis have endured persistent and deep discrimination in the history of modern Nepal.

Although the Tarai has geographically been a very important part of imagining the Nepali state as a bounded entity, Madhesis have often been stereotyped as alien and inferior. More dominant groups refer to Madhesis through terms intended to be derogatory such as '*dhoti*', '*bhaiya*', 'Indians', or simply 'non-Nepali'. *Dhoti* is a garment worn by male Hindus in Northern India and southern parts of Nepal, consisting of strip of cloth tied around the waist and extending to cover most of the legs. It is used in Nepal as marker of 'othering' Madhesis. *Bhaiya* is a Hindi word which means 'brother' but is now considered derogatory since it is used to symbolise Indianness. Madhesi appeals for rights, including full recognition as Nepalis, are often labelled as 'secessionist', as provoking 'communal

conflict', or as instigated by India, all of which serve as pretexts to dismiss Madhesi's grievances.

Little is known about historical Madhesi resistance movements, but Madhesi have been at the forefront of political mobilisations since the 1940s. The history of the Nepali Congress (NC) and the Communist Party of Nepal (CPN) shows that a good number of Madhesi activists and cadres joined the struggle for democratic change. The first organised platform specifically for the Tarai, however, was the founding Nepal Tarai Congress in 1951. The demands of the Tarai Congress included an autonomous Tarai region, the use of Hindi as an official language, and the inclusion of Madhesi in the civil service. The movement did not gain much ground and fizzled out following the takeover by the king in 1960, with the founder of the Tarai Congress entering the Panchayat system.

Two incidents that took place in the Tarai in the 1960s help in understanding Madhesi resistance against the state today. The first followed the seemingly progressive land reforms introduced in 1964. These were in fact detrimental to poor farmers in the Tarai, since land that exceeded the stated maximum area was transferred to new cultivator-owners, including migrants from the hills, and many of the new owners evicted existing tenants who had been cultivating the land for a living. In September 1966, a crowd of around 4,000 protested against government officials in the headquarters of Nawalparasi district in central Tarai. Nine people were killed in the government crackdown.

The second incident took place in 1969 in the districts of Kapilvastu and Rupandehi to the immediate west of Nawalparasi. The government had introduced a compulsory saving scheme, according to which each farmer was required to deposit a portion of their harvest with the government every year to be loaned back to the

community. Although the government had promised to return the savings with interest at the end of five years, for subsistence farmers the proposed saving was simply another form of taxation as they did not believe that the grains would be returned. Violent protests erupted in the two districts for three weeks, and 23 people were killed by government gunfire in villages.

During the Panchayat era two politicians kept the Madhes movement alive. Ram Raja Prasad Singh upheld the Madhesi cause while also advocating Nepal's transformation into a republic. In 1983, Gajendra Narayan left the Nepali Congress, a party he had been part of since the late 1940s, advocating autonomy for the Tarai and recognition of the Hindi language, and formed the seemingly apolitical Nepal Sadbhavana Parsihad (Nepal Goodwill Council). After 1990, the organisation transformed into a political party called the Nepal Sadbhavana Party (Nepal Goodwill Party). Although its electoral success was limited (gaining a maximum of four per cent of the popular vote and six seats in the 205-member House of Representatives in 1991), the party represented Madhesi's aspirations throughout the 1990s and was part of various coalition governments.

“ In 2006, wall paintings started appearing on the main streets of Kathmandu, declaring: ‘Speak with pride that you are Madhesi: not a foreign fugitive, but a son of the soil.’ ”

As with all other movements, a major agenda of Madhesi was claiming both identity and dignity. Madhesi's participation in various movements boosted their collective confidence to resist state discrimination, including the 1990 People's Movement and the 'People's War', and various other civic movements. In 2006, wall paintings started appearing on the main streets of Kathmandu, declaring: 'Speak with pride that you are Madhesi: not a foreign fugitive, but a son of the soil.' With such campaigns, activists were able to finally establish Madhesi as a legitimate politico-cultural category that needed serious attention from the state.

### Post-2006 struggle for a constitutional guarantee of inclusion

The 2006 second People's Movement was a landmark event in terms of bringing all forms of social and political movements together, and demanding an end both to the violence wrought by the Maoist war and also to the



Carrying flags representing various political parties, Janajatis mobilise during the Second People's Movement in Dharan, eastern Nepal, April 2006. © Pradeep Meyangbo



autocratic rule of the king. The CPA and the Interim Constitution affirmed commitments to multiculturalism, declaring that the state would be restructured in order to end all forms of discrimination based on caste, ethnicity, gender and region.

A number of legal provisions were enacted around this time to reflect the state's commitment to inclusion. The most significant of these was the Act to Amend Some Nepal Acts for Maintaining Gender Equality, 2006, which resulted in 56 changes to discriminatory provisions in Nepal's legal regime with regard to gender. It also led to other progressive steps such as granting statutory status to the National Women's Commission and the enactment of the Nepal Citizenship Act, 2006, considered the most liberal among the country's citizenship laws thus far, in granting equal rights to both mother and father to pass on citizenship to their children.

The Election to Members of the Constituent Assembly Act, 2007, laid out procedures to make the Constituent Assembly more inclusive. Likewise, the Civil Service Act was also amended to set aside 15 per cent of all seats to women, 12 per cent to Janajatis, 10 per cent to Madhesis and four per cent to Dalits – along with two per cent for the disabled and two per cent for 10 districts identified as 'backward'.

Similarly, in September 2007 in a highly symbolic move, Nepal voted to adopt the UN Declaration on the Rights of Indigenous Peoples. The very next day it ratified the International Labour Organisation's Indigenous and Tribal Peoples Convention, 1989 (No. 169), which not only acceded to a long-standing Janajati demand but also made Nepal only the 20th country and the only one from Asia to do so thus far. Further major achievements included: for women, the Domestic Violence (Crime and Punishment) Act in 2009, and for Dalits, the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011.

These developments did not unfold smoothly, however. A spontaneous uprising took place in the Tarai soon after the adoption of the Interim Constitution in January 2007, protesting its failure to recognise some of the main Madhesi demands – regional autonomy and federalisation. Tens of thousands of people joined this First Madhes Movement and a general strike was enforced. Markets, educational institutions and industries in the regions were shut down and the highway linking India and Kathmandu valley was closed for several days. Clashes between protestors and government security forces took place across towns in the Tarai region, and more than 40 people were killed in incidents related to the uprising.

The 21-day-long movement came to an end after Prime Minister Girija Prasad Koirala provided assurances that the Interim Constitution would be amended to federalise the state. Accordingly, the first amendment of the Interim Constitution in April 2007 inserted 'federal' in Article 138.1, which dealt with the Progressive Restructuring of the State: 'To bring an end to discrimination based on class, caste, language, gender, culture, religion and region by eliminating the centralised and unitary form of the state, the state shall be made inclusive and restructured into a progressive, democratic federal system'.

This constitutional undertaking to federate Nepal was a remarkable victory for the social movements led by the country's marginalised communities. The Madhes Movement of 2007 can be credited with ensuring federalisation, the demand for which, along with regional autonomy, also has a long and shared history with the Janajati movement. The desire for autonomy encompasses several other aspirations besides decision-making at the political level. Both Madhesis and Janajatis expected the restructuring of the state to allow them the use of their languages in local administration, the courts and schools education, increased representation in the administration, and the opportunity to preserve and promote their culture. The desire for political and cultural autonomy is captured by one of the enduring slogans of the Madhes Movement:

*Apana prant, apna shasan, apni sanskriti,  
apna prashasan  
Apna police, apna nyayalaya, apni bhasa me  
apni bidhyalaya  
(Our province, our rule, our culture, our administration  
Our police, our court, education in our language in  
our schools)*

## **Identity groups' agreements and strategies for inclusive change**

All of the movements in Nepal, including the women's movement, adopted inclusion as a common agenda, and separate agreements reached with the state by respective social movements negotiated inclusive policies for all marginalised groups. For instance, the agreement reached with two Janajati groups in August 2007 stated that a 'fully representative task-force will be formed immediately to conduct a study in order to ensure inclusive participation and proportional representation of all castes, ethnicities, groups, communities, genders and regions in all bodies and levels of the state'. It enjoined upon the government to 'make a serious effort to reach an agreement for addressing the demands of various groups and communities, including Madhesis, women and Dalits through talks and discussions with the respective groups'.

Likewise, the first Madhes Movement led to an agreement later that month that committed to ensuring 'balanced proportional representation and partnership of Madhesi, Janajatis, Dalits, women, backward classes, disabled people, minority communities and Muslims who have been excluded for generations, in all organs and levels of government and in power structures, mechanisms and resources'. The agreement following the Second Madhes Movement in February 2008 was instrumental in getting the government's agreement on ensuring 'inclusive proportional representation of Madhesi, indigenous nationalities, women, Dalits, (people from) backward regions and minority communities in all state bodies'.

The March 2009 agreement with the Samyukta Muslim Rastriya Sangharsha Samiti (United Muslim National Struggle Committee) stated that the 'Government of Nepal shall take necessary initiative to ensure political, economic, social, cultural and educational rights of all Adivasi, Janajati, Madhesi, Tharu, Dalit and minority communities of the country, including Muslims'.

In terms of mobilisation strategy, the Madhes movement has stood out as having been able to muster mass rallies and instigate strikes, whereas the Janajati and Dalit movements did not resort to mass demonstrations as their primary mode of protest. The Madhes movements also forced engagement by established Madhesi leaders in the mainstream political parties. A number of these joined the Madhesi Janadhikar Forum (Madhesi People's Rights Forum), which had been instrumental in the First Madhes Movement. Other leaders quit their parties to form the

**“ In terms of mobilisation strategy, the Madhes movement has stood out as having been able to muster mass rallies and instigate strikes, whereas the Janajati and Dalit movements did not resort to mass demonstrations as their primary mode of protest.”**

Tarai-Madhes Loktantrik Party. Janajatis had made attempts to form political parties since the 1980s but there have been very few examples of ranking leaders quitting their mother parties to start something new. A notable exception was in 2012 when senior leaders from both

the Nepali Congress and the Communist Party of Nepal–United Marxist-Leninist (UML) left their parties to establish the Federal Socialist Party, which would cater specifically to Janajati concerns.

Women, Dalit and Janajati movements also used other means to advance their rights, including activities by NGOs, journalists, lawyers, and caste, ethnic and other civil society organisations. Madhesi tended not to use such tactics, although lately, as their movement has matured and the struggle has been carried out in multiple fronts, similar organisations have emerged calling for the rights of Madhesi as well.

With the election of the first Constituent Assembly (CA) in April 2008 and the beginning of the arduous journey of constitution drafting, the whole focus of all the social movements turned to ensuring their rights in the new constitution. The issue of inclusion was the primary area where the different movements were able to speak with one voice. Women CA members from different political parties came together as a caucus and, working in concert with women's activists and professionals, campaigned for issues such as non-discrimination on the basis of gender, equal citizenship rights and fulfilling commitments under various international instruments that Nepal is party to.

The Janajati movement called for restructuring of the state to include identity-based federalism that would recognise people's history and autonomy, as well as respect for collective rights and rights over land and natural resources. CA members from Janajati communities also came together in an informal caucus that cut across party lines and proved effective in pressuring the political parties. In the run-up to the termination of the first CA in May 2012, following days of unrest, Janajati CA members managed to get government agreement on identity-based federalism. But the agreement fizzled out with the end of the first CA, and Janajatis were never able to build the same momentum in the second CA, while the caucus did not materialise either [see *article on the constitutional process*, p.59].

Dalit CA members were equally active in the first CA, alongside the struggle carried out by Dalit activists and organisations outside the CA, around three key issues: ending the practice of untouchability in both public and private spheres; ensuring representation of Dalits in federal, provincial and local level bodies; and including Dalits in the private and semi- or non-government sectors as well. However, Dalits, were never able to exert the same kind of pressure as Madhesi and Janajatis.

As the term of the first CA was coming to an end with agreement on a constitution not yet in sight, 416 CA



members from different marginalised groups launched a signature campaign in an attempt to force a vote. But the leaders of major political parties could still not agree either on a constitution or on voting for it.

### **Conservative pushback and intra-identity group splits**

The period from the dissolution of the first CA, the election of the second CA, and the promulgation of the new constitution in September 2015 has been characterised by a strong conservative backlash. The conservative forces, which include royalists, sections of the traditional elite, and top leaders of the NC, UML and CPN-MC, have denounced the agenda of change and aggressively pursued the maintenance of the status quo. This has included the assertion by the dominant group of its own identity – terming themselves the ‘Khas Arya’, this counter-movement has adopted the rhetoric of ultra-nationalism and signalled an intolerance towards diversity and the spirit of inclusion.

**“ Each movement focused on its own priorities rather than identifying a point of convergence to carry out a united struggle.”**

A significant section of the mainstream media, which is also largely controlled by ‘upper caste’ hill communities, has also come out openly in support of the status quo and succeeded in presenting a distorted picture of the social movements and their demands. Recognition of identity, a cornerstone of Dalit, Madhesi and Janajati demands, has been presented as a divisive agenda that promotes national disintegration or ethnic conflict. The demand for equal citizenship rights for women has been characterised as the recipe for mass immigration of Indians into Nepal. Fears that commitments to inclusion would be further diluted induced the Tarai-origin communities to forcefully denounce the promulgation of the new constitution, and protests by Madhesis and Tharus (a Janajati group spread across the Tarai) lasted months from August 2015 and resulted in the deaths of 50 people.

It is not surprising that existing elites would resist sharing power, but their success in denying change can partly be attributed to the social movements’ own shortcomings. Specifically, the social movements failed to persuade and educate political parties and a wider section of Nepali society of the need to create equality and dignity for all, with failure resulting largely from the lack of a workable



alliance among them. Each movement focused on its own priorities rather than identifying a point of convergence to carry out a united struggle. Janajatis were preoccupied with issues of culture, identity and the right to self-determination. Madhesis focused on regional autonomy. Women and Dalit stressed gender equality and the removal of untouchability.

Indeed, there were conspicuous cleavages among the different movements. Dalits and women did not support identity-based federalism and autonomy, and even expressed outright reservations. Similarly, Janajatis, Dalits and women from the hills did not show solidarity with Madhesis from the plains; Madhesis were generally blind to concerns of Dalits and women, and also tended to view all hill-origin groups as a homogenous category of oppressors.

There were also splits within individual social movements. Women, Dalits, Madhesis and Janajatis are not uniform but consist of multiple cross-cutting strands defined by political ideology and internal hierarchies. Sub-groups have associated with different political parties, while leaders from each movement have been co-opted by the political mainstream. Despite decades of organisation and mobilisation, the women’s movement is still effectively in its infancy in dealing with the intersectional questions relating to Dalit, Madhesi, Muslim and Janajati women. Dalits are divided according to their provenance: between the hills and the Tarai plains, but also by their own internal caste hierarchy. Janajatis are also divided into hill and Tarai communities and the highly affluent Newar, as well as among larger and smaller population sizes. Madhesis are divided along the caste hierarchy, including Tarai Dalits, and Tarai Janajati and Muslim groups sometimes prefer to forge an identity independent of Madhesis.

### **Conclusion**

Collective action by historically excluded groups in Nepal has been an important force in advocating innovative and fundamental democratic change. The social movements of Dalits, Madhesis, Janajatis, women and others have evolved with and for democracy, seeking to transform

the existing social order in relation to the ideology of caste and ethnic hierarchy, discriminatory values, and prejudices towards marginalised communities and women.

A salient feature of the social movements in Nepal is that all have aspired to reconfigure the state to better reflect the country's socio-cultural diversity and to provide for equality in its legal framework, policies and practices. This distinguishes Nepali social movements from ethno-nationalist groups that aim for secession or from political movements that try to come to power.

Over the last quarter of a century, Nepal's social movements have contributed to bringing substantial changes in society. Their different histories mean that each has had a relatively isolated evolution with their own priorities and strategies. All have faced individual failures, and they have not managed to build an effective alliance among themselves. Nevertheless, they have been able to rally collectively around the agenda of inclusive change and have helped to force it onto the national agenda. The contribution of social movements is reflected in the preamble to the 2015 Constitution, which recognises:

*the multi-ethnic, multi-lingual, multi-religious, multi-cultural and diverse regional characteristics, resolving to build an egalitarian society founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability...*

The social movements still face grave challenges, the most serious of which is the current upsurge of conservative resistance to inclusion and equality. But, if the agenda of inclusion is rejected or watered down to the level that it loses its true meaning, the continuation of exclusion and discrimination risks pushing Nepal towards a new round of violent conflict.

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# Post-war armed groups in Nepal

Deepak Thapa

A number of armed groups have been active since the end of the 'People's War', with ambitions often at the margins of politics and criminality. Various governments have taken softer and harder approaches, reaching deals or imposing tough security policies, and the armed groups' ability to affect the course of the post-war transition has been limited.

The use of violence against the state has a long history in Nepal. The Rana dynasty came to an end following the successful Nepali Congress (NC) armed campaign against it in 1950–51. Following the royal takeover in 1960, the NC briefly took up arms again from bases in India. The Jhapa Movement of 1971 involved an attempted insurrection by a group of young Maoists in the south-eastern corner of Nepal, inspired by the much more brutal Naxalite movement across the border in India, and the leaders of that movement formed the core of the Communist Party of Nepal–Marxist-Leninist (CPN-ML) founded in 1978.

## Khambuwan

The Khambuwan Rashtriya Morcha (KRM) was responsible for the first instance of armed violence in Nepal after the return to multi-party democracy in 1990. Active in the eastern hills, the KRM demanded an ethnic Rai homeland (Khambuwan) although its actions were limited to burning down Sanskrit schools, considered a symbol of 'upper-caste' oppression. Later, with the expansion of the Maoist insurgency into the east, a section of the KRM and its incipient Kirat Workers' Party merged with the CPN-Maoist in 2003. A splinter group, the Kirat Janabadi Workers' Party, broke with the Maoists after the 2006 *Comprehensive Peace Accord* (CPA). It experienced further fracturing, and carried out violent actions mainly aimed at extortion, surrendering its few weapons only in 2015. Given the constant splits and realignments, it is not clear if armed groups related to the KRM are still active. The faction of the KRM that did not join the Maoists maintained an independent existence, renounced violence, and even won a seat in the second Constituent Assembly (CA).

