

**RESILIENT
SOCIAL
CONTRACTS**

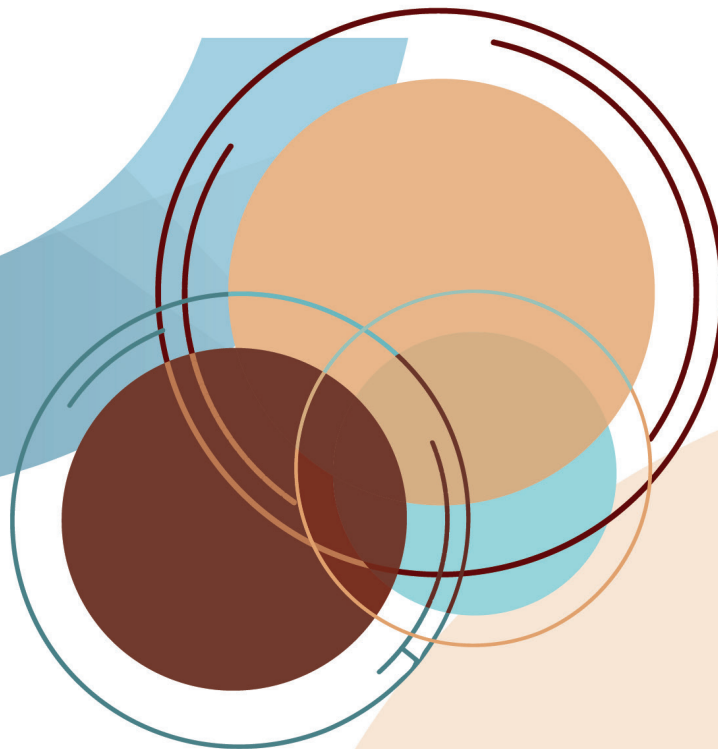
**WITS SCHOOL OF
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The Elusive ‘New Nepal’:

Democratisation, Ethnic Politics and Social
Contract-making in a Plural Society



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The Elusive 'New Nepal': Democratisation, Ethnic Politics and Social Contract-making in a Plural Society

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The summary findings, and this full report, are available on the project and institutional home websites, www.socialcontractsforpeace.org, <https://www.wits.ac.za/wsg/research/research-publications-/working-papers/>, as well as our partner websites: http://www.undp.org/content/undp/en/home/ourwork/global-policy-centres/oslo_governance_centre/social-contract.html. <http://www.fesny.org/>.

EXECUTIVE SUMMARY

Nepal's decade-long process from 2005 to 2015 of ending its civil war through a comprehensive peace agreement, constitution-making and overall democratisation of the state portend a 'New Nepal' social contract to upend centuries of exclusive rule and a hierarchically ranked society. This paper considers how the newfound social contract has been forged and the ways in which a sustainable contract remain elusive. While agreements have been reached and the state restructured, underlying economic and social transformation will be much more difficult to achieve. The paper evaluates Nepal as a deeply plural society in transition from a caste-based monarchy to democracy with analysis of efforts to strengthen institutions, build greater trust within society and address longstanding inequalities. A truly 'New Nepal' will require deep-seated economic and social transformation, and whether the hard-won social contract will be resilient over time remains to be seen.

1. Introduction

Nepal, locked between India and China, is a plural society that features a kaleidoscope of ethnic, linguistic and religious minorities. With such social diversity have come historical marginalisation, control of the state by a caste-based elite and a 10-year civil war from 1996-2006 that cost nearly 17,000 lives. Since a landmark peace agreement to end the civil war and to democratise in 2006, Nepal has seen a decade-long process of democratisation and peacebuilding from 2006-2015 to create a 'New Nepal'¹ based on inclusivity, fairness and remediation of historical injustices and inequalities.

Yet such a 'New Nepal' remains elusive. Since 1990, and against the background of the democratisation of the political system following a royal coup, ethnic politics has been in a process of profound transformation from monolithic to poly-ethnic politics, challenging the hegemonic ethnic domination of Bahun – Chhetri in state and society. Confrontational politics and spiralling tensions caused deep and widespread social rifts leaving Nepal deeply divided. The 'New Nepal' approach expressed the momentum behind the peace agreement and subsequent constitution-making efforts: through transition, negotiation and social transformation Nepal could create a new, more resilient social contract capable of building and sustaining peace and addressing underlying or root-cause injustices that caused the civil war.

The 12-point Understanding in 2005 became the basis on which the people of Nepal could unite – under the leadership of civil society, as much as of the political parties – to express their demand for peace and change. The fuller peace agreement that was then negotiated was enshrined in the Comprehensive Peace Agreement (2006) and then in the Interim Constitution (2007), both of which reaffirm that the aim of new social contract-making is a more inclusive, just political system that manages more fairly the challenges and opportunities that come with Nepal's remarkable social diversity.² The peace agreements among others have a commitment to political, economic and social transformation.

