INCLUSIVE CONSTITUTION BUILDING

Identifying Common Ground through Political Dialogues on Contentious Constitutional Issues & Indigenous Peoples' Concerns in Nepal

INTERNATIONAL **IDEA**

INSTITUTE FOR
DEMOCRACY AND
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NEFIN
नेपाल आदिवासी जनजाती महासंघ
Nepal Federation of Indigenous Nationalities

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FOREWORD

The ten year insurgency in Nepal ended when all parties agreed to move forward to build an inclusive society. This principle of inclusiveness was enshrined in the Comprehensive Peace Agreement (2006). Six years later, Indigenous Peoples demands for inclusion were cited by some as the reason for the failure of the first Constituent Assembly (2008-12). The second Constituent Assembly (2013-2017)renewed the work of drafting Nepal's new constitution. At this juncture the International Institute for Democracy and Electoral Assistance (International IDEA) and the Nepal Federation of Indigenous Nationalities (NEFIN) considered it critical to find a way for all Nepali's, Indigenous Peoples (IPs) and non-Indigenous Peoples (non-IPs), to be part of the solution. International IDEA and NEFIN initiated discussions with Nepal's political parties on how to increase understanding and build trust among IPs, non-IPs and the political parties. All parties agreed to support a series of dialogues between IP and non-IP Constituent Assembly (CA) Members and political leaders to find space for agreement on difficult constitutional issues – to find common ground. This support resulted in the submission of a list of 'common ground solutions' to the Speaker of the CA. The submission was made and received as a resource to assist with breaking the political deadlock on these issues in Nepal.

International IDEA has been supporting Nepal's peace and constitution building processes since 2004.It is an inter-governmental organization with member states from all over the world, representing all continents, including Asia, with a mandate to support sustainable democracy worldwide. International IDEA has supported the constitution writing process in Nepal since 2004, when the very first debates about constitution reform began. Since that time, Nepal has gone a long way in consolidating the peace process as well as its democracy and International IDEA is honored to continue to support these processes.
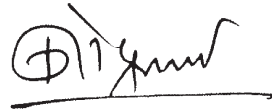
NEFIN is an autonomous and politically non-partisan, Nepalnon-government organization representing 56 indigenous member organizations throughout the Terai, Hills and Himalayas of Nepal.It is a member of the United Nation's Permanent Forum on Indigenous Issues (UNPFII) and of the Asian Indigenous People's Pact (AIPP). NEFIN's vision is to establish a secular, federal Republic of Nepal where diverse ethnic, linguistic, cultural, religious and territorial Indigenous Nationalities are treated equally. NEFIN is a key stakeholder in Nepal's constitution building process and is committed to promoting social inclusion for IP's and non-IPs in Nepal's new federal structure.

This publication, *Inclusive Constitution Writing: Identifying Common Ground through Political Dialogues on Contentious Constitutional Issues & Indigenous Peoples' Concerns in Nepal,* is based on the dialogue series and is being published by International IDEA and NEFIN to inspire practitioners and constitution makers in Nepal and abroad to support dialogues to seek common ground and promote social harmony.

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ACKNOWLEDGEMENTS

LIST OF ACRONYMS

CA	Constituent Assembly
CA-I	First Constituent Assembly (2008-2012)
CA-II	Second Constituent Assembly (2013-present)
CPN-UML	Communist Party of Nepal – Unified Marxist Leninist
FPTP	First Past The Post [electoral system]
MMPR	Mixed Member Proportional Representation [electoral system]
NC	Nepali Congress
NEFIN	Nepal Federation of Indigenous Nationalities
PR	Proportional Representation [electoral system]
SRDSP	State Restructuring and Distribution of State Powers Committee
UCPN-M	Unified Communist Party of Nepal - Maoist
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

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I. INTRODUCTION

Image 1: Dialogue participants during the dialogue on State Restructuring

In 2006 leaders came together to sign the Nepal Comprehensive Peace Accord that signaled the end of a 10-year armed conflict. A historic moment, but the actual hard work of building a new, stable and peaceful nation had only just begun. Today, Nepal has been working on the foundations of this new stable and inclusive democracy for more than 8 years. At the very heart of the process has been the drafting of a new constitution that will protect the fundamental rights and interests of all citizens. This publication outlines some of the major contentions that have arisen during the process, at times severely threatening the peace process. However, it also shows that bringing together opposing groups and finding common among them *is* possible. Based on a series of political dialogues organized by the Nepal Federation of Indigenous Nationalities (NEFIN) and International IDEA, it outlines the steps taken to create a safe space for meaningful interaction and the resulting consensus that was reached on some of Nepal's most pressing issues.

Background: Half a Decade of Constitution Writing in Nepal

Nepal counts 59 officially recognized indigenous tribes with their own mother language, history and distinct cultural identity. However, this cultural richness has not been reflected in the country's history of unification and nation building. Although indigenous peoples make up around 37 percent of Nepal's population, they have long remained at the very margins of state and society, being excluded from major economic, social and political processes. Moreover, their various identities were not reflected in the national identity as projected by the Hindu monarchy that privileged high caste Hindu males at the expense of the rest of the population. Discontent with this status quo was one of the drivers behind the armed conflict that lasted from 1996 to 2006.

Given the country's history of inequality, exclusion and resulting unrest, it is crucial that the new, post-conflict democracy is firmly built on principles of

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equality and inclusiveness. It was therefore agreed that the new constitution must enshrine these principles and ensure the rights, equality and inclusion of all citizens. Indigenous peoples and other marginalized groups[1] have demanded ownership in constitution making and have put forward their own agendas. Moreover, representatives of many of the formerly excluded groups officially entered the political arena in 2008, following the election of the first Constituent Assembly (CA-I) tasked with writing the new constitution. Indigenous peoples secured an unprecedented 37 percent of seats, matching their overall percentage of Nepal's population.

This new diversity of backgrounds and perspectives means that it is more important than ever that consensus is forged to build a stable future for Nepal. While crucial, it is certainly not easy. Lack of consensus and misconceptions around the rights, demands and concerns

> **Box 1: Key Contentious Issues**
>
> - State Restructuring
> - Electoral System
> - Form of Government
> - Judicial System

of indigenous peoples have contributed to the stalling of the constitution writing process. When the tenure of the CA-I ended in 2012, key issues remained unresolved, forcing the CA to disband without finalizing a constitution. A new CA (CA-II) was elected in 2013, taking ownership of consensus reached and key contentious issues identified by CA-I (see Box 1). The second CA has equally struggled to resolve the issues that led to CA-I's failure to promulgate the new constitution. The CA-II's self-imposed constitution promulgation deadline of 22 January 2015 came and went without the parties being able to find a way out of the deadlock.

