

# The Nepalese Peace Process:

Faster Changes, Slower Progress

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## Abstract

The ongoing structural reform process in Nepal is the outcome of over one decade of negotiations among the former ruling Monarch, Nepali political parties and the Maoist movement, under the impetus of civil society mobilisation for change – with demands ranging from power, rights and dignity for people at the community level. This paper analyses the ways in which the peace process, which put an end to the armed conflict in Nepal in 2006, has sought to address popular demands for inclusive democracy. It does so by reviewing the various cycles of negotiation, codification and materialisation of political reforms since the People's Movement of 2006, the Comprehensive Peace Accord and the (first and second) Constituent Assemblies. It focuses in particular on one area of reform that has been widely debated among political and civil society sectors, namely, state restructuring through power decentralisation. Overall, the paper develops the arguments that although there is a widespread consensus that state institutions should be made more inclusive and representative of the makeup of society, the voices of power contenders, such as the Madhesi and Janajati communities, have failed to be adequately represented in constitutional debates. Their exclusion could lead to an undermining of all the achievements made so far in terms of laws and practices in favour of the marginalised communities and the achieved and pipelined progresses towards a democratic Nepal. This could further plunge the country into violence in an endless political transition.

## About the Publication

This paper is one of three case study reports on Nepal produced in the course of the collaborative research project ‘Avoiding Conflict Relapse through Inclusive Political Settlements and State-building after Intra-State War’, running from February 2013 to February 2015. This project aims to examine the conditions for inclusive political settlements following protracted armed conflicts, with a specific focus on former armed power contenders turned state actors. It also aims to inform national and international practitioners and policy-makers on effective practices for enhancing participation, representation, and responsiveness in post-war state-building and governance. It is carried out in cooperation with the partner institutions CINEP/PPP (Colombia, Project Coordinators), Berghof Foundation (Germany, Project Research Coordinators), FLACSO (El Salvador), In Transformation Initiative (South Africa), Sudd Institute (South Sudan), Aceh Policy Institute (Aceh/Indonesia), and Friends for Peace (Nepal). The views expressed in this paper are those of the authors and do not necessarily reflect the views and opinions of the Berghof Foundation, CINEP/PPP, or their project partners. To find more publications for this project please visit [www.berghof-foundation.com](http://www.berghof-foundation.com). For further information, please contact the project research coordinator, Dr. Véronique Dudouet, at [v.dudouet@berghof-foundation.org](mailto:v.dudouet@berghof-foundation.org).

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## Acronyms

<b>CA</b>	Constituent Assembly
<b>CPA</b>	Comprehensive Peace Accord
<b>CPN (UML)</b>	Communist Party of Nepal (Unified Marxist and Leninist)
<b>CPN</b>	Communist Party of Nepal
<b>DC</b>	Disappearance Commission
<b>DDC</b>	District Development Committee
<b>FFP</b>	Friends for Peace
<b>FM</b>	Frequency Modulation
<b>FoDDC</b>	Federation of District Development Committee
<b>FPTP</b>	First-past-the-Post
<b>GoN</b>	Government of Nepal
<b>HMG</b>	His Majesty's Government
<b>HoR</b>	House of Representatives
<b>IC</b>	Interim Constitution
<b>LPC</b>	Local Peace Council
<b>MoPR</b>	Ministry of Peace and Reconstruction
<b>NNDSWO</b>	Nepal National Dalit Social Welfare Organisation
<b>NPTF</b>	Nepal Peace Trust Fund
<b>OHCHR</b>	Office of United Nations High Commissioner for Human Rights
<b>PLA</b>	People's Liberation Army
<b>PR</b>	Proportional Representation
<b>RNA</b>	Royal Nepalese Army
<b>SPA</b>	Seven Party Alliance
<b>TC</b>	Technical Committee
<b>TRC</b>	Truth and Reconciliation Commission
<b>UCPN</b>	Unified Communist Party of Nepal
<b>UML</b>	Unified Marxist and Leninist
<b>UNMIN</b>	United Mission to Nepal
<b>VDC</b>	Village Development Committee
<b>VoC</b>	Victim of Conflict

# 1 Introduction

Nepal, the youngest republic in the world, has found itself at a junction. The founder of the state of Nepal viewed it as *Dui Dhunga Bichko Tarul* – the yam stuck between two boulders, symbolising that Nepal is a landlocked country inserted between two Asian giants – China and India (Sri Panch Prithvi Narayana Shahko Upades ND, 11). Nowadays, people ironically call it *Dui Tarul Bichko Dhunga* – the stone stuck between two yams, expressing that Nepal has not been able to progress in a changing global context (NNDSWO 2012).

As a modern state, Nepal is 244 years old. Nearly 225 years of this period were governed in absolute monarchy by the Shahs and their next of kin, the Ranas, amidst internal conflicts, feuds and conspiracies against each other for power and privileges. Buoyed up by the independence of neighbouring India from British rule in the late 1940s, as well as Nepal's entry to the United Nations in the mid-1950s, the Nepali people started to mobilise to fight the parricidal ruling clique. There have been many popular mobilisations aimed at political change, the most important of which have been the 'People's Movements'<sup>1</sup> of 1950, 1990 and 2006 – all of which resulted in negotiations with the power-holders (see Annex 2). However, protecting the achievements made through these movements by institutionalising democracy has proven to remain a major challenge. Another hard fact is that though some parties and leaders have long raised the issue of inclusive democracy, it only became a primary political demand during the 2006 movement.

The 1950 movement for democracy abolished the 104 year oligarchic Rana Regime and established a multi-party system; however the negotiators of the time (namely, the Rana rulers themselves, the monarchy led by King Tribhuvan, the then Nepali Congress leaders and Indian leaders – initially including Jawaharlal Nehru) were not able to institutionalise these achievements. As a result, and taking advantage of the in-fights among the democratic forces, King Mahendra took over the power in 1959 by imposing a *coup d'état*. Nepal remained an autocratic regime for 30 years more.

The 1990 People's Movement mobilised against the 'strongholds of the autocratic minds' and contributed to restoring multi-party democracy by making the Monarchy constitutional in some (limited) areas. However, the sluggish development of inclusive democracy was challenged by the rebellion of the Communist Party of Nepal (Maoist) (CPN (Maoist)), which launched a 'People's War' in 1996. This event plunged the country into armed conflict for ten years, resulting in violence, and challenging the democratic norms and principles – with both conflicting parties (the Maoists and the security forces) being responsible for the arrests, abductions, disappearances and murders of innocent civilians on spurious charges such as being 'informers of the enemies' or 'feeding or giving shelter to the Maoists'.

The premises of the peace process in Nepal can be traced back to 2001, when the Nepalese civil society front started organising itself against the armed conflict, and both conflicting parties, namely, the Maoists and the state rulers (i.e. the monarchy and the political parties in the government), announced a joint ceasefire. However, they could not reach a consensus on the demands put forth by the Maoists – particularly on the abolition of the monarchy and the convening of a roundtable discussion for state restructuring. On the other hand, the then government was also unable to convince itself of the Maoists' intentions to cease violence. The King, whose rule rested on hundreds of years' legacy of monarchy, was not ready to negotiate

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<sup>1</sup> A 'movement' in the Nepali context refers to a social movement initiated by a political leadership, often 'informal', that is, without announcing its starting date, modality and envisioned objective, and sometimes 'formal', meaning that the political parties or their alliances announce a date, usually on a day of some significance which symbolises change.

with the conflicting parties at the risk of losing his authority over the country. The monarchy also questioned the ruling capacity of the then main political parties, particularly the Nepali Congress and the CPN (Unified Marxist Leninist) (CPN (UML)). The fate of the Monarchy was strongly affected by the royal massacre which took place in June 2001.<sup>2</sup> The new King Gyanendra (brother of deceased King Birendra) then attempted to impose an authoritarian system in 2002, by dismissing the Parliament and government, and assuming all executive authority. This compelled the mainstream political parties (united around a Seven Party Alliance – SPA<sup>3</sup>) to negotiate with the Maoist rebellion, leading to their signing of a historic agreement in Delhi in 2005 to join forces against the King, which became popularly known as the 12-Point Understanding. This agreement became the basis for these parties to launch a ‘People’s Movement’ in 2006. This Movement not only became successful, it also dug itself into the depth of abolishing Monarchy forever.