-
1. After nearly two decades of social and political instability, the Comprehensive Peace Agreement in 2006 inspired hope that a New Nepal might bring political stability and socio-economic development. While there was much talk of 'New Nepal' in the immediate period following the transition, its usage quickly fell away and is not now part of the political narrative of Nepal.
 2. In Article 3.5 of Comprehensive Peace Agreement signed between Seven Party Alliance and Communist Party of Nepal (Maoist), it has been agreed that, to "end discriminations based on class, ethnicity, language, gender, culture, religion and region and to address the problems of women, Dalit, indigenous people, ethnic minorities, Tarai Communities, oppressed, neglected and minority communities and backward areas by deconstructing the current centralised and unitary structure, the state shall be restructured in an inclusive, democratic and forward-looking manner." See Nepal's Comprehensive Peace Agreement 2006. Clause 4 of Interim Constitution 2007 states, "The political parties shall ensure the proportional representation of women, Dalits, oppressed communities/indigenous groups, backward regions, Madhesi and other groups, in accordance with the law." See The Interim Constitution of Nepal, 2007: As Amended By The First To Sixth Amendments.

This case study and overarching 11-country research and policy dialogue project are informed by a conceptual framing and methodology³ that investigates what drives a resilient national social contract – that is, a dynamic national agreement between state and society, including different groups in society, on how to live together. Within this project’s framework, the paper addresses three drivers of the social contract (Box A) in historical, proximate, transition and institutional terms and in conclusion discussions the prospects for a resilient social contract in Nepal.

- First, to what extent has the post-war political transition enabled the systematic addressing of core issues of conflict in Nepal: political exclusion and economic and social inequalities along identity lines – both strong factors in the outbreak of the Maoist People’s War?
- Second, to what extent are the new interim and now more permanent political institutions effective, fair and inclusive? To what extent are they increasingly embraced as legitimate across Nepal’s plural society?
- Third, to what extent has social cohesion been broadened and deepened within society through national or local efforts often aided by international development assistance?

Though the Constitution of 2015 initially incurred heavy costs on the social fabric, we find Nepal has made great strides toward a more resilient social contract – one based on a common national destiny, with inclusive and efficient institutions, and one that has broadened and deepened social cohesion. Yet the creation of a resilient ‘New Nepal’ is incomplete and the resilience of the social contract cannot be taken for granted. Notably, since the 2006 peace agreement, movements based on ethnicity, language and regional identity have become vital players on the contemporary political stage, reshaping debates on the definition of the Nepali nation, nationalism and the structure of the Nepali state. This has served to deeply challenge the transition from war to peace, from autocracy to democracy, from an exclusionary and centralised state to a more inclusive and federal one. As the country prepares to implement the new Constitution with state restructuring provisions, promoting intercommunity goodwill and increasing ownership of people in the political processes will strengthen the social cohesion of the country.

3. This research was overseen, and this working paper edited, by Research and Project Director, Erin McCandless. For full project framing, see McCandless, Erin. 2018. “Reconceptualising the Social Contract in Contexts of Conflict, Fragility and Fraught Transition”. Working Paper, Witwatersrand University. <https://www.wits.ac.za/wsg/research/research-publications-/working-papers/>

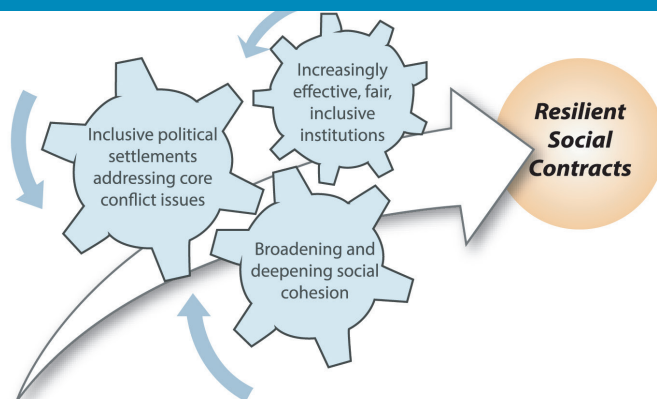
Background to Project and Methodology

This case study and overarching 11-country research and policy dialogue project are informed by a conceptual framing and methodology that investigates what drives a resilient national social contract – that is, a dynamic national agreement between state and society, including different groups in society, on how to live together. Such a contract includes the distribution and exercise of power, and how different demands, conflict interests and expectations around rights and responsibilities are mediated over time through different spheres and mechanisms. Three postulated ‘drivers’ of such a contract, constructed through deeply rooted evidence-based research and dialogue within the project working group, are that:

1. Political settlements and social contract-making mechanisms are increasingly inclusive and responsive to ‘core conflict issues’.
2. Institutions (formal, customary and informal) are increasingly effective and inclusive and have broadly shared outcomes that meet societal expectations and enhance state legitimacy.
3. Social cohesion is broadening and deepening, with formal and informal ties and interactions binding society horizontally (across citizens, between groups) and vertically (between citizens/groups and the state).