## Limbuwan

In the hills even further east, adjoining Nepal's border with India, lies the part of Nepal known as Limbuwan – home to the Janajati (indigenous) group, the Limbus. The Limbus enjoyed some limited autonomy in the pre-1951 period. Due to some strong indigenous institutions, they were among the most well-organised Janajati groups. The Federal Limbuwan State Council (FLSC) is the main body

that claims to represent Limbu interests, although it has experienced splits and has yet to see electoral success. Factions of the FLSC have set up Limbuwan Volunteer (LV) groups for youth participation, and there are reports of LVs being involved in extortion. Paramilitary action per se has not taken place, although there is the implicit threat of violence linked to abductions and coercive practices by many associated groups that appear and disappear with regularity.

## Tarai

It was the Tarai that bore the brunt of post-war armed group violence, the roots of which go back to the Maoist conflict and the establishment of the Madhesi Rashtriya Mukti Morcha (MRMM – Madhesi National Liberation Front) in 2000 (along with similar 'liberation fronts' for some of the larger marginalised groups of Nepal). Differences with the Maoist leadership in 2004 led the head of the MRMM to part ways and form the Janatantrik Tarai Mukti Morcha (JTMM – Democratic Tarai Liberation Front), with the aim of creating an independent state in the Tarai.

The JTMM has also split a number of times – reportedly into five factions by 2009 with further divisions since then. All factions have professed political objectives in terms of advancing Madhesi rights. But their activities have been characterised by criminality, including kidnappings, murders and outright extortion, and, while ostensibly aimed at the state or hill-based 'elites', have in fact also targeted Madhesis through their indiscriminate tactics.

The JTMM was not able to gain popular support among Madhesis. Its primary contribution has probably been in having provided the blueprint for copycat groups to emerge concurrently with the 2007 Madhes Movement [see *article on social movements*, p.97]. For much of the period between 2007 and 2009, large parts of the Tarai lived in fear of violence by these armed groups, which justified their existence as opposing oppression of Madhesis. The names of many of these armed groups expose their criminality or lack of competence – the Madhesi Virus Killers



Minister for Peace and Reconstruction, Janardhan Sharma, speaking while signing an agreement with leaders of the armed group, Tarai Samyukta Janakranti Party, December 2008. © Kiran Panday

Party, the Tarai Cobra, Nag Raj [King Cobra], and even Liberation Tigers of Tarai Eelam (LTTE) and Nepal al-Qaeda World Terrorism.

### Accommodation

Armed groups in post-war Nepal have perennially splintered, merged and dwindled and so it is impossible to know exactly how many there have been. In 2009, the government put out a list of 109 armed groups that it said were active in Nepal. The vast majority were based in the Tarai, but those claiming to fight for Janajati rights, concentrated mainly in eastern Nepal, were also well represented. Pro-Hindu/monarchy groups, such as the Nepal Defence Army, which was responsible for a bomb blast in a Catholic church in Kathmandu in early 2009 that killed two people, were listed as well.

The armed groups were able to take advantage of the fluid situation of the political transition, and a state that was both weak and focused on managing the peace process. There was also a security vacuum in the hinterland since, during the conflict, the Maoists had destroyed much of the security infrastructure after the police retreated mainly to district headquarters. A total of 768 police posts lay destroyed or damaged by the end of the Maoist conflict. In rural Tarai and other parts of Nepal where these groups were active, the main impact of the post-conflict violence was in creating an administrative void, since the secretaries in charge of the Village Development Committees fled to the district headquarters.

However, despite pervasive fears relating to the security situation, the first Constituent Assembly election was held in 2008 without disruption. With the gradual reconsolidation of the state that followed, efforts were made to begin talks

with the armed groups and, starting in December 2008, the government signed agreements with some of them.

The main deal at the heart of these agreements was that the government would treat members of these groups as political activists, while in return the groups would help to bring other armed groups to the negotiating table. It is instructive that many of these agreements contain no mention of any demands having been discussed.

### Hardline response

The Communist Party of Nepal–Unified Marxist-Leninist (UML), which took over power from the Maoist-led coalition in May 2009, took a much more uncompromising approach. The UML devised the hardline ‘Special Programme for Effective Peace and Security, Ending Impunity and Protecting Human Rights 2009’ – known as the Special Security Plan (SSP). Ignoring charges of grave violations of human rights, particularly extra-judicial killings, the SSP was able to gradually control the activities of the armed groups, and by the time of the 2013 Constituent Assembly elections armed group activity had more or less ceased – although reports of attempts at extortion have continued.

Overall, post-war armed groups have not had much impact in shaping politics in the Tarai, the eastern hills, or nationally – particularly because of the existence of political parties. Apart from the JTMM’s secessionist stance, other armed groups were making nothing more than generic demands that were already being pushed by mainstream parties. The armed groups never posed any danger to the peace process. At best they were mere irritants to state and society; at worst, a menace equally feared and loathed by the very communities they claimed to be fighting for.



# Secularism and statebuilding in Nepal

Chiara Letizia

The question of whether Nepal should be secular or should once again be officially designated ‘the world’s only Hindu state’, as it was between 1962 and 2006, has become increasingly pressing. An unexpected compromise was reached when a new constitution was finally promulgated in September 2015, seven years after the first Constituent Assembly was elected following the end of the war.

Article 4 of the new constitution describes the Nepali state as secular, but defines this as meaning ‘religious and cultural freedom, along with the protection of religion and customs practised from ancient times’. None of the other terms used in Article 4 were deemed to need similar explication. Hence, according to the 2015 Constitution, to say that Nepal is secular is to say that there is religious freedom and that someone, presumably the government, must protect those traditional religions and customs ‘practised from ancient times’ – which, it seems, does not apply to religions and customs that are less ancient.

Secularism in Nepal dates back to April 2006, when the second People’s Movement forced King Gyanendra to give up power. On 18 May, the reinstated House of Representatives proclaimed Nepal secular, the first of several constitutional steps that led to the abolition of the monarchy and the creation of the new secular Federal Democratic Republic of Nepal. The Interim Constitution of January 2007 declared Nepal a secular state, while the first Constituent Assembly (CA) abolished the monarchy at its very first meeting in May 2008.

Yet, the place of secularism was never fully secured during the long constitution-writing process that followed. When elections for a second CA were held in November 2013, the political scene changed: the Maoist party, the most prominent political force under the first CA, was relegated to a distant third, while the older political parties, the Nepali Congress (NC) and the Communist Party of Nepal–Unified Marxist–Leninist (UML), were returned to power. The Rastriya Prajatantra Party–Nepal, which supported both constitutional monarchy and a return to state Hinduism, became the fourth largest party. It fought a clever campaign and managed to win a large number of votes in the proportional part of the election from pious Hindu middle classes, especially in the cities, who gave their first-past-the-post vote to the main parties but split their vote in protest against secularism.

In the wake of the Hindu nationalist Bharatiya Janata Party’s stunning victory in the Indian elections in May 2014, anti-secular forces have grown stronger in Nepal. As the new constitution was being drafted, different political parties and religious associations held protests and rallies calling for the restoration of the Hindu state. Even though the new constitution reaffirmed Nepal’s secular status, continued demonstrations in the summer of 2015 for the replacement of secularism with the principle of ‘religious freedom’ underlined the strength of opposition.

## Demand for secularism

Although prefigured from the 1950s onwards, serious and more mainstream demands for secularism emerged only in 1990 after the fall of the partyless Panchayat regime. Started by Theravada Buddhist monks and laypeople who no longer wanted to be counted as members of a Hindu sect, and strongly supported by Janajati (indigenous) activists, this campaign aimed to obtain equal recognition, rights, and space for all religions practised in the country.

Activists recognised that a two-century-old process had embedded Hinduism in Nepal’s national identity, seeking to homogenise an extremely heterogeneous population and leading to the domination of ‘high-caste’ Hindus in the economic, political, legal and educational spheres. Secularism therefore represented a demand that the multi-ethnic and multi-religious composition of the country be acknowledged. It was not a move to banish religion from public life, but rather a call for non-Hindus to be treated equally with Hindus. The core elements of this demand were the de-Hinduisation of the state (by replacing Hindu symbols and rituals on state occasions, for instance), the push for a multicultural Nepal, and the recognition of the distinct identity of ethnic groups.

The 1990 constitution retained Nepal’s identity as a Hindu kingdom, but secularism won the day 17 years later thanks to the success of the Maoist party. Maoists had asked for secularism from the beginning of their 10-year



insurgency – it was listed in the 40-Point Demand they presented to the government before the launch of the ‘People’s War’ in 1996. Their pro-secular stance was popular among Janajatis, who formed a large part of their support. Opinion polls have consistently shown that the majority of Janajatis, unlike other major groups in the country, favour a secular state – although there is still a sizeable minority of Janajatis who prefer the Hindu state option. The NC and UML parties supported secularism in 2007 and 2008 because they saw it as a necessary step to dismantle the power of the monarchy, which existed in symbiotic relationship with Hinduism. Even though many of their leaders had misgivings, they went along with the secular tide for fear of being seen as monarchists.

### Competing narratives

Secularism has encountered strong opposition precisely because it entails a new, pluralist notion of national identity in which different religions meet on the basis of equality. The anti-secular and Hindu nationalist associations and political parties emphasise *sanatan dharma* (Hinduism as a transcendent, ‘eternal religion’) as a shared Nepali (and South Asian) heritage. They argue that Hinduism is the world’s ‘most secular’ religion, which includes in its fold many different sects and guarantees tolerance and harmony amongst Nepal’s different religious communities. Hindu nationalists ignore the fact that ethnic and religious identities distinct from Hinduism (particularly Islam) have a long history in Nepal, and that seeing some people as more Hindu than others bestows them with special privileges. Disregarding the defining role that movements to assert a non-Hindu identity have played in Nepal’s recent history, Hindu nationalists prefer to portray secularism as a foreign import. In doing so, they capitalise on both the lack of proper public debate on secularism before the declaration of a secular state, which surprised and shocked many, and the widespread belief that foreign actors play a large role in Nepal’s politics.

“ It was not a move to banish religion from public life, but rather a call for non-Hindus to be treated equally with Hindus.”

Thus, secularism is often seen by its opponents as the product of a Christian conspiracy to allow proselytising. In this discourse, secularism is seen as giving religious minorities the right to convert and eat cows – whereas protecting cows and banning conversion symbolised the purity and the Hindu-ness of the former kingdom. Secularism

is thus viewed as leading to disrespect, communal violence and the loss of national unity and identity. The idea of Nepal as the ‘last land of the Hindus’, or the only Hindu country in the world, retains its appeal to a younger generation seeking affirmation of their Nepali identity.

### What does secularism mean now and what has changed?

The declaration of secularism has not brought radical legal changes: ‘anti-secular laws’ such as those criminalising cow slaughter and proselytising have not been repealed. Neither have gods left the political sphere. Much of the symbolic and ritual apparatus of the monarchy has passed unchanged to the secular republic. Rituals that featured the king’s public presence continue to be financed as state affairs, and the president of secular Nepal has appropriated the king’s ritual role at important Hindu festivals.

Far from being a mere continuation of the status quo, however, this reconfiguration of royal rituals into state rituals is one way in which the young secular republic is legitimised, which is precisely the reason some still seek to reverse this trend. While secularism itself has not undermined the traditional elite’s hold on power, the fact that Hinduism is no longer formally guaranteed a hegemonic position has opened up the possibility that Nepalis of different religious backgrounds could represent the state in the future. Certainly, further challenges for Nepali secularism will emerge as minorities begin to achieve greater representation in the courts, the legal profession, the political parties, and the governmental apparatus.

So far, secularism in Nepal has not meant the strict separation of state and religion and appears to be inspired by the Indian model, according to which the state upholds all the religious traditions of its people equally. It neither makes religion a private affair nor society secular. Instead, through secularism, religious minorities seek recognition on an equal footing with the majority, and religious and ethnic groups engaged in identity-making processes have tended to enhance their religious traditions, making sure that they invite the president or prime minister to their new year’s festivals, for example. The multiplication of religious festivals in the national calendar and in public space is thus seen as both a secular development and an important symbolic recognition of religious and ethnic minorities.

Secularism has changed the nature of the relationship between Hinduism and minority religions – from a paradigm of distant control under a tolerant hegemony to a situation of competition and negotiation among



Members of the Christian community carry mock coffins demanding a burial space, March 2011. © Min Ratna Bajracharya

equals. Secularism has been an essential step in the larger project to create a new, inclusive and republican Nepal, but it has also led to a public debate on the relationship between religion and the state that has at times become fractious. Religion continues to be a crucial modality for constructing individual and collective identities, including at the national level, which explains the lasting sensitivity around the idea of secularism. Barring a few isolated incidents, though, secularism has not given rise to religious conflict. Despite the fact that the principle is highly divisive, it is still evolving, and actual secularist practices and accommodations can be built and worked out over time, without recourse to identity politics.

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# Justice and human rights

## Interview with Mohna Ansari

Mohna Ansari is a member of the statutory National Human Rights Commission (NHRC). The first Muslim woman lawyer in Nepal, she was previously a member of the National Women's Commission.

### On the NHRC

During the conflict period and afterwards, the National Human Rights Commission has been viewed as an institution that will protect people's lives. People also expect the Commission to act when their civil and political rights have been violated. There have been a lot of expectations of the Commission from all over the

country and the international community has shown readiness to provide support. But, sometimes people may feel disappointed when they hear that the Commission does not execute its decisions: it can only tell the government what to do; there are no clear guidelines on what should happen if the government does not follow through. It is important to keep up the people's confidence in NHRC.



Mohna Ansari. © Deepak Thapa

### On the NHRC's work on transitional justice

We are also looking at conflict-era cases. Cases with NHRC will not just be handed over to the Truth and Reconciliation Commission or the Commission of Investigation on Enforced Disappeared Persons. We have encouraged people to file complaints with both Commissions. We tell them that is their right. But we also tell them that their testimonies are safe with us. We will not give those testimonies to the TRC without the consent of the victims.

But there are many problems, such as with the disappeared. The general understanding is that the NHRC has investigated many cases of disappeared people and it has not taken action on these. When someone goes missing, the family files a report with the police. But, they do not inform the police once that person returns home. Hence, people demand their rights from the state, but forget that they have responsibilities too. So, we are filtering such cases.

### On transitional justice

The promulgation of the constitution does not mean the transition has come to an end. It will not be complete

until restorative justice has been provided. There is not much appreciation of the fact that conflict victims are not only from the Maoist side. There are those from the side of the army and others. Until all of these are dealt with and matters of reparations agreed upon, this issue is not going to be settled.

We have been putting pressure on the government to provide resources to the two commissions so that they can function properly. These were formed after eight whole years [since the *Comprehensive Peace Accord* (CPA)]. If you look at the CPA, it commits to the formation of the Truth and Reconciliation Commission soon after the CPA.

But we at NHRC also have some reservations [about the transitional justice process] as well. The main issue is that of witness protection. The other is the proposed amendments that aim to remove certain categories of crimes from the process. Not everything should be viewed from a political angle. If certain incidents happened in the past, the commissions should be allowed to investigate them and find the truth no matter who was responsible.

**“ Perhaps if it had been someone else in my position they would have taken them more seriously. That’s why I have begun to tell people, don’t judge me by who I am, but by what I say.”**

Our concern is that there should not be any compromise on the issue of torture, extra-judicial killings, sexual violence against women and also on international principles.

### **On the behaviour of the state**

It is difficult to find real change in the attitude and behaviour of the state bureaucracy towards marginalised communities, and even less so towards women. The laws have been very beautifully framed on the question of women. But, when we try to implement them, we find resistance from the bureaucracy.

I face that myself from time to time in my personal dealings. I don’t know if that is because of my gender or my social background. They tend to treat me flippantly. Perhaps if it had been someone else in my position they would have taken them more seriously. That’s why I have begun to tell people, don’t judge me by who I am, but by what I say.

### **On Nepal’s international commitments**

International opinion matters a lot to Nepal. This is linked to international goodwill, reputation and also aid, since we rely a lot on international funding. But, equally important is how we honour our commitments under various instruments. There is still discrimination, though. Take the case of CEDAW [the Convention on the Elimination of All Forms of Discrimination against Women]. We have signed up to it but according to the current constitution a man can easily pass on citizenship to his offspring, but a woman cannot. In that sense, the constitution accepts me, a woman, as a person, but refuses to recognise my identity and provide equal rights.

# Gender first

## Rebranding inclusion in Nepal

Lynn Bennett

In the early 2000s, as the Maoist insurgency became more intense, journalists, scholars and the development community increasingly cited social exclusion as the 'root cause' of the conflict – specifically the systematic denial of economic resources and cultural recognition to women, Dalits ('low caste'), Janajatis (indigenous groups) and Madhesis (from the Tarai plains).

This was broadly consistent with the Maoists' own narrative that called on excluded communities to join them in overthrowing the 'feudal elite' that had oppressed them for centuries. Many Nepali rights- and identity-based organisations had themselves been raising issues of social inclusion since the first People's Movement of 1990, which restored multi-party democracy to Nepal.

The Nepali Government too recognised problems of exclusion and underdevelopment, even as the war was continuing. The National Planning Commission (NPC), the government institution charged with developing strategic plans that prioritise and articulate national development goals and coordinate the work of the sectoral ministries to achieve them, identified social exclusion as one of four main causes of poverty in its 2003 Poverty Reduction Strategy Paper.

The NPC was also highly supportive of the 'Gender and Social Exclusion Assessment', a major piece of analytical work undertaken by a team of Nepali and international researchers with support from the UK Department for International Development (DFID) and the World Bank. It was published in summary form in 2006 as *Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal*.

The report documented the sharp differentials in poverty, welfare outcomes and governance participation between various excluded groups and the traditionally dominant 'high-caste' hill Hindus. It also called for the government to 'incorporate an inclusion lens into its planning, budget

allocation and monitoring processes to ensure full access for women, Dalits and Janajatis in all core government services and development programmes'.

### Post-war politics and incentivising inclusion

During the period following the second People's Movement in April 2006 and the negotiations for the *Comprehensive Peace Accord* later that year, part of the political settlement was consensus on the need to restructure the state and society to be more inclusive. At that point, no one was sure how much power the Maoists – or the marginalised groups they had championed – really had, but their demands clearly had to be taken seriously in order to support the peace process.