A new round of peace negotiations was organised between the Maoists and the SPA, this time without the monarchy which was by then virtually powerless and functionless. As a result, the historic Comprehensive Peace Accord (CPA) was signed on 22 November 2006, between the SPA and the CPN (Maoist). The CPA became the main mandate for the political parties to draft an Interim Constitution (IC), hold elections to the Constituent Assembly (CA), and later attempt to draft a new Constitution. A first CA was convened in 2008 and dissolved in 2012 without having agreed on a new Constitution. A new CA was elected in November 2013, mandated to forge a consensus on the remaining contentious issues related to state restructuring and forms of state governance.

This paper addresses the process of transition from authoritarianism and protracted social conflict towards a new political settlement, from the perspective of inclusive democracy. The concept of inclusive democracy can be translated as “direct political democracy, economic democracy (beyond the confines of the market economy and state planning), as well as democracy in the social realm and ecological democracy”.<sup>4</sup> As Fotopoulos (1997) argues, “inclusive democracy involves the equal distribution of power at all levels.” The local term used to embody this principle in Nepal is *Loktantra*, a catchword term which means inclusive democracy with full enjoyment of human rights, good governance, a proportional representation system, multi-party democracy and rule of law, based on political consensus. For instance, Bhattachan (2005) defines inclusive democracy as the “sharing of power and authority by all caste/ethnic, gender, linguistic, religious, cultural and regional groups through caste/ethnic, linguistic and regional autonomy and sub-autonomy, proportional representation and special measures under a federal structure of government by using the processes of round table conference, right to self-determination, referendum and constituent assembly.”

This paper aims to describe and analyse the nature and degree of inclusivity in the process and (preliminary) outcomes of the Nepalese political transition since 2006. The methodology includes textual analysis of various policy documents, particularly those related to peace agreements, proceedings of the Constituent Assembly, government decisions, as well as conflicting parties’ statements and circulars. Cross-

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<sup>2</sup> On 1 June 2001, King Birendra, Queen Aishwarya, Prince Dipendra and his brothers Nirajan and Sruti were assassinated along with more than a dozen other royal family members. The Investigation Committee reported that Prince Dipendra shot all his family members dead and finally shot himself. However, an overwhelming majority of the Nepali people do not believe in this report, convinced instead that either King Gyanendra, his son prince Paras or some external forces, must have killed the royal family.

<sup>3</sup> The seven-party alliance included the following political parties: Nepali Congress, Communist Party of Nepal (Unified Marxist and Leninist), Nepali Congress (Democratic), Nepal Workers and Peasants Party, Nepal Sadbhawana Party (Aanandidevi), United Left Front, and United People’s Front.

<sup>4</sup> See [www.inclusivedemocracy.org](http://www.inclusivedemocracy.org) (accessed 21 July 2014).

verifications of these materials have been made from secondary literatures (both published and unpublished). The paper first provides a general overview of the various cycles of negotiation, codification and materialisation of political reforms since the People's Movement of 2006. This is followed by a detailed examination of one area of reform that has been widely debated among political and civil society sectors, namely, state restructuring through power decentralisation. As Nepal is currently undergoing a second attempt to forge consensus on a new constitution, the paper concludes by identifying areas of major achievement as well as possible factors for conflict relapse.

## 2 Arenas of Negotiation, Codification, and Materialisation of Nepal's Political Settlement since 2006

This section provides a succinct overview of the main phases of the interdependent processes of conflict resolution and democratisation in Nepal, from the People's Movement of 2006 until the election of the second Constituent Assembly in November 2013. In particular, it assesses the levels of inclusivity in the various negotiation and decision-making platforms set up by the contending parties, and their resulting outcomes. Four main stages of transition will be successively examined (for a general overview of the main phases, see Annex 2).

### 2.1 The People's Movement (March-April 2006)

#### 2.1.1 Negotiations and Codification: The 12-Point Understanding

The 2006 People's Movement was initiated when the CPN (Maoist) and the then seven political parties that made up the SPA agreed to initiate a dialogue in Delhi in November 2005. Although the talks were held in India, no official representatives took part on behalf of India itself, nor did anyone from the civil society and monarchy fronts. Heads/representatives of each party signed a '12-point Understanding' on 22 November – the term 'agreement' was found to be too legally binding by the SPA leaders, who feared possible legal complications if they would associate themselves too closely with the CPN (Maoist) (Ogura 2008). The essence of the 12-Point Understanding (see full text in Annex 4) was that the long struggle between absolute monarchy and democracy had taken a very grave and new turn and the need of the hour was to establish peace by resolving the armed conflict through a progressive political outlet. The first priority of the parties was to implement the concept of full democracy by bringing the autocratic monarchy to an end and restructuring the state in order to resolve the deep-rooted sources of conflict pertaining to all sectors (class, caste, gender, region, political, economic, social and cultural).

## 2.1.2 Materialisation

The 12-Point Understanding paved the way for the 19-day peaceful People's Movement against the King's authoritarian rule. On the eve of this movement, a second agreement was signed between members of the SPA, who committed themselves to implementing the November 2005 accord. Then, starting on 6 April 2006, hundreds of thousands of "professionals, labourers, peasants, women, various religious and ethnic groups, ... [and] ordinary Nepalese came out in droves to protest the King and ensure that they have a democratic and free future" (Budhathoki n.d.). As a result of the huge protests in the streets of Nepal's major cities, particularly in front of the royal palace where one million people are said to have taken part in the largest peaceful gathering in the history of Nepalese People's Movements, the king was compelled to restore democracy. On 24 April 2006, he proclaimed:

*Convinced that the source of State Authority and Sovereignty of the Kingdom of Nepal is inherent in the people of Nepal and cognizant of the spirit of the ongoing people's movement as well as to resolve the ongoing violent conflict and other problems facing the country according to the road map of the agitating Seven Party Alliance, we, through this Proclamation, reinstate the House of Representatives which was dissolved on 22 May 2002 on the advice of the then Prime Minister in accordance with the Constitution of the Kingdom of Nepal (1990). We call upon the Seven Party Alliance to bear the responsibility of taking the nation on the path to national unity and prosperity, while ensuring permanent peace and safeguarding multiparty democracy.*<sup>5</sup>

The King's proclamation opened up ground for the SPA to negotiate with the underground Maoist movement. The reinstated House of Representatives (HoR), which had been elected in 1999 and dissolved in 2002, and was mainly represented by the Nepali Congress and the CPN (UML), made some decisions of historic importance from the perspective of inclusive democracy on 18 May 2006. First and foremost, the proclamation of the HoR stripped the 237-year-old monarchy of almost all of its power, including the King's power to designate his successor. It also asserted the supremacy of the parliament. Furthermore, it clarified that the people are the sole source of state powers and sovereignty. Declaring that all the rights regarding the legislative body of Nepal shall be exercised through the HoR, it also announced that the name "Royal Nepal Army" shall be changed into the "Nepalese Army", and the formation of the Nepalese Army shall be based on inclusive principles, so as to reflect the nation's representation in terms of caste/ethnicity, region and sectors. Other announced reforms included the declaration of Nepal as secular state, the resolution of problems around citizenship, and the introduction of a 33% reservation for women in every state institution.<sup>6</sup>

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<sup>5</sup> See [www.satp.org/satporgtp/countries/nepal/document/papers/King\\_Gyanendra%20Proclamation\\_Apr24.htm](http://www.satp.org/satporgtp/countries/nepal/document/papers/King_Gyanendra%20Proclamation_Apr24.htm) (accessed 26 September 2014)

<sup>6</sup> See [www.nepalmonitor.com/2006/05/historic\\_proclamation\\_in\\_kathm.html](http://www.nepalmonitor.com/2006/05/historic_proclamation_in_kathm.html) (accessed 26 September 2014)

