

# From Peace Settlement to Political Settlement

State Restructuring and Inclusive Measures for Marginalised Groups in  
Nepal

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## Abstract

Nepal has been going through a historical momentum since the peaceful settlement of the Maoist Armed Insurgency which resulted from the 2006 Comprehensive Peace Accord (CPA). The Hindu nation, kingdom and monarchy was abolished, replaced by a federal democratic republic. The conflict issues accumulated over the centuries aspired to be resolved in the ongoing state reform process. However, the constitution-making process is yet to be accomplished. The State is still primarily controlled by forces of the old regime, who do not let new aspiring forces become seriously engaged in the discussion over how to resolve the remaining conflict issues. Thus, this paper highlights both the historical and the present condition of power contending forces, with a particular focus on marginalised societal groups and their mobilisation (or instrumentalisation) through the Maoist Insurgency. In addition, this paper seeks to portray the inclusive measures adopted since 2006 to make the State move representative of, and responsive to, the makeup of society. The study relies on secondary information as well as data collected through key informant interviews in three regions of Nepal.

## About the Publication

This paper is one of four 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 April 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>APF</b>	Armed Police Force
<b>CA</b>	Constituent Assembly
<b>CPA</b>	Comprehensive Peace Accord
<b>CPN (M)</b>	Communist Party of Nepal (Maoist)
<b>CPN (ML)</b>	Communist Party of Nepal (Marxist and Leninist)
<b>CPN (UML)</b>	Communist Party of Nepal (United Marxist and Leninist)
<b>CPN</b>	Communist Party of Nepal
<b>FPTP</b>	First Past the Post
<b>HHHC</b>	Hill Hindu High Caste
<b>ICG</b>	International Crisis Group
<b>MPRF</b>	<i>Madheshi</i> People's Right Forum
<b>MRMM</b>	<i>Madheshi Rastriya Mukti Morcha</i> ( <i>Madheshi</i> National Liberation Front)
<b>NC</b>	Nepali Congress
<b>NCARD</b>	National Coalition Against Racial Discrimination
<b>NCP</b>	Nepali Congress Party
<b>NEFEN</b>	Nepal Federation of Nationalities
<b>NP</b>	Nepal Police
<b>NA</b>	Nepal Army
<b>PR</b>	Proportional Representation
<b>RNA</b>	Royal Nepal Army
<b>UCPN (M)</b>	United Communist Party of Nepal (Maoist)
<b>URPC</b>	United Revolutionary People's Council

# 1 Introduction

Nepal has a long history of political exclusion of groups such as the *Janajati* (indigenous peoples), *Dalits* (the untouchable cast), *Madheshis* (inhabitants of Madhesh) – including Muslims, and women. This exclusionary system is based on patriarchal norms, the supremacy of Hindu religion and a hierarchical caste system that can be traced back to the very foundation of the State of Nepal in 1779. A number of popular movements<sup>1</sup> have attempted to challenge this exclusive State, most remarkably through the Maoist 'People's War' which began in 1996. This war ended in November 2006 with the signature of a Comprehensive Peace Accord (CPA).

The CPA has resolved the immediate and underlying causes of violence through direct mutual engagement by the main conflict parties – the Nepali State represented by the King and the main political parties, and the rebel armed movement formed by the Communist Party of Nepal (Maoist) (CPN (M)). However, these parties have so far been unable to deliver a new constitution due to conflicting interests between the dominating political elites, and between the State and society. In other words, the peace settlement has not yet given way to a new political settlement. Manjushree Thapa, a well-known literary writer, opined:

*What do you do if you're the high caste leader of a democratic party faced with a vote that will end your caste's supremacy? You avoid voting at all costs. This is what the leaders of the Nepali Congress and the Communist Party of Nepal (Unified Marxist and Leninist) did in Kathmandu on May 27 [2012]. Their refusal to compromise with the Unified Communist Party of Nepal (Maoist) and other parties led to the failure to pass a new constitution and the dissolution of the country's only democratically elected body, the 601-member Constituent Assembly. This was an unforgivable betrayal of public trust: the citizenry had waited for four years for a new constitution that would mark the birth of a "New Nepal". (Thapa 2012)*

After the failure of the 2008-2012 Constituent Assembly (CA), the country plunged into chaos for one and half year until elections for a new CA were held in late 2013. Despite the political parties' commitment to promulgate a new constitution in the first year of their second tenure (2013-2017), they failed to do so. Both ruling and opposition parties are presently accusing each other of being responsible for this failure. The ruling parties argue that if no consensus can be reached, they may take a vote on it, since they have a two third majority in the CA. If the ruling parties insist on drafting a new constitution on the basis of their numerical strength in the CA, their sidelined opponents may opt out of the process altogether, as asserted by Maoist party Chairman, Pushpa Kamal Dahal (Ekantipur 2015). Thus, the future of the constitution is still uncertain.

This paper aims to offer a comprehensive review of the conflict and peace process from the perspective of excluded groups (also referred to here as 'power contenders') in Nepal, particularly the *Janajati*, *Dalits*, *Madheshis*, Muslims and women. Firstly, the paper will examine the reasons for their historic, social, and regional exclusion, analyse the political claims which they have raised, and the ways in which the Maoist Insurgency has capitalised on their demands to mobilise support for its armed movement. Secondly, the paper will examine the extent to which these groups have been able to meaningfully participate in the political reform process through the CA. Finally, the paper will analyse the roles and degree of access to power by excluded groups in the reformed state, to date.

The sources used for the purpose of this paper include a literature review, secondary data analysis and empirical qualitative data, gathered through key informant interviews in three major geographical regions of Nepal – East (main location: Jhapa), Centre (main location: Dhanusha) and West (main location: Nepalgunj). The key informants consisted of former Maoist leaders, civil society members, former combatants and political leaders related to the former and current political settlement.

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<sup>1</sup> The term 'popular movement' refers to the political protest movements against the existing undemocratic regime. For more detailed information about the various people's movements in Nepal, see the other Nepali case study report published for this project (Khatiwada 2014).

## 2 Mapping of Power Contenders and their Inclusive Claims to State Reform

This first section describes the exclusion endured by the *Janajati*, *Dalits*, *Madheshis* (including Muslims) and women throughout Nepali history, their main grievances, and the ways in which the Maoist Insurgency had mobilised these communities by claiming to support their demands.

### 2.1 History of exclusion and insurgency in Nepal

Nepal was founded as a Hindu religious nation State in 1779. According to Stiller (1968, 44), the very popularly recited version of a speech by late King Prithvi Narayan Shah says:

*If brother soldiers and courtiers are not given to pleasure, my sword can strike in all directions. But if they are pleasure seekers, this will not be my little painfully acquired kingdom but a garden of every sort of people. But everyone is alert; this will be a true Hindustan of the four Jats (castes), greater or lesser, with the thirty-six classes.*

Following this, Prime Minister of the Rana Oligarchy, Jung Bahadur Rana, took over the Kingdom in 1846 and established an exclusive kinship-based dictatorship that lasted for 104 years. Prime Minister Rana promulgated the *Muluki Ain* Country Code<sup>2</sup> in 1854, based on a hierarchical Hindu four-fold system,<sup>3</sup> followed by the declaration:

*We [Hindus] do have our own country and a state where cow slaughtering is prohibited. Women and Brahmans cannot be prosecuted for death sentence. In this Kaliyug<sup>4</sup> this is the only country where Hindus ruled over the land.* (Sharma 2005, 452)

*Muluki Ain* classified the punishments and impunity in the law as being based on the hierarchical structure of Hindu norms and mythology that were fixed in the *Manusmrti* (Law of Manu – a Hindu religious text). People who had a different culture, religion, language and history other than the Hindu higher castes were generally excluded from the State. The *Dalits* who were originally recognised as *Sudras* in the Hindu *Manusmrti*, and the *Janajati* autochthones or indigenous people who were marked in 1854 A.D. as *Matwalis* (Hofer 1979), were subject to discrimination and exclusion. Additionally, women and people from the Terai (plains) region were also excluded from state governance and state representation – the former because of societal patriarchy, and the latter due to the very unitary structure of the State.

The concept of a 'Westministerial' type of multiparty democracy was introduced to Nepal during the Indian independence movement (*Swaraj*) against British colonialism. Nepali youth, who were either in exile in India because of the Rana autocratic rule or because they were studying at Indian universities during the early 1950s, learned that a democratic state is the prime cure for emancipating people from autocracy. They advocated for the democracy of the people, by the people and for the people. The Nepali National Congress (NC) party led a liberal stream and advocated for democracy. However, a fraction of the NC bifurcated and formed the Communist Party of Nepal (CPN) in 1949. With Puspahal Shrestha as their leader, they established the CPN out of protest against

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<sup>2</sup>This code is described in Hofer (1979) as such:

*The Hierarchical Structure Consists of:*

A. *Water acceptable (pure):*

1. *Wearers of the sacred thread/ Tagadhari: Upper caste” Brahmans and Chhetris (Parbatiya), “Upper caste” (Madheshi), Upper Caste (Newar).*

2. *Matwali Alcohol drinkers (non-enslavable): Gurung, Magar, Sunuwar, Thakali, Rai, Limbu, Newar,*

3. *Matwali Alcohol drinkers (enslavable): Bhote (Including Tamang) Chepang, Gharti, Hayu, Kumal, Tharu,*

B. *Water unacceptable/PaniNachalne (impure) :*

4. *Touchable- Dhobi, Kasai, Kusule, Kulu, Musulman, Mlechha (foreigner).*

5. *Untouchable (Achhut). Badi, Damai, Gaine, Kadara, Kami, Sarki (Parbatiya), Chyame, Pode (Newar).*

<sup>3</sup> According to Hindu Mythology, King Manu classified the human society hierarchically into four levels, where Brahman (priests) posed at topmost level, followed by Chhetree (warriors), Baishya (mercantile), and Sudra (labor/ untouchables) castes.