Once in government, however, the Maoists (whose senior leaders are themselves from the traditionally dominant groups) quickly began to reveal their own weaknesses – through corruption and failure to produce visible improvements in the lives of the poor: the 'peace dividend'. Given the fact that the development bureaucracy charged with implementing the promised changes was run almost entirely by the same dominant elite, this failure is not surprising.

Neither the Maoists, the traditional parties nor the development partners have recognised the need to incentivise inclusion through all levels of the bureaucracy, and to identify and support sincere advocates for the broader inclusion agenda among the traditional political elite.



It did not help that unrealistic demands were made by historically excluded groups unfamiliar with the concepts and mechanisms of representative democracy. In both the first and second constituent assemblies, opportunities to articulate and debate the core issues of recognition and voice for Nepal's diverse minority groups were missed, or indeed actively avoided, by the Maoists and the traditional parties. Federalism and whether it would be based on identity or economic viability became the proxy issue that blurred the real options for restructuring the state and society at a deeper level.

Over time, the simple persistence of the status quoists undermined the Maoists' already tottering credibility and reduced their ability to mobilise their rural supporters. When the cantoned Peoples' Liberation Army was finally disbanded (rather than moving in large numbers into the national army at all levels as the Maoists had hoped), the Maoists' bargaining power dropped precipitously. They were forced to move from revolutionary to coalition politics. Since then, especially after the second Constituent Assembly elections, the traditional 'upper-caste' hill Hindu political elite has reasserted itself. Partly in response to the perceived insult of having been labelled 'other' in the electoral law, they have self-identified as a separate indigenous ethnic group, the Khas Arya, and the centre-right political parties they control are today dominant once again.

As the traditional political forces have regained power, there has been pushback against the concept of social inclusion, a concept they label as a foreign construct that has promoted ethnic politics and identity-based federalism, thus threatening Nepali national integrity and undermining its 'social harmony'. Ranking officials in the government have criticised certain high-profile donor efforts to support excluded groups, and some projects were even forced to shut down.

A prominent example is the fate of the Janajati Empowerment Programme, a DFID-supported capacity-building project for the Nepal Federation of Indigenous Nationalities (NEFIN), to reach excluded indigenous groups with development and empowerment programmes. But NEFIN's core agenda centred on securing ethnic federalism in the new constitution, and so it ignored DFID's request to refrain from participating in strikes or *bandhs* – a common form of anti-government protest for activists groups across South Asia. The government felt that by supporting an activist group like NEFIN, DFID was taking sides on a critical political issue. In the end, DFID (and other donors) withdrew support to NEFIN, but its relations with the government remained strained for several years and, after having been an early pioneer, it has remained very cautious on inclusion, shifting

most of its efforts to supporting gender equality, which is not perceived as 'political'.

Meanwhile, the government, facing pressure to show progress on the development front, continued to seek donor support even though such funding often came with requirements to address issues of exclusion. Indeed, few politicians or public servants wish to appear hostile to the idea of equity and social justice and, at a personal level, many educated members of the elite feel considerable ambivalence about the salience of caste, ethnic, regional and gender hierarchies, which they see as incompatible with their own modern democratic ideals of equality between all citizens.

## Re-branding inclusion: gender first

What seems to have happened in the face of this discomfort and the need to keep the development business going in post-conflict Nepal is an unspoken 'rebranding' of the 'inclusion lens' to place an emphasis on gender – reflecting the configuration of the Gender and Social Exclusion Assessment of 2006.

Through low-key, working-level partnerships between the government, donors and non-governmental organisations (NGOs), the inclusion/exclusion framework has been reconfigured into the Gender Equality and Social Inclusion (GESI) approach. This involves a number of steps to be applied to government periodic plans, policy development and programme design, as follows:

1. systematically identify the excluded and formal and informal barriers that different excluded groups may face in getting access to the programmes, services or rights;
2. design and put into place mechanisms to overcome these barriers; and
3. establish a system to monitor outcomes for different excluded groups and continuously make necessary design modifications if systematic disparities persist.

By now, the use of the GESI approach is impressively widespread. With the support of different development partners, the government has developed GESI guidelines for a number of sectors and ministries. The NPC even devoted a whole chapter of the first Three-Year Interim Plan (2007/08 to 2009/10) to a GESI analysis of the major excluded groups. Donor agencies and NGOs have also conducted GESI audits of their own operations to try to ensure that their project design processes and internal policies are sensitive to the constraints faced by different groups and that their hiring practices bring in a staff that reflects Nepal's diversity.



**Figure 1: the excluded**

Economically excluded	The poor of all Castes Ethnicities Locations Genders
Socially excluded (specific issue of exclusion)	Women Dalits Adivasi Janajatis Madhesis Muslims People with disabilities People from geographically remote areas Sexual and gender minorities

Putting gender rather than caste, ethnicity or regional identity up front seems to have helped to make the GESI approach more familiar and less threatening. Government staff at all levels are used to donor concerns about gender mainstreaming since it has been part of development discourse in Nepal for more than 30 years. Donors, too, have strong mandates from headquarters on gender and feel more confident of their grasp of gender issues than they do about issues like untouchability or ethnic identity that have been highly politicised.

Another aspect of GESI is that it includes not only identity-based groups, but also the poor from all groups, including the politically dominant group (see Figure 1). Since there are large numbers of poor Bahun and Chhetri families – especially in the far west – it was important to look at deprivation based on economic status as well as social identity.

The GESI approach can be seen as an expansion of gender mainstreaming. The core idea is that government services and rights should be equally accessible to everyone. Instead of relying on special targeted programmes to reach the poor and the excluded, it is more efficient and equitable to make sure that mainstream programmes and projects are designed and implemented to reach all citizens.

In order to achieve this, the team designing such a policy or programme has to be aware of the power relations – between men and women and between members of different caste or ethnic groups or religions – and able to assess how the constraints inherent in these relationships may block access for members of non-dominant groups. For example, where schooling is given only in the dominant Nepali language, a Madhesi girl in the Tarai or a Tamang (an indigenous ethnic group) boy in the hills may well face serious barriers to a meaningful education even though the government is committed to ‘education for all’.

## Impact

At the moment, Nepal is the only country where the GESI approach has been adopted at the government level.

Besides a robust toolkit of guidelines at the project, programme and sectoral levels, guidance on institution-level GESI audits and a number of assessment and progress reports and evaluations are available along with trained GESI staff and a much larger group of GESI-sensitised staff at all levels across more than six ministries. There is even a self-formed National Association of GESI Trainers and Practitioners with experience working all across rural Nepal. The approach seems to be a practical way to work with government (still predominantly composed of the traditionally dominant groups and men) in a post-conflict setting to address the highly charged issue of social exclusion.

**“No one was sure how much power the Maoists – or the marginalised groups they had championed – really had, but their demands clearly had to be taken seriously in order to support the peace process.”**

Development partners in Nepal are also working together to support the GESI approach in their own internal policies and structures as well as in their support to government programmes. A voluntary group that began in 2005 as the Social Inclusion Action Group became one of the thematic groups under the International Donor Coordination Group, and in 2015 renamed itself the GESI Working Group. After a series of consultations in districts, ministries and with a range of NGOs, the GESI Working Group has come up with a common framework document that explains why the GESI approach is important in Nepal, defines key terms and lays out the process for operationalising GESI at the policy and programme levels. It further presents a ‘road map’ of activities to build capacity and improve the measurement of GESI outcomes.

Yet, this rebranding effort could still fail to achieve its ultimate purpose. There is some danger that the very thing that made GESI broadly acceptable to government – gender

mainstreaming – may be what ends up limiting its ability to bring meaningful change for other groups. When one reviews the various guidelines in search of solutions for non-gender dimensions of exclusion, these are few and far between. Outcome monitoring data by caste and ethnic group is often less complete than data by gender, leaving critical gaps in the system’s ability to expose shortcomings in these dimensions.

For now, the challenge is to make sure that the ‘Social Inclusion’ part of the GESI approach gets the same attention as the ‘Gender Equality’ dimension. Donor agencies, government ministries and NGOs that want the GESI approach to work for all groups need to keep on doing the patient ground-level work to improve systematic coverage of all the excluded groups. For this, it is necessary to focus on the less political and less controversial elements of the inclusion agenda: helping to build the human capacity and economic opportunities of groups historically affected by discrimination while also working to support good governance and progressive policies across the board.

Although progress on inclusion sometimes seems agonisingly slow and halting, over the last 50 years Nepalis from all social groups have made vast strides in their awareness of international rights regimes and their expectations of equality and voice. This is a one-way street. The traditional political elite seems to have successfully defended the status quo in parts of the new constitution, but as long as the basic framework of representative democracy remains in place and citizens continue to become more educated and aware, over time they will insist on a more inclusive Nepal.

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Lynn Bennett obtained her PhD from Columbia University (1978). She led a three-year research project on the social and economic status of women in Nepal for USAID, published in the 13-volume series, *The Status of Women in Nepal* (1981). She joined the World Bank in 1988, serving as Gender Coordinator and then Director for Social Development in the South Asia Region. She led the joint DFID/World Bank Gender and Social Exclusion Assessment, the summary report of which was published in 2006 as *Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal*. A follow-up to the study was published as *Gender and Social Exclusion in Nepal: Update* (2013).

# Inclusive state and Nepal's peace process

Yam Bahadur Kisan

Issues of inclusion and affirmative action have entered the public discourse in Nepal alongside major political changes, notably the end of the Rana dynasty in 1951 and the restoration of democracy in 1990.

But such matters failed either to engage the ruling classes or impact the political system, and in reality little changed in the lives of most Nepalis, particularly those from oppressed and marginalised communities. It therefore came as no surprise to many when the Maoists tapped into popular feelings of anger, dissatisfaction, hopelessness and rebellion to launch the 'People's War' in 1996.

## Inclusion and the People's War

Article 11.3 of the 1990 Constitution, on the *Right to Equality* in the section on Fundamental Rights, recognised the concept of affirmative action. It provided 'special provisions ... for the protection and advancement of ... those who belong to a class which is economically, socially or educationally backward'. But the state took no steps towards implementation, and in fact the Supreme Court even repeatedly quashed a number of petitions requiring the government to formulate laws needed to operationalise such provisions.

The Maoist insurgents talked of bringing excluded and marginalised communities into the mainstream, but they went further to try to address the different kinds of exclusion that people faced and to understand the disparate reasons behind their unhappiness. This approach meant that the excluded came to believe that their demands, feelings and sources of dissatisfaction were at one with the party's own. Large sections of marginalised communities were attracted to the 'People's War', where the desire of the oppressed for emancipation converged with the Maoists' objective of capturing state power.

The Maoists organised and armed the angry and discontented, including women, Dalits ('low caste'), Janajatis (indigenous groups) and people from 'backward regions', reflecting the extent of people's rage and courage. As the war intensified and the role of the excluded groups in it became increasingly apparent, the government began rethinking its stance, and ultimately those in power were forced to accept that the traditional unitary, centralised and discriminatory system could not last. The next step was to formulate policies that would help address grievances.

On the eve of peace talks with the Maoist rebels in 2003, the government under a newly active monarchy began

to open a path towards affirmative action – for example by declaring quotas in government institutions and elsewhere. One example was to set aside a fixed number of places for Dalits, Janajatis, women, and persons with disabilities in medical and engineering education courses. Notwithstanding the fact that the Supreme Court overturned this particular provision (it was reinstated through another court order only recently), it is clear that the Maoist rebellion contributed directly to changes in policy to support affirmative action even as the war continued.

The progress of inclusion accelerated alongside the emergence of the peace process – from the *12-Point Understanding* of November 2005 between the Maoists and the state, to the Second People's Movement of April 2006 and the *Comprehensive Peace Accord* (CPA) of November that year. Principles of non-discrimination, inclusion and secularism were established through a parliamentary declaration of the House of Representatives – reinstated following the success of the Second People's Movement. After the CPA, the spirit of affirmative action and inclusion was subsequently reflected in a number of agreements reached between the state and different caste, ethnic, linguistic, religious, gender and regionally based groups and communities, usually following a period of agitation by the respective identity group [see the article on *negotiating an inclusive Nepali state*, p.13].

## Legislative change

The 2007 Interim Constitution, which was agreed by consensus, further advanced commitments to inclusion: Section 21 on the *Right to Social Justice* mentioned the principle of proportional participation in state structures; and Section 154 provided for the establishment of commissions 'to safeguard and promote the rights and interests' of various marginalised groups. Federalism as a means of advancing inclusive representation



was introduced as a result of the Madhes Movement, a major protest by groups representing the Madhesi and Tharu populations predominant in Nepal's southern Tarai plains, which erupted following the promulgation of the Interim Constitution.

The 2007 Constituent Assembly Election Act set aside 56 per cent of the total seats of the Constituent Assembly for marginalised groups (with the exception of the disabled) on a proportional basis. The Interim Constitution further provided the basis for the Amendment of the Civil Service Act in 2007, which allotted 55 per cent of vacancies for open competition and the remaining 45 per cent to be allocated as follows: women (15 per cent), Dalits (4 per cent), Janajatis (13 per cent), Madhesis (9 per cent), people with disabilities (2 per cent), and people from nine hill and mountain districts of the mid- and far-west regions ('backward regions' – 2 per cent). It was this revision to the Civil Service Act that served as the benchmark for other acts to be amended. In December 2008, the government formed the National Inclusion Commission to formulate additional policies on inclusion. The Commission submitted its report in April 2009, outlining detailed recommendations on the basis, the process and benchmarks for inclusion of different population groups in various state structures, but the government took no action to implement the report.

## Resistance to change

A lot of progress was made in the first three years following the re-establishment of democracy in 2006, in principle as well as in the constitutional and legal sense. These related to affirmative action, proportional participation and representation, inclusion, secularism, federalism and republicanism. But dominant groups continued to create institutional hurdles to inclusion. For instance, in practice vacancies were announced in small batches so that fewer positions fell into the reserved category: if six vacant positions were advertised at once, three would be in open competition and three in the reserved category; but if the same six were advertised in batches of three, there would be two seats in the open competition each time and so for six vacancies the reserved category would end up with only two seats. Similarly, the results of the reserved category were sometimes declared early, with the vacancies that went unfilled then re-advertised quickly in the open competition category.

The new Constitution of Nepal agreed in 2015 largely continued this pattern of institutionalising gains in inclusion and affirmative action while at the same time diluting them through ambiguity and contradiction. A form of institutional inclusion has been assured

through the provision of rights-based constitutional commissions for women, Dalits, Janajatis, Madhesis, Tharus and Muslims, as well as one more dealing with inclusion itself. The representation of women has been guaranteed at a minimum of 33 per cent in elected bodies, but the overall proportion of reserved seats has in fact gone down [*see article on the electoral system, p. 72*]. Inclusion in executive bodies is discretionary, and there is no provision for mandatory inclusion in the judiciary.

The new constitution is full of aspiring phrases such as 'proportional inclusion', 'positive discrimination', 'special provisions' and 'principle of inclusion', but without defining clearly what these mean. Therefore, interpretation of these terms can differ among institutions and structures, creating additional barriers to advancing inclusion in practice. Further, listing of all groups in Nepal, including existing influential groups such as the Khas Arya that have a long history of dominance in Nepali state structures, as beneficiaries of affirmative action and a target group of bodies like the National Inclusion Commission contradicts the basic norms of affirmative action policy and will certainly create further problems in the future implementation processes [*see article comparing the 2007 and 2015 constitutions, p. 64*].

## Future of the inclusive state

The evolution of the inclusion agenda has sparked public debate on both the pluses and minuses of affirmative action. Progressives have welcomed increases in the presence of women, Dalits, Janajatis, Madhesis, Muslims, people with disabilities and people from 'backward areas' in the state, in policy-making and in political parties at different levels. But there has also been pushback, albeit often disingenuous, for example through claims that quotas have impacted negatively on 'communal harmony', or that productivity has diminished because recruits from reserved categories are less capable – an assertion that is in fact used to discriminate against employees in the workplace.

The promulgation of the new constitution brought to a close one chapter of the peace process. Statutory safeguards to protect progress on inclusion, such as Part 18 on *The Right to Equality*, provide some hope that misconceptions about policies on affirmative action or to counter discrimination can be resolved. But complications such as the incorporation of Khas Arya among the list of beneficiary groups show that the roots of the problems that have contributed to the continuation of a non-inclusive state in Nepal have not totally disappeared. Continued progress on peace requires that the extent of popular discontent continues to be





Police take into custody a demonstrator from the Dalit community of Badis during a protest rally in Kathmandu, August 2007. © Kiran Panday

reduced: by steadily addressing constitutional challenges through amendments; and by building trust among people that amendments will in fact lead to tangible change through effective implementation.

*[Translated from the original Nepali by Manesh Shrestha]*

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# Inclusive development

## Interview with Shankar Sharma

Shankar Sharma was Vice-Chair of the National Planning Commission from 2002–06. His term in office coincided with the increased push for gender and social inclusion in government plans and policies. He was previously Professor of Economics at the Centre for Economic Development and Administration, Tribhuvan University, Kathmandu. He also served as Nepal's Ambassador to the United States, 2009–14.

### **On how the gender and social inclusion agenda entered government policy**

Nepal had already initiated policies on gender and social inclusion, but the Tenth Plan of Nepal [2003–2007], the government's five-year strategic planning document, which was also our Poverty Reduction Strategy Paper, included inclusion as one of the four pillars of development. It was the conflict that pushed the government to take this policy forward strongly. Studies have shown that where there is heterogeneity in terms of ethnicity, and disparity between different geographic regions and ethnic groups in social, economic as well as political terms, and exclusion, there is a high probability that the country will end up with conflict, if [these issues are] not managed well. And, because governance was weak and the implementation of planned activities was poor, improved governance was also included as another pillar for development.

### **On the perception that gender and social inclusion is driven by donors**

Donors cannot do anything unless their assistance is linked to the government's priorities, or else their headquarters will raise questions. The pillars in the Tenth Plan were something the Nepali government came up with. That's not to say the donors did not suggest that while we focused on poverty reduction, we should also try to address the factors that may have fuelled the conflict and ensure higher levels of inclusion. They also provided us with different monitoring manuals, which were very useful because we either have to visit different countries and learn from them, or we have to derive lessons from already available material.