## 2.2 Comprehensive Peace Accord

### 2.2.1 Negotiations

The reinstated HoR had a legal mandate to resume peace dialogue with the then underground Maoists, as addressed by the king, “...to resolve the ongoing violent conflict and other problems facing the country according to the road map of the agitating Seven Party Alliance”. This proclamation opened up an environment for the Maoist to enjoy their democratic rights as a political party. On 25 May 2006, the government and CPN (Maoist) signed a code of conduct for ceasefire,<sup>7</sup> which showed respect for “the popular mandate expressed through the historic people’s movement in favour of full democracy, progress and peace”, but also a strong commitment towards the Universal Declaration of Human Rights, the historic 12-Point Understanding, and the competitive multi-party system. It also demonstrated the parties’ commitment towards establishing an environment conducive to fearless civil life, creating trust among the people, and fulfilling their basic needs by restoring education, health medical services, and so on. On 15 June 2006, a Ceasefire Code of Conduct National Monitoring Committee was formed, coordinated by civil society leader Dr. Birendra Prasad Mishra. It comprised senior members from civil society (30 in total), including eleven Janjati (indigenous minority) representatives, one Dalit cast representative, two women and one Madhesi (ethnic minority) representative. Another decision was also made to appoint five senior civil society members as observers for the formal negotiations between the SPA and the Maoists – representing most agitating forces which took part in the People’s Movement. In addition, an 8-Point Agreement was signed between the Maoist and the SPA leaders on 16 June 2006, reiterating their commitment towards the protection and promotion of human rights, and requesting the United Nations to assist in the management of armies and arms of both parties. This agreement was witnessed by the then caretaker government formed mainly by representatives of the SPA.

### 2.2.2 Codification

On 21 November 2006, a Comprehensive Peace Agreement (CPA) was adopted by the Maoist Leader Pushpa Kamal Dahal ‘Prachand’ and the leaders of the SPA, including then Prime Minister and Congress Leader Girija Prasad Koirala.<sup>8</sup> This agreement had an historic importance for the Nepalese peace process, as it formally declared the end of the armed conflict by both of the conflicting parties (Government of Nepal 2006). Moreover, the CPA formally allowed the Maoists to take part in government, and to place their weapons under UN monitoring. The main components of the CPA are summarised as follows:

- ≡ **End of armed struggle:** The CPA formally ended the one-decade armed struggle launched by the CPN (Maoist). Through this agreement, both conflicting parties agreed to stop attacks or any kind of violent

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<sup>7</sup> See [www.un.org/np/unmin-archive/downloads/keydocs/25-point%20agreement%20on%20COC%2025%20May,%202006.pdf](http://www.un.org/np/unmin-archive/downloads/keydocs/25-point%20agreement%20on%20COC%2025%20May,%202006.pdf) (accessed 6 September 2014).

<sup>8</sup> Other attendees were Madhab Kumar Nepal (CPN – UML), Sher Bahadur Deuba (Nepali Congress – D), Amik Sherchan (Janamorcha Nepal), Bharat Bimal Yadav (Nepal Sadbhawana –Aanandidevi), Narayan Man Bijhukshe (Nepal Majdur Kisan Party), and CP Mainali (Sanyukta Bam Morcha).

and offensive activities from either side. They also agreed not to recruit any armed forces and not to transport any arms, ammunition and explosives.

- ≡ **Army integration:** The agreement stipulated that the Maoists' People's Liberation Army (PLA) would be confined in temporary cantonments, supervised, undergo a verification process, and that its members would be rehabilitated and integrated. Likewise a decision was also made for the Nepali army to be confined within their barracks. Both PLA cantonments and Nepal Army barracks would be monitored by the United Nations Mission in Nepal (UNMIN). It was also agreed that the possession, display and use of arms and weapons by anybody would be turned into a punishable crime.
- ≡ **State restructuring:** By agreeing that the new constitution would be proclaimed through a Constituent Assembly, the peace agreement formally announced the onset of the Federal Democratic Republic of Nepal through the principle of state restructuring. It furthermore scrapped the Maoists' parallel administrative and justice systems (People's Governments, People's Courts) across the country. Both parties also agreed to form a National Peace and Rehabilitation Commission, a Truth Commission, and a high-level Commission for State Restructuring.
- ≡ **End of monarchy:** This agreement formally announced the nullification of all powers vested in the monarchy, and stripped the King of political rights and his property, to be nationalised through public trusts.<sup>9</sup>
- ≡ **Investigation on human rights violations during the armed conflict:** The CPA created avenues for investigation by an independent body of the victims of the armed conflict, i.e. the killed, wounded, disappeared, displaced, and the grave violations of human rights. Both parties agreed that the Office of the High Commissioner for Human Rights (OHCHR)-Nepal would monitor the human rights situation. They also agreed for a respectful rehabilitation and social integration of the people displaced during the insurgency.
- ≡ **Commitment to human rights and democracy:** The CPA also committed the parties to a strict implementation of all previous pacts/agreements reached between the government and Maoists. Both sides agreed to fully commit themselves to upholding human rights, all international human rights laws, and civil liberties; they also agreed to assist each other to maintain peace, law and order.
- ≡ **Justice and governance:** Both parties also agreed to end the feudal land-ownership system by initiating a scientific land distribution system. They felt the need for a strong punitive policy to curb corruption, and to confiscate properties earned illegally e.g. through corruption.

### 2.2.3 Materialisation

In terms of the materialisation of the CPA towards conflict transformation and peacebuilding, some areas of positive reform can be pointed out. New institutions were created, such as the Nepal Peace Trust Fund (NPTF) – established in January 2007 and managed by a Ministry of Peace and Reconstruction (MoPR), in charge of implementing the CPA provisions. Moreover, Local Peace Councils (LPCs) have been formed in almost all the districts of Nepal, as a result of the CPA. LPCs serve as a meeting point for all local stakeholders (including authorities, political parties, civil society and war victims) to meet and discuss ways

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<sup>9</sup> The CPN (UML) however had put a note of dissent. They insisted that the future of monarchy needed to be decided by a referendum, to be organised together with the election to the Constituent Assembly.

to uphold peace in their localities. Measures were also implemented to reconstruct the infrastructure that was ruined during the violent conflict, mainly in rural areas.

The CPA has also addressed the issue of transitional justice – broadly defined as a way to deal with the violent past and addressing human rights violations and war crimes, in order to promote the transition to peace and security in a divided society (Engel 2013). During the armed conflict in Nepal more than 15,000 people died, 250,000 to 350,000 were displaced, and 1.5 million migrated to other countries. Today, 5,000 are still missing due to enforced disappearances. The CPA has provided for the establishment of a Truth and Reconciliation Commission (TRC) and a Disappearance Commission (DC). In spite of strong demands from civil society and repeated promises by the political parties, these two commissions have not yet been formed. The government also developed several national plans of actions, policies and programmes for providing peace dividends and reparation packages to the survivors of violence and the families of the conflict victims. However, victims were not involved in their design, and it is debatable whether such reparation schemes have actually reached the deserving families and individuals. There is a lack of efficient mechanisms to deliver such services to the people, and despite the strong demands put forth by civil society actors, there are virtually no mechanisms for civil society organisations to monitor the state's compliance to these plans of action, nor to assess the extent of the dividends provided to those most affected by the conflict.

The CPA's implementation has also been a topic of intense debate when it comes to fulfilling people's fundamental rights to basic services such as health, education or employment. Despite the huge amount of tax income that the government earns, particularly through remittance collection, it has not been allocated to ensure the full rights to the people of Nepal. For example, many people still do not have access to medical care. Moreover, the right to employment has not been given priority by the government. Demographically, the number of youths is growing day by day: 48% of the population is under 20 years of age (CBS 2012). Unfortunately, the government of Nepal has not been able to create job markets for these youths who are thus compelled to travel abroad for work, particularly to India, the Gulf countries and Malaysia. Inside Nepal, the main source of the revenue has been the remittance sent or brought in by these youths abroad. These socio-economic problems remain unaddressed, despite being provisioned in the CPA. Nevertheless, the Peace Accord has had a great and historic political importance, by ending the conflict and beginning a process of structural reform towards a more inclusive democracy. The CPA in itself could not bring about a new political settlement, however, as most issues pertaining to state reform were to be codified in a new Nepali constitution.