<sup>4</sup> Kaliyug, ("age of [the demon] Kali", or "age of vice"), is the last of the four stages the world goes through as part of the cycle of Yugas described in the Hindu scriptures. The other ages are Satya Yuga, Treta Yuga, and Dvapara Yuga.

“...the compromising and conciliatory politicians of the [NC] leadership” (Gurung 1977). The Nepalese revolutionaries were in search of an alternative path for the democratic movement in Nepal. This path could not be any other than the Marxist-Leninist one. The CPN published the first issue of its bimonthly advocacy paper *Pakshik Prachar Patra* (Bimonthly Bulletin) on 15 September, 1949, with the CPN Manifesto – the first document which analysed Nepalese history from a Marxist historical materialist perspective.

Armed struggle has proven to be a long-standing and commonly used strategy by Nepalese communist groups who believed in social change through class struggle. One example was the radical Communist Party of Nepal (Marxist Leninist) (CPN (ML)) who was active in the Jhapa district in the 1970s. These revolutionaries cut the heads off landlords and declared the establishment of a dictatorship of peasants, workers and the proletariat. Nepalese communists were very much influenced by Mao Zedong’s stern leadership in neighbouring China. Because of his physical appearance – a giant figure of mongoloid ancestry,<sup>5</sup> Comrade Mao highly influenced *Janajati* (who mostly have Mongoloid origin) to be attracted to both the CPN-ML and the Indian Naxalite Movement which developed in the 1970s. Charu Majumdar, the Naxalite leader from the Indian Naxalbari of North Bengal and a follower of Comrade Mao, appeared to be of Caucasian origin and thus attracted other excluded groups into the CPN (ML).

There have been a number of insurgencies throughout the 20th century in Nepal, starting with the *Mukti Sena* (liberation army) rebellion against the Rana regime in 1950-1951, followed by the covertly NC-led armed struggle against the *Panchayat* (party-less) system in the period 1960-1990, the CPN (ML)-instigated *Bargasatru Samapta Abhiyan* (Movement for the Elimination of Class Enemy) in the early 1980s and the Maoist Armed Insurgency from 1996 to 2006. These insurgencies were motivated by a widespread belief, either consciously (especially among Maoists) or unconsciously, that armed struggle was necessary to overthrow the feudal State and to establish a new democratic state that would ensure the rights of peasants and workers. Each movement emerged through ideologically-rooted beliefs and became ignited by ethnic, regional, untouchable groups and patriarchal issues. The *Janajati*, *Madheshis*, *Dalits* and women were often found to be the ignition for the conflicts in Nepal. In particular, during the 1996-2006 Maoist Insurgency, there was a strong link between the Maoists and identity groups. As a communist thinker and Maoist supporter from the *Limbu Janajati* community frames it in an interview:

*The state security mistrusted the excluded groups during the war. The Janajati (Magar, Tharu, Tamang, Kirati, Limbu, etc.) were synonymous of Maoists insurgents, followed by Madheshis and Dalits. Security forces strictly scrutinised the people belonging to those communities. ... Why? The simple answer is that the Maoist Insurgency had a direct relation with the identity groups that have been excluded for centuries. (Informant C, 2013)<sup>6</sup>*

As a popular Nepali proverb says, ‘when the river is crossed, throw the stick’. Indeed, most political parties have been using socially-excluded groups as a ‘stick’ until they reached power, as Nepali Maoists have also shown.

In order to catch the sentiments and emotional support of marginalised communities, the CPN (M) had rallied and mobilised around their grievances and issues. Basnet (2009) argues that there are three main strategies that the Maoists employed to gain support from excluded groups: their ideological construction of the ‘oppressor’ and ‘oppressed’; the politicisation of ideological constructions of collectively-perceived grievances; and the translation of collective grievances into the mobilisation of a collective force. This mobilisation was supported by the establishment of a parallel government called the ‘People’s Government’ in most of the areas in which they were operating. The Worker (2004, No 4) stated:

*On January 9, the Magarat Autonomous Region's [the region inhabited by Kham Magar] People's Government was declared amidst a huge mass meeting of over 75,000 people in the historic Thawang village in Rolpa district, Nepal. The Autonomous People's Government was formed under the leadership of Com. Santosh Budha Magar, in which members from other nationalities, classes and masses were*

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<sup>5</sup> The Nepali population is a blend of two major ancestries: people with Mongoloid origin who migrated from the north-east and trans-Himalayan north between the 1st and 5th Centuries A.D., and Caucasoid people who migrated from the north-west and south at the beginning of first millennium. People with Mongoloid ancestry are considered to be traditional and indigenous and have by large been excluded from state institutions.

<sup>6</sup> All interviews conducted for this paper are anonymised but listed in the bibliography section. All interview sources were translated from Nepali by the author.

*represented. As may be recollected, this was the main base area of the revolution, inhabited by the most oppressed Kham Magar nationality.* (cited in Basnet 2009)

However, given the fact that communism as an ideology focuses primarily on economic disparities and class struggle between the poorest groups and the richest class, one may cynically ask why the Maoists have been concerned with issues of the *Janajati*, *Dalits*, *Madheshis* and women? The following section describes the various excluded groups in Nepal – referred to here as power contenders, their primary demands, and their recognition and contributions during the Maoist Insurgency.

## 2.2 The Janajati

The nature and identity of the *Janajati* (indigenous peoples) is still a matter of debate in Nepal, and has been widely discussed in parliament. The epistemology of both the terms *Adibashi* (indigenous) and *Janajati* (nationalities) may go back to the Sanskrit language, followed by the Hindi or Arabic languages, which later became sources of the Nepali language. According to the *Nepali Brihat Sabdakosh* (The Larger Nepali Dictionary), written in the 1960s and revised in 1984, *Adibashi* refers to, “an ethnic group living from time immemorial”, while *Janajati* (nationalities) refers to “People like Naga,<sup>7</sup> Koche-Kusunda,<sup>8</sup> who are backward on civilisation, education, etc. who rely on shifting/swidden farming and do not interact with their local environment; a distinct and different human society” (author’s translation).

The *Janajati* had settled in distinct territorial locations of the country, even before the present nation State was formed. Bista (1994) argues that traditionally, the regions of Nepal were identified by the names of their various major ethnic communities. Until the mid-18th century, the territory that is presently the State of Nepal was a congeries of diverse political units (Gurung 1986) called Baissi and Chaubishi principalities (*rajya rajauta*), primarily governed by Sen Thakuris.<sup>9</sup> They were inhabited by the *Magars* and *Gurung* along with various smaller sub-groups.

When the multiparty system was restored in the wake of the 1990 democratic movement, *Janajati* communities submitted a number of demands related to ethnicity, caste, language, religion etc. to the Constitutional Drafting Commission. However, the Commission discarded more than 90 percent of these suggestions, on the grounds that they were communal and useless for the purpose of writing a constitution. The chair of the Commission, Justice Bishwanath Upadhyaya opined that it was “unfortunate” that most suggestions had been about what he called “peripheral” issues, and called upon all political parties to educate the people on basic constitutional subject-matters (Hutt 1993). Nevertheless, the then newly promulgated Constitution of Nepal (1991) promised some rights for the *Janajati*.

In 1991, eight major *Janajati* organisations formed the Nepal Federation of Nationalities (NEFEN). They called for the right for self-identification and defined *Janajati* as “...a community with its own mother tongue and traditional culture but not falling under the traditional four-fold Hindu Varna system” (NEFEN 1991). The NEFEN aimed to establish a secular state against the Hindu religious kingdom. It demanded the recognition of indigenous languages against the so-called official language (the Nepali language), the right of particular groups to be constitutionally recognised, the end to the compulsory teaching of the Sanskrit language in schools, and the right to proportional representation, ethnic autonomy and self-determination (NEFEN 1991). Thanks to its wide social network, NEFEN provided a platform to learn about the rights of the *Janajati* and to lobby the State to ensure their fundamental rights. In the wake of this mobilisation and in response to a constitutional provision spelling out the need to set up a foundation for the empowerment of the *Janajati*, His Majesty's Government of Nepal formed a special taskforce, which led to the enactment of a law establishing the National Foundation for Development of *Adibashi/Janajati* (NFDIN) in 2002. According to the NFDIN Act (2002, 32), *Adivasi/Janajati* are defined as “a tribe or community ... having its own mother tongue and traditional rites and customs, distinct cultural identity, distinct social structure and written or unwritten history”. A schedule enlisted in the Act describes 59 such groups.

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<sup>7</sup> *Naga* people refers to a conglomeration of several tribes inhabiting the north-eastern part of India and north-western part of Myanmar. The tribes have similar cultures and traditions, and form the majority ethnic group in Nagaland, Manipur, Arunchal Pradesh and Assam states, in India.

<sup>8</sup> The *Koche* and *Kusunda* are two of 59 *Janajati* groups recognised in Nepal.

<sup>9</sup> According to the chronicles of the Sen Dynasty (Stiller 1968), they came from Chittaur in India.

Warren (1998) argues that the initiatives of the United Nations (UN) and other international organisations made the discourse of indigenesness a viable way for small marginalised groups to claim rights within the State (see Hagen 2007). When the UN declared the International Year for the World's Indigenous Peoples in 1993, the *Janajati* were enthused to participate in the UN's World Conference on Human Rights in Vienna, Austria, followed by many regional and global meetings. Ever since, NEFN has been sending delegates to attend annual UN meetings in New York and Geneva. This has opened up avenues for the *Janajati* to see the world beyond their horizons, and it has also enabled them to access and raise funds from different donors. There are mixed opinions regarding the *Janajati's* international exposure. On the one hand, a few *Janajati* activists became busy participating in international seminars and conferences. Nevertheless, their international exposure to the rights of indigenous people enables them to comprehensively put forward their demands on the national and global stage.

The basic political demands of the *Janajati* have revolved around the right to self-determination and autonomy in their respective territory, enabling them to protect and preserve their unique cultural identity within a larger nation-state. The State should have taken affirmative measures to compensate for the socio-economic inequality that still persists due to its historical legacy of exclusionary practices against the *Janajati*. Only then can a 'nation' in the sense of a modern and a multinational state be built, in contrast to a homogeneous Hindu nation or nationality.