### **On early successes**

Donors were moving away from infrastructure development support to the social sector in Nepal and worldwide. Since the Tenth Plan had mentioned social inclusion as one of the important pillars for development, it helped them focus strongly on that issue. In addition, the government not only increased budget allocation in the social sector but also came up with a number of innovative ideas for implementation. The government set aside funds for various schemes for girls, for Dalits, the poor, and for underdeveloped areas. These included scholarships, one-time cash or in-kind payment for parents who send their children to school, a school-feeding programme, expansion of infrastructure, a media campaign, and increased numbers of teachers. In health, similar kind of activities were introduced to address preventive and curative health care challenges. Management committees in 36 districts were also formed to improve health service delivery and provided free health care to the poor while charging nominal fees to those who could pay. Also, the Maoists did not target schools and health posts massively during the conflict. All these measures helped to improve social indicators in Nepal significantly. Nepal's advances in health and education sectors have remained impressive.

Improvements in the social and economic sectors also help to reduce the problem of social discrimination. The literature says that improvement in education and economic empowerment related indicators could help in bringing down social discrimination to a minimum in a short period of time.

### On community involvement in development

Since the Tenth Plan, the government has introduced the mechanism of involving communities in development activities. One prominent example is the Karnali Highway linking the western Tarai plains to the Karnali region, the most deprived part of Nepal. Everyone was demanding the construction of the Karnali Highway, which is also vital for the region's development. At that time, due to the conflict, donor projects were not being implemented in rural areas. The World Bank had a few road projects but it wanted to cancel them, because they were not moving forward, including the Karnali Highway. The government asked them not to do so bearing in mind the dire socio-economic situation of the region.

Officials from the National Planning Commission visited Karnali a couple of times, seeking ways to involve the community in building the road. The approach was to give each 500-metre section on contract to different community groups. The immediate impact of the contract system was felt in wages, rising nearly three and a half times for both males and females. When the Maoists objected to the road building, the community took the lead in fending them off and eventually the portion of the road handed over to the communities for construction was completed in time.

**“Reservations are easy to implement and politically attractive whereas the alternatives are difficult and take time. The best way to reduce disparity is through education and income-generating programmes targeted at excluded and deprived groups.”**

Encouraged by that experience and other community-initiated and completed projects, the government also rolled out the Poverty Alleviation Fund. The government thought it would be useful for the people themselves to identify development projects and implement them. Programmes that involved communities were expanded in water supply and other infrastructure projects as well.

### On the current form of affirmative action policies

We do not know if reservations [quotas] are the best ways to address disparities or if there are alternative modalities. Reservations are easy to implement and



Shankar Sharma. © Kiran Panday

politically attractive whereas the alternatives are difficult and take time. The best way to reduce disparity is through education and income-generating programmes targeted at excluded and deprived groups. Income opportunities are almost non-existent in Nepal. What the government can and should do is to emphasise quality and technical education.

Political inclusion helps, but only the enterprising ones among the excluded groups benefit from it; the masses don't. But it has had the effect of reducing conflict.

Right now, the main source of discontent among the marginalised is the lack of economic opportunity and low representation in the bureaucracy. To tackle this, a scheme could be floated in which the government would educate 10,000 students per annum to bachelor's level, selected from marginalised and economically deprived groups and women. The government would pay for their education and provide scholarships, and in return they would serve at least five years in the government. But, it would take time for the results to be seen and it is also a difficult path to take.

Reservations help if we cannot go with the alternative. I don't think they will ever be done away with because of political reasons. And I doubt anyone will look seriously for alternatives, either.

# Backlash against inclusion

Shradha Ghale

Nepal's political elite has never been in favour of inclusion. In 1990, marginalised sections of Nepali society had hoped that the fall of the Panchayat regime and restoration of parliamentary democracy that followed the first People's Movement would open up space for their voices and interests in a new political system. Indeed, citizens' views on a new constitution were sought and there was soon a flood of demands for recognition of minority religions and languages, and for proportional representation in parliament. But the then-Chair of the Constitution Drafting Committee rejected such demands outright, calling them 'peripheral' and even complaining that it was 'unfortunate' that they had even been raised. People in power viewed the aspirations of the diverse communities as a threat to national unity, and many cited the example of India to argue that 'reservations' (quotas) and other forms of affirmative action would disrupt communal harmony.

The success of the second People's Movement in 2006, which expedited the peace process in Nepal, compelled the traditional political parties to accept the idea of inclusion. This sea change happened for two reasons. First, the popular mood at the time was strongly in favour of major political and social transformation, and the traditional parties, having lost their credibility over the previous decade, could not afford to ignore this shift. Second, and more importantly, these parties were forced to engage with new, more progressive entrants into the political sphere. The insurgent Communist Party of Nepal-Maoist (CPN-M) was especially powerful, and the end of the fighting meant it had agreed to give up its arms but not its agenda. It was pressure from the Maoists that ensured that the 2006 *Comprehensive Peace Accord* incorporated specific provisions on inclusion such as the commitment to restructure the state 'in an inclusive, democratic and forward looking manner' (Article 3.5). A material expression of the inclusion agenda – federalism – was subsequently included in the 2007 Interim Constitution as a result of a mass movement by Madhesi in the Tarai, which also saw the rise of Madhesi political parties.

## Resisting inclusion

Initial post-war gains in advancing inclusion were gradually eroded by the older parties, which, with the support of powerful establishment actors such as the army and the bureaucracy, began to reassert themselves. The new political and social forces represented primarily by the Maoists and the Madhesi were progressively weakened, including in part due to their own political and other failings. The Maoists lost their dominant position in the legislature after the end of the first Constituent Assembly. Both they and the Madhesi parties performed poorly in the 2013 elections for the second Constituent Assembly. There are many different reasons why they lost, but this provided an opportunity for the traditional parties, in particular the Nepali Congress (NC) and the Communist Party of Nepal-Unified Marxist-Leninist (UML),

to claim that the result proved people's rejection of identity-based federalism. And, although they did not go so far as to spell it out, they even took it to mean a rejection of the idea of inclusion as well.

As the political transition dragged on, influential sections of society that had never been reconciled to the political changes of 2006 became increasingly vocal. Some argued that the declaration of Nepal as a secular state in the Interim Constitution was illegal, since the political parties had not consulted the population on this, and further that Christian missionary groups were responsible for this move. For many, secularism was emblematic of a more progressive political system given the earlier association of Hinduism with state-sponsored elitism [see *article on secularism*, p. 109]. Others lashed out at federalism, claiming that it would disrupt social harmony and lead to ethnic conflict, or, as discussed below, that the demand for inclusion was a donor construct. Such arguments were often voiced in Nepal's mainstream media, which itself is dominated by 'upper-caste' elite males.

Another typical argument used against inclusion is that no group should be entitled to special measures because many people from the hill 'upper castes' (eg Bahuns and Chhetris) are poor as well. This, however, fails to recognise that marginalised caste or ethnic groups represent a disproportionate share of the poor in Nepal. Moreover, exclusion in Nepali society is systemic, and so it is far more difficult for a poor Dalit ('low caste') or Janajati (from an indigenous group) to achieve upward social mobility than for a poor Bahun. Statistical data corroborate this. The three editions of the Nepal Living Standards Surveys (1995–96, 2003–04 and 2010–11) show that the number of Bahuns and Chhetris living below the poverty line decreased from 34 to 19 per cent between 1995–96 and 2003–04, whereas the fall over the same period was much smaller among Hill Janajatis, from

49 to 44 per cent, and Dalits, from 58 to 46 per cent. By 2010–11, when the poverty rate had shrunk to 25 per cent nationally, it was still 44 per cent among Hill Dalits, 38 per cent among Tarai Dalits, 29 per cent among Madhesi ‘other’ castes, and 28 per cent among Hill Janajatis as opposed to 10 per cent among Bahuns.

Major political parties have also moved to stop their Janajati, Dalit and Madhesi members from raising identity-related issues. In September 2014, when Janajati lawmakers tried to form a cross-party caucus to push Janajati demands, NC and UML leaders warned them against it. The structure of Nepal’s political parties is such that party members are heavily dependent on the patronage of their leaders, and so many lawmakers from marginalised communities were compelled to back down.

**“The structure of Nepal’s political parties is such that party members are heavily dependent on the patronage of their leaders, and so many lawmakers from marginalised communities were compelled to back down.”**

A major objective of the anti-inclusion agenda has been to prevent donor support for marginalised groups. The British government’s Department for International Development (DFID) came under pressure from the Nepali government to withdraw financial support to the Nepal Federation of Indigenous Nationalities (NEFIN), the umbrella organisation representing various indigenous groups from across the country, and its Janajati Empowerment Programme (JEP), which sought greater social, economic and political inclusion for indigenous groups. In 2011, NEFIN led a number of strikes to demand a federal system that recognised the identity of indigenous groups. The mainstream media vociferously criticised these protests amid reports of exaggerated levels of violence, and DFID was persuaded to stop funding the JEP.

The drafting in 2012 of the United Nations Development Assistance Framework provides another example. The Nepali Foreign Ministry and the National Planning Commission asked the UN to remove references to ‘structural discrimination’ from the draft, and to replace the description of 20 vulnerable ethnic and caste groups specifically identified with the generic term ‘poor and disadvantaged communities’. In 2014, after the NC came to power, the government pressured donors to concentrate on investment in infrastructure instead of in activities to promote inclusion.

### **New constitution**

Taking advantage of the chaos unleashed by the 2015 earthquake, the ruling parties hastily pushed through a constitution that reversed many of the gains made since 2006. Most contentiously, the model of federalism provided in the new constitution ignores longstanding demands of Madhesis and Janajatis, particularly in relation to demarcation of state boundaries and constituency delineation [see *article comparing the 2007 and 2015 constitutions*, p.64]. The new constitution also reduced the share of proportional representation (PR) seats in the House of Representatives from 58 to 40 per cent. Since PR is key to ensuring greater representation of marginalised groups, this was another backward step for the inclusion agenda [see *article on the electoral system*, p.72]. One of the most regressive provisions in the new constitution deals with citizenship. Women seeking citizenship for their children have to prove that their child was born in Nepal and that the father is a Nepali citizen, but the same rule does not apply for men.

The Maoists’ drift away from the inclusion agenda and the rise to prominence of the NC and UML has left marginalised groups without political allies. Only the Madhesi parties were able to muster significant opposition to the 2015 Constitution through a four-month-long mass movement in the Tarai. At the time of writing, the government had met only a few of their more minor demands. Janajati and Dalit groups are in an even more precarious position. Lacking resources and political organisation, they have been largely unable to make themselves heard in the public sphere.

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# Mass exodus: migration and peaceful change in post-war Nepal

Amrita Limbu

Hundreds of thousands of Nepalis leave every year to seek livelihoods in other countries across the world. The 2011 Census recorded 1.9 million Nepalis abroad, of whom more than 80 per cent had left for employment and work-related purposes. This mass exodus of people is a consequence of a number of factors, including government policies encouraging foreign employment, chronic political instability, and slow economic growth, and it has played an important part in shaping Nepal's post-war transition.

## Migration policy

Nepal has a long history of migration. The British in India recruited young Nepali men from the early 19th century. Later, Nepalis also migrated to various parts of northern India to provide much-needed labour for tea plantations, oil refineries and coalmines. An open border between Nepal and India, and the facility granted to Nepalis to settle down and seek employment under the 1950 Treaty of Peace and Friendship, continued to provide momentum to the flow of Nepalis to India.

Despite these outflows, the Nepali government did not take an active interest in external migration until the 1980s, when it introduced policy initiatives to send citizens abroad for work as a way to address the growing unemployment and underemployment. This came at a time when countries in the Gulf region were seeking huge numbers of workers for the massive development projects that followed the oil boom.

**“The Maoist insurgency was then gaining momentum and, although not explicit, the move to increase government support for labour migration was aimed at curbing the Maoists’ recruitment efforts.”**

Workers from other parts of South Asia had been working in these countries since the mid-1970s. Nepal entered the process somewhat late and the scale of Nepali labour migration to the Gulf remained limited. Most of the labour permits issued until 1996–97 for employment abroad (excluding India) were for the Gulf

Cooperation Council countries, and these averaged fewer than 3,000 annually. Crossing the open border between Nepal and India does not require any documentation, so there is no accurate estimate of the number of migrant workers going to India.

The government became more proactive in sending young Nepalis as migrant labour in the late 1990s. In 1999, the government announced plans to send 200 workers from each of the 201 electoral constituencies, and also to provide loans of NPR 100,000 to conflict-affected and socially excluded groups to take up foreign employment. The Maoist insurgency was then gaining momentum and, although not explicit, the move to increase government support for labour migration was aimed at curbing the Maoists’ recruitment efforts. In its Five-Year Development Plan of 2002–07, the government extended its promotion of external labour migration with measures such as training skilled personnel, mobilising diplomatic missions, and providing credit facilities to rural youths, poor families and people in insurgency-affected areas.

Implementation of the government initiatives, however, was very poor. The 200 workers per constituency plan never materialised and only 721 people benefitted from the loan programme, which was discontinued after the poor loan recovery rate of less than five per cent. Yet, by the time the insurgency had escalated in 2001–02, the number of people leaving the country to destinations other than India had increased to more than 100,000 annually.

## Migration and development

The upheavals of the past two decades – frequent changes in government, the Maoist insurgency, political and social strife, and a prolonged transition – have held back economic development in Nepal. Investment has been low, with fixed capital formation accounting for only six per cent of economic growth, and net foreign direct investment between 2001 and 2010 averaging just 0.2 per cent of gross



Migrant workers boarding a plane at Kathmandu airport.  
© Dambar Krishna Shrestha

domestic product. Yet, the country has seen economic growth averaging four per cent over the last decade and remittances have been credited with keeping the economy afloat. The most significant impact of remittances is in contributing to reduce poverty rates from 42 per cent in 1995–96, to 31 per cent in 2003–04 and 25 per cent in 2010–11.

More importantly, financial remittances have contributed to increased household consumption, investment in children's education and better health care. Nepal received more than USD 5.5 billion in remittances in 2014–15 alone. Following the devastating earthquake of April 2015, Nepal saw an increased remittance inflow. Migration policies have thus proved to be timely and fruitful and the government has continued to promote labour migration to address unemployment and underemployment, as evidenced in laws and policies such as the Foreign Employment Act 2007, the Foreign Employment Policy 2012, and the Thirteenth Plan (2013–14 to 2015–16). Nepal's going to countries other than India (which remains the number one destination) totalled more than half a million in 2014–15 alone, about six per cent of whom were women.

Migration is also having an equalising effect in the social sphere. For instance, the traditionally marginalised Dalits ('low caste') have become less dependent on other castes or ethnic groups for wage labour, food support or land-leasing following the migration of family members. Likewise, since migration is predominantly a male phenomenon in Nepal, it has increased women's workload both within and outside the household, but has also led to a significant increase in their mobility and participation in community activities. This has exposed them to new ideas, knowledge and information. Women have also increasingly taken up decision-making roles in the absence of their husbands, although more serious decisions such as purchase of land, selection of schools for the children, or taking loans still tend to be taken jointly.

On the other hand, large-scale migration has resulted in a shortage of agricultural labour and decreased household farm output. About 70 per cent of remittances are used for daily consumption, so investment in agricultural assets to enhance agricultural production or even for business start-ups is comparatively very low. Migrant families with financial capability are also shifting to urban and semi-urban localities, primarily to access a better education for their children, further steepening the decline in farming activity.

## Migration and stability

People between the ages of 15 and 39 comprise about 40 per cent of Nepal's population, a stage of demographic transition often seen as a window of opportunity for economic growth known as the 'demographic dividend'. Experiences from other countries, however, show that high youth unemployment, particularly for males, has a disruptive effect on peace and security. In Nepal, risks of falling back into a cycle of political violence and conflict are greater due to unemployment, identity- and ethnic-based tensions over federalism, the absence of local political representatives, and general weak governance.

In this scenario, the productive engagement of youths through large-scale migration has had a significant mitigating effect. There is little empirical evidence on the impact of the Nepali migrant labour force's exposure to skills, ideas, knowledge, and experience acquired abroad, but studies elsewhere have shown that remittances help in democratic transition. Remittance-receiving households are more averse to politicians' attempts to bribe voters and are thus in a position to elect leaders that better represent their interests.

On the whole, migration has helped to address the unemployment and poverty that contributed to the Maoist insurgency. It is fair to conclude that Nepal's mass exodus, coupled with the inflow of remittances, has contributed positively to peace and stability during Nepal's fragile political transition.

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# Section 4

## Conclusion

The most significant milestone of the peace process has always been the adoption of a new constitution drafted by an elected Constituent Assembly (CA). The failure of the first CA sapped confidence that the political parties would be able to find consensus on the most critical constitutional issue – the form of federalism – since others served mainly as bargaining points on that question.

The configuration of the parties had changed by the time of the second CA, but this body remained similarly hobbled. For nearly a year and a half after it was elected there was no sign of any progress towards the constitution. That was the situation when the April 2015 earthquake struck Nepal. The national sense of urgency brought on by the earthquake propelled the parties to come up with a shared understanding on a new constitution, which became a reality in September 2015.

**Austin Lord and Sneha Moktan** review the **political impact of the 2015 earthquakes**. The national response to the disaster mapped onto familiar patterns of institutional incompetence and political patronage. Relief was

slow, and historically marginalised communities have again found themselves at the back of the queue for resources. Chronic failures of local governance have added another layer of dysfunction, epitomised in the informal revival of the discredited All-Party Mechanism to distribute relief. In Kathmandu, the National Reconstruction Authority became a new epicentre for squabbling among political elites. It took eight months to set up and has been largely ineffective. The most significant political repercussion of the earthquakes, the sudden acceleration of the stalled constitutional process, has also been criticised for failing to engage the wider society and for back-tracking on some key inclusive reforms.

# Uncertain aftermath

## Political impacts of the 2015 earthquakes in Nepal

Austin Lord and Sneha Moktan

As the month of April 2015 was drawing to a close, Nepal remained stuck in a prolonged period of uncertain political transition, defined by the failure to draft a constitution, a vacuum in local governance, and a recurrent pattern of political brinksmanship and power-brokering that kept Nepal perpetually on the edge of a political precipice. The government in Kathmandu was preoccupied with its own political theatre and was thoroughly unprepared for any kind of disaster, despite the inevitability of a major and seemingly overdue earthquake in the Central Himalaya.