What has therefore become very clear over the past few years is that the importance of consensus building cannot be underestimated. While the situation may at times seem disheartening, this publication aims to show that inclusive constitution writing and consensus building are possible. It describes a series of high-level political dialogues, organized and supported by NEFIN and International IDEA between April and September 2014. These dialogues succeeded in building concrete consensus options on the four most debated issues in the constitution-writing process. The next chapter (Chapter II) describes the how, what and why of the dialogues, while an overview of the issues, options and outcomes of the dialogues can be found in Chapter III. The publication concludes with Chapter IV, a brief recap of dialogue outcomes and lessons that can be drawn from this experience.

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1. Including, but not limited to women, third gender, Madhesis, Dalits, Muslims and various caste groups.

II. THE DIALOGUES

Image 2: Participant speaking during the dialogue on State Restructuring

Introduction

As CA-II commenced the constitution drafting process in early 2014, it sent out a clear message that consensus building would be at the heart of this process. Specifically the Political Dialogue and Consensus Committee would hold the mandate to forge consensus on contentious issues that had proven insurmountable for CA-I. Following intensive consultations with various political parties and influential leaders, NEFIN and International IDEA realized that the best way to support this ongoing process of consensus building was through political dialogues. In order to make a concrete contribution towards the constitution writing process, options for compromise on the four major contentious issues[2] were forged during the dialogues.

One of the program's goals was to build a common understanding of indigenous rights issues. As mentioned in the introduction, these are by no means marginal issues and have in fact been critical sticking points in the constitution-writing process to date. They are at the heart of the four key contentious issues and have led to increasing polarization among parties and groups. The dialogue series therefore was consciously designed to build intergroup trust and identify concrete options for consensus. By bringing indigenous leaders together with key political party decision makers, the series provided a platform for various voices and perspectives.

> **Political Dialogue**
>
> Political dialogues bring various (conflicting) political groups together around the table and aim to overcome these differences while building mutual understanding and cooperation.

NEFIN was in a suitable position to convene and support the dialogues given its broad support base among indigenous groups across the country, good standing among political parties and history of active promotion of inclusiveness. International IDEA, with its long history of promoting

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2.   As identified by the CA Constitutional Records Study and Determination Committee, see Box 1.

democracy in countries around the world, took on a strong supportive role in organizing the dialogues and providing technical support where appropriate[3].

Dialogue Preparation

As mentioned, an intensive consultation process with various political parties and party leaders helped to give shape to the dialogues. While the goal of the dialogues was to be as inclusive as possible, participants needed to be leaders with a level of influence in their parties and in the CA process. Since not only political ideology but also identity and group interests play an important role in the

> "In dialogue, the intention is not to advocate but to inquire; not to argue but to explore; not to convince but to discover."
>
> Louise Diamond, as quoted in International IDEA et al. Democratic Dialogue – A Handbook for Practitioners

contentious issues, leaders of such social groups were also considered as important actors that should be at the dialogue table. In the end, dialogue participants represented the major political parties as well as regional ethnic parties and groups, achieving a relatively high level of social diversity. For more information on the selection of participants and facilitators see Box 2 and 3. An overview of the participants' characteristics can be found in figures 1-3.

A key ingredient that was taken into consideration throughout the planning and execution of the dialogues was broad political ownership. This was to ensure that progress made would not remain confined to the dialogue tables, but would have a wider political impact. Communication and linkage with political parties was solidified through key political party figures who took part in the dialogues and agreed to communicate the dialogue achievements to their party leadership. Minutes of each dialogue were shared with party leadership not partaking in the dialogues to keep them informed. By maintaining strong lines of communication, support for the dialogues was acquired, misunderstandings avoided and the dialogues remained a trusted forum for consensus building. In this way, they more effectively contributed to the ongoing consensus building and constitution writing process.

Another strategy to strengthen the dialogues was the production of an option paper for each dialogue, shared beforehand with facilitators and participants. They served to inform the discussions and help to quickly pinpoint the main controversies, as well as find possible points of compromise. The option papers included background information for each issue, party positions, election manifesto commitments, points of contention and possible compromise options. Compromise options were based on previously floated ideas (by CA-I, by party leaders) or suggestions from experts. The information was not meant to direct the debate one way or another, but to provide participants with detailed and concrete information that would help them to articulate their arguments during the dialogue and work towards tangible outcomes within a short time span.

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3.   International IDEA took on a solely supportive role in facilitating national initiative. Options and opinions put forward in the dialogues are those of the participants and facilitators, not those of International IDEA.

Box 2: Dialogue Facilitators

- Non-controversial figures.
- Impartial to party positions.
- Ability to pinpoint key differences and suggest options for compromise.
- Expertise on constitutional issues; sensitivity on indigenous issues.

Box 3: Dialogue Teams

- Participants from NC, CPN-UML, UCPN-M, Madhesi parties and smaller ethnic/regional parties.
- Inclusive of indigenous peoples, Brahmins, Chhetris and Madhesis.
- 12 - 25 participants.
- Selection based on: influence in their parties/groups; expertise on indigenous issues; potential influence on the CA process.

The Dialogue Participants

A fairly balanced mix of participants from different political parties was achieved (see Figure 1). A majority of participants identified as indigenous peoples (also: Adhibasi Janajati, see Figure 2). This can be explained by one of the specific aims of the dialogues to address indigenous concerns and testifies to the great interest many indigenous peoples take in the issues discussed. However, participants from Brahmin, Chhetri and Madhesi backgrounds equally contributed to the debates. While representatives from two major Madhesi based political parties took part in the dialogue, few Madhesi candidates from other political parties joined, explaining the relatively low overall percentage of Madhesi participants. As for the gender balance, a number of female CA members participated and greatly contributed to the dialogues. Nevertheless, due to a wider structural gender imbalance in Nepali politics – especially in the more politically influential positions favored for dialogue participation – their overall number unfortunately remained low compared to that of men (see Figure 3). Most participants took part in a number of dialogues, ensuring continuity and progressive consensus building throughout the series.

The Dialogues in Action

Two or more politically impartial facilitators with expertise relevant to the issue and from different social backgrounds led the dialogues. They made brief presentations outlining the key points of contention and different options for compromise. The merits of each option had to be presented clearly and options had to correspond to Nepal's political reality. Additionally, some facilitators outlined cases from other countries in order to learn from other experiences and bring the debate onto more neutral ground. Participants were free to ask for clarifications and could also contribute options not mentioned during the presentations. Similar to the option papers, the nature of the presentations was purely supportive, aimed at promoting clarity on the issue and stimulating fruitful dialogue.

Presentations were followed by a discussion of the various options. All participants were given time to participate in the discussion. They expressed their preference and gave justifications as to why a particular option had their preference. Participants were not expected to defy their parties' decisions, but they were asked to contribute to building consensus in the most constructive way possible. To keep the focus on achieving concrete progress, participants were reminded to stay on topic and within the allotted time.