The fact that the *Janajati* had a long history of being suppressed by the State made them particularly receptive to Maoist mobilisation in the wake of the *Jana Morcha* (the People's Front), instigated by the underground Communist Party between 1992-93. When the Maoists began their so-called 'Peoples War' in 1996, they appealed to the citizens "...to initiate the process of forcibly smashing this reactionary state and establishing a New Democratic state", in accordance with "the almighty ideology of Marxism-Leninism-Maoism to free humanity forever from the yoke of class exploitation" (ICG 2005, 3). In its Politburo meeting held in December 1996, the CPN (Maoist) decided to put forward the issue of ethnic and regional autonomy in the party's policy to "Develop Guerrilla Warfare in a Planned Manner". All excluded groups fell into the trap of the Maoist insurgents who intended to use their apprehension against the regime. Following this strategic decision, the wide participation of excluded ethnic/caste groups became a central feature of the Maoist movement (Sharma 2002). As a result, a great number of *Janajati* became involved in the People's War for the sake of autonomy, so much so that they became "the heart and soul of the Maoists" (Pathak 2007). When the Maoists reached out into the remote areas of Nepal where the *Janajati* have lived from time immemorial, they really grew in size, presenting a strategic challenge to the State.

Mr. Suresh Ale Magar, the founding member and Secretary General of NEFN, and one of few university teachers in English Literature from the *Magar Janajati* community, joined the Maoist movement and thus sent a strong message to the *Janajati*: that they would not get their autonomy unless they joined the Maoist People's War. During the Insurgency, the Maoists formed different ethno-autonomous units.<sup>10</sup> One of these was *Magarat* which lies in the Mid-West region and became a true epicentre of the Maoist's People's War.

## 2.3 The Madheshis (people of Terai origin)

One of the major issues Nepal has been grappling with is the unitary and highly centralised state structure. Geographically, the southern plain area or Terai, culturally known as Madhesh, is left aside when political decision-making is concerned, even though the population of Terai currently comprises 50.1% percent of all Nepalis (according to a 2011 census). The Terai (plain landscape) or Madhesh, comprised about 18 percent of the Nepali territory, more or less symmetrically stretching from east to west. The area is partly covered by dense-

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<sup>10</sup> The Central Government of CPN (Maoist) formed nine autonomous republics during the People's War. Five of those were based on ethnicity, three were based on geographic locations and one was based on linguistics. The ethnic-based republics were: Kirat Autonomous Region (the mountain and hill areas of the present Mechi, Koshi, and Sagarmatha zones); Tamang-Saling Autonomous Region (the mountain and hill areas of present Bagmati, Narayani, and Janakpur zones except Kathmandu Valley); Tamuwani Autonomous Region (Gandak region); Magarat Autonomous Region (from Kali Gandaki region to the hill areas of present Dhaulagiri, Rapti, and Lumbini zones); and Tharuwan Autonomous Region (western Terai area from present Rapti to Mahakali zones). The three geographically-defined republics were: Bheri-Karnali Autonomous Region (the hill areas of present Bheri and Karnali region); Seti-Mahakali Autonomous Region (the hill areas of present Seti and Mahakali zone); and Madhesh Autonomous Region (Awadh area of mid-Terai and Bhojpur and Mithila Pradesh of eastern Terai). The linguistic republic was Newa Autonomous Region in Kathmandu Valley (see Pathak 2007).

forest land known as Charkoshe Jhadi.<sup>11</sup> This region is also referred to as the Tharuhot, the original homeland of *Tharu* people. However, the region also stretches beyond Terai and includes part of the Chure hill: the plain stretching from east to west is also called Bhitri Madhesh (inner Terai).

The origin of the word 'Madhesh' is contentious but is commonly believed to be linked with '*medhya-desh*', a geographic marker distinguishing the plains from the hill region (or *Parbat*, from which *Pahadi*, meaning hill-dweller, is derived) of modern Nepal (Gellner 2007). A *Madheshi* therefore literally refers to an inhabitant of Madhesh. In theory, anyone living in the Terai could be considered a *Madheshi*, but it has developed an ethnic connotation, referring to plains-dwellers of Indian, Hindu origin: people of mountain and hill-origin who settled in the plains are therefore not included. Usage differs, however it seems clear that the *Tharus* and other groups, such as Muslims, do not wish to be included within this category.

According to Hachchhetu (2007), there is one single and highly commendable, political study of Madhesh, by Frederick Gaige. However Gaige (1975) very seldom used the word 'Madhesh', and preferred the word 'Terai'. In my opinion, the term *Madheshi* appeared when resistance against the century-long cultural domination of the Hill Hindu caste emerged at the end of the 20th century, along with the pro-democracy movement. Because of Gaige's integrationist stance, his study highlighted much of the socio-economic contribution of the Terai, to claim its stake in the integrated nation-state. Gaige clearly analysed Kathmandu's ambivalent attitude towards the Terai population, and the anxiety to develop the Terai and make it an integral part of the Kingdom, both economically and culturally. This scenario changed along with the resistance of the Hill-dominated State to give proper recognition and power to the Terai inhabitants. The *Madheshi* identity emerged against the hegemony of Hill dominance within the last four decades.

Both the *Tharus* and Muslims launched protest movements in the wake of the *Madheshis*, to claim recognition of their distinct identity. *Tharu* people are convinced that Madhesh does not exist, but only Tharuhot (their homeland), from time immemorial. A *Tharu* scholar, Mahesh Chaudhary, argues:

*..in the Jung Bahadur period there were eight Terai courts, in the Dev Shumsher period there were Terai Postal Services and in the period of Chandra Shumsher as the ruler of Nepal, 13 districts of Terai had a single Court called a '13-Terai Court'. Such evidence is enough to prove that there is no Madhesh in Nepal, there is only the Terai. Even after 1957 [2007 B.S] the word Terai was used frequently, not Madhesh. (Chaudhary 2008)*

For their part, the Muslim minority in Nepal, especially in the Terai region, no longer wish to accept their inferior status in society, but they face an acute dilemma. As soon as they articulate their identity, they invite the attention and hostility of Hindu fundamentalists (Dastidar 2000). All these issues around the *Madheshis*, *Tharus* and Muslims represent regional dimensions and must be resolved as part of the debate on the status and fate of the Terai region.

Additional cultural strata and tapestries can be found within the Madhesh. For example, in eastern Terai, particularly the Mithila region, the high caste "Chaste Maithili speakers sometimes claim... that they alone speak Maithili; what the others speak is not rustic Maithili but simply rustic language... Maithili is the preserve of those who cultivate their minds, not their fields" (Burkert 1997). One thus needs to recognise the multiple and overlapping layers of identity in order to get a full picture of the Madhesh. However, what *Madheshis* have been contending is mainly the discrimination that they have experienced from the dominant Hill Hindu caste group's predominant position. As expressed by a leader of the *Madheshi* People's Right Forum (MPRF) in an interview:

*The Madhesh movement is directly spearheaded against the domination, discrimination, and subjugation of the Hill ruling class. They have excluded the Madheshis through conspiracies and made a historical injustice to them. Injustices happened when Madheshi participation in political processes, administrative bureaucracy and the national army were denied. It is ridiculous for Madheshis – they can contribute the largest share in national treasury, but they have been denied participation on the grounds that they are much loyal to India. (Informant F, 2013)*

By contrast, the Hill people's point of view is represented by one of the interviewees:

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<sup>11</sup> This forest was severely affected by daily timber poaching between Madhesh and Chure hills ever since the British East India Company established its political influence throughout the Himalaya by setting up a colonial base in north-eastern India. The exploitation of timber harvesting also adversely affected the natural habitat of dozens of *Janajati*, as well as the *Tharu* people (English 1985).

*I have been here [in Nepalgunj, Terai] over four decades, and never heard about the Madhesh. There are 'Deshi' people. People are in the country (Desh), so they are known to be Deshi. (...) As far as the Madhesh movement is concerned, it was a pre-planned and foreign-sponsored movement. The Madhesh movement came like a typhoon and it went out after a while. (Informant D, 2013)*

There is doubtfulness towards the *Madheshis* even on the part of the *Janajati* and hill *Dalits*. The social nomenclature of the Terai originated before the Madhesh movement. However, when *Madheshis* accepted it and asked for their recognition as a unit of the larger state, they were warned that this unit never exist. In addition, prejudices were voiced that *Madheshis* were selfish, inhuman, etc. One of the hill-originated interviewees, a Maoist intellectual living in Madhesh opines:

*People of Terai, especially those living in between Koshi and Gandaki, never remained out of power. They were in power during the [Nepali] Congress regime, followed by the [CPN-] UML, and they have also encircled the Maoists. They exploit all parties and forces. You might remember that a few years ago, disaster occurred in Terai due to Koshi – every leader and commoner of this cause attempted to grab everything donated to flood victims rather than to rescue, or organise relief for, the victims. Who were these helpers? Of course, the people of Hill origin were the helpers for flood victims, indeed. I mean identity or ethnicity doesn't work in the real sense. So to raise grievances on the basis of identity doesn't yield the benefits people are deprived of. (Informant B, 2013)*

Grabbing resources at the time of a disaster might be true, but this also happens in hill and mountain regions, and indeed, anywhere else. Exploitation is associated with the subordination of the unitary state, and central authority which is deliberately established. One of the interviewees of Hill-origin opines:

*There are six villages at the southern border of Nepalgunj, where local people are out of touch with the State, rules and regulations, and so on. They became aware and educated after the restoration of democracy in 1991, when they had the opportunity to mix with the Hill culture and became gradually empowered. Before the Hill people came and got in touch with Deshi people, they were very much subordinated by the local landlords. And since landlords had access to Rana and other feudals of Kathmandu, no development measures reached them. (Informant D, 2013)*

According to these sources, the improvement in the conditions of the *Madheshis* appears to be due to interaction with Hill people or exposure to democracy – which is difficult to confirm or deny in the absence of systematic data on the subject-matter.