The process of writing the constitution remained stalled due to fundamental disagreements over key contentious issues. A familiar sense of political stagnation had settled across Nepal as the second Constituent Assembly (CA II) repeated the pattern of its predecessor, having missed its own 22 January deadline to promulgate a new statute. In rural Nepal, life ground on as usual. Then, in the late morning of 25 April 2015 the earth heaved, rolled and rumbled for nearly a whole minute. The long anticipated 'Big One' had arrived.

### **Earthquake: uneven effects and response**

The epicentre of the 7.8-magnitude earthquake was located in the district of Gorkha, west of Kathmandu. The initial rupture was followed by a series of aftershocks, including a major 7.3 magnitude tremor on 12 May with an epicentre in Dolakha district. According to the national Nepal Disaster Risk Reduction Portal, the earthquakes killed nearly 9,000 people in Nepal, leaving almost 22,000 people injured and an estimated 3.5 million homeless. The government officially declared that 35 of Nepal's 75 districts were 'earthquake-affected', of which 14 were classified 'most-affected', primarily in the Central Development Region surrounding Kathmandu.

Despite their common representation as a 'national tragedy', the earthquakes themselves and the subsequent

earthquake politics have in fact been unevenly distributed across Nepal and across socioeconomic and ethnic groups. Historical patterns of structural inequality left some groups far more vulnerable than others. The areas of greatest need were predominantly in the districts, not in Kathmandu. Most casualties occurred within the boundaries of what has sometimes been proposed as the state of Tamsaling or Tamasaling, where the Tamang ethnic group represents the demographic majority. The earthquakes had relatively limited effects in the southern plains of the Tarai or the Mid-Western and Far-Western Development Regions.

In the immediate aftermath of the earthquake it soon became clear that the ability of victims to secure either state and non-state aid was shaped by factors that were not solely humanitarian, but also followed differential patterns of political and geographic access and longstanding socio-spatial exclusion. Different government institutions responded in different ways. Some disaster response mechanisms were activated and some were not. Accounts of the first few days following the earthquake demonstrate both a lack of official capacity and an atmosphere of confusion among the political class. Not known for its efficiency on the best of days, Nepal's government was unable to mount a quick, efficient and centralised rescue, relief and recovery operation.

These general failures were punctuated by sporadic but admirable efforts made by a handful of individual leaders, as well as an outpouring of volunteer initiatives.

As expected, within the first 48 hours a slew of international institutions and humanitarian organisations arrived in Nepal to provide support of all kinds and qualities. In an attempt to ensure uniform coverage, the government sought to coordinate relief distribution through a 'one door' policy via the District Disaster Relief Committee (DDRC). This approach was in part a reaction to excessive relief, overcrowding, and double or even triple coverage in highly visible and more accessible areas.

But these well-intentioned efforts to seize the reins of the relief effort drew flak as concerns over political bias began to surface. Problems were especially apparent at the local level where, in the absence of elected officials, the spectre of the 'All-Party Mechanism' (APM) was revived in many areas as a conduit to distribute relief. APMs had previously been scrapped as structures to administer local governance having been widely discredited as partisan [see article on local governance, p.91]. But as they now began to re-exert their influence at both the DDRC and in the villages, coordination of post-earthquake relief became a major political issue, and certain political leaders were found to be channelling materials toward their political bases, often along party lines.

The frequent aftershocks drove everyone outside. As time passed, some returned to intact houses, while others had no choice but to live in the temporary shelters. Concerns about landslides during the monsoon brought more and more people into camps for internally displaced persons, which became sources of internal tension and discrimination. There were reports of Dalit ('low caste') families being marginalised from major camp areas as well as of harassment of women. As the weeks dragged on, the initial feelings of unity and impartiality that had characterised the immediate aftermath of the earthquake gave way to partisanship and political positioning, and the 'politics of recognition' intensified during a shift in competition for shelter – from plastic tarpaulin to corrugated galvanised iron.

### Politics of local disaster management

In the absence of a coherent national body to manage a disaster of this scale, the National Planning Commission stepped in to coordinate all initial relief and recovery efforts. Implementation was conducted largely via 'the cluster system', organised thematically and comprising both government and humanitarian partners, as per common international humanitarian practice, and through the DDRC operating in each affected district. The pre-

existing DDRC was activated to provide a forum for local decision-making, to coordinate with central government, and to communicate local needs to the central level. The DDRC was supposed to function as a clearinghouse to channel all relief materials through the 'one-door' policy, in order to ensure efficient use of resources and appropriate distribution throughout a particular district. At the local level, some DDRCs were more successful than others, but a lack of technical capacity and political infighting within these bodies also led to several cases where relief simply piled up at the district centre.

With no functional system for the systematic and equitable distribution of aid at the local level, the quantity and quality of relief materials were largely dependent on informal networks and on the level of access of the actors who shaped the relief distribution process. A lack of information about how distribution worked further exacerbated unevenness. As a result, relief was skewed along lines of caste, ethnicity, class and gender. More often than not, DDRCs were almost exclusively composed of men from historically privileged castes and ethnicities, and many were criticised for overlooking the interests of women and other excluded minorities. Single women with no adult males in the family found it especially difficult to access relief materials. Later, such women even struggled to be identified as earthquake-affected 'household heads', as the enumeration of earthquake victims by the Central Bureau of Statistics was plagued by longstanding discrimination in women's rights to citizenship and recognition as lawful beneficiaries.

**“ Such women even struggled to be identified as earthquake-affected 'household heads', as the enumeration of earthquake victims by the Central Bureau of Statistics was plagued by longstanding discrimination in women's rights to citizenship and recognition as lawful beneficiaries.”**

Relief distribution thus followed familiar patterns of social and spatial exclusion, which became increasingly evident and exaggerated over time, particularly with regard to community decision-making related to relief and recovery. For example, the 2016 report, 'Discrimination in Disaster', noted that Dalit households tended to be registered at the



bottom of the name lists, and that Dalits were often the last to receive relief materials.

The Village District Committee (VDC) Secretary became the point person for all relief and recovery-related activities at the local level. Almost always a man, the VDC Secretary was responsible for collecting data, overseeing the distribution of relief, and, later, assisting with all administrative requirements of disbursing government aid for reconstruction. Some secretaries were responsible for two or even three VDCs, while over 80 VDCs in the earthquake-affected districts were still without their own secretary even a year after the earthquake.

### **Post-earthquake drafting of the constitution**

Within two months of the earthquake, the Post-Disaster Needs Assessment was ready in preparation for an international donor conference – standard international practice for soliciting humanitarian aid. The international conference on Nepal's reconstruction, on 25 June, 'Toward a Resilient Nepal', saw pledges of around USD 4.4 billion. International aid roughly reflected historical patterns, with India and China leading the way, flanked by Norway and the United States, and large amounts promised by the World Bank and the Asian Development Bank. The international community stressed priorities of transparency for the relief effort, but also took the opportunity to reiterate the need for 'political stability' – seemingly an implicit reference to rapid agreement on the much-delayed constitution as a precondition for the release of funds.

In anticipation of the donor conference but also to allay increasing public frustration, Nepal's senior political leaders sat down soon after the earthquake to reconsider the constitution. Remarkably, under the banner of post-disaster need and unity, the major political parties, the Nepali Congress (NC), the Communist Party of Nepal–Unified Marxist–Leninist (UML), the Unified Communist Party of Nepal–Maoist (UCPN–M), and the Madhesi Janaadhikar Forum–Democratic (MJF–D), reached a 16-Point Agreement on issues that had been heavily contested for many years – such as the number of federal provinces and the electoral system.

This detente was further facilitated by the respective agendas of the two major communist parties, the UML and the UCPN–M. The UML was eager to take its turn heading the government once the constitution had been promulgated. The Maoists were fast losing ground in the CA and sought to have the constitution passed with as much of their agenda still intact as possible, while also pursuing an enlarged role in the post-earthquake government. This

coming together of two major parties brought the NC and the MJF–D to the table as well.

In July, the CA presented a draft of the constitution to the nation for a very brief consultation period of 15 days. The plan was to distribute copies of the draft in all 240 electoral constituencies, to get citizens to read the voluminous 100+ page document packed with legal terminology, and to gather feedback through telephone and public hearings – for which two days were assigned. Many saw such a truncated process as a facade for a genuine consultation. No single faction or party got everything they wanted in the constitution, but the terms of compromise were still unevenly distributed across the parties. In particular, the majority of the Madhes-based parties felt they had been sidelined by the traditional politics that perpetuated their persistent under-representation, providing fuel to the smouldering fire of Madhesi dissatisfaction.

### **Tarai protests**

The release of the draft constitution and the ongoing debate over the 16-Point Agreement triggered political protests in the Tarai. These were reminiscent of the 2007 and 2008 uprisings over the Interim Constitution [see *article on social movements*, p. 97], as Madhesi felt that the imposition of another constitution that did not address their longstanding demands was the final proof that the state did not recognise their interests. By August of 2015 the Tarai was in upheaval. The most serious violent incident took place in Kailali district in Far-Western Nepal, when protests seeking recognition for an autonomous Tharuhat province turned violent and seven policemen were killed.

Mass public demonstrations were quickly matched by mobilisation of state security forces across the Tarai. A coalition of Madhes-based political parties protested the delineation of the federal provinces, which they believed would unfairly dilute their political voice in favour of hill-origin communities. Protestors also demanded proportional and inclusive representation in all state bodies, and the determination of election constituencies based on population ratios. Fifty-eight people, both civilians and security personnel, were killed in the violence.

Despite the protests in the Tarai, the constitutional process was 'fast-tracked' and a new statute was passed on 20 September 2015. It was an incomplete document, with a number of critical and contentious issues deferred to be revised later. On the day of the promulgation, a major city in the Tarai, Birgunj, was under heavy curfew. Less than a month later, Prime Minister Sushil Koirala of the NC reluctantly stepped down and UML leader KP Oli, took over – the fulfilment of a widely known 'gentlemen's agreement' between the leaders, and yet another example of power-



A woman from Singla village extracts her belongings from the rubble, May 2015. © Asia Development Bank

brokering in Nepali politics. This outcome placed Oli at the head of a coalition government that included both the far-left Maoists and the far-right monarchists.

Oli and his new government faced another challenge before they could access the ‘reconstruction windfall’. India indicated its unhappiness with the new constitution, initially by merely ‘noting’ (rather than welcoming) its arrival, but later through diplomatic efforts and strong public statements urging Nepal to listen to the agitating voices in the southern plains. When the government failed to respond as desired, an ‘unofficial blockade’ materialised at several major transit points along the southern, ‘open’ Nepal-India border. Protestors in the Tarai ratcheted up their activities. But despite weeks of queues in Kathmandu for petrol and cooking gas caused by the blockade, the political elite remained largely aloof while simultaneously condoning an increasingly robust black market. The Nepali economy suffered tremendous losses. Large-scale infrastructure projects ground to a halt, and post-earthquake recovery and reconstruction work was significantly delayed.

Prime Minister Oli vociferated about nationalism and energy sovereignty and talks began with China about providing an alternative source of fuel. Following a prolonged face-off, the constitution was amended in January 2016 in a move to allow India to save some face, and the ‘unofficial blockade’ was

‘officially lifted’ with the opening of the last and the major border point at Birgunj.

### **National Reconstruction Authority**

The National Reconstruction Authority (NRA) was finally established eight months after the disaster. The NRA had been sketched out in the wake of the donor conference in June 2015, and officially constituted under a special ordinance on the 22nd of that month. But the government failed to get it approved by the Legislature-Parliament within the required timeframe of 60 days, and it was hence automatically dissolved. This was primarily because of political tussles over which party would control the NRA through its appointed chief executive officer (CEO). As the UML strategically filibustered, the Legislature-Parliament was in recess for the second half of August and Speaker Subash Chandra Nembang (of the UML) set a date for the re-adjoinderment of the House too late for ratifying the ordinance.

It was only in September that the government presented a new bill on the NRA in parliament, and it took another three months for the bill to be passed. The UML government finally advanced its candidate as the NRA CEO. In the ensuing months this appointment proved challenging. Senior government officials openly refused to join the NRA despite directives, as they did not wish

to report to a CEO who in their eyes was a relatively junior official. As a result, the NRA has continued to suffer from a lack of capacity and bureaucratic and technocratic deficiencies. It has been as if the NRA has been trying to drive a vehicle at the same time as assembling it – drafting policies and directives while also implementing them.

Initially, the absence of a strong centralised directive meant that decisions at the district level were open to interpretation, and policies were modified in districts, such as altering definitions of who is ‘affected’ and so eligible for relief and reconstruction aid. Such ambiguities have led to discrepancies in the recording of the number of affected households – with the inclusion of several ineligible ones and the exclusion of others that are eligible, including some of the most affected such as marginalised groups, single women and disabled people. The UML-appointed CEO of the NRA remained unchanged for some time even after the change in government, providing a modest but uncertain continuity. In early January 2017, the CEO was finally sacked and the NC candidate who had headed the NRA under the afore-mentioned ordinance was brought back.

Overall, progress on reconstruction remains painstakingly slow, and the NRA continues to lack adequate human resources and to struggle with issues of coordination and communication. As of December 2016, many households eligible for the government reconstruction grant had only just received the first instalment of funds, and all were waiting for the second. This has left the majority of earthquake-affected households in Nepal with just the foundations of their new houses and without a roof over their heads, two winters after the earthquake.

## Building back better?

Looking back, it is now clear that the earthquakes that struck Nepal on 25 April 2015 created a variety of political opportunities. The post-earthquake scenario over the past year has highlighted chronic failures of governance, but has also been used as a prop for political actors to slow down or speed up a variety of political processes according to preference. Nepal now has a constitution, but several key issues are far from finalised. Some political actors are even stating that central issues like secularism and federalism are still on the negotiating table. In the last decade

following the dissolution of the monarchy, there has been a kind of tunnel vision on the constitutional process, which is seen as a panacea for all kinds of systemic political ills. However, the new constitution seems to have established little more than a revised holding pattern – as always, the political leadership seems to be ‘comfortable in transition’.

Some progress has been made in terms of post-earthquake recovery, despite the dominant patterns of government failure, but thousands of people have now spent two monsoons and two winters in temporary shelters. The lack of locally elected bodies has exacerbated poor response and reconstruction efforts, a realisation that can and should be a catalyst for local elections as soon as possible. The government will have to hold fresh elections at all levels before the term of the current parliament is scheduled to expire in 2018, so as to avoid falling back into the vacuum of governance experienced between CAs I and II in 2012–13.

Hopes that a constitution would unlock political stability in Nepal have given way to the realisation of a series of new political challenges over the next five years, relating to reconstruction, transition to the federal system, local elections, redefining Nepal’s problematic geopolitical positions, and resolving social issues in the Tarai ... to say nothing of preparing for the next earthquake.

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Sneha Moktan is a development practitioner in the field of good governance and citizen participation in democratic processes. In 2013–16 she worked for the National Democratic Institute in Nepal, where she managed projects related to voter education leading up to the 2013 Constituent Assembly elections, nationwide electoral reform dialogues, and programmes focused on post-earthquake recovery and reconstruction. She also has a background in media and journalism, and holds an MA in International Relations from Yale University, where she was a Fulbright Scholar.

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# Conclusion

## More forward than back?

### Next steps for peace in Nepal

Deepak Thapa and Alexander Ramsbotham

Opinion differs as to whether Nepal is ‘post-conflict’, or if the decade-long transition since the *Comprehensive Peace Accord* (CPA) represents another phase of struggle, animated by the attempt to radically overhaul a system that has marginalised large sections of society. Given the episodic violence that has gripped parts of the country over the past 10 years, there is a strong argument in favour of the latter. But, that would also ignore how fundamentally the Nepali state has been transformed.

The CPA laid the ground for this change since it not only formally ended the Maoist insurgency, but also provided specific guidance on the reconfiguration of the state. Yet, the Interim Constitution of 2007 that resulted from the CPA also gave rise directly to the Madhes Movement and the associated scourge of armed groups in the southern Tarai plains. At the same time, the promise of a new constitution prompted the rise of different identity groups, which saw an opportunity to force the pace and direction towards a new kind of state.

The balancing act of political deals that have sustained the transition in Nepal have had to offset the differing priorities of stability and reform among elites in Kathmandu, but also in the peripheries – where the Maoist revolt had actually played out. Different agreements reached by the government in the post-CPA period, with the Maoists and also with various agitating groups, indicated a desire to institutionalise peace – seemingly at any cost. This

willingness to compromise also recognised that while the CPA represented the primary post-war political settlement, its promise would not be realised without a number of subsidiary arrangements worked out mainly with forces operating at the sub-national level.

Federalism may have been implicit in the idea of ‘state restructuring’ as expressed in the CPA, but it was the first Madhes Movement that managed to actually insert it into the Interim Constitution. And federalism was further re-emphasised in agreements reached with various Janajati groups, as a concession to ensure that the election to the first Constituent Assembly would not be disrupted.

Other types of settlement had to be agreed in the run-up to the CA election. The two major international instruments on indigenous peoples, the UN Declaration on the Rights of Indigenous Peoples and the Indigenous and Tribal Peoples Convention 1989 of the ILO, were



endorsed by the government to placate the Janajatis. Republicanism was accepted for the sake of keeping the Maoists in the political process. Even later came the concession from the Maoists on the decision to hand over control of the cantonments to the Special Committee, leading to the eventual disbandment of the Maoist army; the compromise reached by the main parties to allow a non-party government to conduct the election to the second Constituent Assembly; and then the earthquake-induced agreement among the three major parties on the 2015 Constitution.

## Peace by chance?

The manner in which the Maoist insurgency ended – with the removal of the monarchy – was far from inevitable. Indeed, chance was a recurrent motif in political developments in Nepal stretching from the early 1990s all the way to the 2006 CPA, facilitated by the capriciousness of the political parties and power struggles among political leaders. Nearly all the principal actors involved in the end of the war did little to address the insurgency in its early stages, and their paramount role in winding it down was not so much a deliberate strategy as following the old maxim that ‘the enemy of my enemy is my friend’.

