



# Nepal's Constitution Building Process: 2006-2015

Progress, Challenges, and Contributions of International Community







# **Nepal's Constitution Building Process: 2006-2015**

Progress, Challenges, and Contributions of  
International Community

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## LIST OF ACRONYMS

Aus-AID	Australian Agency for International Development
CA	Constituent Assembly
CA-I	First Constituent Assembly (2008-2012)
CA-II	Second Constituent Assembly (2013-2017)
CCD	Center for Constitutional Dialogue
CCDRM	Committee on Capacity Development and Resource Management
CCRPOC	Committee on Citizen Relations and Public Opinion Collection
CDC	Constitution Drafting Committee
CIC	Constitution Information Center
CPA	Comprehensive Peace Agreement (also: Comprehensive Peace Accord)
CPDCC	Constitutional Political Dialogue and Consensus Committee
CPN (M)	Communist Party of Nepal (Maoist)
CPN (ML)	Communist Party of Nepal (Marxist-Leninist)
CPN (UML)	Communist Party of Nepal (Unified Marxist Leninist)
CRSDC	Constitutional Records Study and Determination Committee
DANIDA-HUGOU	Danish International Development Agency- Human Rights and Governance Unit
DFID	Department for International Development
DRS	Dispute Resolution Sub-Committee

ECN	Election Commission of Nepal
ERM	Electoral Risk Management
ESP	Enabling State Program
ESP	Electoral Support Project
EU	European Union
FPTP	First Past the Post
IDEA	Institute for Democracy and Electoral Assistance
IEC	Interim Election Council
IFES	International Foundation for Electoral System
KII	Key Informant Interviews
MJF (L)	Madhesi Janadhikar Forum (Loktantrik)
MOPR	Ministry of Peace and Reconstruction
NC	Nepali Congress
NDI	National Democratic Institute
NLS	Nepal Law Society
NPTF	Nepal Peace Trust Fund
PLA	People's Liberation Army
PR	Proportional Representation
RDIF	Rights, Democracy and Inclusion Fund
RPP (N)	Rastriya Prajatantra Party (Nepal)
SC	Supreme Court
SDC	Swiss Agency for Development and Cooperation
SPCBN	Support for Participatory Constitution Building in Nepal
TMLP	Terai Madhes Loktantrik Party
UCPN (M)	Unified Communist Party of Nepal (Maoist)
ULF	United Left Front
UNDP	United Nations Development Programme
UNMIN	United Nations Mission in Nepal
UNPFN	United Nations Peace Fund for Nepal
USAID	United States Agency for International Development



## FOREWORD

Nepal made history on 20 September 2015 with the promulgation of its new secular, federal, democratic republican constitution. The dream of a constitution through an elected CA was envisaged in the 1950s but it was only in April 2008 that the country elected its first Constituent Assembly (CA-I) to draft a constitution. Although the CA-I was not successful in drafting a constitution, it completed a significant amount of work which was largely endorsed and owned by the second Constituent Assembly (CA-II) within the first six months of its mandate.

The CA-II faced a number of challenges between its election and promulgation of the constitution, including the April and May 2015 earthquakes, negotiations with Madhes-based and Tharu political parties on provincial demarcations and responding to concerns registered by Indigenous and ethnic communities as well as women activists, on the issues of inclusion, representation and equality. Not all of these concerns were reflected in the provisions of the new constitution leading these groups to register strong dissents and express discontent. The strongest and most concerning expression of discontent came from the Madhes-based political parties whose elected members did not participate in the meeting of the CA-II which endorsed the constitution, the signing of the statute nor its promulgation. More troubling were the resultant protests and violence in the Terai which continued to escalate even after the promulgation of the constitution, and which claimed the lives of more than forty Nepali citizens and security forces personnel.

This report provides an overview of Nepal's peace and constitution building processes describing the incredible gains made by national actors and highlighting

the important role played by the international community. International actors have supported Nepal's transition to peace and its efforts to conduct successful elections. In addition, they have provided necessary infrastructure and administrative support, capacity building and technical expertise to the CA's elected members, Committees and Secretariat. Moreover, they have also provided capacity building and technical expertise to political parties and civil society organizations representing the interests of women and historically disadvantaged groups.

Now that Nepal has promulgated its constitution, the challenge will be its implementation. The international community greeted the statute cautiously, expressing concerns with the escalating violence in the Terai and stressing the need for the government to respond to the outstanding issues through dialogue with disaffected groups. The government has stated that it is willing to continue discussions and emphasized that the constitution can be improved to address concerns through subsequent amendments. The stability of Nepal's polity will be dependent on the government's immediate actions in this regard and we anticipate the international community's continued commitment to support all efforts to ensure a durable constitution with broad-based acceptance.

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## I. INTRODUCTION

The idea of a Constituent Assembly (CA) in Nepal dates back to the 1950s when the country was, for the first time, entering into democracy, after the end of 104-year old autocratic Rana rule. However, it was not until fifty-eight years later that Nepal started drafting a constitution through an inclusive and participatory CA after the election of the first CA (CA-I) in 2008.

In 2005, when King Gyanendra took power away from the Parliament, the Seven Party Alliance (SPA) and then Communist Party of Nepal (Maoist) (CPN-Maoist) reached a 12-point understanding and launched a joint movement in 2006, popularly known as the People's Movement-II. As a result, King Gyanendra gave up power, the parliament was reinstated, the Comprehensive Peace Agreement (CPA) 2006 was signed, and the Interim Constitution of Nepal was promulgated in 2007. The CA-I of Nepal was elected in 2008 with the mandate to draft a constitution that protects people's rights—especially those of minorities and vulnerable groups—and enshrines democratic principles. The CA-I expired on 28 May 2012 without finalizing the constitution as the major parties could not find consensus on crucial issues. A provisional government led by the Chief Justice of the Supreme Court (SC) Khil Raj Regmi prepared for the election of the second Constituent Assembly (CA-II) which was held on 19 November 2013. The calendar of CA-II identified 22 January 2015 as the date for promulgation of the constitution, which it again failed to meet. From this date until late April, differences between parties continued to delay the process of constitution drafting.

Nepal made headlines around the world on 25 April and 12 May 2015 as two devastating earthquakes struck the country. More than 8,500 people lost their

lives, thousands were injured, and there was insurmountable damage to buildings and infrastructure, including some world heritage sites. In the immediate post-earthquake environment, constitution building naturally took a back seat while elected representatives and government functionaries were immersed in primary earthquake response efforts. Throughout the month of May 2015, the long-term impacts of the natural disaster and human crisis on constitution building had an equal possibility of accelerating or indefinitely delaying the process. Acceleration came out the winner with a 16-point agreement entered into among the four major political parties on 8 June, the tabling of Preliminary Draft Constitution on June 30, public opinion collection on 20-21 July, the release of the Constitution Bill on 23 August and the promulgation of the constitution on 20 September 2015.

Although the constitution drafting process took longer than expected, there are many reasons to be optimistic and hopeful. The strength of Nepal's fledgling democracy was evident by the fact that the rebels who waged a war against the state and the elite parties came together to overthrow the monarchy. Furthermore, when those rebels, the UCPN (Maoist), won the highest seats in the CA-I election, the Nepali Congress and Communist Party of Nepal (Unified Marxist-Leninist) (CPN-UML) gracefully accepted the results and joined the government. Similarly, when the results were once again altered in favor of the Nepali Congress (NC) in the CA-II election, the UCPN (Maoist) rose above their own interests and differences and joined hands with the winning party. This willingness to compromise is a testimony of the commitment of all parties to work together to fulfill their mandate to create a secular federal democratic republic in Nepal. It is also significant that, since the overthrow of the king, there has been no real effort towards reinstatement of the monarchy, which shows the people's aspirations to sustain a democratic, just, and an inclusive society.

This publication aims to provide a brief overview of the peace and constitution building processes starting with the end of decade-long People's War in 2006 to promulgation of the constitution in 2015, describing the incredible gains made by national actors and the important supportive role played by the international community. Without denying that many challenges remain, it is the aim of this publication to highlight the admirable work that has been done to transform Nepal from a centrally ruled Hindu Kingdom, to the secular Federal Democratic Republic it is today. More specifically, it highlights the constitution building process that has

been at the heart of this transformation for the past eight years. In order to bring these processes to a successful conclusion, it is hoped that international partners will continue to provide support towards constitutional implementation.

In the course of preparation of this report, different sources were consulted. The historical development of Nepal's democracy has been derived mostly through desk study and review of literature. The constitution building process, its achievements and challenges have been derived through literature review, Key Informant Interviews (KIIs), media monitoring and analysis. The support of the international community has been documented through the analysis of reports of donors and international agencies, as well as through the interviews. KIIs were conducted between 19 July 2015 and 10 August 2015 with 36 individuals, including constitution building experts, CA Secretariat officials and members, politicians, political analysts, party leaders, representatives of international agencies, among others. A full list of the interviews and the interview questions have been provided in Annex III and Annex IV respectively at the end of the publication.

For easy reference, a brief timeline of the constitution building process is included on next page. Chapter II briefly describes some of the changes that have taken place in the political environment starting in the 1950s, through to the 10-year conflict and eventual signing of the CPA in 2006. Chapter III goes into more detail to describe the constitution building process between 2006 and present, mostly focusing on events around CA-I and CA-II. It also described the contribution of the international community in the process. This chapter is followed by a conclusion and a list of recommended readings for those who wish to learn about Nepal's history, the peace and constitution building processes in more detail.

1951 The autocratic Rana regime overthrown

1959 King Mahendra promulgated a Constitution. First Parliamentary election held

1960 King Mahendra dismissed elected government

1962 King Mahendra promulgated a new constitution establishing the Panchayat System

1990 *Jana Andolan-I* forced the king to lift ban on political parties. A new constitution promulgated which curtailed the role of monarchy

1994 Second parliamentary election held

1996 The People's War launched by then CPN (Maoist)

1999 Third Parliamentary election held

2002 King Gyanendra assumed executive power and dismissed the government

2005 February King Gyanendra usurped absolute power

2005 November The Seven-Party Alliance (SPA) and the CPN (Maoist) signed a 12-point understanding

2006 April Jana Andolan II forced King Gyanendra to return power to the reinstated parliament

2006 November The Comprehensive Peace Agreement (CPA) signed between the SPA and CPN (Maoist)

2007 January An Interim Parliament formed and Interim Constitution 2007 promulgated

2007 March The Interim Constitution amended to establish a federal system to address the demands of the Madhes movement

2008 First Constituent Assembly (CA-I) election held; CPN (Maoist) emerged as single-largest party

2012 CA-I dissolved without promulgating a constitution

2013 Second Constituent Assembly (CA-II) elected NC emerged as the single largest party

2015 April Nepal struck by a major earthquake 7.8 on the Richter scale

2015 June The major four parties signed a 16-point agreement. Preliminary Draft Constitution released

2015 July Public Opinion collected on the draft

2015 August Constitutional Bill released

2015 September Constitution of Nepal 2015 promulgated

## CONSTITUTION BUILDING IN NEPAL TIMELINE<sup>1</sup>

<sup>1</sup> A detailed timeline has been provided in Annex-I



## II. BACKGROUND (1951-2006)

Democracy in Nepal has had a tumultuous history. It was in 1951 that the country first attained democracy through an armed revolution against the autocratic Rana regime. The primary demand of the movement launched by Nepali Congress was a constitutional democracy. After the success of the movement, the then King Tribhuvan announced an Interim Government and an Interim Constitution to govern the country and provide a legal framework, until a Constituent Assembly (CA) was elected to draft a new constitution. However, the promise of CA was not fulfilled as King Tribhuvan died in 1955.