After the discussion, the group tried to draw a conclusion from the preferences expressed during the dialogue. Participants presented their first option (naturally their party's position), as well as a second option. The latter was intended to serve consensus building. Second options showed that participants had a level of flexibility on the issue, even if they did not agree in their first preference. Common ground identified through the dialogues therefore did not represent full agreement, but outlined options that could be acceptable to all. The conclusions drawn from the various dialogues were compiled in a report and endorsed by the participants at the end of the series. The same report was submitted to the Political Dialogue and Consensus Committee.

Efforts were made to establish understanding and trust among the participants. All sides were encouraged to use restrained language and adopt moderate positions. Nonetheless, discussion was at times heated and emotional, but significant progress was also made.

Box 4: Principles of Participation

1. Open discussion: participants are not bound to official ideological lines and ideas presented cannot be questioned based on party positions. Ideas are discussed openly based on merit or appropriateness to the country. Compromise can only be reached if participants can move beyond strict party positions.
2. Non-binding: Options endorsed and views expressed during the dialogue are not binding outside of the dialogue. Participants will not be asked to accept positions in other forums based on their views expressed during the dialogue. No views expressed amount to concession of the party line. Personal statements will not be publicized through the media or other channels.
3. Consensus building aim: The goal of the dialogues is to support consensus building. The dialogues are not a forum to advocate for party positions or other ideological stances. They are not to be used to review or call into question consensus already reached during the constitution writing process.
4. Constructive ideas: In order to find common ground, or the common space between opposing ideas, viable options for compromise need to be put forward rather than hardline party positions. In that way the dialogue can be constructive and forward-looking, as well as creating ownership among all participants.

Figure 1: Dialogue Participation by Political Party
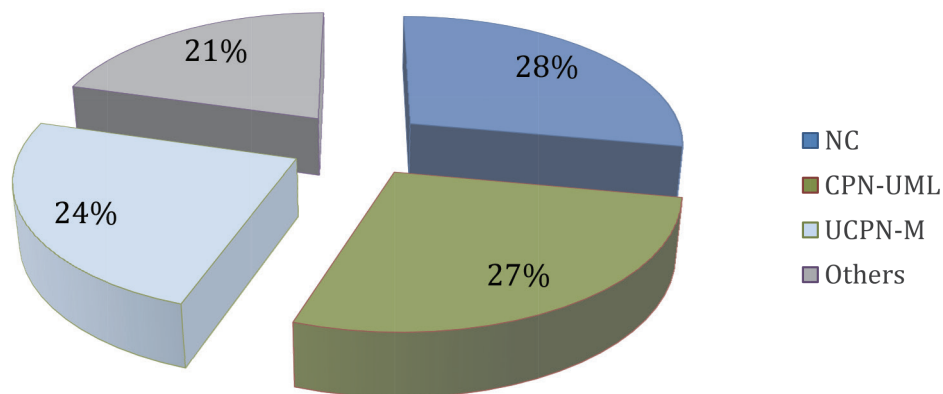
Figure 2: Dialogue Participation by Ethnicity
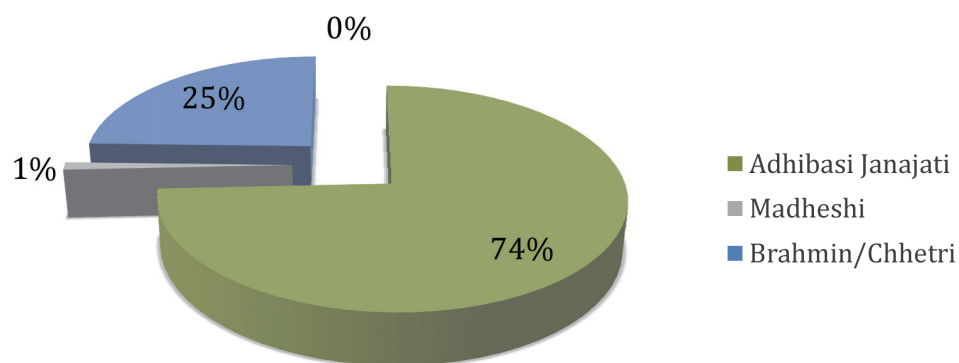
Figure 3: Dialogue Participation by Gender
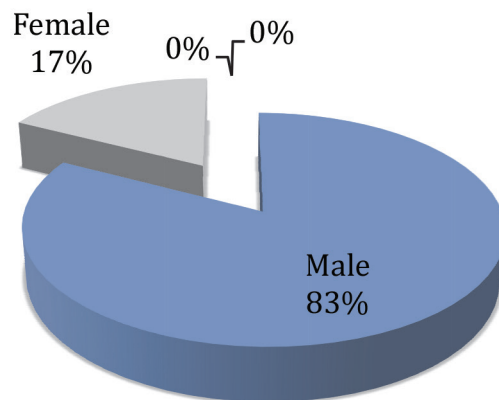
III. THE DIALOGUES: ISSUES AND OUTCOMES

Image 3: Dialogue participants during the dialogue on Form of Government

During the dialogues, it was unanimously confirmed that inclusion should be institutionalized through the new constitution. *How* exactly this is to be done, however, was the main objective of the dialogue series. This chapter delves deeper into the substance of each of the key contentious issues. It provides an overview of each issue (outlining the background, the main contentions and possible compromise options), followed by the outcomes of the dialogues organized on the particular issue.

1. ELECTORAL SYSTEM DESIGN[4]

> *"The choice of an electoral system is one of the most important institutional decisions for any democracy. In almost all cases the choice of a particular electoral system has a profound effect on the future political life of the country concerned."*
>
> International IDEA
> Electoral System Design Handbook

Background

The best way to ensure inclusion in a democratic society is via the design of its electoral system. As Nepal's recent history has shown, a failure to include large parts of the population can lead to severe unrest and alienation from the State. Therefore, the electoral system design is crucial for consolidating peace processes and laying the groundwork for a sustainable future. From the beginning of their movement and throughout Nepal's peace negotiations and transitional process, indigenous peoples have demanded that Nepal's electoral system is designed in a way that guarantees their full and fair inclusion. The main principle advocated to ensure this is the principle of proportional representation. Following this popular demand, the principle was enshrined in (amongst others) the 2006 Comprehensive Peace Agreement and the 2007 Interim Constitution.

> **Proportional Representation**
>
> Principle: participation of groups in different organs and levels of the state in proportion to their overall share in the population

When designing the electoral system for the CA-I elections, the major political parties were in favor of using a First Past The Post (FPTP) system, but Indigenous peoples, alongside women, Dalits and Madhesis argued that this would not result in any significant inclusion of previously excluded groups. In the end, a mixed system was agreed on, where 240 CA members were chosen through a FPTP contest; 350 through a Proportional Representation (PR) system; and an additional 26 members were chosen by the Council of Ministers.

Following implementation of this mixed system the 2008 CA elections resulted in the most representative government body in Nepal's history. The 2013 elections for the Second CA were similarly quite successful in ensuring representation of women and different caste and ethnic groups.

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4.   Outlines of each of the contentious issues in this chapter are based on the NEFIN and International IDEA option papers and background paper on Indigenous People's Issues in Nepal's Constitution-Writing Process. For more details and access to the full papers, contact International IDEA at info-nepal@idea.int.