## **2.3 Interim Constitution**

### **2.3.1 Negotiation**

After signing the CPA, the SPA and CPN (Maoist) began drafting an Interim Constitution through a committee comprised of six legal experts, representing all forces that took part in the People's Movement –

both the political parties as well as civil society leaders defending human rights and democracy.<sup>10</sup> However, other power contenders, such as the Janjati and Madhesi communities,<sup>11</sup> were not represented – and there was not a single woman within the committee. Although the committee consulted with some agitating forces on the contents to be incorporated into the Constitution, their demands were not adequately addressed. The Interim Government played a facilitating role between the political parties and the Interim Constitution (IC) drafting committee. The committee was initially given a 15 day timeframe, but its term was extended several times. Once the IC draft was submitted to the government, the process of finalisation through consensus-building among the political parties took several weeks. The Government finally promulgated the Interim Constitution on 15 January 2007. On the same day, the Madhesi community, as well as other marginalised and excluded groups, voiced their dissatisfaction over the Constitution and announced a protest movement, which later turned into violent armed confrontations which took the lives of at least 53 people. After one month of such violent upsurge, centralised mainly in the Madhesh area (the plain Tarai region in Southern Nepal), the then Interim Government (formed mainly by the SPA) entered into negotiations with the insurgents. The conflict was resolved through an agreement that officially declared Nepal a federal democracy by amending the Interim Constitution on 14 March 2007 (Ekantipur 2007).

### 2.3.2 Codification

The IC (GoN 2007),<sup>12</sup> amended many times to incorporate the demands of the agitating forces,<sup>13</sup> has provisioned many reformative ideas from the perspective of inclusivity. First and foremost, the IC guarantees that “the sovereignty and the state authority of Nepal shall be vested in the people of Nepal” (Art.2), and defines Nepal as an “independent, indivisible, sovereign, secular, inclusive and federal, democratic republican state” (Art.4).<sup>14</sup> The IC also stipulates that the new constitution shall be written by a Constituent Assembly. Furthermore, it made the National Human Rights Commission a constitutional body. It also made it mandatory for political parties to collect 10,000 signatures in order to be allowed to present candidates at national elections. Furthermore, the IC guaranteed governmental (as opposed to monarchical) control over the armed forces: the Council of Ministers was granted the power to appoint the Chief of Army along with the Nepalese Security Council, headed by the Prime Minister and including the Defence Ministry, Home Ministry and other ministries, as indicated by the Prime Minister. The IC also declared that the Special Committee of the Council of Ministers would be responsible for the supervision, accommodation and rehabilitation of the Maoist Army. The existing House of Representatives and National Assembly were converted into a legislative parliament.

The Preamble pays tribute to the “historical struggles and people’s movements launched by the people of Nepal at various times since before 2007”, and upholds the rights of marginalised communities. The

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<sup>10</sup> Its members were Laxman Aryal (coordinator), Harhar Dahal, Sindhunath Pyakurel, Shambhu Thapa, Mahadev Yadav and Khimlal Devkota.

<sup>11</sup> Although one member in the committee was a Madhesi, the agitating forces demanded that he did not solely represent his community’s voices.

<sup>12</sup> The text of the Interim Constitution is available at: [www.lawcommission.gov.np/index.php?option=com\\_remository&Itemid=52&func=startdown&id=163&lang=en](http://www.lawcommission.gov.np/index.php?option=com_remository&Itemid=52&func=startdown&id=163&lang=en) (accessed 29 July 2014).

<sup>13</sup> As records show, the IC has been amended eight times so far, starting from 14 March 2007 to 28 May 2010.

<sup>14</sup> According to the 4<sup>th</sup> Amendment of 29 May 2008.

section on fundamental rights provides for special legal provisions for the “protection, empowerment or advancement of women, Dalits, indigenous peoples (Adibasi, Janajati), Madhesi or farmers, workers, economically, socially or culturally backward classes or children, the aged and the disabled or those who are physically or mentally incapacitated” (Art.13). Article 13 also mentions various subjects such as environment, health, education and culture, employment and social security, children, torture, and labour. Last but not least, the IC declared that state restructuring would be based on a federal system, in recognition of the voices and demands of the agitating regional forces including the Madhesi and indigenous communities.

## 2.4 Constituent Assembly

The IC paved the way for conducting the election for the Constituent Assembly (CA) on 8 April 2008. The main objective of this election was to make the new constitution inclusive to the voices and visions of all people in Nepal. However, street protests by the Maoists, the Madhesi and other ethnic groups as well as Dalit communities took place during the period of inter-party negotiations over the CA electoral system. The main issue of contention was the choice between a proportional representation (PR) or first-past-the-post (FPTP) system. While the Maoists and other power contenders were in favour of a PR system, the mainstream parties were in favour of a FPTP system, with some on both sides advocating for a combination of both. All parties finally agreed that the CA would have 601 members, 335 (56%) of whom would be elected through the PR system, and 240 (40%) through the FPTP system. The remaining 26 seats (4%) would be nominated by the Government on recommendation from the political parties. These reserved seats were specifically allocated for civil society leaders, in recognition of their crucial role in mobilising people behind the democratic movement – in particular those representing marginalised and excluded groups who could not be represented otherwise. However, these seats were allocated by the political parties based on their respective strength in the CA.

The elected CA was highly inclusive in terms of social diversity (i.e. gender, caste/ethnicity, region, religion and class). It comprised of 33% women (197 out of 601 seats), 36% Janajati, around 8% Dalit and nearly 23% Madhesi. These latter figures correspond almost identically with their relative composition of the population of Nepal by caste/ethnic or regional identity.<sup>15</sup> Moreover, the CA truly embodied multi-party democracy: whereas not more than five or six parties were represented in previous parliaments, 25 parties were represented in the CA.

At the first meeting of the CA held on 28 May 2008, delegates proclaimed the Federal Democratic Republic of Nepal by a unanimous decision. Subsequently, eleven Thematic Committees<sup>16</sup> were formed in order to allow every CA member to put forward their issues and feel ownership over the outcome, since each

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<sup>15</sup> Janjati represent 34% of Nepalese, Dalit 8%, and Madhesi 23%. See [www.can.gov.np](http://www.can.gov.np) (accessed 14 April 2014). For more on Nepali indigenous, ethnic and cast groups, see also Mabuhang (2015).

<sup>16</sup> The Constitutional Committee, Committee on Fundamental Rights and Directive Principles, Committee for Protection of Fundamental Rights of Minority and Marginalized Communities, Committee for Restructuring of the State and Distribution of State Powers, Committee on Determination of the Form of the Legislative Organs, Committee on Determination of Form of State Governance, Committee on Judicial System, Committee on Determination of Structure of Constitutional Bodies, Committee on Division of Natural Resources, Financial Powers and Revenue, Committee on Determination of Bases for Cultural and Social Solidarity and the Committee for Protection of National Interests.

committee was responsible for discussing and endorsing provisions related to a specific theme. Most committee reports were approved by consensus among the political parties – with two exceptions. The report drafted by the Committee on State Restructuring and Division of State Power failed to be adopted by the CA, as there were strong disagreements regarding the basis on which to restructure the state, namely, whether to delimitate administrative units according to ethnicity or geography. The report drafted by the Committee on Determination of Forms of Governance of the State also failed to gain consensus, as the parties could not agree on a Westminster system of parliamentary democracy or a presidential system. These two controversies caused severe delays in the search for a consensus among the political parties.

Despite an ambitious plan of promulgating the new constitution within two years (until 27 May 2010), the Constitutional Committee was not able to settle all the disputes relating to state restructuring. As CA members continued wrangling over the draft, voicing their differences with numerous notes of dissent, the tenure of the CA was extended three times: first until 27 May 2011, then until 27 August 2011, and finally until 28 May 2012. As the deadlocks could not be resolved, the CA was eventually dissolved when its term expired in May 2012 – without a constitution. This was followed by a constant row among political parties which lasted for more than a year, as each was blaming the others for having caused the demise of the CA. Negotiations resulted in the handing over of the cabinet to the Chief Justice of the Supreme Court, Mr. Khil Raj Regmi. In consultation with the political parties, the Regmi-led Government organised a second CA election on 19 November 2013. The newly elected CA members, organised in five Thematic Committees,<sup>17</sup> are currently engaged in another round of discussions on how to finalise the new constitution in order to codify and materialise the principle of state restructuring.