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The period following the achievement of democracy remained unstable, as several governments were formed and dissolved. In order to solve the stalemate, NC leader Bisheshwar Prasad Koirala gave approval for the constitution to be promulgated by King Mahendra, and agreed to hold fresh elections of the parliament in 1959, which the NC won. As per the Constitution, the executive power was vested in the king, and in an event of breakdown, the king had the authority to suspend either or both houses of the parliament, assume their powers and suspend the constitution. This is exactly what King Mahendra did in 1960; he invoked emergency power to dissolve the Nepali Congress led government and imprisoned BP Koirala for eight years.

In 1962, King Mahendra announced a new constitution, which brought a new system of government, known as the *Panchayat* system, wherein political parties were banned, political freedoms of the people were curtailed, and the institution of monarchy was given more power as compared to the previous constitution. This constitution continued for almost 30 years, only to be ended by a mass movement of 1990. The movement, referred to as *Jana Andolan-I* or People's Movement-I, was a pro-democracy uprising, launched jointly by the Nepali Congress and United Left Front (ULF). King Birendra gave in to the people's demand for democracy and a

multi-party system, and the Constitution of the Kingdom of Nepal 1990 came into force. This constitution gave more space to political parties, and the king was relegated to being a 'constitutional monarch'. In addition, there were provisions set for freedom of speech, guarantee of fundamental rights of the citizens, independence of judiciary, legalization of political parties, among others. However, the 1990 constitution was criticized for being an imperfect instrument of democracy, especially because it was not drafted by a CA but by a nine-member commission consisting of two royal representatives. It did not declare the country as secular, did not protect minority languages, granted no freedom to life, and realized an imperfect balance of powers within the form of government (Luther and Francavilla 2007).

After the success of the movement, three parliamentary elections were held in 1991, 1994, and 1999, and local elections were held in 1992 and 1997. But this new era also saw bottlenecks as the then Communist Party of Nepal (Maoist) (CPN-M) launched their movement called *People's War* in 1996 against the unstable, ineffective and highly-centralized and upper-caste dominated government. The CPN (Maoist) had an army of approximately 30,000<sup>2</sup> fighters called the People's Liberation Army (PLA), and with this power their conflict escalated throughout the nation within a short span of time (Hachhethu et al 2008, p. 3). Against this already uncertain backdrop, an event that shook the entire nation happened. King Birendra and his entire family were assassinated on the night of 1 June 2001 at the Narayanhiti Palace. The late King's younger brother Gyanendra was crowned the new monarch.

Through two royal coups of 2002 and 2005, King Gyanendra usurped power in a manner similar to his father King Mahendra, on the grounds that the government and the political parties were failing to handle the threat posed by the Maoist to the state. Through the February 2005 coup, he assumed executive power, mobilized the army to shut down the only international airport and took control of all communication

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<sup>2</sup> The number of PLA soldiers is contested. When the verification process first began in 2007, a total of 32,250 PLA combatants were registered with the United Nations Mission in Nepal (UNMIN). However, when the UNMIN completed its verification process in December 2007, only 19,602 persons were verified as legitimate PLA combatants. According to UNMIN, 8640 combatants did not show up for verification interview and hence were automatically disqualified. The verification process further disqualified 2973 combatants as minors and 1035 as ones who joined the PLA after the cut-off date of 25 May 2006.

mediums, including television, telephone, and internet, and declared a state of emergency. Not only this, major leaders were put under house arrest, political activists and civil society leaders were detained in military barracks, and even tortured. As a result of this, there came a turning point in the relationship between the Maoist rebels and the parliamentary parties, who united against the Gyanendra regime. This turning point was reflected in the 12-point understanding between the Seven Party Alliance (SPA) and the Maoists in November 2005 in New Delhi, which vowed to 'establish absolute democracy by ending autocratic monarchy' (SPA & CPN-Maoist 2005). The three key commitments of the agreement were: elections to a CA, multiparty competitive political system, and launch of a peaceful mass movement against the monarchy. This agreement brought a formal end to the decade long conflict which had claimed approximately 16,000 lives, destroyed infrastructure, hampered economic growth, and displaced more than 100,000 people (Ministry of Peace and Reconstruction 2009).

This alliance led to the *Jana Andolan-II* (People's Movement-II) in April 2006, which was a watershed moment in the democratization process in Nepal, bringing at least three to four million people from rural and urban areas, on the streets of Kathmandu demanding republicanism, and overthrowing of monarchy. After weeks of protests and strikes, King Gyanendra agreed to surrender power and reinstate the parliament he had dissolved in the previous year. The April 2006 uprising, which restored democracy in Nepal, is regarded as one of the 'most powerful anti-establishment struggles that Nepal has witnessed' (Hachhethu et al 2008, p. 20). It is considered remarkable for two reasons; one, it brought an end to a two-and-a-half century long monarchical rule; second, it ushered a new beginning of the transformation of Maoists from being an insurgent group to becoming a mainstream political party. Eventually, peace talks were initiated, and a 17-point code of conduct was signed between the government and the CPN (Maoist) for the purpose of ceasefire monitoring.

On 21 November 2006, the Comprehensive Peace Agreement (CPA) was signed by the SPA and the CPN (Maoist), represented by then Prime Minister Girija Prasad Koirala and Maoist leader Pushpa Kamal Dahal (Prachanda) respectively. The signing of the CPA brought a formal end to the decade-long war, and made way for the Maoists to be part of the government (Government of Nepal 2006). As per the terms of the agreement, the CPN-Maoist combatants were put in cantonments and their arms were locked up. The Nepali army was also confined to the barracks, and their arms-similar in quantity of that of the Maoist-were also locked up (Government of Nepal 2006).

### III. WRITING A NEW CONSTITUTION (2006 – 2015)

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One of the commitments underscored by the SPA and CPN (Maoist) alliance was the election of a Constituent Assembly (CA). All the constitutions that were promulgated in the constitutional history of the country had a short life as they could not garner the support from people for their failure to adopt a participatory approach. They were either prepared by experts, or on the recommendation of the political elites, including the King or the political parties. The idea behind an elected CA was to fill this gap; to form a representative body that was committed to a participatory and inclusive constitution writing process. The first step towards it was the promulgation of an Interim Constitution that would provide a framework for the formation of the CA. An Interim Constitution Drafting Committee (CDC) was tasked with the responsibility to write the Interim Constitution. The CDC consisted of six lawyers, headed by a former member of the 1990 constitution drafting committee, one Supreme Court judge, and another ten lawyers to collect public opinions. The committee submitted a draft in August 2006 and the Interim Constitution was finally promulgated on 15 January 2007 as the first constitution that was proclaimed in the name of the Nepali people. It envisioned three major transformations in the country: from monarchy to republicanism, from civil conflict to peaceful politics, and from non-inclusive state mechanism to inclusive democracy.

The promulgation of the Interim Constitution was followed by violent protests in the Madhes (also known as 'Terai' region of Nepal), where millions of Madhesi rallied against the government and mainstream political parties (Hachhethu et al 2008). The demand of the movement was complete regional autonomy, rights of self-determination, and a single Madhes province (*Ek Madhes Ek Pradesh*). The uprising cost many lives, and forced the government to negotiate with the Madhesi representatives. As a result, the Interim Constitution 2007 was amended twice in a short time span to include provisions of federalism, increase the number of electoral

constituencies proportional to population of Madhes, and a corresponding increase in seats under the PR system (Jha 2014).

The next section will give a brief overview of the constitution building process in Nepal since 2008. The first part looks at the CA-I, its progress, achievements, challenges, and the reasons for its dissolution. The second part details the CA-II's constitution building process, its achievements and a summary of the scenario as of September 2015. It also gives an account of the support provided by international community in the peace and constitution building processes.

## **1. The First Constituent Assembly (CA-I)**

One of the major outcomes of the peace process was the election of a CA under the Interim Constitution 2007. There were several postponements before the election was held on 10 April 2008. The holding of CA-I election was a major step towards fulfillment of the aspirations of Nepali people.

The election was contested by 9,648 candidates. A total of 3,947 candidates from 55 political parties contested for the 240 seats allocated under First Past the Post (FPTP) election. Similarly, the closed lists of 54 political parties with a total of 5,701 candidates were approved by the Election Commission for the Proportional Representation (PR) election (Election Commission Nepal 2008). The election was considered successful, and one of the most peaceful in the nation's history. They were organized professionally and in a transparent manner, meeting international standards. Although voting was cancelled in 106 of the 20,889 polling stations nationwide, election environment was 'generally calm and peaceful' (European Union 2008, p.6). On the day of the election, 148 civil society organizations were involved in observing and monitoring the election, with the Election Commission accrediting 61,854 observers throughout the country. In addition, a total of 28 international observation missions registered to monitor the election with 856 international observers (European Union 2008). The incidents of violence, intimidation, or attempts to disrupt polls on the day of election were limited. The voter turn-out was impressive with 60 per cent of the registered voters casting a ballot to select their representatives (Carter Center 2008).

The elected CA was comprised of 601 members, of whom 240 members were elected through the FPTP system from 240 constituencies, 335 were elected through the

PR system with the whole country as a single constituency, and the remaining 26 members were nominated by the Council of Ministers. The elections resulted in a victory of the former insurgents, the CPN (Maoist) party with a total of 220 of the 575 elected seats, altering the balance of power in its favor. The NC, which had expected to win the election, came second with 110 seats, and the CPN (UML) came third with 103 seats. With respect to the regional parties, the Madhes Janadhiar Forum (MJF) won 52 seats and Terai Madhes Loktantrik Party (TMLP) won 20 seats (Election Commission of Nepal 2008). Many of those interviewed during Key Informant Interviews (KIIs) labeled this victory of the former rebels as historic as it completely altered the power balance.

The two-year term of the CA-I was extended four times, pushing its term to four years. After three extensions of the CA-I term, the Supreme Court (SC) responded positively to a public interest litigation application arguing that the CA-I could not continue to extend its term indefinitely. In November 2011, the SC ruled that the CA-I term could be extended one last time for maximum six months. Accordingly, on 29 November, the CA-I extended its term for another six months through the eleventh amendment to the Interim Constitution 2007, on the understanding that it would have to be dissolved if it failed to promulgate a new constitution by the new deadline. The SC also asked the CA-I and the Prime Minister to think of an exit strategy, such as the election of a new CA, a referendum seeking an extension of the mandate of the CA-I, or any other democratic option. All three options would require the Interim Constitution be amended by a two-thirds majority (Adhikari 2013). However, the court verdict was not tabled for discussion in the house.