Internal tussles in the Nepali Congress (NC) in particular accompanied significant developments in the Maoist conflict and how it ended. Factionalism began after the 1991 election, in which the NC won a majority. The three and a half years of the Girija Prasad Koirala-led government was the longest any had lasted in the post-1990 period, but the latter stages were marred by bitter infighting. After losing a parliamentary vote in mid-1994, rather than step down, Koirala dissolved parliament in order to rein in his party’s dissidents. Significantly, this also spelt an end to parliamentary politics for the third largest force in the House of Representatives – the United People’s Front, the political wing of the semi-underground far-left party, a faction of which evolved into the insurgent Communist Party of Nepal–Maoist (CPN-M).

Koirala’s call for mid-term polls turned out to be a miscalculation. The NC was beaten by the CPN–Unified Marxist–Leninist (UML), but with only a plurality of parliamentary seats, the minority UML government lasted just nine months. Its removal set in motion a process of extremely unstable politics that saw a number of coalition governments, a situation that suited the Maoists and their budding insurgency very well.

The NC came back to power with a majority in 1999 and Koirala began his third term as prime minister in 2000. Factionalism was by now more or less institutionalised

in the party and Sher Bahadur Deuba emerged as the leader of the anti-Koirala faction of the NC. Within a year of Koirala’s return to power, the Maoists clearly began favouring Deuba as someone with whom they could do business. Deuba had been prime minister when the insurgency began, but he had also been appointed to a committee to seek ways to bring a peaceful solution to the Maoist conflict.

The Deuba–Maoist detente played out in the 2001 ceasefire. However, when the Maoists quite suddenly resumed fighting, Deuba unleashed the full might of the state against the rebels, deploying the army for the first time. Now it was Koirala who moved closer to the Maoists, pressing for an end to the state of emergency in place at the time. The Koirala–Deuba feud ultimately resulted in Deuba dissolving parliament, just as Koirala had done nine years earlier. But, this time Deuba was expelled from the party, and he responded by splitting the NC itself.

In the meantime, the monarchy had become much more prominent in politics. King Gyanendra pounced on the opening provided by the disarray in the NC and the absence of parliament, but over the first years of his reign he managed to thoroughly alienate the political parties. The Maoists had hoped to exploit this gulf by striking a deal with Gyanendra, but the February 2005 royal takeover ensured an end to all overtures they had been making towards the king.

The king’s manoeuvres succeeded in bringing the parties and the Maoists to the realisation that their principal adversary was the palace. New Delhi also felt let down by the king studiously ignoring the long-held Indian position on what it viewed to be the twin pillars of political stability in Nepal: multiparty democracy and constitutional monarchy. The king’s snub came at a time when India had thrown itself firmly into the fight against the Maoists, such as by providing much-needed materiel to the Nepali Army. And although India had not realised the depth of popular anger against the palace, it had no choice but to go along with events that unfolded in the wake of the second People’s Movement and the complete sidelining of the monarchy.

Thus, political one-upmanship created the conditions for the Maoist movement to take off. But, its continuation over a decade also laid the foundations for the end of the conflict and the entry of the Maoists into mainstream politics.

## Peace through inclusion

The government and political parties sought to undercut the Maoists’ progressive agenda with the introduction of a number of competing measures for reform. Many of these were what various social movements had long



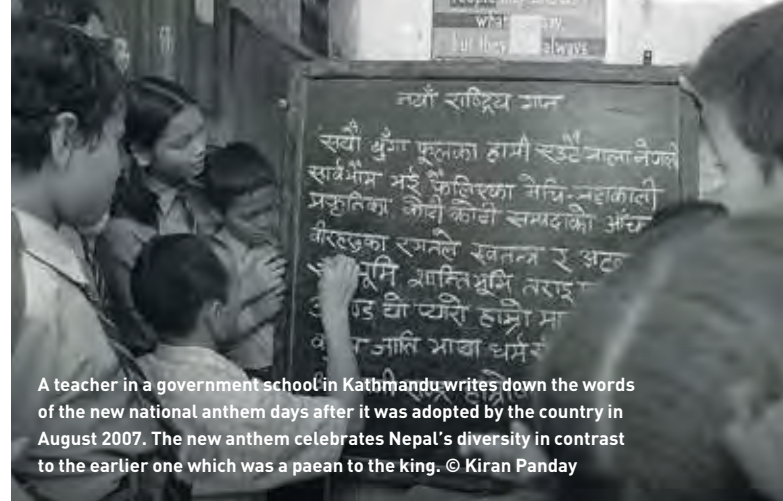
been agitating for. Steps such as the formation of the Committee for the Neglected, Oppressed and Dalit Class and the National Foundation for Development of Indigenous Nationalities were taken partly in response to pressure from social activists. But the insurgency brought home the depth of dissatisfaction with the status quo.

The Maoist movement pushed successive governments into adopting ever more inclusive provisions. Hence, while the Deuba government in 2001 had responded with a National Dalit Commission and the National Women's Commission, among others, within a few years the idea of affirmative action policies had more or less become the accepted norm. The Maoists, too, were taken to task over the issue of inclusion, for despite their demands for gender equality, not a single woman was involved in their five-member negotiating team for the 2003 ceasefire.

By the time of the 2006 People's Movement, it had been generally recognised that the state would have to become much more inclusive. The notion of state restructuring outlined in the CPA was clearly meant to accomplish that, but the momentum granted by the People's Movement extended much further. When the First Madhes Movement erupted in early 2007, the public discourse was overwhelmingly in favour of Madhesis with a general exhortation of the state for the long subjugation they had experienced, and calls for addressing the sources of their dissatisfaction. Likewise, when the government later introduced reservations in elections and also in public sector jobs, the move met with hardly any opposition.

Such government policies have been instrumental in sustaining peace in the long term. The form of federalism may have been contested but despite misgivings expressed by more than a few influential people, there have been no considered attempts so far to roll back the achievements made towards a more inclusive state, whether through job reservations or electoral quotas – although the recent reduction of the number of seats to be elected through proportional reservations in the federal and provincial legislatures is considered by many to be exclusionary, as are steps such as the narrow definition provided for secularism, among others.

The integration of the Maoists into competitive politics may not have been achieved so easily had it not been for these measures. Their agenda was in part achieved even if their larger goal of a complete transformation of the socio-political structure could never be met, since the conflict was ended through a negotiated settlement with give and take from both sides. The core of the Maoist fighters who sustained the war against the state have been the most disappointed with the outcome. But, the training that had



A teacher in a government school in Kathmandu writes down the words of the new national anthem days after it was adopted by the country in August 2007. The new anthem celebrates Nepal's diversity in contrast to the earlier one which was a paean to the king. © Kiran Panday

formed an intrinsic part of the party organisation, in which the military wing remained subservient to the political side, ensured compliance to all party decisions.

## Peace and external support

While the push for greater inclusion came with the 1990 political change and was carried forward by the social movements and the Maoist insurgency, the government and its donor partners later became equally invested in supporting such an outcome. The government's periodic plans in the 1990s had outlined ambitions to reach out to population groups that were increasingly being recognised as excluded from the development mainstream. But as the Maoist insurgency grew stronger and more widespread, there was a rising call from the donor community that it would also have to be countered by addressing the root causes of the conflict, which by definition meant opening up the state to greater levels of inclusion.

External actors have also had a more direct role in the unfolding of the peace process. Most consequential was the involvement of the United Nations, beginning with the Maoists' initial response to the UN's offer in 2002 to provide help in reaching a negotiated settlement to the conflict. For a group that had managed to isolate itself through its pronouncements (calling India 'hegemonic' and the United States 'imperialist') and its actions (killing Nepali staffers employed by the US embassy and targeting programmes funded by western countries, particularly by the US), an international guarantor was required for any agreement reached, not to mention for the Maoists' personal safety.

But UN involvement would have been impossible without the acquiescence of India. The two countries routinely vilified by the Maoists, India and the US, had both labelled the CPN-M a terrorist organisation. India still clung to its 'twin-pillar' policy while the US had tried without success to effect a rapprochement between the palace and the mainstream parties. King Gyanendra's obduracy slowly pushed India towards acceptance of UN involvement in bringing the conflict to a close. That the UN was even mentioned in the *12-Point Understanding* signed in New Delhi

in November 2005 is instructive of this change. Even earlier, India had gone along with setting up the Office of the UN High Commissioner for Human Rights in Kathmandu. Established in May 2005, soon after the royal coup, its presence in the streets has been credited with the comparatively restrained response by the security forces during the April 2006 People's Movement.

The UN Mission in Nepal (UNMIN) was deployed in January 2007 with the mandate to monitor arms, armies and the ceasefire, and to oversee the election of the Constituent Assembly. This limited mandate was primarily to allay Indian concerns. But contradictory interpretations of UNMIN's role proved highly controversial over the four years of its tenure – on the one hand the failure to fully appreciate the specific tasks UNMIN had been given, and on the other the perception that the UN was somehow all-powerful. Thus, a meeting by the head of UNMIN with Madhesi leaders was criticised for overreach. At other times, UNMIN was accused of doing too little to rein in the Maoists. And the Maoists spoke out against UNMIN's intrusive scrutiny of their activities. To its credit, UNMIN succeeded in seeing through the election to the 2008 Constituent Assembly, and even though the Maoist combatants were still in the cantonments by the time its mission ended, it preserved the peace between the two sides and laid the ground for the eventual disbandment of the Maoist army.

Over time there has been some concern about the direction the country has taken. Conflating the related but separate concepts of federalism and inclusion, influential sections in the government, the political parties and the media have pressured donors to ease off on the social inclusion agenda. Even India has not been able to make much headway in its call for a more inclusive polity. New Delhi's position today is a far cry from the post-2006 period, when it was viewed almost as an arbiter of Nepal's fate, having stood with the political parties and

the Maoists against the monarchy and enforcing an end to the second People's Movement by leaning hard on the king. But, India continued with its political games, such as engineering the formation of a political party, the Tarai Madhes Loktantrik Party, to counter the Madhesi Janadhikar Forum Nepal, which was viewed as being too independent with its own power base. It coddled the NC and the UML, to act as a counterpoise to the Maoists and their radical agenda, only to realise later that the NC-UML combination is in general a conservative force, and that this conservatism would affect how they would deal with the grievances of Madhesis as well.

The fracas over the 2015 constitution, including the blockade at the border with India, and the tepid concession to Madhesi demands granted by the UML government with the first amendment to the constitution, has laid bare the limits of India's power. There is no sign at the time of writing that the second amendment, introduced in November 2016 to further assuage Madhesis, is going to get anywhere. But although India has lost a lot of leverage recently, geopolitical reality dictates that New Delhi will always remain a major player in Nepal's politics. And, the terms and conditions of that engagement that will be decided by political developments on the Madhes issue.

Whether one sees Nepal as post-conflict or in a new period of intense transition, it is clear that the war and the peace process have brought significant change. Communities on the periphery of Nepali politics and society – whether marginalised by culture, class, geography, gender or caste and ethnicity, or some configuration of these – have been at the centre of the struggle. But social justice is still a long way off for many Nepalis outside the prevailing elite. With the new constitution in place, which has been so symbolic as the culmination of Nepal's transition 'from war to peace', advocates for inclusion may need to find new forums in which to negotiate change.

# Chronology of major political events in contemporary Nepal

## 1846–1951

Nepal is ruled by hereditary prime ministers from the Rana clan with Shah kings as figureheads. Prime Minister Padma Shamsher promulgates the country's first constitution, the Government of Nepal Act, in 1948 but it is never implemented.

## 1951

An armed movement led by the Nepali Congress (NC) party, founded in India, ends Rana rule and restores the primacy of the Shah monarchy. King Tribhuvan announces the election to a constituent assembly and introduces the Interim Government of Nepal Act 1951.

## 1951–59

Governments form and fall as political parties tussle among themselves and with an increasingly assertive palace. Tribhuvan's son, Mahendra, ascends to the throne in 1955 and begins consolidating power.

## 1959

The first parliamentary election is held under the new Constitution of the Kingdom of Nepal, drafted by the palace. The NC wins by a landslide and forms a government under BP Koirala. The Communist Party of Nepal (CPN) comes a distant fourth.

## 1960

Mahendra takes over, declares a state of emergency, suspends political parties and arrests BP Koirala and members of his cabinet.

## 1961–62

The NC launches raids from bases in India. Armed action ends with the outbreak of the India-China War.

## 1962

Mahendra introduces the Partyless Panchayat System under a new constitution which places the monarch at the apex of power. The CPN separates into pro-Moscow and pro-Beijing factions, beginning the pattern of splits and mergers that has continued to the present.

## 1963

The 1854 *Muluki Ain* (Law of the Land) is replaced by the new *Muluki Ain*. The old *Muluki Ain* had stratified the society into a rigid caste hierarchy and regulated all social interactions. The most notable feature was in punishment – the lower one's position in the hierarchy the higher the punishment for the same crime.

## 1972

Following Mahendra's death, Birendra becomes king.

## 1974

A faction of the CPN announces the formation of CPN–Fourth Congress.

## 1978

The CPN–Marxist-Leninist is established by another faction of communists.

## 1979

Student-led protests break out against the Panchayat system. Birendra announces a national referendum, giving the people a choice between a 'reformed' Panchayat system and a multiparty system. The Panchayat system wins in a vote widely believed to have been rigged. BP Koirala accepts the results.

## 1981

The first election with universal franchise is held under the Panchayat system.

## 1983

The CPN–Fourth Congress splits into CPN–Fourth Congress and CPN–Mashal.

## 1985

The CPN–Mashal splits into CPN–Mashal and CPN–Masal.

## 1990

The Movement for the Restoration of Democracy (the ‘First People’s Movement’) is launched jointly by the NC and the United Left Front, a grouping of communist parties. More radical communists join the movement as the United National People’s Movement. Following the king’s capitulation, a new democratic Constitution of the Kingdom of Nepal is promulgated. Nepal is defined as multi-ethnic and multilingual but also Hindu kingdom. The CPN–Marxist-Leninist and the CPN–Marxist merge to become CPN–Unified Marxist-Leninist (UML). CPN–Fourth Congress and CPN–Mashal come together to form CPN–Unity Centre with Pushpa Kamal Dahal ‘Prachanda’ as General Secretary. Baburam Bhattarai leads a breakaway faction from CPN–Masal and joins the CPN–Unity Centre, which remains underground.

## 1991

The first parliamentary election gives the NC a majority. The UML comes second, followed at a distance by the United Left Front, the political wing of the underground CPN–Unity Centre. BP Koirala’s brother, Girija Prasad Koirala, becomes prime minister.

## 1994

The CPN–Unity Centre splits. In July, Girija Prasad Koirala dissolves parliament following internal dissension in the NC. The November mid-term election gives the UML a slight plurality, which forms a minority government under Manmohan Adhikari. The Prachanda faction of the CPN–Unity Centre boycotts the poll.

## 1995

The Adhikari government loses a no-confidence motion and Sher Bahadur Deuba of the NC forms a coalition government in September with partners, the Rastriya Prajatantra Party (RPP – the political outfit of those who were part of the Panchayat system) and the Nepal Sadbhavana Party (NSP – a party fighting for the rights of Madhesis). The Prachanda faction of CPN–Unity Centre is renamed CPN–Maoist.

## 1996

In February, Baburam Bhattarai of the CPN–Maoist (CPN-M) presents a 40-Point Demand to Sher Bahadur Deuba, warning of armed uprising if ignored. Nine days later the ‘People’s War’ begins.

## 1997

Lokendra Bahadur Chand of the RPP becomes prime minister in March with the support of the UML. In October the RPP splits and Surya Bahadur Thapa becomes prime minister with the support of the NC and NSP.

## 1998

The UML splits into the UML and the CPN-ML. Girija Prasad Koirala becomes prime minister in March, leading a minority government. The CPN-ML joins his government in August; in December it is replaced by the UML, and the NSP joins the coalition.

## 1999

Nepal’s third general elections give the NC a majority and Krishna Prasad Bhattarai becomes prime minister.

## 2000

Girija Prasad Koirala ousts Krishna Prasad Bhattarai to become prime minister.

## 2001

**June:** The royal massacre: King Birendra and many members of the royal family are murdered in the palace by his son Dipendra. Birendra's brother, Gyanendra, becomes king.

**July:** Girija Prasad Koirala resigns after the army fails to act against the abduction of police officers by the Maoists. Sher Bahadur Deuba becomes prime minister and announces a ceasefire with the Maoists.

**August:** The first peace talks between government and Maoists are held.

**November:** The ceasefire ends with the resumption of Maoist attacks on army installations. A State of Emergency is proclaimed and the CPN-M is declared a 'terrorist organisation'.

## 2002

**May:** Deuba dissolves parliament and calls for fresh elections to be held in November. Expelled from the NC, he forms a breakaway faction with the same name in June.

**August:** The terms of elected local government bodies come to an end and the central government decides against extending them.

**September:** Following the Election Commission's decision not to recognise Deuba's faction as the NC, he registers his party as the Nepali Congress–Democratic.

**October:** After Deuba recommends postponing parliamentary elections, King Gyanendra sacks him, postpones elections indefinitely and assumes executive authority. Lokendra Bahadur Chand is appointed prime minister.

## 2003

**January:** A second ceasefire is announced.

**April:** A round of talks is held between the government and the Maoists.

**May:** Political parties begin to agitate for the restoration of parliament and the formation of an all-party government. Lokendra Bahadur Chand resigns.

**June:** Surya Bahadur Thapa is appointed prime minister.

**August:** The ceasefire ends and conflict resumes.

## 2004

**June:** Sher Bahadur Deuba is appointed prime minister with the UML as coalition partner.

## 2005

**February:** Deuba is dismissed for a second time by King Gyanendra, who takes direct control of the government.

**May:** The Seven-Party Alliance (SPA) of major political parties is formed.

**November:** The SPA and Maoists sign the *12-Point Understanding* in New Delhi.

## 2006

**February:** Municipal elections are boycotted by the SPA.

**April:** The 'Second People's Movement' is launched against the king and achieves success in 19 days. Gyanendra reinstates parliament and Girija Prasad Koirala becomes prime minister. The CPN-M announces a ceasefire.

**May:** Parliament issues an 18-point proclamation stripping the king of all powers and declares Nepal a secular state.

**August:** The government and the Maoists send separate but identical letters to the Secretary-General of the United Nations requesting support for the peace process.