### 3 Debates on State Restructuring: Towards an Inclusive Nepali State

As argued above, the demise of the first CA in May 2012 was primarily caused by the failure of all parties to forge a consensus on the nature of state restructuring. The most acute debates were related to the names and number of provinces, the form of state governance and the type of judicial system. Given their centrality for an inclusive Nepal, this section focuses on the major debates and outcomes pertaining to the implementation of federalism through decentralisation and local governance reforms.

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<sup>17</sup> These five committees are: 1. Political Dialogue and Consensus Committee; 2. Constitution Drafting Committee; 3. Constitutional Records, Study and Determination Committee; 4. Capacity Enhancement and Public Opinion Committee; and 5. Citizens Relation and Constitution Suggestion Committee.

## **3.1 Debate over the Nature of Federal Units**

### **3.1.1 Three-Tier Federal Structure**

During the first CA, the Committee for State Restructuring proposed a three-tier federal structure for Nepal: federal, provincial and local. This proposition would collapse the existing unitary system organised around five development/administrative regions, 14 zones and 75 districts. The 3,915 village development committees (VDCs) and 58 municipalities would be merged into larger areas of similar structure. All major political parties have reached a consensus on the tier of the federal structure, however, some civil society organisations and party wings, mainly led by the Federation of District Development Committees (FoDDC), have demanded the introduction of a fourth tier, maintaining the structure of districts (as an intermediary level between those of provinces and local units). Their claim is that Nepal has made good progress in terms of infrastructure development in the 75 existing district headquarters, and that “the concept of district in the federal structure will further strengthen the spirit of the decentralization” (Sapkota 2011).

### **3.1.2 Formation of Provinces**

The Committee on State Restructuring and Distribution of State Power gave a rough sketch of 14 provinces based on nine indicators, related either to ‘identity’ or ‘capability’. The five proposed identity indicators were the following: 1. ethnic/communal; 2. lingual; 3. cultural; 4. geographical/continuity of regional identities; 5. continuity of historical identities. However, the Committee report also confessed the difficulty in classifying Nepali citizens along their primary identity, given the intersectional and complex nature of class-based, social, political, cultural, communal, professional, and gender-based diversity. For their part, the capability indicators were the following: 1. economic interrelationship and capability; 2. infrastructure development and potential; 3. availability of natural resources and means; 4. administrative accessibility. The rationale behind these indicators, according to the Committee report, was the need to consider the communities’ capacity to exercise autonomy and self-governance, based on their economic, material and resource strengths. These assessments should help decide on the formation of federal units, in addition to identity-based criteria.

The proposed indicators have generated a lot of debate among the concerned groups, especially with regards to the proposed names of provinces. Some groups demand ethnic-based provinces and thus understand ‘identity’ as comprising of only ‘ethnic identity’. Others consider that the names of the provinces should be neutral, avoiding any ethnic connotation. A middle ground position is taken by some political party leaders, civil society representatives and academics, who argue that the names of provinces should not be solely linked to ethnic identities but also to cultural, social, and economic identities. They also argue that the targeted ethnic communities would never be satisfied with ethnic names of provinces because in almost all the proposed territories, the targeted ethnic community actually represents a minority. For example, the Limbu community would represent only 26% of the population in the Limbuwan province.

Regarding the nature of provinces, another major dispute occurred between proponents of the ‘vertical model’ (represented by the parliamentary political parties) delimiting provinces along borders running from north to south, and their opponents (mainly represented by the various power contenders including the

Maoists, the Madeshi and Janjatis) opting for a 'horizontal model' concentrated on particular ethnic groups. These two dichotomous views were supported by various arguments: on the one hand, advocates of the vertical model argued that ethnic names of provinces could fuel conflict among the communities of Nepal, since there are more than 100 ethnic groups (while there could only be eight to ten provinces). They also argued that having a huge number of provinces would expend the state's administrative budget and thus Nepal would become further pauperised. On the other hand, advocates of the horizontal model argued that the proposed ethnic names are connected with the history of Nepal and should therefore be given recognition. They also advocated that since the provinces would be autonomous, they would generate their own resources by developing under-utilised natural and human resources. The Dalit communities, furthermore, debated over the need to maintain at least one non-territorial province, in order to address their population who are dispersedly scattered from eastern Mechi to western Mahakali.

## 3.2 Provisions on Legal Governance

The Committee on State Restructuring drafted a list of the respective rights and responsibilities of all three levels of the federal structure, to be enlisted in a separate annex of the new Constitution (see Annex 4, Tables 2-6). These measures could become a milestone for establishing strong local entities with autonomous powers. At the local level for instance, these rights and responsibilities are concerned with municipal police, cooperatives, the opening of local media such as frequency modulation (FM), local tax, property tax, house tax, automobile tax, service tax, tourism tax, advertisement tax and land revenue tax. However, overall the Committee prioritised the formation of provinces, and dedicated much less attention to local governance issues: it did not specify how powers are to be exercised, by whom and under what modalities.

The Committee proposed that all three organs of the state (Legislature, Judiciary and Executive) should be replicated at the provincial levels, as a basis for strong local governance. The Committee on Forms of State Governance also tabled some provisions regarding the executive power at both the provincial and local levels. At the provincial level, the executive power will be held by the Provincial Cabinet. During states of emergency, the executive power will remain solely in the hands of the Chief of the Province.

At the local level, the executive power will be held by Local Councils of Ministers. In every structure of local governance, there will be at least one executive head (President) and a deputy (Vice President), with a five-year term (renewable only once). Elections for the Councils of Ministers will be based on a mixed FPTP (70%) and proportional representation (30%) system. The President and the Vice President of the local Councils will be elected through the FPTP system and the President will appoint the Council members based on the votes received by the respective political parties in the election. The parties will have to give due care to ethnicity, caste, geographical coverage and gender when designating their candidates. There will be a body of five to eleven councillors in municipal areas, and five to seven councillors in VDCs. The Committee has also provisioned a legislature at the local level, however, this currently lacks detailed provisions, such as what form it will have, how it will be formed, and its roles and responsibilities.

With regards to the judiciary, the Committee on Judiciary has proposed two types of courts in the local context: Local Courts and District Courts. For the appointment of judges, a Special Committee of Representatives comprising both local and district levels has been proposed. This proposal thus supports the maintenance of the fourth tier (district level) in the federal system.

The provision of a special structure at the local (unit) level is another new innovation proposed for the new constitution. It concerns three main types of regions: autonomous areas (targeting ethnic communities), special regions (targeting social groups such as the Dalit) and regions under protection (targeting minorities such as Muslims, and ethnic communities such as the Raute, Chepang, etc). The Committee prepared a list of 23 communities to be targeted under this special structure (see Annex 4, Table 1). The dilemma here seems to be over how to ensure coordination and cooperation in local areas where at least four (executive, judicial, legislative and special) different structures of local governance have been proposed. Without formulating clear mandates for all types of structures coexisting at the local level, there is a high risk for conflicts to arise between them. According to the Committee on State Restructuring, more detailed mechanisms such as the names and numbers of the VDCs or municipalities will be devised by a high level commission within one year of the promulgation of the constitution. Until then, existing mechanisms at the local level will remain in place.

In short, there are many outstanding issues to be resolved, that the CA Committees were not able to agree on. The areas of contention between the political parties regarding state restructuring are still valid, despite the election of a second CA, held on 19 November 2013. The composition of the CA has now changed. The representation of power contenders demanding their inclusivity has comparatively decreased, in comparison with the 2008 CA election. Nevertheless, there is no alternative to a CA, and this is ultimately the last chance for the political parties to agree consensually on a new constitution for Nepal.

## 4 Conclusion

Nepal's peacebuilding and democratisation processes have resulted in some major achievements. The CPN (Maoist) benefited from their peace agenda and commitments to various agreements, including the Comprehensive Peace Accord, by winning the highest number of seats in the CA held in 2008. Few other insurgency groups in the world have met such a huge political success shortly after joining a peace process. The Government and other political parties showed their commitment to accommodate the agenda of the Maoists by restructuring the state. Nepal once blamed for 'turning into a failed state' has revived itself to prosperity; many scholars and analysts want to treat it as a 'miracle' too. However, this was not a miracle, but merely a reality made possible due to the will-power of the people themselves.