Issue

The CA-I was committed to inclusion on the basis of proportionality and this same principle was included in the Preliminary Draft Constitution (2013)[5]. Nevertheless, exactly how this would be translated into the design of the future electoral system remained contentious, and was still unresolved when CA-I was dissolved in 2012.

> ### First Past The Post (FPTP):
>
> A single-winner voting system. The winning candidate is the one who gains more votes than any other candidate. For CA-I and CA-II elections, Nepal was divided in 240 electoral constituencies. Each elected one member to the CA.
>
> ### Proportional Representation (PR)
>
> An electoral system in which each party is assigned a number of seats proportional to the amount of votes it received. In case of a closed PR-list, the electorate casts a vote for a political party rather than an individual candidate on the party list.). For CA-I and CA-II elections 335 seats were filled in this way.

Indigenous peoples, as well as other marginalized groups continue to demand an electoral system that guarantees their full proportional representation in future elected state bodies, including the parliament. Major political parties on the other hand may outwardly accept the idea of inclusion and proportional representation, yet throughout CA-I and CA-II party leaders have pushed to reduce or even eliminate the share of PR seats in the future electoral system.

One argument leveraged against a PR system is that promoting participation on the basis of caste, gender and/or ethnicity worsens intergroup tensions rather than building a society where such differences no longer matter. It is also argued that by selecting candidates based on gender or identity, it violates the democratic principle of formal equality under which everyone should be equal in the eyes of the law and the State. Moreover, some argue it clashes with the democratic principle that people should vote along lines of interest and ideology as opposed to identity. Proponents on the other hand stress the concept of substantive equality, which allows for (temporary) special measures and positive discrimination to account for historic inequalities and disadvantages.

There are also a number of failings of the current PR system that cause concern among both its opponents and proponents. One is that 'creamy layers' of indigenous, Madhesi and women's groups benefit from the system much more than other more marginalized members. Indeed, the system has yielded the relative 'overrepresentation' of some indigenous tribes, while others remained excluded. In CA-I, 29 out of Nepal's 59 recognized indigenous nationalities remained completely without representation. Another concern is that the current system gives party leaders too much influence in filling the PR seats. Since there is no predetermined system according to which PR seats should

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5.   See Concept Papers and Preliminary Drafts of CA-1 at www.can.gov.np.

be filled, the final selection of candidates from the PR list is largely left to the discretion of the party leadership.

Compromise Options

Mixed Electoral System (as it is): As mentioned before, this system was originally developed as a compromise between political parties and marginalized groups before CA-I elections. It succeeded in dramatically increasing the representation of indigenous peoples and other marginalized groups compared to previous Government bodies in Nepal.

That said, a number of changes to the system could be made to improve its functioning. For example, a predetermined order of the candidates on the PR list could be submitted to the Election Commission prior to elections. This would leave less room for corruption and favoritism while filling captured seats after elections. Still more transparency would be gained by making the lists public prior to elections, so the electorate can make an informed decision, taking into consideration the inclusiveness (or absence thereof) of the list. Another improvement could be made through designing more nuanced categories of marginalized groups. For example, layered quotas could help ensure that even the most marginalized communities are represented rather than just the relatively privileged ones.

Mixed Member Proportional Representation System (MMPR):
This system was put forward by the CA-I Committee on Determination of the Form of the Legislative Body. It could potentially fulfill marginalized groups' demands for proportional representation, while still maintaining the central place of political parties in Nepal's democracy. The current mixed system only guarantees proportional representation within the PR seats rather than in the CA overall. The MMPR system on the other hand can use the PR lists to compensate for the results of the FPTP election. After the elections, FPTP results are first analyzed and looking at the demographic breakdown of the elected candidates, the PR list is used to account for any disparities in overall representation.

> **Mixed Member Proportional Representation System (MMPR):**
>
> A mixed system in which all voters use the first electoral system, usually a plurality/majority system (such as FPTP), to elect a number of representatives. The remaining seats are then allocated to parties and groups using the second electoral system, (normally list PR) in a way that compensates for any disproportionality resulting from the first electoral system.

The original Committee proposal fell short in that it only ensured compensatory representation of women, not that of other marginalized groups. However, if such a provision was added, MMPR could be a viable electoral system design for Nepal.

Dialogue Outcomes
Electoral System Design Dialogue, 27 May 2014, Kathmandu

Being somewhat less contentious than some of the other issues, this dialogue yielded most progress in developing a detailed option proposal acceptable to the various political parties and indigenous peoples alike. At the end of the dialogue, it was noted that *no* outstanding contentious issues remained for electoral system design.

Common ground identified:

- The electoral system should guarantee proportional representation for all groups on the basis of their share of the overall population (as determined by the national census).
- The electoral system should include positive discrimination measures that will address the underrepresentation of gender and social groups, including indigenous peoples.
- The best compromise option to ensure inclusivity while maintaining the principle of multiparty competition in Nepal's nascent democracy is an MMPR system.
- The PR race should be compensatory, in accordance with the principles of an MMPR system – ensuring representation of groups who do not obtain proportional representation through the FPTP race.
- For the FPTP race, the law should guarantee inclusive candidacy on the basis of the principle of proportional representation.
- Campaign financing should be regulated in order to prevent the costs of participating in elections becoming prohibitively high (particularly affecting already marginalized candidates).
- For the PR race, a closed list of candidates should be made public and amendments to the published list should not be permitted. Candidates on the list should evenly rotate through ethnic and gender categories. This will limit the party chair's discretion in selecting favored PR candidates post-election.
- For very small and/or highly marginalized groups, a basket of seats should be reserved and filled on a rotating basis to ensure representation and inclusion of these groups.
- An FPTP system should be adopted for provincial elections.
- As with the national level, provisions should be made at the provincial level to guarantee inclusive candidacy on the basis of proportional representation and to regulate campaigning costs and methods.
- For local government elections, FPTP should be used to elect the President and Vice President, but a PR system could be used to elect the other members.
- It was also noted that provisions should be made to decrease inequality in the financial and technical capacities of candidates.

2. STATE RESTRUCTURING

> *"State restructuring is a unique way to recognize the historic sovereignty and distinct identities of indigenous peoples and simultaneously practically redistribute and devolve power around Nepal."*
>
> NEFIN and International IDEA
> Background Paper: Indigenous Peoples Issues in Nepal's Constitution Writing Process

Background

'State restructuring' entails a comprehensive and radical change in the nature and characteristics of the State. Given the former monarchical and highly centralized state structure, state restructuring has had a central place on Nepal's transitional agenda. It is seen as an opportunity to re-build the Nepalese nation and incorporate the peoples who have historically been excluded from the national identity and decision-making. Moving to a federal structure is seen as the main way to decentralize and redistribute state power and resources. For indigenous peoples, it is also a mechanism to recognize their historic sovereignty and distinct identity by clearly reflecting this in the state structure itself.