**November:** The *Comprehensive Peace Accord* is signed. The Maoists begin setting up cantonments.



## 2007

**January:** An Interim Constitution is adopted and the parliament transforms into the 'Legislature-Parliament of Nepal'. The first Madhes Movement, led by the Madhesi Janadhikar Forum-Nepal (MJF-N), begins in the Tarai against the Interim Constitution, demanding federalism. The UN Security Council authorises UNMIN to monitor the ceasefire and the management of arms and armed personnel, and to assist in the election of a constituent assembly.

**April:** The CPN-M joins government.

**September:** Maoist ministers quit government demanding the abolishment of monarchy. The NC and the NC-Democratic reunite as the NC.

**December:** The Interim Constitution is amended to include the statement – 'Nepal shall be a federal democratic republican state'. Maoist ministers re-join government.

## 2008

**February:** The second Madhes Movement is led by the United Democratic Madhesi Front (UDMF), an alliance of Madhesi parties demanding a higher degree of proportional representation.

**April:** Elections to the Constituent Assembly are held. The CPN-M emerges as the largest party, followed by the NC, UML and the bloc of Madhesi parties. The arch-royalist RPP-Nepal gains only four seats out of 601.

**May:** The first sitting of the Constituent Assembly abolishes the monarchy.

**July:** Ram Baran Yadav, a Madhesi politician from the NC, is elected first president of Nepal and retired Supreme Court justice, Paramananda Jha, candidate of the Madhesi parties and also a Madhesi, is elected vice-president. Pushpa Kamal Dahal Prachanda becomes prime minister in a coalition with the UML, the Madhesi Janadhikar Forum Nepal (MJF-N) and other smaller parties.

## 2009

**January:** The CPN-M merges with the CPN-Unity Centre-Masal (formed through a merger of the CPN-Unity Centre and the CPN-Masal in 2002) to become the Unified CPN-Maoist (UCPN-M).

**May:** Prachanda resigns following the President's refusal to back his dismissal of the army chief. Madhav Kumar Nepal of the UML becomes prime minister with the support of the Nepali Congress and the MJF-N. The National Interest Preservation Committee becomes the first of the 11 Constituent Assembly thematic committees to present a report on the new constitution.

**June:** The MJF-N splits; the faction that eventually becomes the MJF-Democratic supports Nepal's government. The Tarai Madhes Loktantrik Party (TMLP) also joins the government.

## 2010

**January:** With the submission from the Committee on State Restructuring and Distribution of State Power, all reports of the thematic committees of the Constituent Assembly are in.

**May:** The tenure of the Constituent Assembly is extended by one year.

**June:** Madhav Kumar Nepal resigns. The election of a new prime minister fails amid disagreement among the three main parties – the UCPN-M, NC and UML. Sixteen inconclusive rounds of voting for Prime Minister are held through November.

## 2011

**January:** UNMIN's tenure comes to an end under growing resistance from the Nepali Army, the NC and UML. The UCPN-M hands over cantonments to the Special Committee for Supervision, Integration and Rehabilitation of the Maoist Army Combatants.

**February:** Jhala Nath Khanal of the UML is elected prime minister with the support of the UCPN-M.

**May:** The tenure of the Constituent Assembly is extended by three months.

**August:** Khanal resigns. Baburam Bhattarai of the CPN-M is elected prime minister. The tenure of the Constituent Assembly is extended by another three months.

**November:** The State Restructuring Commission is formed. The Supreme Court rules that the term of the Constituent Assembly can be extended one final time for six months.

## 2012

**February:** The State Restructuring Commission submits its report. A minority group within the commission submits a separate report.

**May:** The Constituent Assembly is dissolved with no new constitution agreed.

**June:** In a major split in the UCPN-M, a hardline faction calling itself CPN-Maoist, led by Mohan Baidya 'Kiran', walks out.

**November:** The distribution of voluntary retirement packages to Maoist combatants is completed.

## 2013

**March:** The Chief Justice of the Supreme Court, Khil Raj Regmi, becomes prime minister, heading an interim government of former bureaucrats amid protests against the same individual heading the executive and the judiciary.

**November:** Election to the second Constituent Assembly. The NC is the largest party followed closely by the UML, with the UCPN-M a distant third. The RPP-Nepal comes fourth, ahead of Madhesi and Janajati parties.

## 2014

**February:** Sushil Koirala (cousin of BP and Girija Prasad Koirala) of the NC becomes prime minister with the UML as coalition partner.

## 2015

**February:** The Truth and Reconciliation Commission and Commission of Investigation on Enforced Disappeared Persons are formed amid continuing controversy over amnesty for certain gross human rights violations.

**April:** A strong earthquake hits Nepal, killing nearly 9,000 people.

**June:** Spurred by the earthquake emergency, the NC, UML, UCPN-M and MJF-D sign a 16-point agreement on contentious issues, including federalism, and agree to fast-track the constitution-drafting process. The MJF-D is thrown out of UDMF. The first draft of constitution is presented to the Constituent Assembly.

**July:** Protests by Madhesi against the draft constitution begin.

**August:** A revised draft of the constitution is presented. The MJF-D and other small Madhesi parties boycott the drafting process.

**September:** The Constitution of Nepal 2015 is promulgated. The Constituent Assembly transforms into Parliament. The UDMF intensifies protests and blocks off transit points along the India border. India stops essential supplies, citing the security situation.

**October:** Sushil Koirala resigns and is replaced by KP Sharma Oli of the UML, who leads a coalition government that includes the UCPN-M, RPP-Nepal and MJF-D. Bidhya Devi Bhandari of the UML is elected Nepal's first woman President and Nanda Bahadur Pun aka Nanda Kishor Pun 'Pasang', Commander of the disbanded People's Liberation Army, is elected Vice-President.

## 2016

**January:** The Constitution of Nepal 2015 is amended to meet some of the demands made by the UDMF.

**February:** The UDMF ends the border blockade.

**May:** The UCPN-M merges with nine other Maoist parties and becomes the CPN-Maoist Centre.

**July:** KP Sharma Oli resigns. Pushpa Kamal Dahal Prachanda becomes prime minister in a coalition government with the NC.

**November:** The Constitution Amendment Bill is presented in Parliament.

# Glossary

## ***agradhikar***

‘Prior rights’ – the idea that members of the titular ethnic group have extra rights such as right to head the government in the respective province.

## **Bahun**

The common term used in the hills of Nepal for Brahmans, the highest in the Hindu caste hierarchy, and generally denotes Brahmans of hill origin. Comprising 12.2 per cent of the population, Bahuns are the country’s second largest social group.

## ***bandh***

A shutdown of all establishments and public and private transport usually called by political parties and interest groups, and enforced with violence or the threat of it. A *bandh* can be nationwide or localised depending on the context. A variation of the *bandh* is the *chakka jam*, literally ‘frozen wheels’, when no wheeled transport except bicycles are allowed to operate but establishments remain open.

## **Chhetri**

The common term used in the hills of Nepal for Kshatriya, the second highest in the Hindu caste hierarchy, and generally denotes Kshatriya of hill origin. Comprising 16.6 per cent of the population, Chhetris are the largest social group in the country.

## **Dalit**

The term used for the group that was formerly considered ‘untouchable’ by law. Dalits consist of the larger hill Dalit group and Tarai Dalits, and together comprise 12.6 per cent of the population.

## **Janajati**

Also Adivasi Janajati (or Indigenous Nationalities) and previously known as ethnic groups or ‘tribals’, Janajati is the term applied jointly to the scores of groups that identify themselves as such. The number of Janajati groups has continued to rise since the census started enumerating social groups in 1991, from 26 in 1991 to 45 in 2001 and 64 in 2011, reflecting a corresponding increase in identity consciousness. Janajatis range from Magars (7.1 per cent of the population) down to Kusunda (273 in total). Janajatis live across the country’s three ecological regions and can accordingly be divided into Mountain Janajatis (0.6 per cent of the population, the most famous being the Sherpas), Hill Janajatis (25.5 per cent), and Tarai Janajatis (9.8 per cent, with the largest being the Tharus at 6.6 per cent, the second biggest Janajati group overall).

## **Khas Arya**

Referring collectively to the four ‘upper caste’ groups of Bahun, Chhetri, Sanyasi/Dasnami and Thakuri, Khas Arya is the most recent term to come into currency in Nepal, mainly as a reaction to growing assertiveness of the Dalits, Janajatis and Madhesis. The Khas Arya make up 31.2 per cent of the population.

## **Madhesi**

Nepal’s southern Tarai plains are also called Madhes. Hence, people with origins in the Tarai are called Madhesi (derogatorily, Madhise). The Madhesi identity is claimed by Tarai-origin Hindu caste-groups (14.8 per cent of the population), including by Tarai Dalits (4.5 per cent), by Tarai Janajatis (8.5 per cent) and also by Muslims (4.4 per cent, nearly all of whom live in the Tarai). But, there is a strong streak among Tarai Janajatis to carve a separate identity, which is also seen on occasion among Muslims as well as Tarai Dalits.

## **Panchayat**

The Partyless Panchayat System was introduced in 1962 by King Mahendra following his ouster of Nepal’s first elected government in 1960, as part of the attempt to graft ‘new institutions ... on what was essentially an absolute monarchy’, in the words of political scientists Bhuwan L. Joshi and Leo E. Rose. Also touted as the Partyless Panchayat Democracy, the polity underwent some reforms after the national referendum of 1980 but remained essentially a tool for an authoritarian monarch during which political parties remained banned. The Panchayat system came to an end after the successful 1990 Movement for the Restoration of Democracy, which saw the Nepali Congress party and the communists join hands for the first time.

## ***sanatan dharma***

Hinduism is also known as *sanatan dharma*, literally ‘eternal duty’, or the practice of beliefs and customs passed down through the ages.

## **Tarai**

Also called the Madhes, the Tarai is a strip of flat land in the southern part of Nepal. Geographically, the Tarai covers 17 per cent of Nepal’s territory, but administratively it consists of the 20 southern districts that make up 23 per cent of the country’s landmass. The Tarai is Nepal’s ‘breadbasket’ and home to 50.3 per cent of the population. The Tarai population comprises 63.1 per cent Madhesis, 35.7 per cent people of hill origin and 1.2 per cent identified as ‘Others’, according to the 2011 census.

# Profiles

## People

### Mohan Baidya

With Prachanda and Baburam Bhattarai (see below), Mohan Baidya formed the triumvirate that led the Maoist movement. Mohan Baidya became the General Secretary of Communist Party of Nepal–Mashal (CPN–Mashal) after the party split in 1985. He was replaced a year later by Prachanda. Although more senior than Prachanda, Mohan Baidya stayed under his leadership for nearly three decades and has continued to engage in ideological debate with him. He was one of the three Vice-Chairs of the Unified CPN–Maoist (UCPN–M) until June 2012 when he walked out of the party with nearly a third of the central committee members, accusing Prachanda and Bhattarai of revisionism. His faction was called the CPN–Maoist and, later the CPN–Revolutionary Maoist. After boycotting the 2013 Constituent Assembly (CA) election, an even more hardline faction split off from Baidya in March 2014. In May 2016, some of the senior leaders of Baidya’s party reunited with the UCPN–M to become the CPN–Maoist Centre.

### Bidhya Devi Bhandari

Bidhya Devi Bhandari is the President of Nepal – the second person and the first woman to hold the post. Active in communist politics since the time she was a student, she came to national prominence after the death of her husband, Madan Bhandari, the General Secretary of the UML, in a road accident in 1993. She was elected to parliament twice from her husband’s constituency. She was defeated in the 2008 CA election but was appointed Minister of Defence in May 2009 in the government led by Madhav Kumar Nepal of the UML. She was elected president in October 2015.

### Baburam Bhattarai

Baburam Bhattarai was one of the most visible faces of the Maoist insurgency. Having started his political career as president of a Nepali students’ organisation in India, he joined the CPN–Fourth Congress after the national referendum of 1980, and later the CPN–Masal. He was instrumental in the formation of the CPN–Unity Centre after the 1990 movement. He headed its political wing, the United People’s Front, in which capacity he submitted the 40-Point Demand to Prime Minister Sher Bahadur Deuba in February 1996, warning of an armed struggle if the Maoists’ demands were not met. He led the Maoist side in the 2003 peace talks. In 2004 Bhattarai was stripped of all responsibilities and placed under house arrest by the party for being pro-India. He was rehabilitated after King Gyanendra seized power in 2005 and the role of India became paramount in bringing the Maoists and the Seven-Party Alliance together. Bhattarai served as finance minister in the first Prachanda government. He became prime minister in August 2011 and oversaw the dissolution of the first CA. He was Chair of the Constitutional Political Dialogue and Consensus Committee of the second CA. In a surprise move, within days of the

new constitution being promulgated in September 2015, Bhattarai quit the UCPN–M, of which he was one of three Vice-Chairs, and resigned his seat in parliament. He has since founded a new party called Naya Shakti (New Power).

### Sher Bahadur Deuba

Sher Bahadur Deuba is currently President of the Nepali Congress (NC). A former student leader, he was home minister in the first post-1990 NC government (1991–94). He became prime minister in 1995 and headed the government when the Maoist insurgency broke out. When the NC came back to power in 1999, he was placed in charge of the ‘High-Level Committee to Provide Suggestions to Solve the Maoist Problem’. He became prime minister once again in July 2001 and began talks with the Maoists. Following the breakdown of negotiations in November 2001 and the resumption of hostilities, Deuba declared a national state of emergency. Internal dissension within the NC led Deuba to dissolve parliament in May 2002. He was suspended from the party as a result and formed a new party, the NC–Democratic. In October 2002, King Gyanendra dismissed Deuba for failing to hold parliamentary elections as required by law, but he was reinstated as prime minister June 2004. In February 2005, Gyanendra dismissed Deuba once again. The NC–Democratic was part of the Seven-Party Alliance that led the Second People’s Movement. The party merged with the NC in 2007, and Deuba was elected president of the NC in March 2016.

### Jhalanath Khanal

Jhalanath Khanal was one of the founding members of the CPN–Marxist-Leninist (CPN–ML) in 1978, and was its General Secretary from 1982 to 1986. He became a minister in the interim government formed after the 1990 People’s Movement, and again in 1997. He became General Secretary of the UML in 2008 after Madhav Kumar Nepal resigned his position following his electoral defeat in the CA election. When the UML revived the post of Chairman, he was elected to it 2009. He became prime minister in February 2011 but held the post for less than seven months.

### Girija Prasad Koirala

Girija Prasad Koirala was the half brother of Matrika Prasad Koirala, the first commoner to become prime minister after the end of Rana rule, and the brother of BP Koirala, the first democratically elected prime minister of Nepal. He himself was the first prime minister of post-1990 Nepal, and assumed the post three more times. His first independent foray into politics began with the 1947 workers’ strike in the Tarai during Rana rule. Immersed in NC politics following his brothers, as the General Secretary he was part of the leadership troika that took charge of the party after the death of BP in 1982. His first tenure as prime minister ended due to factionalism within the party, and he called for mid-term elections in which the NC came second behind the UML. In 1996, he was elected president of the NC, a position he held until

his death in March 2010. He led the NC to victory in 1999 and literally handed over the premiership to his old comrade, Krishna Prasad Bhattarai, only to force him out within a year. Girija resigned in July 2001 in protest against the army's failure to follow his orders. The dissolution of the parliament by Sher Bahadur Deuba in May 2002 resulted from the internal tussle between him and Girija, leading to a split in the party. Girija emerged as the highest political leader following the success of the 2006 Movement and took up the position of prime minister for the fourth time. He signed the *Comprehensive Peace Accord* on behalf of the government. When the Interim Constitution was amended for the third time in December 2007 and Nepal declared a republic, he assumed the role of head of state. It is widely believed that he hoped to be the consensus choice as Nepal's first president after the 2008 CA election, but for the emergence of the Maoists as the largest party in the CA. Girija, however, was able to push through another constitutional amendment that made the removal of the prime minister easier before handing over power to Prachanda, more than four months after the CA election. He died in 2010.

#### **Sushil Koirala**

A cousin of the more famous Koiralas, Sushil Koirala was a long-time NC activist and close confidant of Girija Prasad Koirala. Elected to parliament in 1991 and 1999, he generally shunned public office. He unsuccessfully vied with Sher Bahadur Deuba for the premiership after Girija's resignation in 2001. Having served as the General Secretary and Vice-President, he was elected party President in 2010. After the NC emerged as the largest party in the second CA, he became prime minister in February 2014. He oversaw the drafting of the 2015 constitution and resigned from the premiership following an earlier undertaking to quit once the constitution was promulgated. He stood for re-election by parliamentary vote, but was beaten by KP Oli of the UML. He died in 2016.

#### **Madhav Kumar Nepal**

Madhav Kumar Nepal was one of the founding members of the CPN-Marxist-Leninist (CPN-ML) in 1978. When the party merged with the CPN-M in 1990 and came above ground, he became the Deputy General Secretary of the new party, the Communist Party of Nepal-Unified Marxist-Leninist (UML). He assumed the post of General Secretary following the death of Madan Bhandari in a road accident in 1993. He was Deputy Prime Minister in the minority government formed by the UML in 1994. He resigned his position as General Secretary upon losing the 2008 CA election in both of the constituencies that he had contested. He became prime minister of Nepal in May 2009 and served in office till February 2011 when the then Chair of the UML, Jhala Nath Khanal, replaced him.

#### **KP Oli**

KP Sharma Oli was one of the leaders of the Jhapa Andolan, a brief but violent Maoist insurrection in south-eastern Nepal. He was arrested in 1973 and spent the next 14 years in prison. He escaped from jail in 1987, and joined the underground CPN-ML. He became a minister in the brief UML government of 1994-95. After the 2006 People's Movement, he was appointed Deputy Prime

Minister. He lost the 2008 CA elections but won in 2013. He became leader of the UML parliamentary party in 2014 and later Chair of the UML. He became prime minister in October 2015 in the midst of ongoing unrest in the Tarai and the blockade by India. He took a hardline stance against both Madhesi and India and rehabilitated Panchayat-style nationalism centred on the hill 'upper-caste' culture.