With regards to the role of the *Madheshis* during the Maoist Insurgency, the CPN (M) established the *Madheshi* National Liberation Front (MRMM) in 2000, under the leadership of Jai Krishna Goit. This was part of the Maoist strategy to tap into identity politics and to win support among regionally-excluded communities. According to the MRMM's leaders, their goal was to establish an autonomous Madhesh, free from all kinds of discrimination. However, its true role was largely to be a subordinate force to support the CPN (M) by providing them with a regional front, developing locally popular policies, and recruiting and organising *Madheshis*. The Maoists emphasised Madhesh's difference from the hills – in terms of social structure and production relations, and also stressed that its problems stemmed from both pahadi ruling-class policies and the *Madheshis*' own exploitative feudal and caste structures (ICG 2007). This was also confirmed by an interview with a human rights activist and lecturer, at the Janakpur Campus:

*Madhesh has continuously fought for democracy and a republic for the sake of retaining its distinct and different identity under the larger State. Madheshi martyrs, Durgananda Jha and Arbinda Thakur threw a bomb against the late King Mahendra in Janakpur in the 1960s. Mr. Jha was hanged and Mr. Thakur spent a life sentence in jail but was freed when multiparty democracy was reinstated in the 1990s. Ram Raja Prasad Singh also blasted a number of bombs in Kathmandu against the Monarchy in 1986 and for the Republic. ... So, Madhesh has waged a continuous effort for the Republic and democracy, in the hope to restore its Madheshi identity, which is different from Hill people and their identity. (Informant A, 2013)*

Goit refuses to call himself a Nepali citizen and believes that Nepal has no legal claim to Terai. He also demands that all administrative posts in Terai should be filled by *Madheshis* and the Government should return the tax revenues raised from the region back to the Terai inhabitants (ICG 2007). Jwala Singh, another leader who formed a splinter group from Goit's party, also questions Nepal's historical claim to the Terai. He identifies three main contentious issues: the authoritarian *pahadi* state and its colonial exploitation of Madhesh and *Madheshis*;

class differences; and caste differences. Mr. Singh believes that the *Madheshi* movement has failed because its leaders have not picked up guns: “First, the colonial problem needs to be solved through an armed struggle – our main aim is independence. Once we are free from pahadi rule, we can solve the other problems” (ICG 2007).

Political groups have emerged along with the increasing political awareness. The interviewed human rights activist and university lecturer opines:

*Even if the Madheshi rural populace are still illiterate, they have become much more aware. The country has greatly progressed in the first decade of the 21st century, so I don't think Madhesh will remain in a status quo any longer. We will definitely see new perspectives and change in the coming days. However, Madheshi leaders badly fall in the traps of Hill rulers and politicians, and it is obvious that this happened because they were trained by the hill's dominant political culture. The second generation which emerged in support of Madhesh issues fell into confusion, so many of them converted into armed groups. You know, there were 123 armed groups, and the number of people who died in Madhesh during 2006-2012 was four times higher than during the Maoist Insurgency between 1996 and 2006. (Informant A, 2013)*

There are a number of groups which have split from the MMRM and the media has reported that numerous Madhesh armed groups emerged in the aftermath of the Maoist Insurgency. Although they seem to be quiet at the moment, security personnel are sporadically arresting individuals under the guise of criminal enquiries, whereas their backgrounds are often somehow linked with the *Madheshi* movement. *Madheshi* parties putting forward *Madheshi* issues were badly swept away in the second CA Election in 2013. However, the level of electoral participation increased in the Terai from 2008 to 2013 (Lawoti 2014). People are found to be dissatisfied with *Madheshi* leaders and parties, but this does not necessarily mean that their feelings of discrimination are an exaggeration.

## 2.4 The Dalits (Untouchables)

There is also a debate in Nepal concerning the untouchability practices of so-called high caste people towards the *Dalit* caste (untouchables). Highlighting the historical genesis of untouchability in Nepal, the eminent social scientist and geographer, late Dr. Harka Gurung (2005), claimed that Nepal, at the periphery of the Hindustan plain, was originally a congeries of tribal units with the earliest inroad of Hinduism during the 5th Century A.D. However, a reactionary effect of the Muslim conquest of India made Nepal turn towards a Hinduistic orientation. As a result, Jayasthiti Malla (1382-1395) introduced a system of 64 castes among the *Newar*, followed by Ram Shah (1605-1633), who adapted this model into a less structured form in Gorkha. In addition, the Sen rulers of Palpawho claimed to be 'Hindupati' (champions of Hinduism). It is already said that the founder of the present Nepali nation, Prithvi Narayan Shah, grandson of Ram Shah, declared that Nepal is a true Hindustan; various similar assertions were made in his wake, such as by Prime Minister Maharaja Jung Bahadur Rana, who spoke of a “Hindu Nation” and by King Mahendra, who spoke of a “Hindu Kingdom”. According to Gurung (2005), the confusion about who the *Dalit* are in Nepal, has thus been created by the Hindu regime and its ideologues.

Affirmative action was first referred to in the Communist Government's Budget Speech in July 1994, which recognised 16 social groups as being 'oppressed classes', including eleven lower castes. The Coalition Government's Speech of July 1995 referred to twelve 'oppressed groups', of which eight were lower castes. None of these two statements specified, however, who the *Dalits* were. Subsequently, a National Committee for the Upliftment of the *Upechit* (Excluded), *Utpidit* (Suppressed) and *Dalit* (Exploited) was formed, without specifying the target group. However, *Dalit* activists advocating on the issues of untouchability follow the school of Ambedkar and call themselves *Dalit*. Ambedkar had used the term '*Dalit*' in his writings in the journal *Bahishkrut Bharat* (India of the Outcaste) in 1928, where he had defined '*Dalit*' as a stigmatised community exploited by the social, economic, cultural, and political domination of the upper castes' Brahminical ideology (Guru 2001). However, the term '*Dalit*' is still contentious in Maharashtra, India, today, where Ambedkar launched a historical movement against 'untouchability' amidst his own *Mahar* community and other *Dalit* communities. Ambedkar's followers in Nepal are also dubious about their identity. However, the majority of the population has come to accept the *Dalit* identity. The ultimate goal for all is to get rid of the untouchability that has been prevailing for centuries. Some educated, middle-class *Dalits* believe that the category connotes a negative description since

*Dalits* are no longer oppressed. They feel the label ‘*Dalit*’ is derogatory since it ignores the tremendous social, political and religious transformation of the community as a consequence of conversion to Buddhism. Raja Dhale, a prominent leader, asked:

*Why should we call ourselves Dalit? This term should not concern us. To say ‘I am Dalit’ is negative. The Dalits have to rise and fight for themselves. If some writers use it, they don’t understand anything. There has since been a great deal of social transformation.* (cited in Beltz 2005, 244)

Thus, for some, “*Dalit* is for the most part merely a veneer that has little relevance in everyday life” (Guru 2001, 106). The fate of *Dalits* is like a vicious circle. Untouchability is a form of racial discrimination based on colour. Untouchability in the Hindu caste system also has racial elements, as the ritual status of one's caste is based on birth (Gurung 2005). The oppressed status of the *Dalits* is evident from their low levels of literacy, low income and low life expectancy. Caste discrimination thus marginalises them from all kinds of opportunities, which in turn leads to further dependence and destitution. Due to this situation of deprivation and destitution, the *Dalit* community has been exposed to high vulnerability risks in every political turmoil, though they were never satisfied, since revolutionary leaders turned out to stem from a high caste community.

In September 2001, during the first ceasefire, the Maoists created a 37-member central decision-making body: the United Revolutionary People's Council (URPC). It was headed by Baburam Bhattarai, with Krishna Bahadur Mahara as Assistant Convener and Dev Gurung as Secretary. Of the URPC's 37 members, twenty comprised the *Janajati* and *Dalit* communities. There is also a significant presence of *Janajati*, *Dalit* and *Madhesi* leaders in the party's Central Committee. The Maoists also made some serious commitments to end untouchability and bring forth equality in terms of social, cultural, economic and political status. With that belief, many *Dalit* people joined the Maoist Insurgency, particularly those from remote and rural villages.

The major issues that the *Dalit* community has been advocating for is related to the practice of untouchability that still persists in society. Whatever legal measures or policies were enacted against it, concessions are still given to high caste groups in the name of customary practices the State has been built upon. The expected emancipation from untouchability thus seems to be far away. When Nepal was declared a secular State in 2006, there was obviously a hope that the untouchability against the *Dalit* community would be eradicated by adopting appropriate social, cultural and legal measures. The *Dalit* community also expects some special reservations in proportion to their population, in order to compensate for decades of discrimination by the high caste. The political parties have adopted various concepts such as ‘Progressive Quotas’, ‘Special Reservation’, ‘Affirmative Measures’ and so on. However, these commitments have yet to be fulfilled when it comes to the *Dalits*.

## 2.5 Women

Prior to the 1950s, a combination of social, political, legal, economic and religious factors contributed to the subjugation and exploitation of Nepali women, who were devoid of any sort of freedom – social evils such as polygamy and child marriage were common practices (Tamang 2000). When Nepal underwent a democratisation process in 1951, it was hoped that justice would prevail for women, by abolishing patriarchal traditions which confined women to the role of housewives and by encouraging reforms to the justice system. However, in essence, only the power-holders changed, while the status quo prevailed in all other dimensions. In other words, patriarchy overruled democracy. The voices of women, who were demanding liberty, freedom, and justice were silenced by the Panchayat autocracy, introduced by King Mahendra in the 1960s, which ruled the country for the next 30 years.

The legal code promulgated by King Mahendra introduced “the concept of a single system of family law, and by implication, a single family form, for the whole country” (Gilbert 1992, 737). This standard family system followed the Brahman model, which was used as a template for all family-related issues such as marriage, joint family property management and property transmission (Gilbert 1993). This hegemonic family form based on the ‘Hindu template’ had an important ramification for the structuring of ‘the Nepali family’, which has created a hegemonic threat largely felt within the Hindu caste groups and other non-Hindu groups.