The civil society movement in Nepal has become strongly vibrant under the crux of human rights and democracy, and it has played a crucial role in pressuring the political parties to the negotiation table, by launching a peaceful revolution. The authoritarian regime of the king and his followers had to surrender against a 19-day long popular protest movement throughout the country, in April 2006. Gaining overwhelming popular support, the political parties became stronger and thus they were able to hold inclusive elections to the CA. For the first time in the history of the country, the CA was highly representative of Nepali society in terms of gender, caste/ethnicity, region, religion and class. In other words, there was a direct link between the participatory nature of the people's movement and the inclusive nature of the CA.

Many other changes can be visibly observed in Nepal due to the historic achievements of the nonviolent movements. Debates on the nature of the new federal structure are rife; as are discussions on economic and social reforms. The major political parties are highlighting the need for 'economic revolution', after the long struggle for civil and political rights. 'Sustainable economic development' has been the

common slogan of the major political parties mandated from the people's vote through the second CA election, and this has been repeatedly referred to as 'the peace model'. This does not mean, however, that there is no need for monitoring improvement in civil and political rights, as transitions in the socio-economic, demographic and political sectors are intrinsically linked and mutually interdependent.

During the first tenure of the CA, the political class had been mandated by the People's Movement to engage in consensus-based politics, however, decision-making became hijacked by informal agreements among the senior political party leaders outside the CA arena. CA members were used for receiving applause and support for whatever agreements the senior leaders made. So far it seems that similar practices will be maintained in the second CA. The present exercises reflect the scenario that the parties are more concentrated on shifting and reshuffling the new Government rather than addressing the people's issues and reflecting them in a new constitution.

The major power contenders, particularly the Madhesi and Janajati who have demanded that the constitution should guarantee state restructuring, have not been properly accommodated to secure their participation in the constitutional debates. The Madhesi communities, comparatively less represented in the second CA, persist in their demand for 'One Madhesh Province' in the Tarai plain of Nepal. The ethnic communities and parties that emerged in the respective regions keep insisting on their demands for an ethnic-based federal structure. The Dalit communities, though divided in their voices, are demanding at least one province based on the non-territorial federal model. These issues of contention have caused the demise of the first CA without a constitution, and can be seen as indications that the conflict transformation process is still far from producing a tangible result when it comes to the imperative of state restructuring. In fact, Nepal is still in transition and the risk of violence relapse remains high.

The new negotiation phase which started with the election to the second CA is facing a lot of challenges. First, it may turn into abject violence since the composition of the CA has changed and two major parties, the Nepali Congress and CPN (UML), could reach consensus under the two-thirds majority system without hearing the demands of the various power contenders. Second, it may lead to an undermining of all the achievements made so far in favour of the marginalised communities, in terms of democracy, inclusion, human rights, laws and practices. For instance, in such a transitional period, achieved and pipelined progresses towards women's empowerment can easily be evaded. A commonly-observed phenomenon among feminist movements worldwide is that women's issues and demands are sidelined the most during political negotiations. Political parties might be so focused on their own agendas that their communities' agenda might receive a deteriorated priority.

Continuous movement-based activism as well as strategic advocacy work needs to be maintained both at the central level where political negotiations are ongoing, and at the grassroots level where communities are struggling for their rights to participation, planning, and decision-making in political as well as development work. Against all odds, people have survived, have tried to rebuild the fabric of their social relations and their lives, as individuals, families and communities. This is due to the resilience of ordinary people and their indomitable courage in the face of adversity. This provides the most crucial signs of hope that the parties may be compelled to finally forge consensus in making the new constitution.

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**Annex 1: Major political movements in Nepal (both armed and unarmed)**

<b>Dates</b>	<b>Movements</b>	<b>Demands</b>	<b>Results</b>
1951	Against Rana regime	End of Rana familial rule	Negotiation between parties and the King
1979	Against autocratic Panchayat system	End of party-less Panchayat system and restoration of multi-party democracy	Referendum held on the Panchayat system and declaration made in favour of the Panchayat (Panchayat rule continued by suppressing parties)
1990	Against autocratic Panchayat system	End of party-less Panchayat system and restoration of multi-party democracy	Negotiation between parties and the King; restoration of multi-party democracy; new constitution made, supremacy of power to the King (dubious provisions: Hindu kingdom, no question against king and family, no reservation)
1996-2005 (Maoist Movement)	Against feudalism and monarchy (and mainstream parties)	End of monarchy; feudalism and establishment of People's government	Negotiation with the parliamentary political parties; Decision to launch joint movement against autocratic monarchy
2006	Against autocratic monarchy	End of autocratic monarchy and establishment of inclusive democracy	Negotiation between Maoists and SPA; establishment of inclusive democracy; suspension of monarchy; Declaration to hold constituent assembly by June 2007

Source: Khatiwada (2009)

## Annex 2: Political Negotiation after 2006 in Nepal: A Conceptual Framework

<b>Time Frame</b>	<b>2005/06</b>	<b>2006</b>	<b>2007</b>	<b>2008 – 2012</b>	<b>Since 2012</b>
<b>Negotiation</b>	<b>Peace Talks</b>	<b>HoR Reinstated</b>	<b>Interim Constitution</b>	<b>CA</b>	<b>CA re-election</b>
<i>Relapse</i>		<i>Maoist dissatisfaction</i>	<i>Regional forces' agitation</i> <i>Madhesh movement</i>		<i>Maoist Agitation</i> <i>(Baidhya Group)</i>
<b>Codification</b>	<b>12 point Agreement</b>	<b>Caretaker Government</b> <b>Historic declaration</b>	<b>Federal Democratic Republic</b> <b>Constitution through CA</b>	<b>Thematic Committees</b>	
<i>Relapse</i>			<i>Fundamentalists' agitation</i>		
<b>Materialisation</b>	<b>People's movement</b>	<b>CPA</b> <b>Legislative Parliament</b>	<b>Interim Government</b> <b>NA in barracks</b> <b>PLA in cantonment</b> <b>Assistance to Victims (MoPR/NPTF)</b> <b>Promotion of Security and Transitional Justice</b>	<b>Constitution Draft</b>	
<i>Relapse</i>				<i>Confrontation among/within major parties</i> <i>Parties split</i> <i>No Constitution</i>	

### **Annex 3: 12-Point Understanding Signed in New Delhi on 22 November 2005<sup>18</sup>**

#### *12-Point Understanding Concluded between the Seven Political Parties and the Communist Party of Nepal (Maoist)*

The struggle between absolute monarchy and democracy running for a long time in Nepal has now taken a very grave and new turn. It has become the need of the hour to establish peace by resolving the armed conflict being waged for the past 10 years through a progressive political outlet. Therefore, 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, gender, region, political, economic, social and cultural, by bringing the autocratic monarchy to an end and establishing full democracy. We hereby make it public that in aforementioned context, the following Understanding has been reached between the Seven Political Parties within the Parliament and the CPN (Maoist) through negotiations.

The points reached in understanding:

1. The democracy, peace, prosperity, social advancement and independent, sovereign Nepal is the principal wish of all the Nepali people today. We fully agree that the autocratic monarchy is the main hurdle in achieving this wish. We have a clear opinion that the peace, progress and prosperity in the country are not possible until full democracy is established by bringing the absolute monarchy to an end. Therefore, an understanding has been reached to establish full democracy by bringing the autocratic monarchy to an end through a nationwide democratic movement of all the forces rising against the autocratic monarchy from their respective positions.
2. The agitating Seven Political Parties are fully committed to the fact that the existing conflict in the country can be resolved and that the sovereignty and the state powers can be vested completely in people only by establishing full democracy by restoring the parliament through the force of agitation and forming a powerful all-party government by its decision, negotiating with the Maoists, and on the basis of agreement, holding the election of Constituent Assembly. The CPN (Maoist) is of the view that the aforementioned goal can be achieved by holding a national political conference of the agitating democratic forces and by forming an interim government through conference decisions and holding the election of Constituent Assembly, and the CPN (Maoist) expresses its commitment. On the issue of this procedural agenda, an understanding has been made to continue dialogue and seek a common agreement between the agitating Seven Political Parties and the CPN (Maoist). It has been agreed that the force of the People's Movement is the only alternative to achieve this goal.
3. The country today demands the establishment of a permanent peace along with a positive resolution of the armed conflict. We are, therefore, firmly committed to establishing permanent peace by bringing the existing armed conflict in the country to an end through a progressive political outlet of the establishment of the full democracy by ending the autocratic monarchy and holding the Constituent Assembly election based on the aforementioned procedure. The CPN (Maoist) expresses its commitment to move forward in the new peaceful political stream through this process. In this context, an understanding has been reached to keep the Maoist Armed Force and the Royal Army under the United Nations or a reliable international supervision during the Constituent Assembly election to be held after the end of the autocratic monarchy, to conduct the election in a free and fair manner and to accept the result of the election. We also expect the reliable involvement of the international community in the negotiation process.
4. Making public its commitment in an institutionalised and clear manner towards the democratic norms and values, including competitive multiparty system of governance, civil liberties, fundamental rights, human rights and the concept of rule of law, the CPN (Maoist) has expressed its commitment to move forward its activities accordingly.
5. The CPN (Maoist) has expressed its commitment to create an environment to allow people, leaders and workers of political parties who were displaced during the course of armed conflict, to return and live with dignity in their respective places; to return homes, land and property that were seized in an unjust manner and to allow people to carry out political activities without any hindrance.
6. Making a self-assessment and a self-criticism of the past mistakes and weaknesses, the CPN (Maoist) has expressed its commitment for not allowing the mistakes and weaknesses to be committed again in the future.

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<sup>18</sup> See [www.un.org.np/unmin-archive/downloads/keydocs/12-point%20understanding-22%20Nov%202005.pdf](http://www.un.org.np/unmin-archive/downloads/keydocs/12-point%20understanding-22%20Nov%202005.pdf)

7. Making a self-assessment of the mistakes and weaknesses committed while staying in the Government and Parliament in the past, the Seven Political Parties have expressed their commitment to not repeat such mistakes and weaknesses in the future.

8. To further the peace process, commitment has been made to fully respect the values and norms of human rights and to respect the press freedom.

9. As the announcement of the election of municipality is backed by the ill-motive of deluding people and the international community while maintaining the autocratic and illegitimate rule of the King; and as the rumour of the Parliament elections is spread as a crafty ploy, we announce its complete boycott in our respective ways, and appeal to the general public to make the elections a failure.

10. The people and their representative political parties are the real guardians of the nationality. Therefore, we are firmly committed to the protection of the independence, sovereignty, geographical integrity and national unity of the country. It is our common obligation to maintain friendly relations with all countries of the world in the principle of peaceful co-existence, and to maintain good relations with neighbouring countries, especially India and China. We request all the people to remain cautious of the false attempt of the King and the monarchists to create confusion among patriotic people by projecting the illusory ('Mandale') nationalism to prolong the autocratic and illegitimate rule of the King and to raise a question mark over the patriotism of the political parties; and we appeal to the international powers and communities to support the democratic movement against the autocratic monarchy in Nepal in every possible way.

11. We sincerely invite the civil society, professional organisations, various community organisations, people of all communities and regions, the media, intellectuals and all Nepalese people to make the movement successful by actively participating in the peaceful People's Movement launched on the basis of these understandings reached, while maintaining the core ideals of democracy, peace, prosperity, forward-looking social transformation, independence, sovereignty and dignity of the country.

12. Regarding the inappropriate conduct that took place among the political parties in the past, a common commitment has been expressed to investigate the incidents on which objection was raised and take appropriate action if guilt is established in such cases, and make the same public. An understanding has been reached to resolve any problems that might emerge among the parties in the future through dialogue and discussion at the concerned level or at the leadership level.

**Nepali Congress President Girija Prasad Koirala Signed.**

**NCP (UML) General Secretary Madhav Kumar Nepal Signed.**

**Nepali Congress (Democratic) President Gopal Man Shrestha Signed.**

**Janamorcha Nepal Chairperson Amik Sherchan Signed.**

**Nepal Sadbhavana Party (Anandi Devi) Vice Chairperson Bharat Bimal Yadav Signed.**

**Samyukta Bammorcha Chairperson Krishna Das Shrestha. Signed.**

**Nepal Majdoor Kisaan Party Member Prem Suwal Signed.**

November 22, 2005

Place: New Delhi, India

#### Annex 4: Exercise by the First CA on State Restructuring

**Table 1: List of Autonomous Areas (Proposed by the Committee on State Restructuring and Division of State Power)**

S.N.	Names of Autonomous Areas
1.	Kochila
2.	Jhagad/ Urau
3.	Dhimal
4.	Meche
5.	Santhal
6.	Lepche
7.	Yakhya
8.	Chepang
9.	Dura
10.	Kumal
11.	Danuwar
12.	Pahari
13.	Thami
14.	Majhi
15.	Baram
16.	Thamali
17.	Chhantyal
18.	Sunuwar
19.	Danuwar
20.	Surel
21.	Jirel
22.	Helmu
23.	Byasi

**Table 2: List of the Rights of the Federal State**

S.N.	Subjects
1.	Defense and security related
2.	Central Police Force
3.	Central Bank, Fiscal policy, Monetary Policy, Foreign grant, assistance and loan
4.	Central Telecommunications, distribution of radio frequency, television and postal service
5.	Customs, excise duty, VAT, Institutional income tax, passport, visa, postal service, tourism fee, service tax
6.	Royalty from natural resources
7.	Management of central civil service
8.	Central Bureau of Statistics

9.	Large scale central power houses, irrigation and other projects
10.	Central University, central library
11.	Central Health Policy
12.	Affairs relating to Federal Legislature and Executive
13.	International trade, exchange, port, quarantine
14.	International and Inter-state civil aviation
15.	Foreign and diplomatic affairs and relating to United Nations
16.	International treaty, extradition and international border management
17.	Management of national train and national highway
18.	National intelligence and investigation
19.	Supreme Court, constitutional court
20.	Citizenship, visa, immigration related law
21.	Nuclear energy and space related
22.	Commissions of central importance including the Election Commission, National Human Rights Commission, Commission for Investigation of Abuse of Authority, Public Service Commission, National Women's Commission, Inclusive and Representative Commission, Dalit Commission, National Planning Commission, Indigenous Nationalities Commission, Madheshi Commission, Commission for the upliftment of highly minority, marginalized and backward region etc.
23.	Defence and Offensive
24.	Arms, and related to ammunition production factory
25.	metrology
26.	Mine excavation
27.	Insurance policy
28.	Formulation of criminal law
29.	Intellectual property (including patent, design, copy right)
30.	Any subject unstated in the list of rights of federation, province, local level and autonomous region or any issue not started in the common list and subjects not mentioned in this constitution and laws formulated in line with this constitution.

**Table 3: List of the Rights of the Provinces**

S. N.	Subjects
1.	Provincial main law
2.	Police, administration and law and order
3.	Bank and financial institution, cooperatives, foreign assistance in grant and loan with the consent of the centre.
4.	Radio, FM, Television
5.	Personal income tax, business tax, land revenue, remuneration tax, land and housing registration tax, automobiles tax, entertainment tax, advertisement tax, tourism and agriculture tax, service tax
6.	Royalty from natural resources
7.	Management of provincial civil service
8.	Provincial statistics
9.	Provincial level hydro power, irrigation and other projects

10.	University, higher education, library, museum
11.	Health service
12.	Provincial legislature, and related to local governance and special structure
13.	Inter-provincial business
14.	Provincial civil aviation
15.	Provincial railway and provincial highway
16.	Federal Investigation Bureau
17.	Hydro project, irrigation project
18.	Provincial court, family court and juvenile court
19.	Citizenship and passport management
20.	Provincial level commissions
21.	Land management, documentation of land and determination of land revenue taxes
22.	Mine excavation and management
23.	Insurance management and operation
24.	Protection and use of language, culture and religion.
25.	Utilization of forest and water within the province.
26.	Agriculture and animal husbandry, industrialization, entrepreneurship, transport, production of alcoholic products, construction and buy and sale.
27.	Books and printing press
28.	Management of Trust