The value of these proposed drivers and their interactions is assessed in these studies for their ability to better understand what went wrong and the prospects for attaining and sustaining peace in Nepal.

FIGURE 1: THREE DRIVERS OF RESILIENT SOCIAL CONTRACTS



‘Social contract-making’ spheres and related institutional mechanisms – central to the study framing and findings – are conceptualised as follows: Peacemaking (i.e., through a peace agreement or political agreement); Transitional (i.e., sequenced dialogues, commissions, truth and reconciliation processes); Governance-related, including formal mechanisms (i.e., codified structures of government, formal institutions, national development plans, devolution frameworks/policies) and hybrid mechanisms (i.e., where religious/customary/non-state actor and state mechanisms interact); and Everyday (i.e., citizen actions or practices, norms, mores). In this study, the everyday sphere also serves as a litmus test of the extent to which higher-level, formalised agreements or processes represent wider societal views.

The chapter draws on 22 interviews and six focus group discussions conducted in Nepal between March 2016 and February 2017. Interviews included staff members of local and national non-governmental organisations, political leaders as well as international donors, including the UN and academics.⁶ The focus groups were held with six different communities across Nepal to ensure that different perceptions and experiences are captured.⁷ The interviews and focus group discussions were designed to explore how different stakeholders perceive Nepal’s social contract and how individuals from different occupations and backgrounds explain the challenges and prospects for resilient social contract in Nepal.

4. This research was overseen, and this working paper edited, by Research and Project Director, Erin McCandless. For full project framing, see McCandless, Erin. 2018. “Reconceptualizing the Social Contract in Contexts of Conflict, Fragility and Fraught Transition”. Working Paper, Witwatersrand University. <https://www.wits.ac.za/wsg/research/research-publications/-/working-papers/>

5. As defined in this study, these are overt drivers of conflict and discord, either historical, or contemporary in nature, broadly agreed by the main parties to drive conflict and discord, that are being disputed in the policy arena nationally, over time, and have resonance for most, if not all of the population. Ideally, they are reflected in formal agreements or mechanisms and enable examination of how state and society address conflict (McCandless 2018).

6. See Annex 1.

7. The focus group discussions were conducted in Kailali, Dang, Kaski, Parsa, Sunsari and Dhankuta districts.

2.0 Context

2.1 Nepal: a plural society in transition

Nepal features 125 caste and ethnic groups, 123 languages spoken as a mother tongue, and 10 major religious groups⁸ even as the country is majority-Hindu; no single ethnic group as such has a national majority. However, this diversity is not represented in the structure of government at any level. The high caste Hindus from the hills – Bahuns and Chhetris – who comprise about 31 percent of the population are politically, economically and culturally dominant.⁹ Since its inception in the 19th century, the rulers tried to develop Nepal as a homogenous, monolithic and unitary state providing protection to one language (Nepali), one caste group (hill Bahun – Chhetri) and one religion (Hindu),¹⁰ ignoring the reality of the diversified and pluralistic character of the Nepali society.

The movements for political freedom in 1950 and the restoration of democracy in 1990 focused merely on the issue of political freedom and democratisation and failed to change the oppressive and exploitative structure of the Hindu feudal state and the caste-based hierarchy. The political reforms, however, did provide the space for such grievances to be mobilised and heard. This has spawned the emergence of identity politics. The ‘People’s War’ that followed from 1996-2006 marked a low point in the historically evolved, yet unequal, social contract in Nepal. From 2006-2015, a turbulent transition to democracy sought to create a new, more resilient social contract in Nepal, one that recognises and reverses historical inequalities and that creates a new set of political institutions to rebuild trust between citizens and the state.

However, critical challenges remain and there are serious questions about the durability of this new tryst with the country’s destiny. While old problems are not resolved completely,¹¹ new issues have emerged, most notably around the core demands of a federal structure, power-sharing and amendment of the constitution in 2015. Moreover, ethnic, racial and communal harmony sees continuing challenges through violence fanned by rumour and elite manipulation designed to appeal to people’s already heightened insecurities. To understand Nepal’s present and the politics of ethnic mobilisation that have characterised its present, the narrative of the past requires further elaboration.