The *Muluki Ain* (Country Code) entitled only men to be property dealers by virtue of birth, until the interim Constitution promulgated in 2006. According to Tamang (2000), this law stipulated the conditions by which

individuals entered and left families, and their concomitant rights and duties, along with the regulation of who can marry, under what conditions and with what consequences – both legally and economically. Through marriage, women acquire rights to their husband's property. The Shtri Shakti report states:

*Religion, ethnicity, culture, law, tradition, history and social attitudes, place severe limits on women's participation in public life, and also condition their private life. These factors have both shaped the culture's world view and governed individual self-image, subsequently affecting the understanding and practice of development.* (Tamang 2000)

Tamang (2000) further argues that, "... the Panchayat era was an important time in the history of gender and that the State and the law played central roles in the structuring of a particular form of patriarchy – a shift from family patriarchy to state patriarchy".

The Maoist Insurgency made gender equality one of the central elements of its agenda. The URPC devoted a separate section to women and family in its policy manifesto, promising that under Maoist rule, "...all forms of patriarchal exploitation of women shall be ended, and women shall be given all rights equal to men. Like son, daughter shall enjoy equal rights to parental property. Women shall be provided with special rights for participating in all organs of the State" (ICG 2011). The Maoists also vowed to eradicate commercial sex work, take harsh action against traffickers, permit marriage by mutual consent only, allow abortion and give special consideration to women in divorce proceedings.

The Maoist women's organisation, the All-Nepal Women's Union (Revolutionary), led campaigns against alcohol and domestic violence during the Maoist Insurgency period. It was popularly known as *Bhate-Karbai* (action/beating with a bamboo stick). Although it acted arbitrarily, it provided relief and support to victims of alcohol abusers and domestic violence. This example proves that the Maoists were in some instances able to deliver justice to the weaker sectors of society, including on behalf of women against their husbands or other male perpetrators. At the time when Nepal was a Hindu religious kingdom, women were predominantly perceived as being weaker than their male counterparts. However, female combatants that took part in the Maoist Insurgency demonstrated that women could do similar jobs to their male counterparts, competently and effectively. There is a popular story of Nepalese men who fought in the First and the Second World Wars and contributed to bringing about victory for the British Empire; while women are mostly presented in local songs as crying with sorrow for husbands, brothers, and sons who lost their lives in the wars. Apparently, the story was turned upside down when a large number of women joined the Maoist Insurgency, as depicted in photographs brought back by local and foreign journalists, as well as pictures published on the Maoist website. However, the exact number of female combatants was never made available. It is generally agreed that 30 to 50 percent of the People's Liberation Army (PLA) was made up of women, yet due to a lack of independent sources of verification, it is difficult to confirm this claim which was made by the Maoists (Shrestha-Schipper, 2008-9). What can be ascertained, however, is that 3,846 female and 15,756 male Maoist combatants were officially registered in the seven UN supervised cantonments and satellite cantonments in Nepal (UNMIN 2007).

## 3 Addressing Marginalised Communities' Grievances through Inclusive Constitutional Reform

### **3.1 Towards a federal and secular state: codified provisions and political/cultural resistance on state restructuring**

The 2006 CPA introduced the concept of 'state restructuring'; its content was intended to be one of many tasks to be agreed upon and further institutionalised by an elected and representative Constituent Assembly (CA). However, the CPA did not specify what the concept meant, nor did it address the other key demands (as reviewed in Section 2) of power contending groups such as the *Janajati* and *Madheshis*. Following the CPA, *Janajati*,

*Madheshis, Dalits* and women, immediately showed their discontent by setting up an NGO, the National Coalition Against Racial Discrimination (NCARD).

In an informal conversation, the second highest-ranked Maoist in-command, Dr. Baburam Bhattarai, opined that the NC and CPN (Unified Marxist and Leninist, UML) were both vehemently against the concept of federalism and therefore compromised on the term 'state restructuring' which would carry a meaning of federalism one way or another (*Pers Comm.* with Baburam Bhattarai, n.d.). According to Article 138 the Interim Constitution of 2007, the section, "Progressive Restructuring of the State", states the following:

*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.*

The CPN (M), which raised the issue of state restructuring, including the federalist project, managed to secure the largest number of seats in the first CA in 2008. However, they could not enforce its institutionalisation and implementation, allegedly because they did not have the two-third majority required for adopting constitutional provisions.

Maoists are also credited for their efforts to put an end to the centralist Hindu Monarchy and replace it with a federal and secular state. A Madheshi leader reflects on these efforts:

*Yes! Nepal has been declared as a secular state, since Nepal is also a herd of multiple religions and traditional practices. It is not a country of a single religion and culture. Hence, every religious group has distinct and different values and practices; so the question being raised of on whose religion - norms, value, and practice - the State should be based is an absurd one. The State should represent all its peoples' aspirations and values. So, secularism is a necessity for the Nation to be defined as inclusive and representative, so that each group will get a sense of equality between all religions and practices. India could represent the best example, where millions and millions of Hindus live, but being secular, non-Hindus are free to slaughter calves and cows, and even to export beef abroad.* (Informant F, 2013)

The Nepalese state-building project is rooted in exclusive Hindu religious and cultural values which King Prithvi Narayan Shah and his allies intended to preserve, by claiming that their purity should be protected in a sacred place in the Himalayan region, which both Mughal and Europeans could not reach. However, that region was not barren land or what European explorers termed *terra nullius*, but rather, one which had been inhabited from time immemorial by numerous indigenous nationalities, living independently from each other. The State promulgated the *Muluki Ain* in the mid-19th century, which imposed social order comprised of a single social universe recognised in terms of various *varnas* (colours/ markers) and *Jats* (ethnicities) residing in its territory (Sharma 2003). One typical example of how the State allowed other groups to live independently in their respective territories and to what extent the Hindu value system exerted control upon them is provided by Sharma:

*... in the case of Newar, caste matters were respected and left to their own caste members to be settled in their respective guthis. Much in the same manner, the customs and clan traditions of the various minority ethnic groups were also duly recognised by the Muluki Ain. But their autonomy had to stop where these customs impinged, was discouraged, and the killing of cows, banned.* (Sharma 2003)

One and half centuries later, the CA was tasked to formulate a modern democratic republican constitution. However, one incident illustrated the persistent domination of Hindu norms despite the formal adoption of a secular state, when a couple of Tamang boys who killed a calf for meat consumption were taken into custody and received death threats. This event was relayed by the media and broadcasted during the CA meeting in Kathmandu.<sup>12</sup> A former Maoist local justice interviewed for this paper commented:

*We are not members of the same clan [pointing to the interviewer, a Janajati], so we don't bear on jutho [impure] each other. However, when your family is in a pathetic situation because somebody passed away,*

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<sup>12</sup> The Godamchour area in Lalitpur District, Nepal, remains tense over a cow-slaughter scandal. The situation in the area became tense after a local informed the police about some youths slaughtering a cow and eating its meat. The locals vandalised the house of these youths and the police was deployed to the area to contain the situation. Meanwhile, the police also detained two young people on the charge of slaughtering a cow. The Nepali law recognises the slaughtering of cows, which is the national animal, as a crime, and anyone involved in such an act is subject to punishment. See: [www.ekantipur.com/2012/03/26/national/lalitpur-tense-over-cow-slaughter-scandal/351246.html](http://www.ekantipur.com/2012/03/26/national/lalitpur-tense-over-cow-slaughter-scandal/351246.html) (accessed 1 September 2014)

*may I have a festivity by performing a musical band baja [musical sounds]? I cannot do. Can I? So, we do have a long tradition of respecting each other, just like we have a long tradition to respect the cow as a national animal among the general public. And we also have a concept that although we do not slaughter the cow, somebody may eat its carcass. At least we do not have a tradition of eating beef by killing a cow. Now this is not a case of Hindus only, rather it has become a tradition of a nation. So, let us keep it as milk giving animal, like a mother, because we all drink milk, so we should rather protect it as a national animal than as Hindu religious animal. (Informant B, 2013)*

During the Maoist Insurgency, combatants ate a lot of beef. They killed cows, oxen, and other domestic animals in villages while they were underground or armed with guns over ground. It never became a matter of concern for leaders and combatants who were of Hindu religion; some of them also encouraged the *Janajati* to kill cows and eat beef to express their hatred against the Hindu Monarchy and Kingdom. Most of the *Janajati* are not Hindus, but the State has prohibited them from slaughtering oxen, calves and cows. They have been jailed for committing such offences, and still are, so, the *Janajati* have a collective grievance against the Hindu Kingdom and State. As agreed by the former Vice-President of the Nepal Muslim Association:

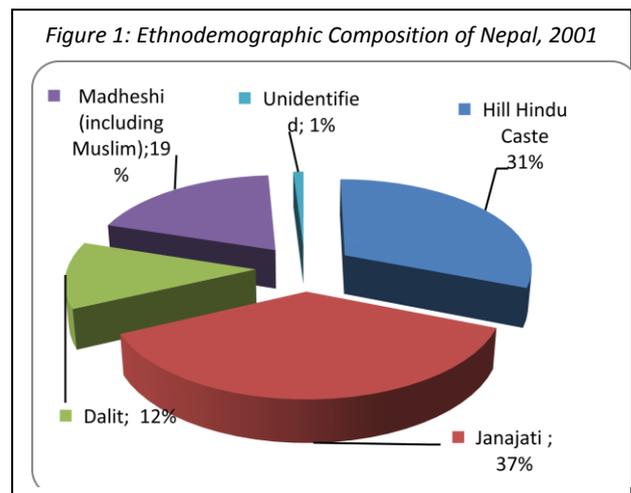
*The State has been declared secular. However, I don't see any visible difference so far. In the name of cow slaughtering in rural villages; many Muslims have been jailed, even after the declaration of a Republic and of a secular State. The political parties made a mistake by keeping the cow as a national animal. Nepal is a multi-religious country, so to portray an animal from a particular religion as a national animal is a great mistake. (Informant E, 2013)*

So, has the secular state been achieved or not? The National Human Rights Commission and human rights activists were all found to be silent on this issue, while dozens of people are still in prison because they killed calves and ate beef.