A lot of progress was made in resolving the contentious issues during the term of the CA-I. The issue that remained most complex throughout the life of the CA-I was state restructuring, that is, the design of Nepal's new federal system. The days leading up to the deadline were marked by intense negotiations, nationwide shutdowns, protest rallies, and violence in different parts of the country. Eventually, as a result of the wrangling between the parties over the issues of state restructuring, the CA-I expired at midnight on the 27 May 2012, amid high hopes and drama. The CA-I was neither able to adopt a constitution as envisaged, nor amend the Interim Constitution 2007 to provide an alternative arrangement for the new constitution and the government system.

In this entire event, the house was not provided with an opportunity to assemble and to collectively consider an exit strategy as suggested by the SC. The members waited

outside the assembly while the leaders continued negotiations on the sidelines. The developments of the discussions were not brought before the CA-I. The dissolution of the CA-I also meant dissolution of the Legislative-Parliament, which formed the government. This affected the implementation of legislative and financial procedures, appointment of officials to constitutional bodies, passing a full-fledged budget, and posed several other challenges.

This event presented Nepal with two dilemmas. The first related to producing a constitution as an important component of the peace process, and the second related to governing the country in the interim. The dissolution of the CA-I under such circumstances was followed by the announcement of fresh elections for the second CA (CA-II) by then Prime Minister Baburam Bhattarai. He said that there was no alternative but to go to the polls in six months on 22 November 2012. This decision was termed unconstitutional as the Interim Constitution did not allow for two elections. The major parties including the NC, and CPN (UML) did not accept the unanimous decision.

## **Achievements of CA-I**

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The CA-I was not able to promulgate a new constitution that was one of the main agendas of the peace process. However, it cannot be written-off as a failure. The CA-I was successful in initiating important discussions about the future of the country, and significant work was accomplished during its tenure.

The following section highlights the major achievements of the CA-I during its four-year tenure.

### **(a) Inclusion and Representation**

The Constituent Assembly Election Act 2007 states that ‘political parties must take into account the principle of inclusiveness while nominating candidates for the FPTP system’ (Election Commission of Nepal 2007). In the PR-list election, candidate lists submitted by political parties were required to contain at least 50 per cent women within each of the following categories: 13 per cent Dalits, 37.8 per cent Janajatis, 31.2 per cent Madhesis, 30 per cent others, and 4 per cent from nine backward districts, which include Achham, Kakikot, Jajarkot, Jumla, Dolpa, Bajhang, Bajura, Mugu, and Humla (Election Commission of Nepal 2007).

Of the 601 members elected to the CA-I, 197 (32.7%) were women, the highest in the history of the country. The CA-I thus achieved a paradigm shift in the context of the women's movement in Nepal. It has, however, been criticized that the number of women elected through FPTP was way lower than those through PR with 161 women elected through PR and only 30 elected through FPTP. Six members were appointed by the Cabinet. Similarly, in terms of ethnic representation, there were 200 (33.28%) Brahmins-Chettris-Thakuris, 213 (35.4%) Janajatis, 111 (18.47%) Madhesis, 49 (8.15%) Dalits, 17 (2.83%) Muslims, and 11 (1.83%) Marwaris in the CA-I (Election Commission of Nepal 2008). This made the CA-I the most representative body in the country's history. This was possible because of adoption of a mixed electoral system (FPTP and PR), as distinct from the FPTP only system which had been adopted in all past elections.

#### **(b) Thematic committee reports**

In order to make the process of constitution building systematic, the CA Rules 2008 created provisions to form various committees in the CA, including one constitutional committee, 10 thematic committees, and three procedural committees. Each thematic committee had its own terms of reference, and was assigned to prepare concept papers of the concerned subjects, prepare preliminary constitutional drafts under its jurisdiction, and finalize the reports based on the concept papers and preliminary drafts. It is worth mentioning that the committees finished their job well before the initial two-year term of the CA expired.

The committees prepared the concept papers and preliminary drafts on the basis of opinions of common people of all districts as well as Nepalese living abroad, suggestions from concerned subject experts, constitutional experts, legal experts, political scientists, human rights activists, civil society leaders, professional organizations, national and international organizations, and other stakeholders. Different international organizations such as the International Institute of Democracy and Electoral Assistance (International IDEA), and United Nations Development Programme (UNDP) had worked with the sub-committees under each of the thematic committees to provide expert guidance for the preparation of the reports. The reports prepared on the basis of the concept papers and preliminary drafts were tabled in the Assembly between 23 May 2009 and 26 January 2010 (Legislative-Parliament Secretariat 2013). As per the CA Rules 2008, the Assembly, after endorsing all the reports including suggestions and instructions, sent them to the Constitutional Committee for preparation of an integrated draft of the constitution.



The above analysis shows that a high level and impressive amount of work was accomplished by the members of thematic committees in the CA-I, which has been documented in the 'Constituent Assembly Mirror' (*Sambidhan Sabha Darban*). During the 2015 Key Informant Interviews (KIIs), an overwhelming majority of respondents acknowledged that the work and progress of the committees in the CA-I was instrumental for the CA-II to move forward. Some even said that the CA-I had completed eighty per cent of the work, and the extensive reports submitted by the respective committees were an excellent source for the CA-II and its committees to complete its task.

### **(c) Formation of caucuses**

The CA Rules 2008 did not officially recognize any caucuses within the CA Secretariat. Despite this, various caucuses, including Women's Caucus, Dalit Caucus, Madhesi Caucus and Indigenous Caucus were formed. The caucuses were helpful in bringing together elected members from the particular groups, and empowering them to raise their agendas and issues collectively and powerfully. For instance, the Women's Caucus was formed with 197 members from 19 political parties on 2 January 2009. The Women's Caucus received the support of CA Secretariat and the Speaker of the CA for its office and staff. However, the other caucuses mentioned above operated from outside the CA Secretariat. During 2015 KIIs, former chairs of the women's caucus recognized that through the caucus, women members were able to raise the agenda of equality—including the right to inheritance, the right to proportional inclusive representation based on population, and the right to equality in citizenship regardless of gender. In addition to advocating for women's rights, the Caucus also studied and analyzed important issues from a gender perspective, and helped train second line women leaders. Similarly, the Indigenous Caucus not only formulated common concepts on the agendas of the indigenous peoples to be addressed in the constitution, it also developed convergent concepts on highly contentious issues that indirectly affected them.

### **(d) Agreement of several contentious issues**

The CA-I Thematic Committee reports contained a large number of contentious issues that needed to be resolved. In order to streamline the process, a committee was formed on 27 May 2009 to study the reports of the thematic committees. The committee

so formed was tasked with the responsibility to identify duplications/overlaps, omissions, dissenting notes and outstanding issues in the reports. All the reports, except that of State Restructuring Committee were referred to this committee. This committee subsequently prepared separate suggestions for each thematic committee report to make them uniform, adding omitted subjects, removing duplicated matters as applicable and forging consensus on contentious issues.

After intensive study and careful analysis of the drafts, the committee listed 210 contentious issues to be resolved at the political level, and submitted the report to the CA Chair on 22 September 2010 (Legislative-Parliament 2013). In order to facilitate the work of the Study Committee, a seven-member taskforce was formed on 11 October 2010 to discuss the differences within reports of the thematic committees and make agreements. Between October and December, the taskforce held a series of meetings and extensive discussions, and by 11 December, 132 disputed issues were resolved through agreement, reducing the number of contentious issues to 78. On 25 February 2011, the meeting of Constitution Committee formed a five-member Dispute Resolution Sub-Committee (DRS), comprising of leaders of major political parties, and headed by UCPN (Maoist) Chairperson, Pushpa Kamal Dahal, to solve the remaining issues through consensus. The contentious issues related to state restructuring were also referred to this sub-committee. In nine months, the sub-committee could not forge any agreement on state restructuring, but was able to resolve 48 out of the 78 contentious issues. The committee submitted its report to the Constitutional Committee on 9 January 2012.

On 10 April, the major aspects of integration and settlement of the Maoist combatants was more or less agreed upon. On 15 May 2012, the sub-committee reached a deal on all fundamental subjects including federalism, Legislative-parliament, ruling system, and the judicial system. It was decided that the constitution would have a mixed system of government (directly elected President and a Prime Minister elected by parliament), a bicameral legislature in which seats in the lower house would be elected according to a mixed electoral system, and a Constitutional Court would be formed to handle disputes related to federalism (Legislative Parliament 2013). In terms of federalism, it was decided that there would be 11 provinces, and that a federal commission would be formed to resolve the issues of demarcation and naming of provinces.

## **Challenges of CA-I**

Although the CA-I achieved a lot, it did not produce a constitution. There were several challenges confronting the constitution writing body during its four-year tenure.

### **(a) Consensus building**

Consensus building between the political parties was one of the major challenges of CA-I. Although the political parties reached consensus on approximately 180 of 210 contentious issues during the tenure of the CA-I, they could not finalize the integrated draft because of lack of consensus on the major contentious issues, including federalism, especially the number, names and boundaries of the provinces. Some of the people interviewed during the 2015 Key Informant Interviews (KIIs) mentioned that parties could not reach a consensus because of lack of political will, and unwillingness among leaders to compromise certain values. Moreover, there were no institutional mechanisms or structures set up for coordination or cross-cutting bargaining, and negotiations took place outside the CA and on an ad-hoc basis, between the political parties' leaders. The consensual process that the Interim Constitution envisaged was hampered by a lack of strong leadership and a single party with a legislative majority to effect change.

### **(b) Size of the Assembly**

While inclusion was an achievement of the process ensuring diversity and ethnic representation, it was also a challenge. The 601-members came from different ethnicities, classes, regions, castes and political orientations and had diverse viewpoints on various issues. As a result, it was often difficult for members to reach a common ground on a myriad of issues during Thematic Committee meetings. In the 2015 KIIs, some of the CA-I members stated that everyone's voice could not be heard during the meetings because of the large size of the committees. They added that it was not because of the weakness of the CA Rules 2008, but because of how the discussions were structured. For instance, they mentioned that larger parties occupied the front rows and were allocated more discussion time as per member strength. Also, debates and discussions were often conducted on party lines and they were sometimes compelled to vote according to party pressure. As a result, the inclusion and diversity of the CA was not capitalized upon and, thus, all perspectives were not fully addressed.

### **(c) Absence of political leadership**

During the 2015 KIIs, some respondents, including civil society leaders, political analysts and representatives of international organizations commented that although the process of constitution building was in line with the Interim Constitution and people's aspirations, the leadership of main political parties got sidetracked from their primary responsibility of constitution building, and indulged in unnecessary power plays. Many respondents lamented that, instead of cooperating, political parties were seen trying to tire each other out, and practicing competitive politics. For the initial two years, coalition building and the peace process were the main priorities of the political party leaders, and they were engaged in the making and unmaking of governments for a long period of time. In the four year period of the CA-I, there were four coalition governments, two of which were headed by the UCPN (Maoist) and two by CPN (UML). All this diluted the focus of party leaders who put their political and private interests over national interest. This not only created a bottleneck in finalizing a constitution, but also derailed people's confidence in the political leadership. The CA-I lacked the strong leadership needed to encourage political forces to rise above partisan politics and join hands to solve the national challenges.