2.2 State formation and political exclusion under the monarchies

The historical trajectory of Nepal and its current conflict dynamics are inherently related: both then and now, geographic and identity factors have interacted to shape discourses on national identity, collective belonging and social hierarchies. Nepal was unified by King Prithivi Narayan Shah (1723-1775). However, unification and territorial expansion of Nepal went on until the 1814-1816 Anglo-Nepal war. A number of principalities popularly phrased as ‘22-24 principalities’ came into the fold of modern Nepal after the death of King Prithivi Narayan Shah and before the Sugauli Treaty of 1816. Realising the delicate ethnic composition, King Prithivi named his country a “garden of different flowers”, indicating the many ethnic groups, castes and sub-castes and many languages spoken by the people. However, during his reign, rather than ensuring economic development that would benefit the country, the King prioritised his personal gains and those of his kin, setting a pattern that has been followed by

8. National Planning Commission Secretariat, Central Bureau of Statistics, Government of Nepal, “National Population and Housing Census 2011 (National Report)”, Volume I, Kathmandu, 2012. <http://cbs.gov.np/image/data/Population/National%20Report/National%20Report.pdf>
9. In 1996, the first year of the conflict, the most privileged groups (Bahuns, Chhetris and one indigenous group, the Newars) accounted for 37 percent of the population, but had human development indicators 50 percent higher than those for other groups and held 80 percent of high-level positions in Parliament, the bureaucracy and the judiciary. See Murshed and Gates, Spatial-Horizontal Inequality and the Maoist Insurgency in Nepal, Review of Development Economics, Vol. 9, Issue 1: 2005.
10. Krishna Hachethu, “The Question of Inclusion and Exclusion in Nepal: Interface Between State and Society”. <http://www.uni-bielefeld.de/midea/pdf/harticle1.pdf>
11. The civil code introduced in 1854 codified the top positions of hill Bahuns and Chhetris in society. This not only established the domination of these groups in the society and state apparatus, but also led to discrimination against other groups on the basis of caste, ethnicity, language, religion, sex and geographical territory.

Nepali rulers to this very day.¹²

The first-ever Nepali constitution, prepared by Ranas, was proclaimed in 1948 by the Rana prime minister. It came at about the same time that the long period of Rana rule was about to collapse. The people were not involved in the preparation of the constitution. Since King Prithivi's time, Kathmandu has been Nepal's political and economic centre, leading to a disconnect with the population outside the valley. As the Kathmandu-based elite dominated all economic sectors, it excluded the rest of the nation from participating in economic activities. In devising development and infrastructure projects, successive governments prioritised Kathmandu while paying little attention to development in other parts of Nepal.¹³

Historically, discrimination and exclusion were rooted in the caste-based Hindu hierarchical order. The civil code introduced in 1854 codified the top positions of hill Bahuns and Chhetris in society. Until the abolishment of the caste system in 1963, the legal system treated different ethnic and caste groups unequally, perpetuating inequality. Following the historic political change in 1951 that ended the century-old Rana oligarchy and saw the advent of democracy, it was said that the whole decade of the 1950s was 'lost in transition'. Nepal was trying to figure out what political and economic system it wished to pursue; these earlier efforts of building a new social contract ultimately proved unsuccessful.

The Panchayat system undermined different native languages, religions and cultures through its assimilation policies. The system promoted one religion, one language and one set of values in a multicultural society. This definition of a 'true Nepali' immediately privileged a certain group of people – the hill Bahuns and Chhetris – who fulfilled the above criteria. This did not favour Muslims, as the state was officially Hindu. There was little chance that Dalits¹⁴ would be able to rise up and challenge the caste hierarchy. The bulk of the indigenous people – Tharus, Magars, Tamangs, Gurungs, Newars, Limbus, Rais and others – were left outside the mainstream since many were neither Hindus, nor spoke Nepali, and continued to maintain distinct cultural practices. Furthermore, the 30 years of the Panchayat regime were bad not only for democracy and political freedoms, but also for Nepal's economic development. In the early and late 1970s, some Western scholars highlighted the extreme inequality between high-caste and non-caste ethnic groups while analysing the unequal relationship between the centre (Kathmandu) and its periphery (the rest of Nepal).¹⁵

2.3 The failure of liberalisation in the 1990s

Until 1990, analysis of Nepal ethno-politics was done mainly by Western scholars whose findings were largely ignored by politicians, ethnic leaders, Madhesis¹⁶ and Nepali social scientists. The then government and its institutions did not allow Nepali scholars to study the conflict aspect of caste and non-caste ethnic relations because such studies would disturb a 'continuing tradition' of communal harmony in Nepal.¹⁷ Mainstream Nepali intellectual and political thinking during this phase was directed towards manufacturing a narrative of ethnic harmony and a composite Nepali culture through a coercive process of Nepalisation.