### 3.2 Proportional representation in the Constituent Assembly

The Interim Constitution adopted an inclusive definition of Nepal's ethno-demographic composition, along four broad groupings: *Janajati* accounts for the largest group with 37% of the national population, followed by the Hill Hindu high caste *Brahmins/Chhetrees* (31%), *Madheshis* (19%), *Dalits* (12%) and lastly, the unidentified (1%).

In order to end the discrimination of all walks of life, the State also introduced a historical proportional representation system for the CA composition. Three constitutional provisions were made for the CA election, including a first past the post (FPTP) system (through which 240 members would be elected from single member constituencies); a proportional representation (PR) system (from which 335 members would be elected in proportion to a popular party vote throughout the country, considered as a single constituency), and finally, the nomination by the Council of Ministers, of 26 CA members consisting of distinguished citizens who contributed to national life and belong to ethnic and indigenous groups and who fail to be represented through the first and the second provisions.



The PR system was devised with the following representation quotas: women (50%), followed by *Janajati* (37.8%), *Madheshis*<sup>13</sup> (31.2%), Others<sup>14</sup> (30.8%), *Dalits* (13.0%), and 'Backward Regions' (4.0%).<sup>15</sup> This system,

<sup>13</sup> The PR quota for Madhesh seems to be greater than the proportion of *Madheshis* in Nepal, given that the Madhesh region comprises *Madheshis* along with other communities.

<sup>14</sup> The 'Others' category encompasses the dominant social groups, even though they are already overwhelmingly over-represented through the FPTP system. These groups criticised the term 'other' for being unfair, so it was changed to 'Khas Arya' in the second CA elections.

which simultaneously combined ethnic, gender and regional parameters, was described as very complex (ICG 2008); for instance, when adding up all percentages, the total amounts to 112.2%. With regards to the actual social composition of the first CA, resulting from the 2008 elections, a complex scenario appeared. According to the Carter Center (2008), out of the 575 elected seats in the CA, there were 196 *Madheshis*, 192 *Janajati*, 191 women, 47 *Dalits*, and 22 representatives from 'Backwards Regions'. The European Union (2008) reported that the traditionally excluded communities received a greater number of seats in the proportional representation race.

It was a truly remarkable shift in Nepalese politics when the different power contenders gained such success in reaching power and decision-making rights in the constitution-making process. However, the hopes and the enthusiasm felt by excluded groups vanished when, after four years, the first CA could not agree on a new constitution and was subsequently dissolved on 28 May, 2012. The second CA formed in November 2013 hoped to promulgate the Constitution by 22 January, 2015; but failed to do so. Its tenure has now been extended to November, 2017.

There is a significant difference between the CA's composition in 2008 and 2013. The proportion of members from the Hill high caste, who dominate the State, accounted for 32.1% in the 2008 CA, rising to 41% in 2013 – representing an increase of 8.9%. Meanwhile, excluded groups lost some of their representation. For example, the *Janajati* lost 4.5%, followed by *Madheshis*, with a loss of 2.9%, then *Dalits* (-1.2%) and Muslims (-0.4%). Women across all these groups lost about 12% of representation in the 2013 elections. For instance, in the FPTP, women had won 30 seats in 2008 against only ten seats in 2013. According to Vollan (2014), the 26 members nominated through appointment consisted of five women, a few *Janajati* and some outstanding personalities who were needed in the drafting process, including party leaders who had lost the elections.

Vollan (2014) stresses the prominence of the PR list system as one of the most commonly used electoral systems in the world. However, to be efficient, such a system should have a ranking-based PR list, while Nepal has 'an unranked closed PR list' system, which contradicts prevalent democratic norms. The PR system was meant to send representatives of marginalised sections of society to the CA, but has been used instead by parties to send members who have no political standing, to the CA.<sup>16</sup> In the 601-member CA, 575 members were elected through the FPTP and PR, while the remaining 26 members were nominated from among distinguished personalities and from under-represented *Janajati* communities. However, the three main political parties (Nepali Congress, CPN-UML and UCPN (Maoist)) agreed to divide these seats between themselves, according to their respective strengths in the CA (Ekantipur 2014). These parties are facing public criticism for allegedly having allocated some seats to individuals who had made monetary donations during the FPTP election campaign.

Table 1: Candidates Elected through the FPTP and PR Systems in the 2013 and 2008 CA Elections

Social Identity	FPTP, 2013				FPTP, 2008		PR, 2013				PR, 2008		Total, 2013		Total, 2008		Change (2008-2013)
	M	F	Total		Total		M	F	Total		Total						
	No.	No.	No.	%	No.	%	No.	No.	No.	%	No.	%	No.	%	No.	%	%
HHHC	130	2	132	55.0	99	41.3	55	49	104	31.0	94	26.0	236	41.0	193	32.1	8.9
Janajati	59	5	64	26.7	79	32.9	59	56	115	34.3	135	37.4	179	31.1	214	35.6	-4.5
Madheshi	35	2	37	15.4	48	20.0	36	33	69	20.6	80	22.2	106	18.4	128	21.3	-2.9

However, this term is not fully adequate either, as 'Khas' denotes the original inhabitants of the Khasan area (mid and far western hills and mountain region of Nepal).

<sup>15</sup> 'Backward regions' is the term used by Nepalis to describe the nine districts (Achham, Kalikot, Jajarkot, Jumla, Dolpa, Bajhang, Bajura, Mugu and Humla) in Nepal, which are the lowest on the development index. These quotas, provided for by the Interim Constitution, are defined in Schedule 1 of the Election Act, 2007.

<sup>16</sup> See <http://thehimalayantimes.com/fullTodays.php?headline=Leaders+misuse+PR+system+to+send+kin+to+CA&NewsID=407276> (accessed 2 April 2015)

Muslim	4	1	5	2.1	7	2.9	6	3	9	2.7	10	2.8	14	2.4	17	2.8	-0.4
Dalit	2	0	2	0.8	7	2.9	17	21	38	11.3	42	11.6	40	7.0	49	8.2	-1.2
Total	230	10	240	100	240	100	173	162	335	100	361	100	575	100	601	100	0.0
				(30)						(167)		(172)		(197)			(-12)

Source: Adapted from Election Commission (2008; 2013).

Note: the numbers in parenthesis in the Total row stand for women elected as CA members.

It is interesting to note that the inclusionary provisions adopted in the CA represent a real outcome of the CPA, whereby members of excluded communities were given an opportunity to see, feel and believe that conflict transformation was really enabling the peaceful resolution of contending issues. However, *Janajati*, *Madheshis*, *Dalits* and women, are still waiting to be fully included in the process. As a former PLA and female, *Dalit* member of the CPN-Maoist expresses:

*I worked as a PLA member and combatant during the war. I was not integrated into the Nepal Army and the explanation I received was that the party would nominate me as a CA member, but my name was dropped out at the eleventh hour. Since I was a Dalit woman and didn't have access to the top brass among the leaders, my contributions to the People's War and the party were undermined, and this is so pathetic to me. We fought with the dream of emancipation from all kinds of discrimination and exclusion, including gender, but now this dream appears to be wrong...Of course, there are some tangible results of the Maoist Insurgency, such as the end of the Hindu King and Kingdom, and the establishment of a secular Republic, but as progress is progressively being reversed, I am observing that the old regime, and their actors, are slowing raising their heads, and the outcomes of such a decade-long devastating peoples' struggle is cooling down without any substantive achievements. (Informant G, 2013)*

## 4 Participation in State-building and Post-War Governance

### 4.1 The CPN (Maoist)'s transition from power contenders to power-holders

The Maoists came into power as abruptly as they lost it. There is a popular Nepali proverb, "*Jun Yogi Aene Kanai Chirua*" (Whichever Yogi came, he has a torn ear), which means that whoever came to power did not make any substantial difference. A modified version was popularised and reported by a taxi driver, referring to the Maoists as, "*Aru Yogikotachirikobhaenikanthiyo, tarayeskotakanaixaina*" (at least others had a torn ear, but this one doesn't have an ear). This means that although people gave their vote to the Maoists as the largest political party in the CA election, they could not bring forth their issues convincingly enough for the constitution-making process to be accomplished within the imparted time frame. As a result, the Maoists lost people's confidence, while their opponent forces also dismayed them by arguing that they should have made some compromises on their agenda in order to find some common ground with other political parties. It is obvious that the Maoists should play a pivotal role to convince other political parties to adopt their agendas, the revolutionary aspirations of the people and address the issues of excluded groups, along with the country as a whole. An intellectual close to the Maoists opined:

*We tried to destroy the old structure, but without tracing the blueprint of the new structure. So, where are we now? It is very baffling; I feel that we eventually got nowhere. A decade ago people joined the Maoist Insurgency with some objectives in mind that they wanted to see achieved, such as: corruption-free governance, social equality with justice, special measures for downtrodden and poverty-stricken groups, and so forth. But the leaders are articulating [their agendas] in an abstract manner and dealing with*

*subjective ideas where people could not find themselves. Nothing is clear, so the entire effort of the Maoist People's War was simply – so to say – dismissed.* (Informant B, 2013)

## 4.2 Representative bureaucracy: towards a more inclusive state?

The term 'representative bureaucracy' was first coined by Donald Kingsley in 1944, in his book with the same title. Since that time, there has been growing concern about the composition of bureaucracies and to what extent they represent diverse societal segments (Jamil and Dangal 2009). It is assumed that a more representative bureaucracy will ensure that bureaucratic decision-making takes into account diverse societal interests and that closer links are forged with citizens. It is also said that bureaucracy is the 'permanent government', so services delivered by a representative bureaucracy represent a lesser threat to a democratic system than a bureaucracy that represents a particular class or social group. In order to function, democracy needs to lie on its feet, and bureaucracy represents the essence of democracy.