### **(d) Unrealistic timeline**

The timeline envisaged for the constitution building was very ambitious. Constitution building is a challenging task in any country, and it is especially complicated in a country like Nepal given the vast change agenda that lies at the heart of the country's transition. The original CA-I timeline of two years had no scientific basis, and the vision for change was unclear. Although the leaders acknowledged that a task of this scale required time and consistent efforts, they did not do anything to adopt a phase-wise approach. Many of the respondents during the 2015 KIIs expressed that if there was necessary infrastructure, and adequate time, the task of constitution building could have been better streamlined. In fact, many were of the opinion that if the CA-I would have responded in a timely manner to the SC ruling, it could have extended its mandate and successfully taken the constitution building process to promulgation.

### (e) Inconclusive federalism debate

Federalism, since the beginning, was a complicated issue, as no one had a clear understanding of what it entailed, and how the country could move towards attaining it in the most effective manner. Initially, the Committee on State Restructuring and Distribution of State Powers proposed a 14-province model based on a combination of ethnic identity, history, and economic viability. The fourteen provinces were: i) Lumbini-Awadh-Tharuwan, ii) Mithila-Bhojpur-Koch-Madhes, iii) Khaptad, iv) Karnali, v) Jadan, vi) Magrat, vii) Tamuwan, viii) Tamsaling, ix) Newa, (x) Narayani, xi) Sunkoshi, xii) Sherpa, xiii) Kirat, and xiv) Limbuwan. The committee approved fourteen provinces, although major parties and several groups were opposed to it.

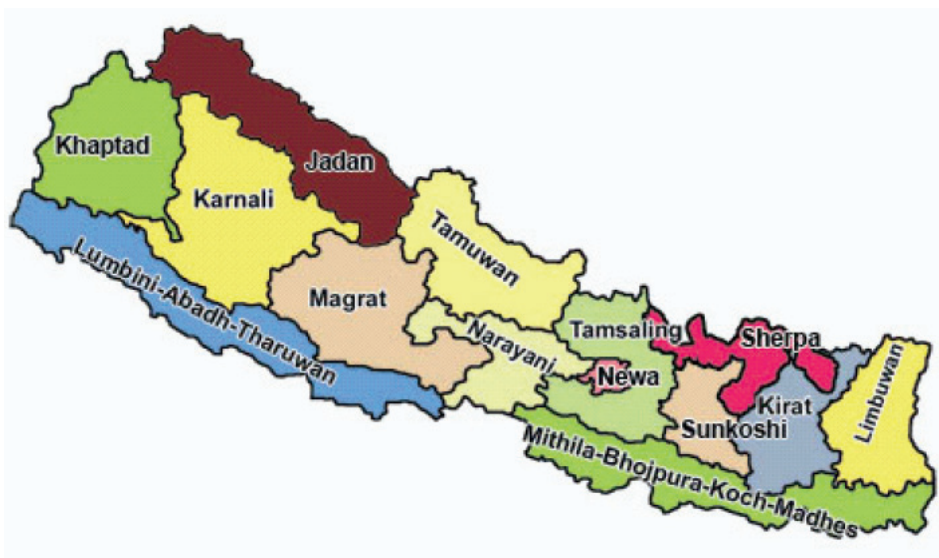


Figure 1: 14-province model finalized by Committee on State Restructuring and Distribution of State Power

The model was criticized on many grounds. Many believed that a 14-province would be costly and unmanageable for a country like Nepal given that some of the provinces did not have any resources. Additionally, it was feared that creating provinces on ethnic lines could lead to communal violence. As a result of widespread criticism of the proposed model, the Committee proposed an 11-province federal structure, with one non-territorial province.

However, after the Indigenous people, Madhesis, and other ethnic groups rejected the agreement for 11 provinces, political party leaders had to backtrack.



Figure 2: 11-province model proposed by Committee on State Restructuring and Distribution of State Power

In addition to the above challenges and shortcomings, during the 2015 KIIs, some respondents opined that if the CA Chairperson had assumed stronger leadership, the CA-I could have broken the impasse and planned an exit strategy. Although the role of a Chairperson as a presiding officer is impartial, non-interfering, and non-partisan, and there is not much he could have done, some believed that he could have encouraged and compelled political party leaders to participate in committee meetings, discussions, and activate steering committee meetings.

## Overall Assessment

The CA-I faced a lot of criticism for not being able to give a final shape to the constitution despite repeated extensions. However, it is important to look back at its achievements. The CA-I was in itself historical because it was the first time that the nation was drafting a constitution through a CA. On the way, there were several challenges, obstructions, and failures, including mistrust among party leaders, large size of the CA, political deadlocks, differences among different groups, and lack of extensive knowledge among the members on constitution. Regardless, the assembly was not only able to narrow down the disagreements through continuous party-level dialogues, it also produced reports which were later adopted and owned by CA-II. Most importantly, it created the necessary processes and systems for constitution drafting. In fact, if the achievements of assembly are to be evaluated, they far outweigh the failures. The four years' time of CA-I, therefore, did not go to waste.

## 2. The Second Constituent Assembly (CA-II)

As outlined in the previous section, Prime Minister Baburam Bhattarai dissolved the CA-I on the midnight of 27 May 2012, and announced new elections for the CA-II for 22 November 2012. However, as a result of constitutional and political stalemate, election could not be held on that date. Intense negotiations took place among the four major parties represented in CA-I, UCPN (Maoist), Nepal Congress, CPN (UML) and Madhesi Janadhikar Forum (Loktantrik). After months of ambiguity, the parties signed an 11-point agreement on 13 March 2013 to resolve the constitutional crisis, which led to the formation of an Interim Election Council (IEC) led by a caretaker government formed under the leadership of Supreme Court (SC) Chief Justice Khil Lal Regmi. The IEC announced 19 November 2013 as the new date for elections for CA-II, approximately 18 months after the demise of the CA-I. Despite some initial struggles and delays, 2013 again saw successful election, with a record 79.82 percent voter turnout, including over fifty percent female voters (Election Commission of Nepal 2013). Although months following the dissolution of the CA-I were rocky, the successful elections by an interim government was appreciated by everyone interviewed in the 2015 KIIs. This successful transition, according to them, was a proof that the parties, although divided on issues, were willing to reach a compromise when it came to advancing the constitution building process.

The CA-II election adopted an electoral system replicating that of the CA-I, that is, a mixed electoral system combining FPTP and PR. The number of constituencies remained the same—240 FPTP and 335 PR seats with 26 seats to be nominated by the post-election Council of Ministers (Election Commission of Nepal 2013). For a long time, however, the Council of Ministers failed to agree on the 26 seats that were to be filled by appointment. After months of delay, the government nominated 24 members by 7 January 2015, leaving two of the 26 nominated seats vacant.

Unlike CA-I, which was applauded for creating history in terms of inclusion, representation of minority and marginalized groups decreased in the CA-II. For instance, representation of women was approximately 30%, indigenous people 31%, Madhesi 26%, Dalits 7% (against 33% 37%, 35% and 8% respectively in the CA-I). This decrease in representation, according to many 2015 KII respondents, was a weakness of the CA-II, and a big blow to the issue of inclusion. The CA-II election also produced very different results for the political parties as compared to the 2008 election. The Nepali Congress won 196 seats making it the largest party in the CA-II, followed by 175 seats won by CPN (UML). The Maoists won just 80



of the 601 seats compared to 220 seats in 2008 election (Election Commission of Nepal 2013). Despite initial resistance by Maoist leaders in accepting the results, and subsequent threats to boycott the the CA-II unless an independent probe was established to look into the possible irregularities, in just a little over one month they accepted the people's mandate and agreed to be a part of the constitutional process. The acceptance of electoral loss by former insurgents is a testimony to the willingness of all parties to come together to build a participatory and inclusive constitution.

On 24 December 2013, the four major parties reached a four-point deal in which they agreed to: a) establish a committee comprised of their top leaders to assist in finalizing the peace process and constitution drafting; and, b) ensure promulgation of the constitution within a year. The CA-II was to start its business from 22 January 2014, resuming the task of constitution drafting. On 10 February, three months after the election, the Legislative-Parliament elected Sushil Koirala of the Nepali Congress as Prime Minister. On 21 March, the CA-II adopted the CA Rules 2014, paving the way for the constitution drafting process. Following this, on 28 March 2014, the CA-II decided to adopt agreements concluded by CA-I, and form five new committees: Constitutional Records Study and Determination Committee (CRSDC), Constitutional Political Dialogue and Consensus Committee (CPDCC), Committee on Citizen Relation and Public Opinion Collection (CCRPOC) and Committee on Capacity Development and Resource Management (CCDRM), and Constitution Drafting Committee (CDC). On 4 April 2014, the CA-II endorsed a working calendar according to which the constitution building task would be finished by 22 January 2015.

The CRSDC, led by Bishnu Prasad Poudel was given the responsibility of reviewing the documents produced by the CA-I and list the issues that were 'agreed upon' and those that were 'disputed'. The agreed upon issues were forwarded to the CDC headed by Krishna Prasad Situala, and the disputed issues were forwarded to CPDCC headed by Dr Baburam Bhattarai. The CDC was responsible for preparing the draft of the constitution. Similarly, the CPDCC was responsible for forging a consensus within the CA-II, and consulting organized groups and representatives of identity-based organizations.

On 13 May 2015, the CRSDC started submitting its phase-wise reports to the CA. The full House of the CA-II began discussions on the ten reports submitted by the CRSDC. The CDC started its work through its five sub-committees on 1 June 2015.



The five sub-committees were: Sub-committee on Preamble and Definition; Sub-committee on Fundamental Rights and Directives Principles; Sub-committee on the Judiciary; Sub-committee on Legislature; and Sub-committee on the Executive. Through the work of these committees, CDC compiled all the agreed upon issues by June 2014, and adopted almost all the issues agreed upon by the CA-I.

The disputed issues related to judiciary, electoral design, forms of governance and federalism landed in the CPDCC, which started submitting its reports to the Assembly on 11 September 2015. The committee started discussions with political parties on the contentious issues, but the parties failed to settle them. The Ruling Party Alliance (Nepali Congress, CPN (UML), RPP, CPN (ML) having two-thirds majority), and the 30-Party Alliance (UCPN (Maoist), MJF (Loktantrik), plus small parties inside and outside the CA-II) remained divided, and put forth their positions on the contentious issues through 9-point position papers. The two positions were different, yet both alliances, from time to time, showed a desire to identify space for consensus on each point. Despite the willingness shown by both the alliances to reach a consensus on contentious issues, the issue of state restructuring remained unresolved even after several attempts by CPDCC. As a result, the constitution drafting could not progress and the 22 January 2015 deadline to promulgate the constitution was missed.