#### **Pushpa Kamal Dahal Prachanda**

Pushpa Kamal Dahal has led the Communist Party of Nepal-Maoist (CPN-M) and its various incarnations since 1985. Using the nom de guerre 'Prachanda', he was the General Secretary of the CPN-M when the 'People's War' began in 1996, and took up the newly created position of Chair in 2001. Later that year, the CPN-M announced the formation of its People's Liberation Army (PLA) with Prachanda as Commander. After the war, he led the CPN-M to victory as the largest party in the 2008 CA elections. He gave up his position as Commander of the PLA when he became prime minister in August 2008, a position he resigned in May 2009 following differences with the president over his dismissal of the army chief. In the second CA election of 2013, the CPN-M won far fewer seats and came third overall, with Prachanda himself defeated in one constituency and barely winning in a second. He became prime minister once again in August 2016, leading a coalition government with the Nepali Congress.

#### **Gyanendra Bir Bikram Shah**

Gyanendra is the second son of King Mahendra. When King Tribhuvan and his family escaped to India via the Indian Embassy in 1950 as part of the attempt to end Rana rule, Gyanendra was left behind. The Ranas declared the three-year-old Gyanendra king. His 'reign', however, was soon over with the return of his grandfather from India. Known as a hardliner, Gyanendra was involved in business and conservation work. His son, Paras, was one of the few eyewitnesses to survive the 2001 palace massacre that killed Gyanendra's elder brother King Birendra and his immediate family. Although Gyanendra was away from Kathmandu at the time, the circumstances of his accession, combined with the unpopularity of Paras, made him a suspect in the eyes of many Nepalis and undermined his legitimacy. He made a grab for power in October 2002, dismissing Prime Minister Sher Bahadur Deuba and then ruling through prime ministers he had appointed, including Deuba in mid-2004. In February 2005, he dismissed Deuba once again and began running the government himself. He lost de facto power following the April 2006 Second People's Movement, after which all his political and even socio-cultural functions were taken over by the prime minister. He was voted out in the first sitting of the CA in May 2008, a decision he accepted without protest.

#### **Ram Baran Yadav**

Ram Baran Yadav was the first president of Nepal. A medical doctor by training, he was a member of the Nepali Congress party. He served as minister of state for health in the first Congress government of 1991-94, and became minister for health in 1999. He was elected President of Nepal by the first CA in July 2008. He remained president until October 2015 and had the distinction of having had eight prime ministers serve under him. As a Madhesi, his elevation to such a high



post symbolised the transformation of Nepal. His tenure was generally without controversy except for his overturning Prime Minister Pushpa Kamal Dahal Prachanda's sacking of the army chief in 2009.

## Institutions

*See articles on peace architecture, p.24, and political parties, p.68, for more on Nepali institutions.*

### Joint Monitoring Coordination Committee (JMCC)

The creation of the Joint Monitoring Coordination Committee (JMCC) was part of the *Agreement on Monitoring of the Management of Arms and Armies* signed on 28 November 2006. Consisting of representatives of both the Nepali Army and the PLA and chaired by the United Nations, the JMCC's role was to ensure compliance with the Agreement by both sides. It was one of the more successful mechanisms of the peace process and by the time the UN Mission in Nepal (UNMIN) came to an end in January 2011, the JMCC had held 135 sessions, which, according to the outgoing head of UNMIN, were 'collegial, professional and confidential'. The current Vice-President of Nepal, Nanda Bahadur Pun, was a member of the JMCC.

### Nepal Peace Trust Fund

The Nepal Peace Trust Fund (NPTF) was established in January 2007 to support the implementation of the CPA. The NPTF is a joint initiative of the Government of Nepal and a group of donors consisting of Denmark, the European Union, Finland, Germany, Norway, Switzerland, the United Kingdom, and the United States. Organisationally, it lies under the Ministry of Peace and Reconstruction. NPTF's main activities have been in the management of cantonments and the integration/rehabilitation of combatants; providing support to individuals and communities affected by the conflict; enhancing security and transitional justice mechanisms through actions such as rebuilding police stations and clearing mines; and conducting peacebuilding initiatives nationally and locally. NPTF is currently in its third phase and focusing on other areas of the peace process such as transitional justice and support for conflict victims.

### People's Liberation Army

The PLA was formed in September 2001, at the time of the first ceasefire between the Maoists and the government. Most of the weapons at its disposal at the time were limited to those looted in attacks against the police, although some appeared to have been procured from the underground arms market. The PLA's arsenal was bolstered greatly by its successful surprise attack on an army camp in November 2001, signalling the end of the ceasefire. In terms of organisation, the PLA claimed to have reached division strength by 2004, and set up three divisions. These were much smaller than divisions in regular armies (10,000-plus) and the true strength of the PLA was never verified. When the cantonments were set up, 32,250 showed up for registration, a number that had dwindled to 19,602 by the time of verification. In May 2009, a video showing Prachanda boasting that the PLA had been only 7–8,000 strong surfaced in public. Prachanda was the Commander of the PLA from its establishment until he became prime minister in 2008, when he handed the role over to the current Vice-President of Nepal, Nanda Bahadur Pun.

### Seven-Party Alliance

Formed in May 2005 to present a united front against King Gyanendra, who had usurped power in February 2005, the Seven-Party Alliance (SPA) consisted of six parties from the House of Representatives that had been dissolved in 2002 – the Nepali Congress, the breakaway Nepali Congress–Democratic, the Communist Party of Nepal–Unified Marxist-Leninist, the Nepal Workers' and Peasants' Party, Nepal Sadbhavana Party (Anandi Devi), and the People's Front (the political wing of the underground Communist Party of Nepal–Unity Centre-Masal), which together accounted for 95 per cent of the membership of the House – and the United Left Front (which was itself a coalition of five communist parties), but which did not have any parliamentary representation. The SPA signed the *12-Point Understanding* with the Maoists in November 2005, which paved the way for the Second People's Movement of April 2006, and later negotiated the CPA and the Interim Constitution.

# Key texts

## 1990

### **Constitution of the Kingdom of Nepal**

[www.constitutionnet.org/vl/item/1990-constitution-nepal](http://www.constitutionnet.org/vl/item/1990-constitution-nepal)

## 2005

### **12-Point Understanding, 22 November**

[peacemaker.un.org/nepal-12pointunderstanding2005](http://peacemaker.un.org/nepal-12pointunderstanding2005)

## 2006

### **Agreement on Code of Conduct for Ceasefire, 25 May**

[peacemaker.un.org/nepal-25pointceasefire2006](http://peacemaker.un.org/nepal-25pointceasefire2006)

### **Agreement Between Seven-Party Alliance and CPN-Maoist on Arms Management and Other Political Issues (The Six-Point Understanding), 8 November**

[www.europe-solidaire.org/spip.php?article3912](http://www.europe-solidaire.org/spip.php?article3912)

### **Comprehensive Peace Accord, 21 November**

[un.org.np/node/10498](http://un.org.np/node/10498)

### **Agreement on Monitoring the Management of Arms and Armies Personnel, 8 December**

[nttpinstitute.org/wp-content/uploads/2015/11/Agreement-of-Monitoring-of-Management-of-Arms-and-Armies-English.pdf](http://nttpinstitute.org/wp-content/uploads/2015/11/Agreement-of-Monitoring-of-Management-of-Arms-and-Armies-English.pdf)

## 2007

### **Interim Constitution of Nepal, 15 January**

[himalaya.socanth.cam.ac.uk/collections/rarebooks/downloads/Nepal\\_Interim\\_Constitution\\_2007\\_first\\_to\\_sixth\\_amendements.pdf](http://himalaya.socanth.cam.ac.uk/collections/rarebooks/downloads/Nepal_Interim_Constitution_2007_first_to_sixth_amendements.pdf)

### **Agreement with Nepal Federation of Indigenous Nationalities and Indigenous Nationalities Joint Struggle Committee, 7 August**

[www.constitutionnet.org/files/2007-08-07-agreement\\_between\\_government\\_and\\_janajatis.pdf](http://www.constitutionnet.org/files/2007-08-07-agreement_between_government_and_janajatis.pdf)

### **Agreement with Madhesi Janadhikar Forum, 30 August**

[un.info.np/Net/NeoDocs/View/891](http://un.info.np/Net/NeoDocs/View/891)

## 2008

### **Agreement with Federal Democratic National Front, Nepal, 2 March**

[un.info.np/Net/NeoDocs/View/900](http://un.info.np/Net/NeoDocs/View/900)

### **Eight-Point Agreement with United Democratic Madhesi Front, 28 February**

[un.info.np/Net/NeoDocs/View/899](http://un.info.np/Net/NeoDocs/View/899)

## 2011

### **Seven-Point Agreement, 1 November**

[peacemaker.un.org/sites/peacemaker.un.org/files/NP\\_111101\\_The%20Seven%20Point%20Agreement.doc\\_.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/NP_111101_The%20Seven%20Point%20Agreement.doc_.pdf)

## 2015

### **16-Point Agreement, 8 June**

[www.satp.org/satporgtp/countries/nepal/document/papers/16-point\\_Agreement.htm](http://www.satp.org/satporgtp/countries/nepal/document/papers/16-point_Agreement.htm)

### **Constitution of Nepal, 20 September**

[www.ilo.org/dyn/natlex/docs/MONOGRAPH/100061/119815/F-1676948026/NPL100061%20Eng.pdf](http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/100061/119815/F-1676948026/NPL100061%20Eng.pdf)

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# The Accord series

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## Insight



### INSIGHT ISSUE 3 (2016)

Accord Insight 3 examines practical approaches and challenges to reconciliation in peace processes. Case studies from the Georgian-Abkhaz conflict, Colombia, Mindanao (Philippines) and Northern Ireland offer insights from initiatives to transform relationships horizontally, among communities, and vertically, between society and the state, in societies with different histories of violence and at very different stages on the conflict spectrum.



### INSIGHT ISSUE 2 (2015)

#### Local engagement with armed groups

This second Accord Insight publication looks at the interactions between armed groups and local populations. Case studies from Colombia, northern Uganda, Syria and Northern Ireland document the experiences of communities who have organised to influence the behaviour of armed groups – often in advance of more formal negotiations and in situations of intense violence and embedded conflict.



### INSIGHT ISSUE 1 (2013)

#### Women building peace

Most peace agreements do not address the specific concerns of women, and women are still excluded from political processes. The first Accord Insight presents nine articles and new analysis drawn from the Accord series from 1998 to 2010, which examine the roles women have played in addressing violence and building peace – from Bougainville and Sierra Leone to Aceh and Northern Ireland.

## Accord



### ISSUE 25 (2014)

#### Legitimacy and peace processes: from coercion to consent

Accord 25 focuses on the practical ways that legitimacy can contribute to building more sustainable peace: national dialogue; constitutional reform; local governance; and transforming coercive actors. It looks at 15 country case studies, including the Philippines, Syria, Afghanistan, the Basque Country, Somaliland, Yemen and Burma.



### ISSUE 24 (2012)

#### Reconciliation, reform and resilience: positive peace for Lebanon

Accord 24 includes more than 30 articles and interviews on peacebuilding in Lebanon: from diverse perspectives and from inside and outside the country. Together they show that the Lebanese are not passive victims of a violent fate determined beyond their country's borders. Many are actively pursuing opportunities for change.



### ISSUE 23 (2012)

#### Consolidating peace: Liberia and Sierra Leone

A decade after the official end of wars in Liberia and Sierra Leone, Accord 23 draws on respective societies' experiences and insights to ask what headway has been made to consolidate peace, what challenges lie ahead and what lessons can be learnt. It argues that policy needs to focus on people, on repairing relationships and promoting inclusion, and that traditional mechanisms can play a crucial role.



### ISSUE 22 (2011)

#### Paix sans frontières: building peace across borders

War does not respect political or territorial boundaries. This twenty-second Accord publication, looks at how peacebuilding strategies and capacity can 'think outside the state': *beyond* it, through regional engagement, and *below* it, through cross-border community or trade networks.

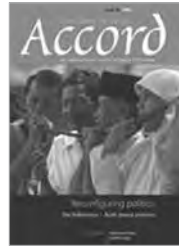




#### ISSUE 21 (2010)

##### **Whose peace is it anyway? Connecting Somali and international peacemaking**

Accord 21 contains over 30 articles including interviews with Somali elders and senior diplomats with the African Union, the UN and IGAD, and contributions from Somali and international peacemaking practitioners, academics, involved parties, civil society and women's organisations.



#### ISSUE 20 (2008)

##### **Reconfiguring politics: the Indonesia-Aceh peace process**

In 2005, the Indonesian government and the Free Aceh Movement (GAM) agreed a settlement ending 30 years of armed conflict. Accord 20 explores how that agreement was reached and subsequent challenges to its implementation.



#### ISSUE 19 (2008)

##### **Powers of persuasion: incentives, sanctions and conditionality in peacemaking**

International policymakers frequently use incentives, sanctions and conditionality as tools to influence intra-state conflicts. Using a range of case studies, Accord 19 asks whether and how these tools can constructively influence conflict parties' engagement in peacemaking initiatives.



#### ISSUE 18 (2006)

##### **Peace by piece: addressing Sudan's conflicts**

This Accord publication reviews the peace process that led to the 2005 Comprehensive Peace Agreement in Sudan. It also explores questions that remain to be tackled, arguing that future Sudanese initiatives must be more inclusive and better coordinated.



#### ISSUE 17 (2005)

##### **The limits of leadership elites and societies in the Nagorny Karabakh peace process**

Since the 1994 ceasefire, the conflict between Azerbaijan and Armenia over Nagorny Karabakh has remained deadlocked. Accord 17 explores the dynamics of polarisation, the obstacles to a sustainable agreement and the challenge of overcoming resistance to compromise.



#### ISSUE 16 (2005)

##### **Choosing to engage: armed groups and peace processes**

Non-state armed groups, key actors in many internal armed conflicts, have participated in peace processes across the world. Accord 16 draws on these experiences to explore the case for engaging with armed groups, and the different options, roles and challenges for such engagement.



#### ISSUE 15 (2004)

##### **From military peace to social justice? The Angolan peace process**

The Luena Memorandum of 2002 brought an end to Angola's 27-year civil war. Accord 15 reviews the history of peacemaking efforts in Angola, and analyses challenges that remain if the absence of violence is to develop into a sustainable and just peace.



#### ISSUE 14 (2004)

##### **Alternatives to war: Colombia's peace processes**

This Accord publication provides an overview of more than 25 years of peace initiatives with Colombia's guerrilla and paramilitary groups. It includes analysis of civil society efforts at local, regional and national levels and identifies the necessary elements of a new model of conflict resolution.



#### ISSUE 13 (2002)

##### **Owning the process: public participation in peacemaking**

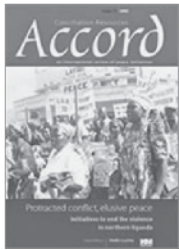
This first thematic Accord publication documents mechanisms for public participation in peacemaking. It features extended studies looking at how people were empowered to participate in political processes in Guatemala, Mali and South Africa. It also contains shorter pieces from Colombia, Northern Ireland and the Philippines.



#### ISSUE 12 (2002)

##### **Weaving consensus: the Papua New Guinea – Bougainville peace process**

This Accord publication documents efforts leading to the Bougainville Peace Agreement of 2001. It describes an indigenous process that drew on the strengths of Melanesian traditions, as well as innovative roles played by international third parties.



#### ISSUE 11 (2002)

##### **Protracted conflict, elusive peace: initiatives to end the violence in northern Uganda**

While a meaningful peace process in northern Uganda remains elusive, Accord 11 documents significant peacemaking initiatives undertaken by internal and external actors and analyses their impact on the dynamics of the conflict.



#### ISSUE 10 (2001)

##### **Politics of compromise: the Tajikistan peace process**

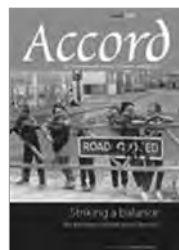
This publication describes the aspirations of the parties to the conflict in Tajikistan. It documents the negotiation process leading to the General Agreement of June 1997, looking at the role of the international community, led by the UN, and of local civil society.



#### ISSUE 9 (2000)

##### **Paying the price: the Sierra Leone peace process**

The Lomé Peace Agreement of July 1999 sought to bring an end to armed conflict in Sierra Leone: one of the most brutal civil wars of recent times. Accord 9 explores the Lomé process and earlier attempts to resolve the conflict, and draws lessons for Sierra Leone's transition.



#### ISSUE 8 (1999)

##### **Striking a balance: the Northern Ireland peace process**

This publication examines the factors that led to the negotiations resulting in the 1998 *Belfast Agreement*. It describes the complex underlying forces and the development of an environment for peace. (2003: Supplement Issue – see online index)



#### ISSUE 7 (1999)

##### **A question of sovereignty: the Georgia-Abkhazia peace process**

This publication explores the background and issues at the heart of the Georgia-Abkhazia conflict, providing a unique insight into a political stalemate and pointing towards possible avenues out of deadlock.



#### ISSUE 6 (1999)

##### **Compromising on autonomy: Mindanao in transition**

The GRP-MNLF 1996 Peace Agreement was a milestone, as all previous peacemaking attempts over 24 years had failed. Accord 6 analyses elements of peacemaking in Mindanao and examines the challenges of implementation. (2003: Supplement Issue – see online index)



#### ISSUE 5 (1998)

##### **Safeguarding peace: Cambodia's constitutional challenge**

This publication documents issues around the signing of the 1991 Paris agreements that officially ended Cambodia's long war, and the subsequent violent collapse of the country's governing coalition in July 1997.



#### ISSUE 4 (1998)

##### **Demanding sacrifice: war and negotiation in Sri Lanka**

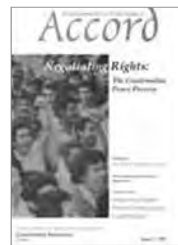
This publication documents the cycles of ethnic/national conflict that have blighted Sri Lanka since 1983. It analyses negotiations and other peace initiatives, and outlines fundamental concerns that need to be confronted in future peacemaking efforts



#### ISSUE 3 (1998)

##### **The Mozambican peace process in perspective**

This publication documents the diverse initiatives that drove the parties to a negotiated settlement of the conflict in Mozambique. It further illustrates the impact on the country of changing regional and international political dynamics.



#### ISSUE 2 (1997)

##### **Negotiating rights: the Guatemalan peace process**

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#### ISSUE 1 (1996)

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