Table 2: Percentile Comparison of Officer Level Bureaucrats in 2006 and 2012 (Excluding the Health Service)

	Broader Groups	Bureaucrat Level				Total	
		Special	First	Second	Third	No.	%
2006	Janajati	21.0	17.9	20.8	16.1	1,476	17.6
	Other Janajati	2.6	0.8	3.3	3.4	271	3.2
	Newar Janajati	18.4	17.1	17.5	12.7	1,205	14.4
	Madheshi	0.0	7.6	11.1	9.7	824	9.8
	Dalit	0.0	0.8	0.5	1.1	75	0.9
	Others	78.9	73.8	67.6	73.0	6,021	71.7
	Total (%)	100.0	100.0	100.0	100.0		100.0
	Total (No.)	38	397	2,136	5,525	8,096	
2012	Janajati	5.6	14.6	13.7	11.8	1,593	12.3
	Other Janajati	5.6	3.3	13.7	5.6	915	7.1
	Newar Janajati	0.0	11.3	0.0	6.3	678	5.2
	Madheshi	3.7	9.6	1.4	9.5	1,027	7.9
	Muslim	0.0	0.2	0.0	0.4	41	0.3
	Dalit	0.0	0.2	0.5	1.1	117	0.9
	Others	90.7	75.4	84.4	77.2	10,193	78.6
	Total (%)	100.0	100.0	100.0	100.0		100.0
	Total (No.)	54	513	2,526	9,878	12,971	

Source: Adapted from Awasthi et al. (2012)

Awasthi et al. (2012) argue that "Nepal has been a unitary state ever since the unification of the principalities of the country. The bureaucracy was under the control of the then ruling family and the people close to them used to be appointed in almost all key positions of the public service. This trend continued until the dawn of the democracy in 1950. The Civil Service Act passed in 1956 provisioned 14.85% of all open competition vacancies in the civil service for women, followed by indigenous nationalities (12.5%), *Madheshis* (9.9%), *Dalits* (4.05%) and candidates from backward regions (1.8%).<sup>17</sup> In the Nepal Police and the Armed Police Force, the inclusion of social entities was also provisioned. Of the total vacancies of all open competition, *Janajati* should account for

<sup>17</sup> Civil Service (Second Amendment) Act, 8 August 2007.

14.4%, followed by *Madheshis* (12.6%), women (9%), Dalits (6.75%), and backward regions (2.25 %).<sup>18</sup> However, when it comes to the State’s implementation of inclusive measures, positive discrimination does not appear to benefit the marginalised and highly deprived communities over the long run (see Table 2 above).

This comparative study on the inclusion of marginalised groups into the Nepalese administration reveals a negative trend. For example, *Janajati* accounted for 17.6% of bureaucrats in 2006, declining to 12.3% in 2012. Similar results were found for other social categories. Ironically, the affirmative action measures undertaken by the State benefited the dominant Hill Hindu High caste groups rather than the dominated or excluded groups.

### 4.3 A truly ‘Nepali’ army?

The reinstated Parliament made a Nine-point Declaration in 2006. Its Sub-article 3.6 states: “the organisation of the Royal Nepal Army (RNA) shall be inclusive and of a national character.” This declaration implied two crucial dimensions: first, it recognised that the old RNA had been an exclusive organisation where the Chhetri warrior class (tasked by Hindu norms to defend the country) had been prioritised for recruitment; and secondly, it clearly hinted that the ‘Nepal Army’ should not belong to a particular group, nor should it rely on the value of warriors as a superior class, in prejudice to others as inferior groups or classes. The name of the Royal Nepal Army (RNA) was also changed into the Nepal Army (NA).

However, the NA (2009) defended its exclusiveness and claimed that it had already adopted inclusive measures, even prior to the state restructuring process, by arguing that, “unlike the Gurkha Regiments of foreign armies which often have selective ethnic requirement practices, the NA is the national army of Nepal, and must therefore maintain a national character in terms of inclusion of all castes, ethnic communities, genders, regions and religions”. Moreover, it claimed that at a time when the Government of Nepal did not even have a policy on inclusion in the state organs, the NA was the only institution in Nepal which had a system of reservation for five different ethnic communities (*Magar, Gurung, Tamang, Kiranti/Limbu and Madheshi*).

The total strength of the five battalions reserved for ethnic communities is about 3,950 members, which amounts to 4.4% of the current army personnel. It sounds ironical that such a reservation provision would only concern 4% of the forces. The Army further claimed that in all its other units and sub-units, all castes, ethnic communities, religions and regions are given equal opportunity based on open competition. Whenever the question of demographic proportional representation is raised, the NA cynically retorts that recruitment is voluntary and competitive. Hence, it is argued that forcing citizens to sign up as a proportion of the demographic makeup of the Nation would violate the rights of the people who may not want to join the Army, and at the same time this would be unfair to those qualified and wishing to join. With regards to the actual composition of the NA (see Table 3), the personnel of Hill Hindu high caste origin account for 55.1 %, followed by *Janajati* (32.2%), *Dalits* (6.7 %), and *Madheshi* (6%). Compared to other groups, *Madheshis* are disproportionately recruited into the NA.

Awasthi et al. (2012) also carried out a comparative analysis of the NA, Armed Police Force (APF) and Nepal Police (NP) in 2009 and 2012, respectively, before and after the adoption of inclusive measures by the State (see Table 3 below). By comparison, the NP seems to be the most representative of the security organs. This might be explained by the general security services required at the local level. The NA and APF both seem to be skewed to the dominant groups, lumped together under the cynical term ‘others’. When comparing the two successive periods, the dominant groups’ share appears to have decreased by 2.9%, while the proportion of *Janajati* increased by 2.3%.

Table 3: Comparison of Inclusiveness in the Security Forces in 2009 and in 2012

Security Forces	2009	2012
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<sup>18</sup> November 2007 amendments to the Police Regulations of 2049 (1992) and the Armed Police Force Regulations of 2060 (2003).

	Janajati	Madheshi	Dalit	Others	Total	Janajati	Madheshi	Dalit	Others	Total
Nepal Army (NA)	27047 (29.9)	5446 (6.1)	5422 (6.0)	52483 (58.0)	90,398	29,221 (32.2)	5,433 (6.0)	6,115 (6.7)	50,038 (55.1)	90,807
Armed Police Force (APF)	NA	NA	NA	NA		9,000 (30.3)	400 (1.3)	955 (3.2)	19,370 (65.2)	29,725
Nepal Police (NP)	NA	NA	NA	NA		16542 (29.3)	10516 (18.5)	4381 (7.7)	25,224 (44.5)	56,663

Source: Adapted from Awasthi et al. (2012)

With regards to the inclusion of women into the security sector, Adhikari (2013) argues:

*...Women's participation in the military in Nepal is a long awaited issue for initiating an intense debate both at a conceptual and policy level. The issue still remains untouched by the historians or experts on security, who should seek to unveil the role of women in military and the wars in the past. The women themselves have neither tried to make it a worthwhile issue of national importance, nor do they realise the necessity of its mainstreaming through their ongoing social and women movements.*

However, women have been working in uniform for decades in Nepal. Adhikari (2013) highlights that women's status, performance, role in military institutions and treatment are contentious gender issues and have initiated a debate on whether women should serve in the army, especially in combat units, and how this would affect the combat readiness, cohesion and morale of the troops. Available data shows that altogether, there are about 1,000 female personnel serving in the NA in different capacities. As far as inclusion measures are concerned, two groups are represented: the Hill Hindu high caste and the *Janajati*. Of the total women serving in the NA, the Hill Hindu high caste accounts for almost 3/4 against 1/4 of *Janajati*. There appears to be no *Dalit* or *Madheshi* women serving in the NA.

Finally, one needs to address the issue of integrating the Maoist combatants into the Army as part of the new State's inclusionary policy. Observers and NA personnel had estimated the strength of the PLA at between 5,000 and 10,000 at the height of the war. It came as a bit of a surprise when over 32,000 combatants showed up to the UN-run verification process in 2007 and were registered in the cantonments. Approximately 19,600 were later verified as being members of the PLA (ICG 2011). The Army has consistently argued that the absorption of large numbers of Maoist combatants would jeopardise the organisation's professional and apolitical nature. There was a big tug of war between the main political parties on whether the PLA would have to be integrated into the NA or not. But in order to transform a militarised political force into a civilian political party, it was imperative to merge the two armed forces into one. Subsequently, the integration process of former Maoist combatants was formally completed with the induction of 70 Maoist commanders into the NA as lieutenants, while 1,352 former combatants entered the junior ranks of the national army after completing a basic training course. All other former PLA members went into voluntary retirement with a so-called 'rehabilitation package'. Nearly a decade after the CPA, there are still ongoing speculations that remaining PLAs who are trained and experienced in insurgency might turn back to armed rebellion if political parties do not reach a meaningful political settlement.

## 5 Concluding Remarks

### 5.1 A question of identity

The question of collective identity as a nation is not new, nor is it – as its opponents depict it to be – an instrumental issue. Rather, it is engrained in history and has remained unresolved ever since the nation-building process initiated by King Prithvi Narayan Shah commenced. He explicitly opined that he was the King of

Magarat, a territory largely inhabited by *Magar* indigenous nationalities. The dichotomies of 'nations' vs. 'nationalities' of indigenous peoples, or a Hindu Nation vs. a Hindu Kingdom (State) of Hindu religious communities, remain an unresolved debate.