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After the CA-II missed the January deadline, the CA-II proceedings were largely suspended due to a deadlock over whether to issue the new constitution through consensus or through majority vote. While some NC and CPN (UML) leaders were pushing to have a constitution passed by a two-third majority, the opposition UCPN (Maoist) and Madhesi parties threatened to sabotage any such attempts, arguing that consensus on all contentious issues should be reached. While the deadlock was disheartening, there were also positive signs. Opposition protest programmes were not as fierce as feared, and the ruling parties were hesitant to push through the proposed voting processes. Attempts to negotiate a way out of the deadlock continued.

In spite of boycotts and obstruction by Maoist-led alliance of various full sessions of the CA-II, the ruling party alliance passed a Questionnaire Committee on 25 January 2015, which was tasked to prepare 'yes' and 'no' questions for voting. However, the meetings of the CA-II were postponed 'indefinitely' in a response to demands of the Maoist-led alliance.

## April and May earthquakes

Amid the obstruction in the constitution building process, the country was struck by two major earthquakes on 25 April 2015 and 12 May 2015. The earthquakes and continuous aftershocks brought unprecedented personal loss to the people. The state was overwhelmed with the loss and unable to respond swiftly to rebuild lost homes, resettle the internally displaced, repair infrastructure, and rehabilitate the livelihoods of thousands of people affected. The earthquakes naturally put the constitution writing process on hold, but they also put a lot of pressure on political parties to exhibit their leadership, reinstate their relevance, and regain people's trust by not only rebuilding what was destroyed but also completing the peace process through the declaration of new constitution.

## 16-point agreement

Responding to the pressure to exhibit leadership, on 8 June 2015, less than one month after the second earthquake, the four major parties, the Nepali Congress, CPN (UML), UCPN (Maoist) and MJF (Loktantrik), signed a 16-point agreement which finally gave an impetus to the process of constitution drafting. As per the 16-point agreement, the parties agreed that the country would have eight provinces based on identity and capability. The five criteria of identity were: ethnicity/community, language, culture, geographical and regional continuity, and history; and the four criteria of capability were: economic inter-relationships and capability, the status and potential for infrastructure development, availability of natural resources, and administrative feasibility. The agreement stated that their boundaries would be decided by a federal commission within six months after promulgation of the constitution, and the names of the provinces would be passed by a two-third majority of provincial assemblies.

The agreement also outlined that there will be a bicameral parliament at the center, comprising of the House of Representatives and National Assembly, with an executive Prime Minister and a constitutional President. It also made provision for a Constitutional Court to settle disputes between the provinces and the center, between provinces, between provinces and local bodies, and election-related disputes of the House of Representatives, National Assembly and provincial assemblies. The tenure of the Constitutional Court was fixed to be 10 years.

The 16-point agreement was seen as a positive step towards a viable outcome. It was welcomed by many of the 2015 KII respondents as the country could not afford

another political stalemate amid the long-term humanitarian crisis. However, there were some opposed to the agreement, as they argued that state restructuring should come through the CA, as Article 138 of the Interim Constitution explicitly stated that the CA should determine the names, numbers and boundaries of the federal provinces. In addition, some respondents, including political analysts, pointed that the agreement was the outcome of the personal political interests of the leaders of the main parties. Despite the Supreme Court's interim order issued on 19 June 2015 specifying that all the federal issues including demarcation should be settled by the CA-II as required by the Interim Constitution, the constitution drafting process moved on.

### **Preliminary Draft Constitution of Nepal – 30 June 2015**

Based on the 16-point agreement, the Preliminary Draft Constitution was tabled in the CA-II on 30 June 2015. While the UCPN (Maoist) party had reservations about the parliamentary system and provisions on citizenship, and the place of districts in the federal set-up, among others, by 7 July 2015 it had endorsed the document along with the other major political parties

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Members of Madhes-based parties (Federal Socialist Forum Nepal, Terai Madhes Democratic Party, and Sadbhavana Party) tore the draft soon after it was presented in the House, and boycotted the subsequent meetings of the CA-II. They demanded constitution be promulgated only after delineation of federal units. Additionally, the parties said that the draft had curtailed the rights of Dalit, Janajati, Madhesi, Muslim and other marginalized communities. Similarly, Kamal Thapa, the Chairperson of RPP (Nepal) reiterated his demand for referendums on secularism, federalism, monarchy and republicanism. CA-II members from the indigenous communities submitted a 52-point note of dissent. Their demands ranged from including the word secularism in the preamble, naming the provinces based on ethnic, linguistic and cultural identity, and revising the provisions related to state restructuring and devolution of state power. Many more parties and CA-II members also registered notes of dissent but pledged to support the ongoing process.

The tabling of the Preliminary Draft Constitution after a prolonged impasse was considered a major milestone in the constitution building process by many 2015 KII respondents. It gave hope to many that after eight long years of waiting, the country was on the path to finally getting a constitution. The efforts of the political parties and their leaders in reaching this stage in the constitution building process were

appreciated by all. However, during the KIIs, the Preliminary Draft Constitution was criticized by leaders of Madhes based parties, some constitutional experts and civil society activists who believed that it fell short of meeting the aspirations of the marginalized groups and upholding the promises of the Interim Constitution, especially regarding participation in state structures, and gender and ethnic equality.

The Interim Constitution ensured the right of marginalized groups to participate in state structures on the basis of their population. This was not fully reflected in the provisions of the Preliminary Draft Constitution. Although Article 43 (4) of the Preliminary Draft Constitution gave women the right to participate in state structures on the basis of proportional inclusion, it did not make provision for affirmative action for women to participate in the Federal Ministerial Council. Similarly, Article 88 (8) and 175 (5) only guaranteed one-third seats for women in federal and provincial legislatures. Moreover, marginalized groups including Madhesi, Dalits and Muslims were denied any kind of quota altogether. Article 23 made arrangements for special provisions to protect and empower the marginalized groups, along with the dominant *Khas Arya* group, which basically qualified almost everyone in the society to receive special treatment. A representative of Madhesi civil society organization assessed this as not only impractical and unattainable, but also meaningless.

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In terms of the electoral system, Article 88 and 175 of the Preliminary Draft Constitution adopted a mixed member proportional representation. The Parliament (or the House of Representatives) would comprise of 275 members, of which 165 members would be elected through FPTP system and 110 through PR system; meaning that 60 per cent would be elected directly and 40 per cent through PR, as opposed to 40-60 shares in the Interim Constitution. Under such provisions, marginalized communities would find it exceedingly difficult to participate in state structures and in decision-making.

The citizenship issue also remained one of the most debated and contentious issue in the Preliminary Draft. According to Article 12, both father *and* mother need to be Nepali citizens for a child to be able to acquire citizenship by deicent. It was contrary to the Interim Constitution which provided that any person whose father *or* mother was a Nepali citizen can acquire citizenship by descent. This citizenship provision of the Preliminary Draft drew a lot of opposition from women's rights groups as it not only infringed upon a mother's right to pass citizenship to her children, but also created conditions which could render millions stateless. Moreover, in case of

naturalized citizenship, the draft further perpetuated gender inequality. According to Article 13, a foreign man married to a Nepali woman would need to wait for 15 years to acquire Nepali citizenship, whereas a foreign woman married to a Nepali man would be eligible for citizenship after relinquishing her foreign citizenship after marriage. As per Article 282, naturalized citizens could not be elected or appointed in key state positions, including the post of President, Vice President, Prime Minister, Chief Justice, Parliament Chair, as well as in constitutional bodies. Such discriminatory citizenship provisions would deny a significant part of the population an opportunity to be elected in key state positions, especially to the Madhesis.

In addition, the draft had several other weaknesses, including discriminatory provisions on property rights, reproductive rights, lack of autonomy to provinces in distribution of power and resources, among others. Most importantly, the 'fast-track' approach adopted by the CA-II to draft a new constitution was criticized on the grounds that the rush to get a constitution might result in a statute that is exclusionary, and lacks ownership. Despite the weaknesses, the process moved on and people were assured that they could provide their feedback during public opinion collection, and that their feedback would be incorporated in the final statute.

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## **Public opinion collection**

The Committee for Citizen Relations and Public Opinion Collection (CCRPOC) came up with a 15-day action plan to collect public opinion on the Preliminary Draft Constitution. The action plan was endorsed by the full House on 9 July 2015 and came into effect from 10 July 2015. As per the schedule, two-day interaction programmes were organized on 20 and 21 July 2015 in each of the 240 electoral constituencies in the presence of CA-II members to collect feedback.

The government announced public holidays for two days to encourage mass participation in the campaign. According to CA Secretariat, more than 590 lawmakers and 150 officials from the secretariat were deployed for the feedback collection program. Although the public opinion collection was a significant democratic exercise, it drew criticism for allocating only two days for interaction. Most of the 15 days allocated for public opinion collection were set aside for technical and logistical discussions. However, the feedback collection was completed across the country with participation of people from all walks of life, except in the Madhes region, where protests continued against the major parties, demanding demarcation of the federal provinces to be settled down before promulgation of the constitution.

A report was submitted by the Chair of CCRPOC, which contained 186,946 suggestions collected from people through website, e-mail, post office and fax. According to the report, people mostly favored directly elected executive, religious freedom against secular state, demarcation of federal provinces before the constitution, and equality in citizenship. Most of the respondents during 2015 KIIs were of the view that although the time allocated for public opinion was short, the process went smoothly and provided an opportunity to the public to voice their concerns over the Preliminary Draft Constitution.

### Six-province model

On 8 August, the leaders of the four major parties reached a new agreement to divide the country into six provinces<sup>3</sup> (contrary to the eight provinces as agreed in the 16-point agreement). The UCPN (Maoist) and MJF (Loktantrik) signed the agreement but did so registering reservations. The stated intention of the agreement was to provide a pathway to resolve the federal debate, taking the constitution drafting to its final phase.



Figure 3: Six-province model proposed by four major parties

Source: [www.nepalitimes.com](http://www.nepalitimes.com)

The decision to federate the country into six provinces received both support and opposition. Those who were tired of the long stand-off on federalism welcomed

<sup>3</sup> The map has been taken from <http://www.nepalitimes.com/blogs/thebrief/2015/08/08/map-of-federal-nepal/> We believe that the map is a correct representation of the actual agreement reached by the parties

the decision with the hope that the deal would bring an end to the political crisis and facilitate the task of constitution building. On the other hand, many parties, especially the Madhesi parties and ethnic groups such as the Indigenous People, criticized the agreement. These groups took to the streets, enforced shutdowns in several parts of the country, staged protests and demanded that the parties roll back the decision. Those demanding Tharuhat province called for an indefinite strike in many districts of the mid and far-west. The dissatisfied Madhesis and supporters of ethnic provinces also protested over the six-province model. Madhes-based groups demanded that the entire stretches of the southern terai plains be kept together.