12. Sujeev Shakya. *Unleashing Nepal: Past, Present and Future of the Economy*, India: Penguin Books, 2009.

13. Interviews in Kathmandu, Dang and Parsa, June/July 2016

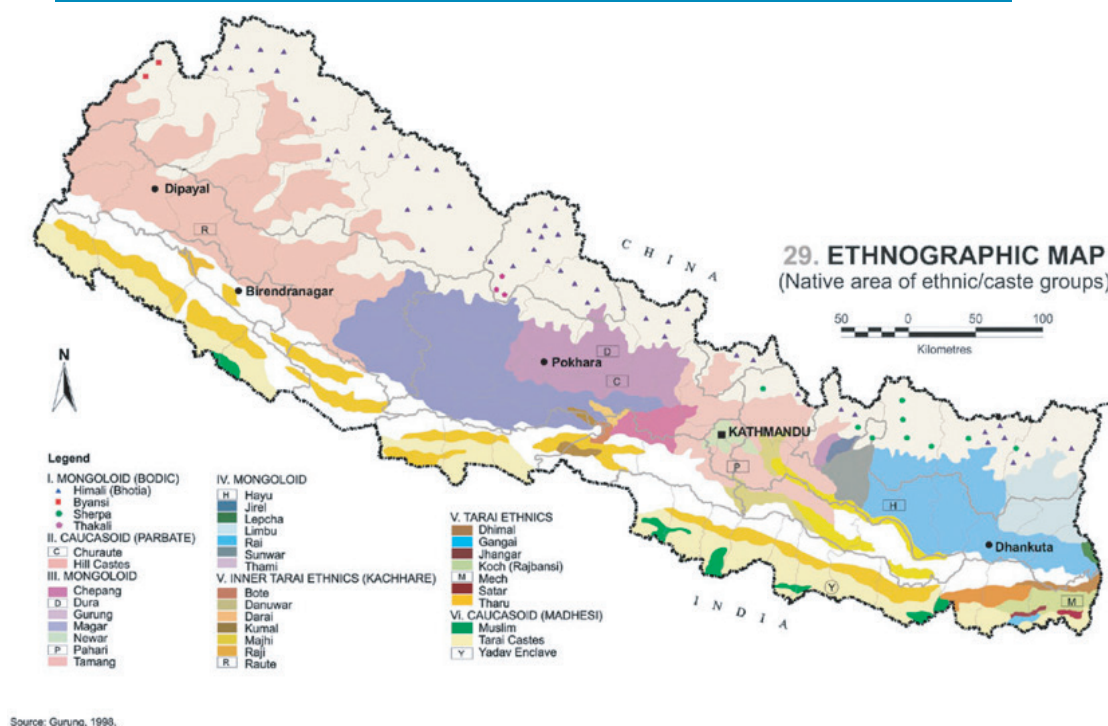
14. According to National Dalit Commission, Dalits are known as lower caste under the stratified Hindu caste system originated some 3,000 years ago. They face an estimated 205 forms of discriminatory practices in their daily life, though caste-based discrimination is illegal in Nepal. According to government's figures, Dalits comprise 13 percent of Nepal's total population.

15. See Piers Blaikie, John Cameron and David Seddon, *Nepal in Crisis: Growth and Stagnation at the Periphery*, Oxford: Clarendon Press, 1980. Also see Frederick H. Gaige, *Regionalism and National Unity in Nepal*. University of California Press, 1975. Lionel Caplan, *Land and Social Change in East Nepal: A Study of Hindu-tribal Relations*, London: Routledge, 1970.

16. Madhesis are an ethnic group living mainly in the southern plains of Nepal, close to the border with India.

17. Krishna Bhattachan, "Ethnopolitics and ethnodevelopment: an emerging paradigm in Nepal – with a postscript", in *Nationalism and Ethnic Conflict in Nepal: Identities and Mobilisation after 1990*, eds. Mahendra Lawoti and Susan Hagen, (Routledge, New York, 2013), pp. 35-57.

FIGURE 1: GENDERED INSECURITIES IN CYPRUS



Source: Nepali Times (Nepal Atlas of Ethnic and Caste Groups), Himal Books, 2006

When the 10-year long war ended in 2006, the monarchy was stripped of all executive power and the parties agreed to renegotiate Nepal's social contract in a Constituent Assembly, triggering great hopes among the people for spurred economic development. However, instead of using the post-war period to harness the economic potential of the country, the political elites were criticised by some as working primarily for narrow clientelist or ethnic-group benefit.

The book *Fatalism and Development*, written by a Nepali scholar and published in 1991, played a vital role in the discussion of academic and public debates. The book strongly criticised the ideology of Brahminism and associated fatalism for being responsible for the obstruction of modernisation in Nepal.¹⁸ The celebration of 1993 as the World Indigenous People's International Year sparked new interest in the indigenous peoples of Nepal. Debates on the ethno-politics or ethnic question by mainstream Nepali scholars began after they were taken by surprise with the rise of the Maoist movement.

The advent of multiparty democracy in 1990 and the freedom and open space it provided led to stronger assertion of identity politics that had been kept tightly suppressed during the Panchayat system. The social justice movements of the Dalits, Madhesis, women and indigenous nationalities expanded the political space of these traditionally disadvantaged groups. The traditionally disadvantaged groups became more aware, informed and active citizens and increased their voice. However, the reach of social movements has been limited and to a large extent has been an urban phenomenon. Many of the people engaged in these movements belong to the middle class or elite section of the society or the groups.