The Maoists adopted an instrumental approach to this question to support their class struggle agenda. They attempted to transform collective grievances into a collective force. The *Madheshi* strongly sensed that the Maoists would not adopt their collective grievance, so they left the Maoist party earlier than other ethnic communities such as the *Janajati*. A *Janajati* intellectual who was formerly a Maoist supporter opines:

*If somebody asked me whether I prefer an 'identity' or 'bread', I would first go for identity, because I cannot imagine my presence [existence] without my acquired [birth-given] identity for even a second. Rather, I can survive with an empty stomach for a week or more. If I am a person with zero identity, do you think that you feel worthy to meet me or to be interested in any conversation with me? It would be worthless for you to meet me, if I don't have an exclusive identity. You are not concerned whether I had my bread or not. ... Firstly, when I do exist with some worthy existence or identity, then bread comes to keep it alive. I mean, bread comes second.* (Informant C, 2013)

The need for state-building to encompass and recognise the issue of collective identity is, to some extent, a larger nation-making endeavour. The democracy which was well chanted during the 1950s and 1990s could not perceive it, and so it was treated as a peripheral issue (Hutt 1991), irrelevant for matters of constitution-writing. However, the acclaimed 'best constitution of the world' [in 1990] became torn after just five years.

## 5.2 Unfulfilled promises

Every armed conflict in Nepal has ended through negotiation, leaving the main agenda of change as per the will of the people. Although the NC also rose up in arms against the Rana regime, in support of multiparty democracy, it ultimately failed to establish inclusive and sustained democracy over the next six decades. Historically, the Maoists became the last armed insurgents to fight for the new democracy. Eventually, they too turned to multiparty democracy; nothing more and nothing less. However, armed insurgencies for democracy or a new democracy have been used or misused. They eventually left out many other issues which they were fighting for as part of their struggles. In retrospect, a human rights activist and university lecturer reflects on these past insurgencies:

*It is unfortunate that Nepal was unable to institutionalise democracy from the very beginning...In all past events, Nepal has sacrificed [a great deal] for the sake of deep and meaningful democracy, but it couldn't institutionalise the Madheshi issues, nor other issues, such as the Janajati and others, in a democratic set up. Now the question is when and where the next movement is going to happen for the real sake of democracy? Peoples' rights are still awaited.* (Informant A, 2013)

A former Maoist local judge and intellectual also argued:

*In essence, we don't have a proletariat; we simply have an elite group that often talks about proletariat, peasants and poor people until s/he gets the right opportunity [to gain access to power]. When that opportunity comes, s/he stops talking about the proletariat, the peasants and the landless, poor people.* (Informant B, 2013)

In the discourse of ideologically-driven political forces, the proletariat and its emancipation has been very much talked about for the last six decades. Yet in the struggle for emancipation, only a handful of people have benefited from each and every political transition. *Madheshis*, *Janajati*, *Dalits* and women all sought to achieve a dignified future in every movement, so they joined-in every time. Yet, the major change occurred beyond the power contenders, and failed to incorporate their issues and demands.

The *Madheshi's* and *Janajati's* grievances resurfaced when the Maoists were in an advanced stage of the peace negotiations in 2007. Both communities expressed their resentment in a symbolic protest, where they set fire to some pages of the Interim Constitution in the heart of Kathmandu. The State gave some concession to the *Janajatis* and did not intervene during the actual protest, but afterwards *Madheshis* were arrested, brutally tortured, and more than three dozen activists were killed. As a result, the Madhesh region began to burn and a sentiment of hatred against the Hill people burst out. It was pictured as a 'third People's Movement' or a

'Madhesh Awakening'. Many armed groups came out due to the failure of Madheshi parties and politics to bring about justice and autonomy for the people.

Another interviewee, a Maoist intellectual, reiterates:

*[The Maoist Insurgency was a] holistic war that comprised ethnic, regional, class, and gender agendas, so all people participated. However, in practice, what it has achieved is difficult to say and justify at this moment; since reactionary and conservative forces are also there and they tend to backtrack the whole issue. Prachand [Chairman of the CPN (M)] himself is apparently unable to stand strongly... So, it is difficult to comprehend the achievements that the revolution has gained. (Informant C, 2013)*

What the decade-long Maoist Insurgency has raised and achieved is a matter of serious debate. Even radical communist groups learned the hard lesson: what Comrade Mao Zedong did in China could not be achieved in the context of Nepal. It was neither relevant spatially nor temporally, given Nepal's difficult geographical and physical conditions. A communist regime could never be envisaged in the context of feudal capitalism, being deprived from labourers from their surplus labour in the West and the need to establish a dictatorship of a proletariat. This was deemed to be irrelevant in Nepal.

### 5.3 Prospects for a new political settlement and risks of conflict relapse

Since both state and non-state parties signed the CPA, Nepal has already spent more than seven years hoping for the establishment of a meaningful political settlement – understood as an expression of a 'common understanding' between all parties on how to organise and exercise power amidst elites. The second CA proceeded from 20 January 2014, and its members expressed their commitment to promulgate a new constitution by 22 January 2015; however, the ruling parties NC and CPN (UML), and the opposition parties led by the UCPN (Maoist), could not fulfil these expectations. The contentious issues that had emerged in the first CA continue to cause a deadlock in the second Assembly, despite the changed composition of the CA. Logan (2015) argues, "To an outsider, what really appears to be happening is that the same handful of 'leaders' are jockeying in the back rooms for political and personal gains at the expense of nearly 30 million people".

Meanwhile, *Janajati*, *Dalits*, *Madheshis* and women have remained subordinates to the Hill Hindu caste-led political parties. Although the UCPN (M),<sup>19</sup> NC and CPN (UML) agreed to introduce appropriate representation measures within the CA, they pursued their own agendas and became united in their respective caucuses. This led to the paralysis of the first CA, and its eventual dismissal before promulgating a constitution. This was a clear hint that the dominant political groups are cynical and even illiberal when it comes to power-sharing.

After 18 months of bureaucratic government, the General Election of November 2013 led to the formation of a new CA. However, the main contending forces such as the Maoists and the *Madheshi* Movement were badly wiped out in the electoral contest, and presently find themselves deprived of a constitution-making job. A large faction of Maoists (around senior leader Baidhya), who do not believe that the Westminster system of liberal democracy may give true emancipation to suppressed people, split from the UCPN (M) and boycotted the CA Election. Since about 8% of the former PLA became integrated into the NA, 17,000 demobilised combatants were left out with extensive experience and knowledge of insurgency. They have the power to exert tremendous external pressure on the CA. The question is how tactfully power contenders will play at this juncture to ensure their rights through the CA, since they are still in the hard grip of political parties. Their fate became even more uncertain in the second CA, since the Maoists, who have claimed to represent their grievances, have fallen down to the third position in the Assembly. According to a Maoist intellectual:

*Narankaji Shrestha,<sup>20</sup> Madhav Nepal and Jhalanath,<sup>21</sup> and every leader, was ready to let Mohan Baidhya face the Second CA election, but he was simply left out. ... So, the conflict is prevailing undercurrent and we need to understand that there are many people including foreigners, donors and so on, who support the*

<sup>19</sup> The CPN (Maoist) added the prefix 'United' to its name (hence the acronym UCPN (M)) after merging with the CPN (Unity Centre-Masal) in January 2009.

<sup>20</sup> Mr. Shrestha is the vice-chair of the UCPN (M).

<sup>21</sup> Mr. Jhalanath and Madhav Nepal are the most senior leaders of the CPN (UML).

unyielding CA process. On the other hand, out of 19,000 [UNMIN-verified] combatants, hardly 1,500 integrated into the NA. What about the remaining 17,000? They are trained people, so they know how to fight, how to make ammunitions, and possibly, where to go and get those arms and ammunitions. So, the question is when and how the armed conflict will relapse. (Informant B, 2013)

In conclusion, the Nepali State has, from its very inception, been made up of elites rather than of people's representatives. The undefined conflict enduring from the beginning, is between the elites and interest groups. This resonates with Bentley's view (cited in Manely 2010), that the Marxist theory of class struggle was a "crude form of group theory". He further argues that the failure of the so-called proletariat to "unite behind a common interest and seize power" proved Marx wrong. According to him, a proletariat class such as Marx and Engels conceived, simply did not exist. Thus the Nepali state which was formed under the domination of the Hindu religion needs to be shared among other groups according to the principle of 'united in diversity', through a federal political arrangement. The first CA tried to resolve this issue by designing federal units based on 'identity' and 'viability', but that proved to be unacceptable for the dominant group, who have enforced a status quo, and it is yet unclear what the new state structure will look like. As a result, even though walking out of the CA process is not their immediate policy, the UCPN (M) and other opposition parties are mentally prepared to do so, in case the ruling parties continue their efforts to promulgate a constitution by sidelining them.

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## Author Interviews

- Informant 'A'**: Lecturer in Janakpur Campus, Human Rights activist, MA in English, politically in favour of Madheshi peoples, aged 42. 10 December, 2013.
- Informant 'B'**: Former adviser and judge of Jan Adalat [People's Court as then formed by Maoists), CPN Maoist, Jhapa, aged 55. 6 December, 2013.
- Informant 'C'**: Farmer, Communist thinker from the Limbu Janajati Community, aged 62. 8 December, 2013.
- Informant 'D'**: Kamal Gurung, District Secretary, CPN (UML), full-time Party Leader, aged 52. 20 December, 2013.
- Informant 'E'**: Maulana, former Vice-President of the Nepal Muslim Organisation, Vice-President of *DharmikSadbhabSanjal*, aged 60. 25 December, 2013.
- Informant 'F'**: Leader of Madheshi Peoples' Right Forum, Nepal. Dhanusha, aged 39. 15 December, 2013.
- Informant 'G'**: Former PLA, Dalit Woman, CPN-Maoist (Baidya), aged 32. 7 December, 2013.
- Informant 'H'**: Leader of Tharu Kalyankari Sabha, Banke, Vice-president of NEFIN, Banke, aged 37. 25 December, 2013.
- Informant 'I'**: Leader of the Nepali Congress, Banke, aged 34. 21 December, 2013.
- Informant 'J'**: Central Committee Member, Cultural Department of UCPN (Maoist), Dalit, Former school teacher, Morang, aged 65. 7 December, 2013.
- Informant 'K'**: Commander of Limbuwan Volunteers (LV), Sanghiya Limbuwan Raajya Parisad (Federal Limbuwan State Council), aged 38. 7 December, 2013.