### **Seven-province model**

On 21 August, the federal model was once again revised and the political parties agreed to federate the country into seven provinces. A meeting of the special committee under CPDCC revised the previously agreed six-province federal model and agreed to create a separate province in Karnali by including some eastern districts of the region. As per the agreement, provinces 1, 2, 3, 4, and 5 would remain unchanged. It was also agreed that the final demarcation of the provinces will be decided by the soon-to-be formed federal commission. With the new development, Bijaya Kumar Gachhadar, Chairperson of MJF (Loktantrik), one of the signatories of the 16-point agreement, boycotted the meeting of the special committee expressing his dissatisfaction with the new seven-province model. With the announcement of seven-province model, the Tharus, Madhesi and Janajatis enforced indefinite strikes in the plains. The demarcation dispute mainly surrounded Jhapa, Morang, Sunsari, Saptari, Kanchanpur, and Kailali districts. Senior leaders of Nepali Congress and CPN (UML) were adamant that the nine districts of Far-West should remain undivided and Kailali should not be split. However, factions within NC, UML and UCPN (Maoist) showed willingness to reach an agreement even by splitting the districts.

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### **Constitutional Bill of Nepal – 23 August 2015**

The Preliminary Draft Constitution tabled on 30 June was revised ostensibly to incorporate submissions made by the people. The resultant document, tabled on 23 August by the Chairperson of the CDC, Krishna Prasad Sitaula, was the Constitution Bill of Nepal (the Constitution Bill). Copies of the Constitutional Bill were distributed to the CA-II members, who were given three days to go through it before deliberation began on 26 August. The full house of the CA-II held deliberations for five days on the revised draft. A meeting of the CA-II on 30 August gave members

seven days to register their amendment proposals on the Constitution Bill, which was the last opportunity for their demands to be incorporated in the statute. The CA-II members were allowed to register amendment proposals until 5 September. According to the CA Rules 2014, any amendment proposal endorsed by a two-thirds majority in the CA-II was to be included in the new constitution.

These developments in the CA-II saw widespread protests that left close to forty people dead and hundreds injured within four weeks. The discontent was especially high among Madhesi and Tharu communities, who said that the Constitution Bill failed to address their demands through a federal inclusive system. The Madhesi communities that comprise one of the biggest population blocs in the country (19.86%)<sup>4</sup> were objecting to some parts of plains being included in hill states. Much of the Terai was agitated, including Birgunj, Janakpur, Dang, Rautahat, Siraha, Bardiya, and Sarlahi, and curfews were imposed in different places. An indefinite shutdown in Terai continued for five weeks. The leaders of Madhes based parties vowed not to bring an end to the protests unless their demands were fulfilled. The Tharu community, Nepal's fourth largest indigenous group, concentrated in the Far-Western Terai, demanded an autonomous undivided Tharu Province and demonstrated their dissatisfaction through protests characterized by a high level of violence. The Tikapur village in Kailali saw one of the worst incidences of violence on 24 August 2015, killing eight police and security personnel including a Senior Superintendent of Police (SSP), and a two-year old child.

The caste, ethnic and regional rivalries and violence was further fueled by lax political response from the center and by mobilizing the army, for the first time since the people's war, to deal with civic unrest. The leaders assured the agitating groups and communities that their demands would be addressed in the constitution through the amendment process.

## **Voting and Promulgation**

As per CA Rules 2014, the Chairperson started conducting clause-wise discussion and voting for each and every article of the Constitution Bill on 13 September 2015. On 16 September 2015, the Constitution Bill was endorsed in its entirety

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<sup>4</sup> Population Monograph of Nepal 2014-Volume II, <http://cbs.gov.np/wp-content/uploads/2014/12/Population%20Monograph%20V02.pdf>, p. 6.



by more than two-thirds of the CA-members (507 of 598 CA-II members), with Madhesi parties boycotting the process, and the Rastriya Prajatantra Party-Nepal (RPP-N) voting against the Bill. The CA-II members signed five copies of the new Constitution on 18 September 2015, and the CA Chair, Subhas Chandra Nembang, authenticated the Constitution.

On 20 September 2015, President Ram Baran Yadav promulgated the Constitution of Nepal 2015 amid a special ceremony at the CA Hall in New Baneswor, Kathmandu. With the promulgation of the constitution, the CA-II was dissolved converting the former CA-Legislative Parliament into solely a Legislature Parliament. At the time of writing this report, the situation in the Terai remained tense. The promulgation of the constitution was cautiously welcomed by the international community, with everyone urging the Government to resolve the differences with the dissenting parties and groups without any delay. As of 30 September 2015, the three major parties had started negotiations with the leaders of Madhes-based parties to find a solution to the prolonged dispute.

### 3. Support of International Community towards constitution building

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The international community<sup>5</sup> was proactive in supporting the peace process, election to CA-I as well as CA II, and the constitution building process at various levels. There is no clear estimate of the investment made in the nation's peace and constitution building processes. According to recent data released by an English daily *Republica*, a total of NRs 117.74 billion<sup>6</sup> (approximately 600 million USD) was spent on the entire process of constitution building (including CA-I and CA-II). The figure is based on data from the Election Commission of Nepal, the Office of the Auditor General, the Ministry of Peace and Reconstruction and the Peace Fund. The figure does not include what was spent on security agencies. According to an evaluation of the international support to Nepal's peace process commissioned by the Danish Ministry of Foreign Affairs' Department of Evaluation, financial support to the peace process between 2006 and 2011 was estimated to be USD 300-400

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<sup>5</sup> For the purpose of this report, International community refers to Kathmandu-based donor agencies and multilateral and bilateral organizations that provided technical and programmatic support towards Nepal's peace and constitution building processes.

<sup>6</sup> <http://www.myrepublica.com/feature-article/story/28512/the-cost-of-constitution.html#sthash.Sy8xEnte.dpuf>, last accessed on 25 September 2015

million. However, the total support must be a lot higher, given that this data does not include the support towards constitution building in CA-I and CA-II.

## **Support to peace process**

A number of organizations have supported the peace process since the signing of the Comprehensive Peace Agreement (CPA) between the Seven Party Alliance (SPA) and then CPN (Maoist) on November 2006. Some of the primary support received during the peace process is highlighted below.

### **United Nations Mission in Nepal (UNMIN):**

UNMIN played an important role in the integration and rehabilitation of the Maoist ex-combatants. Although not directly related to the constitution building process, it was one of the most important components for the conclusion of the peace process as envisaged in the CPA. Based on its mandate, UNMIN verified 19,602 combatants between 2007 and 2011. On 22 January 2011, the combatants were brought under the Special Committee for Supervision, Integration and Rehabilitation of Maoist Army Combatants of the Government of Nepal. The committee undertook the process of updating and regrouping. Of the 17,052 updated combatants, 94 had died between 2007 and 2011, 7344 opted for voluntary retirement, 9702 chose integration, 6 opted for rehabilitation. The regrouping started again, and of the 9702 combatants who had chosen integration the first time, 6577 combatants chose voluntary retirement in the second round. Officially, the process of integration and rehabilitation of the Maoist combatants was successfully completed in 2013, with 15,624 opting for Voluntary Retirement, 1,422 choosing Integration, and 6 opting for Rehabilitation (Special Committee Secretariat 2012; cited in Bhandari 2015).

### **Nepal Peace Trust Fund (NPTF)**

The NPTF is a government owned programme which was established in February 2007 to implement the provisions of the CPA. The Ministry of Peace and Reconstruction (MoPR) was the core Ministry responsible for overall operation of the NPTF, which provided common platform for planning and interaction between development partners, as well as between development partners and government. It was financially supported by eight donor agencies: Denmark, European Union, Finland, Germany, Norway, Switzerland, UK and the US. Some of the major activities under the Fund were cantonment management, integration/rehabilitation of combatants, security

and transitional justice, providing compensation for conflict affected and internally displaced people, supporting their reintegration into society, supporting constitution building and future elections, among others.

### **The United Nations Peace Fund for Nepal (UNPFN)**

The UNPFN was established in March 2007 to complement the government's NPTF discussed above. The Fund was created to mobilize resources for activities of clear, short-term relevance to the peace process where they could not be funded or implemented through the NPTF or other existing mechanisms. With USD 44.5 million contributed to UNPFN over its lifetime, the Fund received generous contribution from the global UN Peacekeeping Fund and the governments of Canada, Denmark, Norway, Switzerland, and the United Kingdom.

### **The Rights, Democracy and Inclusion Fund (RDIF)**

The RDIF was launched in February 2006, with an objective to support peace building and smooth transition to democracy in Nepal. The project focused on enhancing rights, democracy and inclusion at the community level. The first phase of RDIF was supported by Department for International Development (DFID), Swiss Agency for Development and Cooperation (SDC), Australian Agency for International Development (AusAID), and Norwegian Embassy. Similarly, the second phase was supported by DFID, SDC, Australian Government and Danish International Development Agency (Human Rights and Governance Unit) (DANIDA-HUGOU). A final evaluation of the project in March-April 2013 concluded that RDIF was successful in not only raising awareness about civil and political rights among marginalized communities, but also helped in improving their representation in various social and political structures.

### **Support to Electoral Process**

Organizations such as International Institute for Democracy and Electoral Assistance (International IDEA), United Nations Development Programme (UNDP) through its Electoral Support Project (ESP), and International Foundation for Electoral System (IFES), provided technical support to the Election Commission of Nepal (ECN) to inform its electoral system design, assist in electoral reform management, and in successful management of the CA-I and CA-II elections. The latter area of support included training officials on polling and counting, ballot production and

delivering voter education and providing voter registration support to marginalized communities including women, ethnic minorities, and people with disabilities. More detail on the support provided by International IDEA, UNDP-ESP and IFES are set out below:

### **International Institute for Democracy and Electoral Assistance (International IDEA)**

International IDEA provided technical support to the ECN for electoral legal reform, and capacity building of the ECN officials. It was one of the partnering agencies in organizing Building Resources in Democracy, Governance and Elections (BRIDGE) trainings, which produced several fully accredited facilitators. With the support of the SDC, International IDEA introduced its Electoral Risk Management (ERM) Tool to the ECN and supported its operationalization. The ERM Tool is designed to enhance users' capacities to understand risk factors, analyze risk data, and take action to prevent and mitigate election-related violence. In recognition of the importance of ERM system for improved electoral decision-making, the ECN institutionalized the system and established an ERM Unit under its organizational structure in May 2014.

### **32 Electoral Support Project, United Nations Development Programme (UNDP):**

Following the CA-I election, UNDP initiated the Electoral Support Project (ESP) aimed at institutional strengthening and professional development of the ECN. In addition, it also helped in building long-term human resources capacity of the ECN to organize credible elections. Through the ESP, UNDP assisted in the design of a new fully digitized voter registration mechanism under the Voter Registration Project supported by the governments of Denmark, Norway, the UK and the US.

### **International Foundation for Electoral Systems (IFES)**

IFES, with support from USAID, worked with the ECN to strengthen its electoral management capacity, promote inclusive electoral reform, strengthen capacity of civil society organizations and mobilize citizens to participate in democratic politics. Some of its major interventions included providing technical support to the ECN towards the management of CA-II election in November 2013, providing voter education to marginalized communities, establishing a Gender and Social Inclusion Unit at the ECN, and engaging disabled people's organizations and other community groups to collaboratively advocate for the civic and political rights of people with

disabilities. Through the financial support of the Embassy of Norway, IFES also invited an International electoral expert Mr Kåre Vollan, who assisted the ECN on election law issues and provided advice to the CA members on the electoral issues of the constitution.