Small ethnic parties have provided space for the rural and poor marginalised indigenous nationalities. These people rarely find space in the mainstream political parties and social movements. These ethnic parties also raised issues that the mainstream political parties usually do not. In the mobilisation of the rural poor and their issues, perhaps the Maoists have played the most significant role. No political

18. Dor Bahadur Bista, *Fatalism and Development: Nepal's Struggle for Modernisation*, Sangam Books, India. 1991.

party or movement has mobilised the people from particular regions, ethnic and caste groups more than the Maoists.

The excluded groups began organising and mobilising themselves in the post-1990 period to promote their interests, which challenged the domination of particular ethnic groups in the state and society. However, the structure of Nepali political parties and their role in the political system did not help. The main two political parties draw the base of their support largely from the establishment, the middle class, the business community and sections of the security forces. Inexperienced in democratic and parliamentary processes and pragmatically unprepared, the mainstream parties were also autocratically structured, with all major decisions made by a small circle of largely male, Hindu high-caste party leaders. Furthermore, the proportional electoral system gave incentives for party proliferation and polarisation, leading to rapidly shifting political coalitions over time.

Since the opening of democratic space in the early 1990s, decisions about public expenditure have been dictated by politicians promoting their interests by maximising their electoral gains along geographic/ethnic lines.¹⁹ Internal divisions and constant struggles for party leadership within further limited political parties' room to manoeuvre. As a result, the country experienced a series of short-lived governments that provided little stability and failed to advance the people's aspirations for inclusion, economic development and good governance. The inequalities across different sectors and regions and neglect of the periphery contributed to dissatisfaction among rural people, especially the youth. They created a fertile ground for the rise of various forms of contentious activities, especially for the Maoist insurgency. Thus, Nepal's second initial attempt at a new social contract faltered and instead set the stage for the escalation of social conflict into civil war.

A person who served as finance and foreign minister in the 1990s argues that, despite several shortcomings – which are partially due to institutional, political and socio-economic legacies from previous autocratic regimes – the multiparty democratic period improved many areas of life for Nepalese in the 1990s.²⁰ In fact, Nepal made notable progress in expanding basic education and health services, roads and rural infrastructure. The introduction of village block grants that reached every Village Development Committee (VDC) of the country for the first time in Nepal's history, gave local communities direct access to state resources for local development projects.

The restoration of democracy in 1990 had raised high hopes among many people, but the state failed to meet those aspirations. Political power was centralised in Kathmandu, parties focused on toppling successive governments, politicians avoided accountability and corruption was rife. The state apparatus became associated with rent-seeking politicians and political exclusion, and political parties continued to be dominated by upper-caste Hindus. This neutered the parliament and other state agencies. Furthermore, local governments were weak despite the 1999 Decentralisation Act because they had no fiscal or political authority. Thus, the weak local governments could not provide services or protect the people. Consequently, deep frustration with democracy grew among the people.

In many parts of the country, especially in the hills and mountains, poverty affected a large proportion of the population. In this analysis, we identify a few core conflict issues in Nepal that were drivers of the conflict and whose remediation is essential in any long-term agenda. These are grounded in patterns of horizontal inequalities and, more importantly, strong perceptions and articulation of such inequalities centred around two major structural patterns that informed grievances.

First, poverty intensified and expanded owing to an increase in population and a decrease in land productivity. Inequality in Nepal existed among different sectors: according to geographic regions (mountain and hills and Tarai, and east to west), in rural vs. urban areas, and along lines of gender,

19. Interviews with a former minister in Kathmandu and a CA member in Dang, June 2016.

20. Ram Sharan Mahat, *In Defence of Democracy: Dynamics, and Fault Lines of Nepal's Political Economy*, New Delhi: Adriot Publishers, 2005.

ethnic and caste. Second, land ownership patterns also contributed to poverty and inequality. Similarly, land and land-based resources such as forests and water are very valuable in an agricultural society like Nepal and their unequal distribution has contributed to conflict. While such deep-rooted patterns of conflict cannot be immediately addressed, the subsequent civil war and peace process pivoted Nepal toward a new social contract to resolve them.

3.0 DRIVER 1 – Political Settlements Addressing Core Conflict Issues

3.1 A political settlement: the 2006 CPA and the New Nepal

Against this background, the Communist Party of Nepal (Maoist) launched the people's war in 1996, raising the rights issues of longstanding social exclusion, economic marginalisation and unequal political representation of women, Dalits, Janajati and Madheshi communities. This helped them to enlarge their support base quickly. The decade-long Maoist armed conflict formally came to an end in 2006 with the signing of the Comprehensive Peace Agreement (CPA).