**Table 4: List of Common Rights. Related to Article 9(3) of the Constitution**

<b>S.N.</b>	<b>Subjects</b>
1.	Criminal and civil legal procedure, verification and oath (legal status, public work and documentation and judicial process)
2.	Supply of essential goods, price control, quality and monitoring
3.	Preventive detention relating to security of the state, management of prison and arrest and law and order.
4.	Transfer of convict, detainee and prisoner from one state to another
5.	Formulation of law relating to family affairs (related to wedding, hand-over of property, diverse, and protection of groups on the verge of extinction, adoption, heir, joint family matters)
6.	Acquisition of property, acquisition and creation of rights
7.	Relating to contract, partnership and agency
8.	Related to Bankruptcy and insolvency
e9.	Medicine and chemicals
10.	Economic and social planning, family planning and population control
11.	Social security and employment, trade union and issues relating to rights and disputes of Industrialists and workers
12.	Medicine, legal and other professions
13.	Vital events like documentation of death, birth
14.	Water ways
15.	Relating to communications

16.	Relating to archaeology, historical monuments and museums.
17.	Relating to industries and mines and physical infrastructure
18.	Licensing of casino, lottery, automobiles
19.	Fire and control of natural calamities, relief and rehabilitation
20.	Tourism, drinking water and sanitation
21.	Relating to film and cinema hall
22.	Insurance
23.	Poverty alleviation and industrialization
24.	Scientific research, science and technology and human resource development.
25.	Utilization of jungle, animals, birds, Himalayas, national parks and water resources spread between provinces.
26.	Management of national and inter-state level environment
27.	Land policy

**Table 5: List of Rights of the Local Level**

S.N.	Subjects
1	City police, community police
2	Cooperatives
3	Operation of FM stations
4	Local tax, property tax, house tax, automobile tax, service tax, tourism tax, advertisement tax, land revenue tax
5	Royalty from natural resources
6	Management of local services
7	Local statistics and documentation
8	Local level development projects
9	Primary and secondary education
10	Basic health and sanitation
11	Management of local bazaar
12	Local road, villager road, agriculture road
13	Local court, mediation and arbitration
14	Citizenship, distribution of passports and documentation management
15	Distribution of land and housing certification
16	Agriculture and animal husbandry
17	Management of elderly citizens, disabled, women, single women and helpless
18	Collection of unemployment data
19	Management of agriculture, operation and control
20	Registration of vital events like birth, death and others

**Table 6: List of Rights of Autonomous Areas to be set up under special structures**

S.N.	Subjects
1	Police

2	Cooperatives
3	Management, and operation of FM radio and television
4	Primary, secondary education, library and museum
5	Health service
6	Autonomous Election Council
7	Property tax, business tax, house and land registration tax, automobile tax, entertainment tax, tourism tax, land revenue tax, remuneration and agriculture income tax
8	Royalty from natural resources
9	Road
10	Hydro power, irrigation and other development projects
11	Citizenship/passport management
12	Documentation of land, certification of housing and land
13	Mine excavation and management
14	Protection of language, culture, script and religion
15	Natural resources and their utilization
16	Agriculture, animal husbandry, business
17	Service management
18	Statistics and documentation
19	Court
20	Other rights determined by the provincial government

## Annex 5: Comprehensive List of Codifications in Nepal from 2005 to 2011

SN	Negotiation	Date
1.	12-Point Understanding concluded between the Seven Political Parties and the Communist Party of Nepal (Maoist)	22 November 2005
2.	Proclamation to the Nation by His Majesty King Gyanendra on	24 April 2006
3.	2006 Proclamation of the House of Representatives,	18 May 2006
4.	The Code of Conduct on Ceasefire Agreed between the Government of Nepal and CPN (Maoist)	26 May 2006
5.	The Second Understanding Concluded between the Seven Political Parties and the CPN(Maoist)	16 June 2006
6.	Terms of Reference and Mandate of the National Monitoring Committee on Code of Conduct on Ceasefire	16 June 2006
7.	Agreement Reached between the Government Talks Team comprising Seven Political Parties and the Federal Limbuwan State Council	16 June 2006
8.	8-Point Agreement between the Leaders of the Seven Political Parties and the CPN (Maoist)	22 June 2006
9.	Local Peace Council and its Procedure	17 July 2006
10.	Letter of the Prime Minister of Government of Nepal to the United Nations Secretary General	2 July 2006
11.	Letter of the CPN(Maoist) to the United Nations Secretary General	9 August 2006
12.	Decisions of the Meeting of the Top Leaders of the Seven Political Parties and the CPN (Maoist)	8 November 2006
13.	Comprehensive Peace Accord concluded between the Government of Nepal and the CPN (Maoist)	21 November 2006
14.	Dissolution of National Monitoring Committee on Code of Conduct on Ceasefire (NMCC)	2006
15.	Agreements on Monitoring of the Management of Arms and Armies	8 December 2006
16.	Agreement between the GoN and Nepal Adivasi Janajati Mahasangha and Adivasi Janajati Samyukta Sangharsha Samiti	7 August 2007
17.	Agreement between the GoN and Madheshi Janadhikar Forum, Nepal	30 August 2007
18.	Agreement between the GoN and Chure Bhawar Pradesh Ekta Samaj, Nepal	13 September 2007
19.	Agreement between the GoN and Rastriya Badi Adhikar Sangharsha Samiti	15 October 2007
20.	23-Point Agreement between the Top Leaders of the Seven-Party Alliance	23 December 2007
21.	Agreement between the GoN and Samyukta Loktantrik Madheshi Morcha	28 February 2008
22.	Agreement between the GoN Talks Team Comprising the Seven Political Parties and Sanghiya Ganatantrik Rastriya Morcha, Nepal	19 March 2008
23.	10-Point Commitment made by the Leaders of the Main Political Parties	1 April 2008
24.	Agreement between the Political Parties to Amend the Constitution and to Further the Peace Process	11 October 2011
25.	Agreement between the GoN and Rastriya Haliya Mukti Samaj Mahasangha	5 September 2008
26.	Agreement between the GoN and Madheshi Virus Killers Party	11 December 2008
27.	Agreement between the GoN and Samyukta Janatrantik Terai Mukti Morcha	26 December 2008

28.	Agreement between the GoN and Terai Samyukta Janakranti Party	31 December 2008
29.	Agreement between the GoN and Janatrantrik Terai Mukti Morcha (Rajan Mukti Samuha)	10 January 2009
30.	Agreement between the GoN and Kirant Janawadi Workers Party	18 January 2009
31.	Agreement between the GoN and the Adivasi Tharu Community agitating in the Terai and Nepal Adivasi Janajati Mahasangha	14 March 2009
32.	Agreement between the GoN and Samyukta Muslim Rastriya Sangharsha Samiti	16 March 2009
33.	Agreement between the GoN and Madhesh Mukti Tigers	20 March 2009
34.	Agreement between the GoN and Nepal Pichchada Varga Mahasangha	24 March 2009
35.	Agreement between the GoN and Tamsaling Samyukta Sangharsha Samiti, Nepal	11 April 2009
36.	9-Point Agreement between the Maoists and the CPN(UML)	2009
37.	Agreement between the GoN and Nepal Pichchada Varga Mahasangha	24 March 2009
38.	Agreement between the GoN and Kirant Janawadi Workers Party	14 November 2009
39.	Basic Agreement Paper Presented and Ratified by the Brihat Bhela of Adivasi/Janajati, 2009	21 November 2009
40.	Agreement between the GoN and Liberation Tigers of Terai Eelam (LTTE)	21 February 2010
41.	Memorandum to the Prime Minister by Adivasi/Janajati Brihat Morcha regarding the Common Issues of Adivasi/Janajatis	26 November 2009
42.	Agreement between the GoN and Akhil Terai Mukti Morcha(Sansthapan Paksha)	7 May 2010
43.	4-Point Agreement between the GoN and UCPN(Maoist) to Take the Peace Process to Its Logical Conclusion	13 September 2010
44.	7-point agreement between Jhalanath Khanal, Chairperson of CPN (UML) and Prachanda, Chairman of CPN (Maoist)	2010
45.	5-Point Agreement between the Top Three Parties UCPN(Maoist), Nepali Congress and CPN(UML) to Extend the CA Tenure	28 May 2011

Source: Aspect (2011); Lunn (2013).