Being closely tied to peoples' visions of the new Nepal, it is no wonder that the topic of state restructuring has led to the most heated of debates. While there is agreement that the state *should* be restructured, the details of exactly how it is to be done are very contentious.

Map 1: Nepal's Map according to the SRDSP Committee report

Three proposals emerged from CA-I deliberations. First, the State Restructuring and Distribution of State Powers Committee (SRDSP) proposed to divide Nepal into 14 provinces plus 22 'special structures'[6]. Identity was proposed as the major criterion for delineation (although viability was also taken into account) and as the basis for the province names. Majority ethnic groups were proposed to have special political priority and indigenous peoples were promised first use rights to natural resources. See Map 1 for province details.

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6. Special structure includes autonomous region, protected area and special area as proposed by the CA 1. An autonomous region is defined as anarea to be established within the state, having domination of a particular ethnic or lingual community. A protectedarea is an area not covered by an autonomous region, economically and socially backward area or the geographic unit to be established for the special development of the area.

From the same committee, a dissenting opinion emerged, putting forth a 'minority report' with an alternative design that would have 6 provinces mostly running North to South, but with two provinces running East to West along the border with India (see Map 2). The proposal

Map 2: Nepal's Map according to the SRDSP Committee dissenting opinion report

rejected the idea of granting special political rights to any group.

No consensus was reached within the SRDSP, and in 2011 a State Restructuring Commission was formed. It affirmed identity and viability as the main criteria for delineation and proposed a model with 10 provinces plus a non-territorial Dalit State (See Map 3). It rejected the idea of political prerogative rights at the provincial level, but upheld these rights within the planned autonomous regions. Again, a minority report emerged from the Commission that proposed six federal units and no political prerogative rights at any level.

Map 3: Nepal's Map according to the State Restructuring Commission Proposal

When CA-I was dissolved, many issues around state restructuring remained contentious. Specific issues are outlined in some detail below.

1. STATE RESTRUCTURING: NUMBER OF PROVINCES

Issue

The number of provinces became hotly debated, with the following two arguments being put forward: (1) There should be enough provinces to ensure power is effectively decentralized, so that participation of historically marginalized groups can be guaranteed. (2) There should not be too many provinces as this would undermine the economic and financial viability of provinces. In this

latter argument, economic capacity and existing infrastructure would be main criteria for province delineation. Generally speaking, those more concerned about the first argument have suggested between 10 and 14 provinces would be appropriate, while parties who put more focus on the second

argument have argued in favor of 6 or 7 provinces. Those in favor of fewer provinces with less emphasis on identity may also be concerned about national unity and a perceived threat of secession. From the perspective of indigenous peoples, 6 or 7 provinces would not allow for enough devolution of power or true re-delineation of voting constituencies.

Compromise Options

10 Provinces: This is the option originally put forth by the CA-I State Restructuring Commission (see Map 3). While coming down from the original demand of 14 provinces, it can still largely meet indigenous peoples' aspirations regarding the effective devolution of power. It also ensures that provinces are not running North-South (a model that is seen to protect Hill Brahmin/Chettri elite groups' voting power). It could be an acceptable model for the Madhesi community as it does not divide the Madhes into more than two provinces and also provides a non-territorial province for the Dalit community.

14 Provinces: In this case, provinces would be delineated mainly on the basis of identity (as well as some level of economic and practical viability). However, provincial units would primarily be based on symbolic identity and granted limited power and resources. This would limit the strength of provinces that might seek separatism. Instead, more powers and resources would be given to local governance units. This kind of model has been implemented in post-conflict societies such as South Africa and Indonesia to accommodate diversity while maintaining national unity and social cohesion.

6 or 7 Provinces: Two major political parties Nepali Congress and CPN-UML proposed a political map of 6 or 7 province in the CA-II. This model is based on territorial accounts and indivisibility of development regions with some exception in southern part, and pays little or no attention to identity concerns. Since the model does not offer accommodation of diversity, it has less potential for management of ethnic conflict.

Dialogue Outcomes

State Restructuring Initial Dialogue, 10 June 2014, Kathmandu
*Names, Numbers and Boundaries Dialogue***,** *18 & 19 July 2014, Dhulikhel*

Common ground identified:

- The 10-province model has the most potential to be acceptable to all.

2. STATE RESTRUCTURING: BOUNDARIES

Issue

The main debate with regard to boundaries is over what should be the main criteria for delineating those boundaries. All parties recognize that the actual delineation is a highly technical task, which should be carried out by experts. While CA-I unanimously agreed on using identity, viability and administrative convenience as key criteria for delineation, it has become increasingly clear that in particular identity remains a contentious criterion. Some of the major political parties are more inclined to stress economic and geographic considerations over identity. There is even a concern that institutionalizing identity as part of the federal system will confuse people's allegiances to the Nepali state. The high number of ethnic groups and their geographic dispersion has raised further concern about the practical feasibility of delineating provinces on the basis of identity.

Indigenous peoples remain in favor of giving primacy to identity as the basis for provinces. However, they demand identity-based federalism as opposed to ethnic federalism (see definitions below). Identity is understood as a broader category than just ethnicity and includes language, historic sovereignty and culture. Many indigenous peoples also recognize that economic viability and geographic convenience should be considered alongside identity. NEFIN has argued that identity should be the criterion for delineation, as economic capability will be determined more by a province's fiscal policies and development plans and priorities.

Experience from other countries shows that ethnicity cannot be the sole criteria considered, but ignoring ethnicity as a major factor will only perpetuate patterns of discrimination and marginalization.

Ethnic Federalism:

Provincial structure is based on historical land of the targeted ethnic group. The targeted group is entitled to prerogative rights in political posts and in administration, and first rights to natural resources. The provincial government is granted a high level of autonomy and the right to self-determination. The central legislature, executive and judiciary are composed through a provision of ethnic-based representation.

Identity-Based Federalism:

Provinces are constructed primarily on the basis of ethnic or linguistic or cultural identity, while taking into consideration other factors, in particular viability. Based on ethnic-based human geography rather than physical geography. Does not permit the provision of prerogative rights to any social groups. Appointment to central organs is made on territorial basis, not on ethnic basis.

Compromise Options

Using identity and viability: This model balances identity with considerations of geographic convenience and economic viability. The 10-state model proposed during the tenure of CA-I is an example of this model.

Developing new criteria: One criterion put forward as viable was language. While it is an aspect of identity, it is fairly neutral and fact-based, and can be supported with objective census data. It is pragmatic in the sense that official language use can more easily be devolved in provincial courts and the education system.

Agreeing on the criteria and number only: While marginalized groups generally oppose this idea, it is an option for the CA to only agree on criteria for delineation (and possibly the total number of provinces), while leaving it to a commission of experts to draw the exact borders. This has successfully been done in India and South Africa. As delineation is an extremely technical task, it is logical to leave it to geographers, anthropologists and other experts as opposed to having it completed by politicians. Thus, the criteria would be chosen in a democratic way, while allowing the technical delineation to remain relatively depoliticized.