The war during the Maoist insurgency (1996-2006) left an estimated 17,000 people dead, even more injured, hundreds of thousands internally displaced and millions of dollars of infrastructure destroyed. Besides the damage and destruction of existing infrastructure, the pace of new construction slowed down considerably during the conflict, especially in rural areas. For a country lacking essential infrastructures and already straining to provide its citizens the barest minimum of services, a decade of war and mayhem followed by another decade of chaotic transition set back Nepal's progress many years.

The principal political settlement to the war was the landmark 2006 CPA, which promised a fundamental approach to addressing the core conflict drivers: complete reform of the state, making it more inclusive and offering redress for what it described as oppression, neglect and discrimination based on caste, class, region and gender, including against Dalit, Janajati and Madhesi groups. The CPA and the Interim Constitution, in a sense, provided an ambitious roadmap for the peace process, including the "restructuring of the State in an inclusive, democratic and progressive way by ending its present centralised and unitary structure".²¹ In many ways, the CPA, together with the eventual Constitution of 2015, represents Nepal's experience of negotiation sequential or iterative social contracts. The agreements, building on each other, provided an initial commitment to addressing conflict drivers and an eventual set of institutions for inclusive governance of a long-term state and societal transformation.

To back-stop and help implement the initial political settlement, the United Nations established an Office of the UN High Commissioner for Human Rights in 2005 and a full-fledged UN Mission in Nepal (UNMIN) in 2007. The coup by King Gyanendra in 2005 united the mainstream parliamentary parties in the Seven Party Alliance against the king, which then sought peace negotiations with the Maoists. Both sides signed an Indian-facilitated 12-point agreement in November 2005. The 12-point agreement set the stage for the April 2006 People's Movement (Jana Andolan – II), which forced the king to reinstate the elected parliament and to renounce all executive power. It then led to a Ceasefire Code of Conduct, which formally started the peace process between the Seven Party Alliance and the Maoists, culminating in November 2006 in the Comprehensive Peace Agreement (CPA).

The entry of the Maoists into the political mainstream in 2006 was marked by great optimism. As the peace process progressed, the UN Security Council provided UNMIN a 'special political mission' with

21. Comprehensive Peace Agreement, para 3.5

the rather limited and technical mandate to assist in the implementation of specific elements of the CPA, such as supporting elections to a Constituent Assembly and monitoring the management of arms and armies.

The major weakness of Nepal's peace process was the failure to implement commitments made in the CPA and other agreements. The mistrust among the political parties led them to engage in various power games to weaken each other rather than to focus on implementing the peace process agreements. SRSR Ian Martin in November 2007 asked the Nepali Government for an expansion of UNMIN's responsibilities that would then help the UNMIN assist security sector reform, including integration of the Maoist People's Liberation Army. UNMIN was not granted such an extension of responsibility. Lacking any enforcement capacity, UNMIN only drew attention to unfulfilled commitments and breaches of the peace agreements and urged the political parties to take steps to fulfil them. Immediately after the election of April 2008, UNMIN began downsizing through the withdrawal of electoral personnel and the Security Council decided that UNMIN would withdraw at the end of a final extension in January 2011.

3.2 From promise to institutions: Nepal in transition, 2006-2015

Since the CPA in 2006, socio-political movements based on ethnicity, language, caste, religion and regional identity became increasingly vital players on the contemporary political stage, reshaping debates on the definition of the Nepali citizen, nationalism and the structure of the Nepali state. The interregnum of 2006-2015 marked a long period of transition for Nepal, with successive coalition governments, an initial unsuccessful start to constitution-making, and tensions around the rapid nature of change, international influences and uncertainty about the future. The transition also featured soul-searching for institutions to give meaning to the notion of living together, within diversity, and particularly how decentralisation and subnational governance could balance to give more autonomy to local communities without compromising the integrity of the overall Nepali nation.

Unstable politics, frequent ruptures of political parties and all-too-frequent changes of government – 27 of them – have plagued Nepal since the 1990 political changes. The current prime minister is Nepal's eleventh since the end of the civil war in 2006. Even though a government has the mandate to rule for five years and thus bring long-term plans and policies, the average longevity of a government in Nepal is a year at most; this high turn-over often leads to half-baked plans, ill-executed policies and continuous disruptions, with constant changes in government working styles.

The debate on federalism has been highly divisive in Nepal's political discourse since the CPA. The parties differ considerably in their ideas of what type of federalism should be implemented. The Maoists, with support from ethnic groups, proposed an identity-based model, arguing that it would expand the political representation of ethnic groups and would also give ethnic groups such as Madhesi, Tharus and Janajatos majority rule over some provinces. However, this idea was criticised by the country's two largest political parties, who felt that an identity-based system would ruin Nepal's unity and create divisions in a society that had not seen major ethnic clashes in the past.