In addition, DFID supported the CA elections with voter education and training to candidates from marginalized groups, and the Australian Election Commission with support from the Government of Australia supported the establishment of the Electoral Education and Information Centre. Similarly, the European Union, Carter Center, and several other donors and international organizations deployed international observers to ensure free and fair elections for both the CA-I and CA-II.

### **Support to constitution building process**

The eight year long constitution building process received support from a number of organizations. Some of the major contributions by international organizations are highlighted below.

#### **International Institute for Democracy and Electoral Assistance (International IDEA):**

International IDEA, through its *Supporting Constitution Building Process in Nepal* project, supported national actors in the process of constitution building. It worked in close collaboration with the CA and the CA Secretariat, different committees, informal Women's Caucus, Indigenous People's Caucus, political parties, and externally with other partners to support the constitution building process in the country. It did so by offering technical advice on drafting the constitution, facilitating dialogues among key political actors to help them reach a consensus on contentious issues, sharing comparative perspectives from other countries, supporting constitutional designs that embrace diversity, and creating space for political parties to share the results of the constitution building process. The project was supported by the Embassy of Norway in Nepal from 2006 to 2015. In addition, it was also supported by the Embassy of Finland from 2009 to 2013.

#### **United Nations Development Programme (UNDP) Supporting Participatory Constitution Building in Nepal (SPCBN):**

The SPCBN project provided infrastructure and logistics support to the CA Secretariat, and enhanced the capacity of CA members, staffs, advisors, and other

key stakeholders. Through SPCBN, the UNDP also established the Center for Constitutional Dialogue (CCD) with support from consortium of donors, including Denmark, Norway, DFID, Switzerland, and USAID. The CCD served as a resource center and a neutral space for dialogue between CA members and political leaders, and served as an open forum for deliberations on constitutional issues (January 2009 to December 2011). It also helped promote public participation in the drafting process. It housed a library, training facilities, and provided venue for public lectures, seminars, orientations, and workshops on issues related to constitution building.

#### **United States Agency for International Development (USAID):**

During the CA-I, USAID provided technical assistance to the CA members and the Parliamentary Secretariat to strengthen parliamentary committees and constitution drafting. Among others, USAID played an important role in providing avenues for alternative dispute resolution, political party negotiations and consensus building during heightened tensions after the dissolution of CA-I. USAID also provided financial support to agencies such as The Asia Foundation towards its constitution building support projects.

#### **Department for International Development (DFID):**

DFID launched its Enabling State Programme (ESP) in January 2001 to ensure that state institutions and citizens' work together to promote inclusive and responsive policies and programmes. Through the ESP, which was managed by GRM International from 2010 until 2013, DFID worked closely with state institutions to promote inclusive governance. During CA-I, it provided technical assistance on constitution drafting, and conducted civic awareness through the CICs to enable citizen participation in the process of constitution drafting.

#### **Swiss Agency for Development and Cooperation (SDC):**

SDC supported the constitution building process in different forms in collaboration with Nepali experts and partners. It especially provided technical input on the issue of state restructuring. It organized seminars and workshops with relevant stakeholders including the government ministries, political party representatives, women, Dalits, Madhesis, Tharus, among others. They worked with Dr. Nicole Toepperwien, a Swiss constitutional expert, to prepare working papers highlighting key aspects of federalism with reference to Nepal, and organized study tours with

leading representatives of political parties, government, academia, and civil society to Switzerland to study the Swiss federal system.

In addition to these, there were several other organizations and donors that directly and indirectly supported the constitution building process, including National Democratic Institute (NDI), Forum of Federations, DANIDAHUGOU, among others.

## **Assessment of the International Communities' Role and Contribution**

### **Important Supportive Role**

During the 2015 KIIs, the support of international community was much appreciated by the stakeholders, including the CA Secretariat, CA members, and political parties. They acknowledged the important role played by different organizations not only in supporting the peace process and ensuring smooth, free and fair elections, but also providing continuous support throughout the process of constitution building. The respondents acknowledged the role of different organizations in ensuring smooth transition of country from the state of war to state of peace by providing necessary financial, technical, and human resources support. The Election Commission of Nepal (ECN) was thankful of the support of organizations such as International IDEA, IFES and UNDP's ESP project for the electoral support provided by them during the CA-I and CA-II elections, as well as capacity building support provided to the ECN officials. One ECN official commented,

‘The mixed election (PR and FPTP) was new for us, and in the beginning, we were lost. However, with the support of different organizations, we were able to successfully organize the CA-I election.’

The technical support of international organizations in the process of constitution building was considered crucial. The CA Secretariat officials were appreciative of the important contributions of the international community in both CA-I and CA-II. One of the officials remarked,

‘Several international organizations, donors, INGOs provided us support which made it easier for us to complete our task.’

It was acknowledged, however, that the coordination between international organizations and the CA Secretariat could have been strengthened. An official at the CA Secretariat commented,

'After the CA election, and before the work of constitution writing began, CA members should have been sensitised on the constitution building process; what is required in the constitution, what can be fulfilled by law, what requires cabinet decision, etc. CA Secretariat took 1.5 years just to cut through these issues.'

Similarly, some of the CA-II members were of the opinion that the support of international community was 'not enough' during the CA-II, 'which put many issues in the dark.'

After the dissolution of the CA-I, different international organizations played an important role in reaching out to the general people and informing them of the work of the CA-I, and keeping them updated on different political agreements leading up to the election of the CA-II. This was crucial given that the anxiety among the people was excessively high. At the same time, they also played an important role in organizing political dialogues between the leaders of political parties so that they could sort out their differences and reach a common ground. Some of the international organizations invested heavily in capacity building of disadvantaged groups including women, Madhesi, Dalits and Indigenous People. Although their intention was to empower the marginalized groups, they were criticized by some political parties for 'creating friction between castes and communities'. However, a constitutional expert from Nepal justified this saying,

'The international community should be credited for empowering the marginalized communities. The criticism came from the ruling elites because they were not happy that the status quo was challenged.'

### **Inter-agency coordination**

In terms of coordination, some of the CA members pointed that there were duplication of efforts, and that international organizations did not always collaborate with each other to provide their support in the most efficient manner. 'I feel that there was unwanted competition among international bodies', commented one of the members.

In order to support, coordinate and facilitate participatory constitution building, a donor consortium was formed in 2008 with the consent of the Government of Nepal, under the auspices of UNDP, DFID, then DANIDA-HUGOU, the Embassy of



Norway and USAID were involved in this initiative. The idea behind this consortium was to share information about each other's work through regular meetings, minimize duplication of efforts, and inform the members of new happenings. Although successful to some extent, one of the respondents of 2015 KIIs reported that 'donors and organizations were often reluctant to share information and join hands for collaboration'. It was recommended that the duplication of efforts should be minimized in the future through greater collaboration between the agencies, with each agency providing specialized support in coordination with the government.

One of the most successful collaborative efforts during CA-I and CA-II was the setting up of Constitution Information Center (CICs) in 2010 in 14 zones supported by various international agencies including International IDEA, UNDP, DFID, Swiss Embassy, USAID and CA Secretariat and operated by the Nepal Law Society. CICs have played an important role in bridging the gap between the CA and the people. They helped in increasing public confidence in the constitution building process by providing information and documents from CA to the people at the district level, obtaining feedback on different issues, and channeling the feedback to the CA.

Another successful collaboration has been that of International IDEA, IFES and UNDP (ESP) in providing support to the ECN particularly through BRIDGE trainings in the areas of: Election Management; Voter Registration; Voter Civic Education; Electoral Dispute Resolution; Electoral System; Gender, Inclusions and Elections; Political Finance and Corruption; Election Legal Framework; Polling and Counting; and Elections and Security.

Overall, the support of the international community was hailed by stakeholders and beneficiaries for not only providing infrastructural support, but also helping the ECN conduct free and fair elections, providing support to the CA Secretariat in creating right processes, organizing trainings, conducting open discussions on different issues, bringing in national and international experts to help in conceptual clarity of complex issues, and for creating an environment to build consensus among political parties.

## **Way forward**

Now that Nepal has promulgated its constitution, the biggest challenge will be the implementation of federalism. Although the parties have agreed to a seven-province federal set-up, there is no plan as to how it will be rolled out. Federating the country

will require not only technical capacity, but also financial and human resource capacity. As the country moves from a unitary system to a federal system there will be a need for political, administrative, social and economic restructuring. Of all this, administrative restructuring will be one of the most challenging, and such massive change will require the right structures, institutions, mechanisms, policies and resources. Furthermore, protests against the model increase not only the challenges but the risk of resultant conflict. Although it is difficult to please everyone given the diversity of the country and conflicting demands, it is important that the model adopted gains some kind of ownership from dissenting groups.

Another challenge will be creating the appropriate legal and policy environment to implement the constitution. The government will need to write and amend hundreds of laws, and develop and revise policies accordingly. It has been said that the 1990 constitution failed not because it was a bad constitution, but because many provisions of the constitution remained non-implemented without appropriate laws to realize the promises made in the statute. Nepal needs to be careful not to repeat the same mistakes.

The 'success' of the constitution will also depend on people's awareness about it, and its provisions. Political awareness is not an easy exercise and it will be important to raise such awareness among people so that they can exercise the rights provided for in the constitution. The expectations of the people will need to be managed, and for that the government will need a plan and to build capacity at the local and national level.

Given the challenges that lie ahead, international organizations can play an important role during the implementation of the constitution. In addition to sharing international experiences and lessons learned, they can also provide technical support for legislative review and reform, creation of institutions and mechanisms, as well as building capacity of the government and civil servants. It is of utmost importance that the support from international actors is well coordinated. There could be a master plan under government's leadership with proper task division, wherein some organizations can work at policy level, some on capacity building, and some on institutional set-up, as per the organization's expertise.

## IV. CONCLUSION

Nepal has come a long way over the past five and a half decades. While its democratic journey has not always been smooth, national actors have set major changes in motion and achieved incredible gains. Major changes that Nepal has seen during this time period include the overthrow of the Rana regime in 1951, institutionalization of multi-party democracy in 1990, the overthrow of the monarchy in 2005, declaration of federalism in the Interim Constitution 2007, establishment of a constitutional democratic republic in 2008, completion of integration and rehabilitation of the Maoist ex-combatants in 2013 and holding successful CA elections twice with historic gains in the inclusion of women and marginalized communities and promulgation of a secular federal democratic constitution.

It cannot be denied that there have been significant differences, tensions and delays along the way. However, beginning with the 12-point agreement in 2005, Nepal's political leaders have shown time and again that they have the ability and willingness to eventually compromise and bridge their differences in the interest of democracy and peace. Such willingness was shown by the Nepali Congress as well as the UCPN (Maoist), when the former lost the election for CA-I, and the latter for CA-II. The parties accepted the mandate of the people, and remained committed to the process of constitution drafting. CA members and political leaders have been slowly working towards consensus on difficult and highly contentious constitutional issues. Moreover, in a fledgling democracy like Nepal's, which was under palace rule just a decade back, the effort to bring back monarchy has been miniscule.