Dialogue Outcomes
State Restructuring Initial Dialogue, 10 June 2014, Kathmandu
Names, Numbers and Boundaries Dialogue, 18 & 19 July 2014, Dhulikhel

Common ground identified:

- Ethnic federalism is not a suitable model for Nepal.
- Identity-based federalism is considered to be the best compromise option (acceptable to *most* parties), under the clear understanding that it does not include prerogative rights (see definitions page 23).
- Provinces should be based on ethnic, linguistic *or* cultural identity, while economic viability should also be taken into consideration (as agreed to in CA-I).
- North-South provinces, 'one Madhesh, one Pradesh' and other more conservative or revolutionary conceptions for province delineation are *not* viable or acceptable options for Nepal.

3. STATE RESTRUCTURING: NAMES OF PROVINCES

Issue
The naming of provinces has a much more symbolical than practical place in the federalism debate. It is tied to notions of historic occupation of various communities and the politics of identity recognition. It is a critical issue, in that it is closely tied to the explicit recognition and accommodation of Nepal's diversity, something that is central to the aspirations of many Nepali's. The strong association between identity and naming has infused this debate with particular tension.

The main debate has been about multiple versus single identity names. Single identity is where provinces would be named solely after the ethnic group that claims the territory as its ancestral land. Multiple identity would be based on a broader definition of identity that includes ethnicity as well as geography or language. Political parties have generally argued that multiple identity naming is preferable as it emphasizes common characteristics of an area that unite various ethnic groups. They have raised concerns about alienating minorities, castes and other communities living within a province named after another group.

Naming provinces after those who consider it their ancestral land is important to indigenous peoples as it clearly recognizes their pre-existence and autonomy within the current Nepalese state. Some are open to the idea of mixed names, especially for those provinces where this would be appropriate, so long as identity references in the names are not dropped altogether.

Compromise Options

Mixed names for some provinces: This option corresponds with the 10-state model proposed by the CA-I Commission and was also suggested in the 2013 UCPN-M election manifesto. In this proposal, most names are single identity based (referring to one ethnic group), but in areas where this would be alienating, linguistic and geographic characteristics are used as bases for naming (resulting in multiple identity names).

Use alternate ways to recognize identity: Negotiations could center more on including robust provisions in the constitution itself that recognize identity and the pre-existing presence of indigenous peoples in Nepal. This could assuage some of indigenous peoples' concerns without necessarily doing so through province names.

Dialogue Outcomes

State Restructuring Initial Dialogue, 10 June 2014, Kathmandu
Names, Numbers and Boundaries Dialogue, 18 & 19 July 2014, Dhulikhel

Common ground identified:

- Names on the basis of multiple identities are acceptable to most (90 percent of indigenous and 80 percent of non-indigenous participants).

4. STATE RESTRUCTURING: THE RIGHT TO SELF-DETERMINATION

Federalization of Nepal's state structure is intricately linked with the hopes to realize a number of human rights, including those to political participation, non-discrimination and development. Two much more contentious rights embedded

in expectations of the federal system are the right to self-determination and the issue of political prerogative rights (see next paragraph).

Issue

The right to self-determination refers to people's right to determine their own political status and social, economic and cultural development. As a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the government is obliged to recognize indigenous peoples' right to self-determination. However, there has been increasing apprehension to promote the right and express resistance against the term's inclusion in the new constitution. Apprehension seems to stem mainly from confusion between the right to self-determination and the right to secession. While traditionally the right as defined under international law *does* include the right to secession, the right as defined under UNDRIP expressly *does not*.

> **Box: Right to Self-Determination**
>
> - Indigenous peoples can exercise their right to autonomy or self-government in relation to their own affairs;
> - They can participate in decision-making at all levels of authority in relation to matters affecting them;
> - They have rights over territory and natural resources in accordance with customary patterns;
> - They have the right to maintain and develop the various aspects of their distinctive cultures.
>
> *Based on: Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous Peoples, 2009. Report on the Situation of Indigenous Peoples in Nepal.

For indigenous peoples, the right to self-determination is recognition of their *distinct position and needs. It is also seen as the foundation of many other rights* such as the right to participation in decision-making and governance, determining one's own development priorities etc. Recognition of the right to self-determination within the constitution has therefore taken on strong significance. Indigenous peoples have consistently disavowed any interest in the right to secession, but political parties are still concerned that recognition of the right to self-determination would threaten the territorial integrity of the state.

Compromise Options

Recognize indigenous peoples' right to self-determination: The experience of Mexico and Bolivia has proven that it is in fact possible to recognize indigenous peoples' right to self-determination in the constitution, without threatening

territorial integrity of the state. In both cases, the right is acknowledged but circumscribed with an explicit commitment to preserving national unity and the territorial integrity of the state. Nepal could adopt a similar provision (also previously suggested in the SRDSP Committee report).

Recognize indigenous peoples' right to autonomy: The right to self-determination usually does not imply a desire for secession, but one for participation in state structures on an equal and dignified footing, as well as a right to govern ones internal affairs. Rather than naming indigenous peoples' right to self-determination, explicit recognition can be given to their right to autonomy. Specific arrangements to devolve power and ensure indigenous peoples' political participation could further assuage indigenous peoples' desire for self-determination.

Dialogue Outcomes
State Restructuring Initial Dialogue, 10 June 2014, Kathmandu
Rights within the Federal System Dialogue, 5 August 2014, Kathmandu

Common ground identified:

- The right to self-determination should be included in the constitution, but with the explicit exclusion of the right to secession.

5. STATE RESTRUCTURING: PREROGATIVE POLITICAL RIGHTS

Issue
As mentioned, the CA-I SRDSP Committee proposed political prerogative rights for the majority ethnic community in States and autonomous areas. These rights would be limited to two tenures, after which they would become ineffective. The aim of the measure is to overcome historical discrimination. The State Restructuring Commission formed in 2011 consequently suggested that prerogative rights be deleted at the provincial level and only be maintained for autonomous regions.

Political Prerogative:

Provision that offers a special privilege to particular groups of society regarding the composition of the political power structure.

A concern about prerogative rights is that they may overcome the historical exclusion of some communities, but at a high cost of other, equally excluded communities who are not assigned prerogative rights. Another concern is that across Nepal, few groups will have a convincing majority at the provincial or autonomous area level. Granting the right to rule to a community who represents – for example – only 30 percent of the total population of a territory is not consistent with democratic principles. Similarly, according to some, political prerogative rights are undemocratic as they do not treat all people equally.

On the other side of the debate, political prerogative rights are considered democratic and appropriate to overcome historic exclusion. From the perspective of indigenous peoples, they are due this type of special right, given their centuries-long exclusion from decision-making even within their traditional homelands. Some indigenous peoples even believe that two tenures are insufficient to correct these historical wrongs; and fear that they will face exclusion again after the two terms have lapsed.