With the promulgation of the constitution on 20 September 2015, Nepal is at an important juncture. The constitution is not a perfect document. It is not as inclusive

or as equitable as many of Nepal's ethnic groups had hoped and the Madhesi and Tharu political parties are extremely dissatisfied with the proposed federal structure which has sparked violence including numerous deaths, particularly in the southern plains. Successful implementation of the constitution will require, as a first step, the government to bring all disaffected groups to the table. The International community has a critical role to play in supporting such efforts.

The material and technical support from international partners has been crucial in enabling national actors to achieve their goals. Now is the time to step up efforts to secure and consolidate the gains that have been made, and continue to support the Nepali people in their aspiration of creating a just and inclusive democratic society. Some are of the opinion that as a result of the earthquakes, the single most pressing need of the country is to rebuild homes, resettle the internally displaced, repair infrastructure, and rehabilitate the livelihoods of thousands of people affected. While there is certainly a need for disaster relief and reconstruction, it is equally important that such reconstruction is well-planned and is carried out in a transparent and accountable manner. Even five months after the earthquake, and three months after the donor community pledged \$4.1 billion to the Prime Minister's Relief Fund to help Nepal rebuild, the government has not been able to collect and use the money because of the lack of a strategic plan at the national level and stable government at the local level. Good governance is the cornerstone of efficient post-disaster recovery, and in case of Nepal it can only be ensured through the strategic implementation of the new constitution. Implementation of the constitution, therefore, is more critical for Nepal than ever before.

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## ANNEX I : CONSTITUTION BUILDING TIMELINE

1951	The Rana regime overthrown, and a new government headed by King Tribhuvan formed
1959	King Mahendra promulgated a Constitution Parliamentary elections are held, and Nepali Congress (NC) won two-thirds majority
1960	King Mahendra dismissed the elected government headed by Prime Minister Bishweshwor Prasad Koirala
1962	King Mahendra promulgated a constitution that established the <i>Panchayat System</i> , and centralized power in the Palace. Political parties banned
1972	King Mahendra passed away, and King Birendra took over as the new King
1979-80	Student protests forced the king to call a referendum in which the party-less system defeated the multiparty system
1990	<i>Jana Andolan-I</i> , a mass movement called jointly by NC and United Left Front (ULF), forced the king to lift ban on political parties. Multi-party democracy restored and a new constitution promulgated which curtailed the role of monarchy, retained Nepal as a Hindu kingdom, and paved the way for a parliamentary system
1991	General election held, which brought NC to power, with a majority of seats in the parliament. Girija Prasad Koirala elected Prime Minister
1994	Second parliamentary election held. The Communist Party of Nepal (Unified Marxist–Leninist) (CPN-UML), as the largest party in the parliament, formed a minority government

1996	The <i>People's War</i> launched by Communist Party of Nepal (Maoist) (CPN-Maoist)
1999	NC came back to power with a majority government after the third parliamentary elections. Krishna Prasad Bhattarai elected Prime Minister
2001	Gyanendra crowned the King following a royal massacre
2002	King Gyanendra assumed executive power and dismissed the government
<b>2005</b>	
February	King Gyanendra usurped absolute power and took up the post of Chairman of the Council of Ministers
November	The Seven-Party Alliance (SPA) of parliamentary parties and the CPN (Maoist) signed a 12-point understanding
<b>2006</b>	
April	An alliance of the SPA and CPN (Maoist) initiated Jana Andolan II, which continued for 19 days, and forced King Gyanendra to return power to the reinstated parliament. A ceasefire declared and GP Koirala took oath as Prime Minister
May	A 17-point Ceasefire Code of Conduct signed between the government and CPN (Maoist)
November	The Comprehensive Peace Agreement (CPA) signed between the SPA and CPN (Maoist), brought an end to the 10-year conflict, and created a roadmap for elections to a Constituent Assembly (CA)
<b>2007</b>	
January	An Interim Parliament formed Interim Constitution (2007) promulgated The Madhesi movement flared up and intensified, demanding declaration of federalism and increase in number of seats in the CA on the basis of population
March	The Interim Legislature amended the Interim Constitution, ensuring the establishment of a federal system through the CA Election

April	The CPN (Maoist) joined the Interim government
2008	
April	The first Constituent Assembly (CA-I) election held; CPN (Maoist) emerged as the single-largest party
May	CA-I held its first sitting which abolished monarchy and declared Nepal a 'Federal Democratic Republic'
July	Ram Baran Yadav elected Nepal's first-ever President
August	CPN (Maoist) Chairman Pushpa Kamal Dahal 'Prachanda' elected the first Prime Minister of the new Republic
2009	CPN (UML) leader Madhav Kumar Nepal elected the new Prime Minister
2010	The term of the CA-I extended for a period of 1 year
2011	
February	Jhalanath Khanal elected Prime Minister on the basis of a seven-point pact between the Maoists and the CPN (UML)
May	CA-I term extended for 3 months
August	CA-I term extended for another three months Baburam Bhattarai elected Prime Minister
November	Parties agreed to integrate a maximum of 6,500 former Maoist combatants into a specially created NA directorate CA-I's term extended for the fourth time for six months
2012	CA-I dissolved without promulgating a constitution after a two-year original tenure and four extensions
2013	
March	Interim government led by Chief Judge Khil Raj Regmi formed
November	The Second Constituent Assembly (CA-II) elected. NC emerged as the single largest party and the Maoist and Madhesi parties faced a severe electoral defeat
2014	NC President Sushil Koirala elected Prime Minister
2015	
April	Nepal struck by a major earthquake 7.8 on the Richter scale

May	Nepal struck by another major earthquake 7.3 on the Richter scale
June	<p>The major four parties signed a 16-point agreement which proposed eight-province model</p> <p>Preliminary Draft Constitution released</p> <p>Protest flared in the Terai over the federal model and some provisions in the Preliminary Draft</p>
July	Public Opinion collected on the Preliminary Draft
August	<p>Six-province model proposed by four major parties</p> <p>The previous model amended and parties proposed a Seven-province model</p> <p>Protests continued in the Terai over the model</p> <p>Constitutional Bill released</p>
September	<p>Clause-wise discussion and voting on the Constitution Bill began</p> <p>Promulgation of the Constitution of Nepal 2015</p> <p>The major three parties urged the protesting parties for negotiation, while the protests in the Terai continued post-promulgation</p>

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## ANNEX III: LIST OF PEOPLE INTERVIEWED

1. Anil Sinha, Secretary General, Nepal Law Society
2. Bishnu Adhikari, Governance Advisor, Department for International Development, UK
3. Bipin Adhikari, Former Chairperson, Nepal Constitution Foundation
4. Budhi Karki, Senior Legal Officer, SPCBN/UNDP
5. Dama Sharma, Former Women's Caucus
6. Deepak Prakash Bhatta, CPN (UML)
7. Deepti Khakurel, Former Women and Constitution Building Coordinator, International IDEA
8. Kalpana Rana, Former Women's Caucus
9. Kamala Bisht, Senior Advisor on Political and Social Development, Royal Norwegian Embassy in Nepal
10. Khim Lal Devkota, UCPN (Maoist)
11. Khushee Tharu, Constitution Building Advisor, International IDEA
12. Krishna Hachhethu, Nepal Center for Contemporary Studies
13. Krishna Man Pradhan, Executive Director, Nepal Law Society
14. Lok Raj Baral, Executive Chairperson, Nepal Center for Contemporary Studies
15. Laxman Lal Karna, Nepal Sadbhavana Party (Anandidevi)

16. Manohar Bhattarai, Secretary General, CA Secretariat
17. Min Bahadur Bishwokarma, Nepali Congress
18. Mukunda Sharma, Secretary, CA Secretariat
19. Nagendra Kumar Kumal, President, Nepal Forum for Indigenous Nationalities
20. Nil Kantha Uprety, Former Chief Election Commissioner, Election Commission of Nepal
21. Onsari Gharti Magar, Vice Chairperson, CA Secretariat
22. Padam Sundas, Chairperson, Samata Foundation
23. Purna Man Shakya, Reliance Law Firm
24. Pushpa Bhusal Gautam, Nepali Congress
25. Rabi Sharma Aryal, Secretary, Constitution Drafting Committee
26. Resham Gurung, President, Gurung Rastriya Parishad
27. Rita Rai, Communications and Social Inclusion Officer, International IDEA
28. Shanti Ram Bimali, BRIDGE Focal Point, Election Commission of Nepal/  
International IDEA
29. Sheri Meyerhoffer, Head of Mission, International IDEA
30. Subhas Chandra Nembang, Chairperson, CA Secretariat
31. Sunil Pokharel, Secretary General, Nepal Bar Association
32. Surya Aryal, Under Secretary, Election Commission of Nepal
33. Tek Dhungana, Joint Secretary, Ministry of Law and Justice
34. Tula Narayan Shah, Chairperson, Nepal Madhes Foundation
35. Usha Kala Rai, Former Women's Caucus
36. Vijay Kant Karna, Chairperson, Jaghrit Nepal



## ANNEX IV: KEY INFORMANT INTERVIEW QUESTIONS

1. Can the CA elections of 2008 be considered a watershed moment in the country's democratic transition?
2. What do you think were the main achievements of the first Constituent Assembly (CA-I)?
3. What were the main challenges that confronted the CA-I?
4. What, in your opinion, was the main reason behind the dissolution of the CA without finishing its task of drafting the constitution?
5. Could you highlight the main achievements of CA-II to this date?
6. What do you think are the main challenges facing CA-II?
7. Would it be correct to say that the April Earthquake was the main trigger behind pushing the parties to reach the 16-point agreement of June 8?
8. Do you think the 16-point agreement reflects the promises of the parties and aspirations of the people?
9. Will the constitution be legal given the fact that the Supreme Court has directed the CA that it cannot be dissolved without resolving the issue of federal provinces?
10. What has been the role of international actors such as International IDEA in the process of drafting of the constitution?

11. How effective was the coordination among international donors in channeling their efforts and expertise in the process of drafting of the constitution? Has the level of coordination improved over time?
12. In your opinion, does the draft constitution reflect the aspirations of the people of Nepal? Does it reflect the change that the people have been looking for since the CPA was signed?
13. What are the major flaws or missing points in the draft constitution?
14. What will be the major challenges in the implementation of the constitution?
15. What do you think will be the role of international actors in effective implementation of the constitution?



This publication 'Nepal's Constitution Building Process 2006-2015: Progress, Challenges and Contributions of International Community' provides a brief overview of the peace and constitution building processes in Nepal, starting with the end of decade-long People's War in 2006 to promulgation of the constitution in 2015. It describes the incredible gains made by national actors over the years and the important supportive role played by the international community. While many challenges remain, the aim of the publication is to highlight the achievements made so far and how the international community can continue to play a catalytic role in the implementation of the constitution.

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