Compromise Options

Political prerogative combined with reserved seats for minorities: In this case the majority community would have political prerogative rights for two terms, but it would be balanced by granting minority groups within the territory a number of reserved seats in the legislature and government.

Develop alternative measures to ensure inclusion: The forthcoming constitution can ensure the full and fair inclusion of historically marginalized groups through other means than prerogative rights. The design of the federal structure can help advance communities' level of self-determination; the electoral system can play a crucial role in ensuring proportional representation; and mechanisms can be set up to systematically consult minorities and indigenous communities about legislation, policies and projects that directly affect them.

Dialogue Outcomes

State Restructuring Initial Dialogue, 10 June 2014, Kathmandu
Rights within the Federal System Dialogue, 5 August 2014, Kathmandu

> **Common ground identified:**
>
> - Participants (indigenous and non-indigenous alike) reject the proposal for prerogative rights.
> - However, other mechanisms for positive discrimination like quota systems need to be put in place.

3. FORM OF GOVERNMENT

> *"All the systems of government currently under discussion are of democratic nature. Among these systems of government, one with a clear division of executive power between the president and prime minister is appropriate and constitutional provisions should be arranged accordingly."**
>
> Nepal Bar Association's submission to the Constituent Assembly from Special Constitutional Conference held on May 2014
>
> *original quote slightly edited for length

Background

Nepal is in a constitutional transition aimed at shifting away from a monarchical and highly centralized structure towards a more decentralized democracy. The choice for the form of government is incredibly important within this process, as it will decide the shape of the executive power in the nation. If designed well, it will ensure that the country has strong and stable leadership, as well as limiting the potential for dictatorial exercise of power. While the form of government is important for democratic legitimacy and the representation of diverse voices, this can only be ensured in combination with an appropriate electoral system design (see page 17)). Note: This page may change with layout. Review in final edit.

During the tenure of CA-I, three forms of government were considered: a parliamentary system, a presidential system and a mixed system. The members of the CA thematic committee tasked with proposing the best form for Nepal was ultimately unable to reach consensus. The former Constitutional Task Force did come up with a proposal for a mixed system under which the president would be elected directly by the people and the prime minister would be elected by the legislature-parliament. This proposal was originally accepted by all political parties, but since then they have backtracked and changed their views.

Issue

Parties agree that the form of government selected should further the shared democratic aims of promoting participatory, responsive and inclusive governance. However, there is no consensus on which form would most effectively accomplish this. Some have argued in favor of a presidential system and others in favor of a parliamentary system based on similar arguments of democratic legitimacy. During 2013 elections, virtually all parties came out in favor of a mixed model of government, but they differed on what the system should look like in practice.

From the perspective of indigenous and other marginalized groups, the idea of *direct* election of the President by the people is in some ways more

appealing than a parliamentary system. Election by the people themselves rather than by parliament suggests closer proximity and accountability between the head of state (and thus the government) and the people. However, others argue that it is in fact harder to ensure inclusivity within a presidential system. A presidential system needs a carefully designed electoral process to ensure inclusivity and a level playing field for candidates from different communities. A mixed system that ensures accountability and a clear division of power is a viable option to most indigenous representatives.

Even if there is a high degree of consensus on choosing a mixed model, the challenge remains in hammering out the – very crucial – details. The division of power between the president and the prime minister remains contentious, and so does the question of which one will be accountable to parliament and which one will be directly elected by the people.

> **Presidential System:**
>
> A directly elected president who is both head of state and head of government; fixed term presidency; President is directly accountable to voters.
>
> **Parliamentary System:**
>
> The head of state is not directly elected; separate office for the head of government and head of state; prime minister and cabinet are directly accountable to the parliament (which has the power to appoint/dismiss the government).
>
> **Mixed System:**
>
> A dual authority structure with separate head of state (elected) and head of government (usually appointed by parliament); umbrella category, which in itself has several sub-categories and forms; can be designed to meet different political agendas.

Compromise Options

Mixed Model of Government: A mixed model of government represents a natural middle ground, or compromise option between a parliamentary and a presidential system. However, within this category there are many possible variations. Some parties prefer a directly elected prime minister; others prefer direct election of the president. CA-II therefore needs to focus on building consensus around more concrete and technical aspects of the form of government. Choices need to be made on, among others, the election/selection and removal of the president and prime minister; the division of power between president, prime minister and cabinet; and the accountability of the prime minister and cabinet or president to the legislature-parliament.

Semi-Presidential Model: This is one particular form of a mixed model that has become a popular option. It is known as a model that tends to reinforce stability in post-conflict environments and divided societies. It allows for the development of democratic practices, while also maintaining a check on

authoritarian power. Given Nepal's current democratization process and historic governance trend towards centralization, this could be an appropriate option.

Concrete arrangements should include (1) separation of head of state and head of government; (2) fixed term presidencies; and (3) the on-going accountability of the prime minister and cabinet to the parliament. The latter means that the parliament is involved in both appointing the government and monitoring its exercise of power. If practiced in this way, the semi-presidential model will promote power sharing, accountability and provide stability in the event of political crisis.

Dialogue Outcomes

Form of Government, 13 August 2014, Kathmandu

The dialogue on this issue was strengthened by significant information sharing by the facilitator to ensure that there was a clear and common understanding of the different possible forms of government. Apart from the options outlined above, a reformed parliamentarian system (as currently used in Germany) was put forward as one that could promote stability, accountability, economic performance and social inclusion.

Many participants argued in favor of a directly elected executive chief (president or prime minister). Most agreed that there is enough room for compromise on this issue.

Common ground identified:

- Either a reformed parliamentary system or a semi-presidential system is preferable for the context of Nepal.
- Regardless of the system implemented, the most important thing (given some of Nepal's past disappointing experiences) is that it is stable, well-functioning and effectively promotes democracy, accountability and efficiency.

4. JUDICIAL SYSTEM

> *"The goal of judicial system design in democratic societies is to have a judiciary that is independent, accountable and competent. Furthermore, the courts must also be perceived as such by the citizens."*
>
> International IDEA and The Center for Constitutional Transitions at NYU Law Consolidating the Arab Spring, Working Paper No. 5

Background

This third branch of government (after the executive and legislative) is required to ensure that Nepal's new constitution will be implemented and respected by political actors. Therefore, the effectiveness of the future constitution partly depends on the political parties' capacity to negotiate and reach consensus on the judicial system.

During CA-I, some argued in favor of maintaining the current judicial structure, arguing that significant reforms would create chaos and inefficiency. The CA Committee on the Judicial System proposed continuing the same system, but with the addition of a parliamentary committee tasked with interpreting the new constitution. Others argued that stronger reform was needed, or the impact and effective implementation of the new constitution would be limited. This could be achieved through the establishment of a constitutional court. The current system, meanwhile, is criticized for being too politicized, with political actors having undue influence over appointments. Lack of inclusion is another criticism of the current system.

Issue

From the perspective of indigenous peoples and other marginalized groups, it is crucial that the judiciary becomes more inclusive, following the principle of proportional representation. Currently, Brahmin and Chhetri caste groups constitute close to 90 percent of all judges in the country. Having a judiciary that better reflects the actual makeup of the population is perceived as essential for ensuring legitimacy, public trust and equal access to justice. However, opponents argue that reforms should not threaten the integrity of the system; and education level and competency of judicial actors should be considered rather than their ethnic background, caste or gender.

A central issue with regard to inclusiveness is judicial appointments. It is the process that determines *who* interprets and applies law, and ensures that every state authority respects it. For the judiciary to remain independent,

the appointment process needs to be protected from political intrusion and interference. The appointment process also needs to be inclusive enough to create a sense of ownership among various groups. The appointment process has three decisive factors: (1) who will take part in the appointment process; (2) the tenure of the judges; and (3) the definition of the requirements and qualifications of the judges. The latter is an important factor as selected candidates will need to have the necessary expertise and experience, while at the same time diversity in judges' social, ethnic and gender backgrounds also needs to be considered. How these considerations should be balanced remains a topic of debate.

Although slightly more contentious, some indigenous activists also argue for more inclusiveness through the recognition of customary law and traditional justice systems and a need to promote linkages between these informal institutions and the established formal justice system. This could be enabled by granting more autonomy to lower levels of the judiciary.

The other major contention with regard to the judiciary is the establishment of a constitutional court. A constitutional court acts as the guardian of the constitution. It is an 'organ of the state whose central purpose is to defend the normative superiority of the constitutional law within the judicial order'[7]. It also provides a forum for resolving disputes between federal units, enforcing the separation of powers and holding political players accountable to constitutional commitments.

From the perspective of marginalized groups, the judiciary is, for the time being, a conservative and non-representative body. A constitutional court could help ensure that the new constitution is effectively implemented and a new order of progressive social

> **Constitutional Court:**
>
> Organ of the state whose central purpose is to defend the normative superiority of the constitutional law within the judicial order.

justice established. The bench of newly appointed constitutional court judges could be made more diverse than the current makeup of the judiciary.

During CA-I, the High Level Political Committee did decide in favor of establishing a constitutional court to guide the transition and substantial support for its establishment has been expressed by most parties at one time or another. However, there is little agreement over what the mandate of this body should be, how its jurisdiction should be coordinated with that of the Supreme Court, and the appointment and removal process for judges. Most contentious is the question whether the court should be permanently established, or if it should be a temporary arrangement for 5 or 10 years to guide the transition. Some believe it will only need to be there to interpret complications that arise during the initial years of transition, while others argue it should remain to serve – among others - as a dispute resolution mechanism for future federal units.

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7.   International IDEA, the Center for Constitutional Transitions of NYU Law, 2014. *Constitutional Courts after the Arab Spring: Appointment Mechanisms and Relative Justice Independence.*

Compromise Options

Constitutional Court: The establishment of a constitutional court seems to have sufficient political support to provide a workable option. As for the question of how long it should be established for, ten years seems to be a viable compromise. While conservative groups vie for five years, this may be too short a timeframe to accomplish its tasks. More progressive groups argue for the court to be a permanent feature, however there is a concern that the court may lose some of its relevance over time. The ten-year option falls somewhere in the middle.

Judicial Appointments: Various models can be designed that engage a variety of actors in the appointment process, including representatives from the executive, legislative, judiciary and civil society. Diversity of actors will reduce the risk that any one political group is able to dominate the appointment process and will promote a broad sense of investment in the court.

Another option is to open the appointment process to competitive selection. In this case, a yearly national entrance exam should be organized and the best candidates are then automatically appointed as judges. Minimum criteria for participation in the exam could be established, such as minimum years of experience as a lawyer or academician. This design would be completely isolated from politics and be based purely on knowledge and merit. However, it does not account for historic exclusion from educational and professional opportunities.

Dialogue Outcomes

Judicial System Dialogue, *15 September 2014, Kathmandu*

During the dialogue, various options for restructuring through federalization were considered, including different options for the roles and relationships between the supreme, federal and local courts. While no concrete form was decided on, common ground was found as follows:

> **Common ground identified:**
>
> - A constitutional court should have final interpretative authority of the constitution, but its jurisdiction should be clearly defined, avoiding contradictions or overlap with the jurisdiction of the Supreme Court.
> - To enhance legitimacy of the judiciary, inclusiveness should be guaranteed. The appointment of judges should be done following principles of inclusion
> - Increased access to justice needs to be ensured, especially for marginalized groups.
> - In order for people to seek justice through the system, public perception of the judicial system needs to be improved.
> - Informal and traditional justice systems should have a place within the broader judicial system (details/means for this integration remained undecided).

IV. CONCLUSION

Image 4: Sharing the dialogue conclusions with the Political Dialogue and Consensus Committee.

During a final dialogue, the political dialogue participants agreed to six major recommendations based on the common ground identified in the course of the series. These were formally received by The Honourable Dr. Babu Ram Bhattarai, Chair of the Political Dialogue and Consensus Committee, on 28 September 2014. Dr. Bhattarai agreed to include the recommendations in the agenda for the next Committee meeting. He further acknowledged that they had great potential to be used as a reference point for forging consensus on the outstanding issues. The recommendations were also submitted to individual top political leaders from NC, CPN-UML, UCPN-M and Madhesi based parties.

The dialogue series succeeded in building a common discourse, understanding and common ground on very sensitive and contentious issues in Nepal's constitution writing process. It promoted trust and open communication between groups that previously did not interact with one another. Participants from a range of political and ethnic backgrounds came together in an unprecedented way to discuss issues with openness and honesty, thereby narrowing the gap in issues that had come to be seen as unresolvable. It has proven that it is far from impossible to build consensus around even the most delicate and complicated issues. Moreover, it proved that party positions and indigenous interests *are* reconcilable if all groups are willing to adopt flexible and moderate stances.

While it was not within the scope of the dialogue program to solve all constitution writing obstacles, it supported the constitution writing and peace building processes by providing notable reference points for consensus. These reference points and the resource materials developed in the course of the dialogues can be used in future interactions and dialogue programs[8]. Hopefully they can continue to enhance understanding of the contentious issues and thereby support the planned public consultations on the draft constitution. Moreover, the trust

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8.   To gain access to additional resource materials, please contact International IDEA at info-Nepal@idea.int.

and communication built during the dialogues can serve as a foundation for the ongoing negotiations as Nepal's constitution is drafted and, thereafter, implemented.

Box: Dialogue Outcomes: Final Recommendations

1. Commitment to identity-based federalism.
2. 10-Province federal model with multiple-identity based names.
3. MMPR as the future electoral system.
4. Mixed form of government (either reformed parliamentary or semi-presidential).
5. Social inclusion in all government bodies.
6. An accountable and inclusive judiciary.