Nepal's peace process, which began with the 12-point Understanding between the Seven Party Alliance and the Communist Party of Nepal (Maoist) in November 2005, began with the single focus of ending the armed conflict between the Maoists and the state. It later became considerably more complex with the assertive campaign of traditionally marginalised groups to claim fair representation in the country's political life. The Madhesi of the Tarai were one of the groups who demanded action to address their marginalisation in the governance of Nepal. Other communities – the Janajatis, the indigenous people of the hills, and the Dalits, who suffer the most extreme caste discrimination – have pressed their claims so far without violence, but with threatened or actual economic and social disruption.

The demand for a Constituent Assembly elected by the people had long been at the core of Nepal's political transformation agenda. The People's Movement of April 2006 provided a firm base for the election of a constituent assembly as the vehicle to an "inclusive, democratic and progressive" state.²² The legislature-parliament passed the much-awaited Constituent Assembly Members Elections Act on 14 June 2007, which stipulated a mixed system with proportional and majoritarian components.²³ According to the legislation, a total of 601 legislators would make up the CA body, with 240 candidates elected under a first-past-the-post (FPTP) system and 335 selected from party lists under a proportional representation system. The other 26 members would be appointed by the Council of Ministers.

FIGURE 1: GENDERED INSECURITIES IN CYPRUS

	CA I – 2008 elections		CA II – 2013 elections	
	Seats	%	Seats	%
Women	197	33	176	30
Dalit	49	8	40	7
Madhesi	210	35	179	26
Indigenous (Janjati)	213	37	183	31
Muslims	17	3	19	3

Source: Nepal's Constitution Building Process: 2006-2015, International IDEA, 2015 and Nepal Peacebuilding Initiative, May 2017

The 2008 CA election results, together with the requirements of the quotas for the proportional representation seats, ensured that representation of the historically marginalised groups – Madhesi, Janajatis, Dalits and religious minorities – was greater than in any elected body in Nepal's history. It was proof of the remarkable progress driven by the people of Nepal, and the post-2013 period also featured high representation even as the numbers of seats won by some ethnic parties declined. Though the CA was the most representative elected body in the history of Nepal, lack of self-confidence, insufficient knowledge of the Nepali language, a split in the party and differences between local and national politics were cited as barriers for members of excluded groups to speak in the CA.²⁴ The party whip and party hierarchy enabled party leaders to control CA proceedings and debates and ensured that individual CA members remained within the party control and lines.²⁵

The democratisation period in Nepal has been characterised by evident mobilisation of identity-based groups and the formation of political parties along fault lines new and old in the Nepali social fabric. In the post-CPA period, a fair amount of national and international attention has been devoted to the inclusion of traditionally marginalised groups. This is a very positive development, but there is a need to prevent 'elite capture', given the complexities of Nepal's social stratification. For example, in the Tarai, the progress made in empowering and ensuring representation of Madhesi in politics and state institutions has mainly benefited the Madhesi Bahuns and other high-caste privileged groups, further widening the divide between them and the less privileged in the region like Madhesi, Dalits, Janajatis and others²⁶ (Devendra Raj Pandey 2011).

22. Comprehensive Peace Agreement, para 3.5

23. Bhojraj Pokhrel, Elections: A Nepali Perspective, 2012 in Nepal in Transition: From People's War to Fragile Peace, eds. Sebastian Von Einsiedel, David M Malone and Suman Pradhan, (Cambridge University Press, New Delhi), pp. 255-264.

24. Martin Chautari, "Attendance and Participation in the Constituent Assembly", Policy Paper Number 4, September 2010, http://himalaya.socanth.cam.ac.uk/collections/journals/mcpb/pdf/MC_PolicyBrief_04_ENG.pdf

25. Ibid.

26. Devendra Raj Pandey, Looking at Development and Donors: Essays from Nepal, Martin Chautari, Kathmandu, 2011.

This also might lead to the formation of patron-client relations between the elites within certain identity groups and the rest of their populations. At the same time, there is growing anger towards the quota and reservation system.²⁷ There is a feeling that “all of these groups have big advantages over me. The system, politics and donors are giving them, not me, special treatment, because I am khas aya (Bahun/Chhetri). From this line of reasoning, they conclude that it is they who are the minority that have been oppressed and discriminated against.”²⁸

Madhesi political representatives have pressed claims for proportionate inclusion in all state machinery, including the judiciary, law enforcement agencies and the armed forces. Madhesi political parties keep pressing for greater representation of the Madhesis in the security forces – a demand that was already accepted in the agreement signed by the interim government and Madhesi parties on 28 February 2008. In the 2008 elections for the first Constituent Assembly, the three Madhesi parties emerged as a credible political force for the first time, with 84 seats. Internal squabbling and power politics fractured the three into a dozen, and, in the 2013 elections, the number of seats declined to 40. Realising the need for unity, some Madhesi parties came together in April 2017 to form a new entity, Rastriya Janata Party-Nepal. The Dalits have faced numerous violent backlashes in their struggle towards equality and the end of untouchability. Despite the law against the discrimination, social acceptance has not been that strong.²⁹

Ten years after the conflict, the government established the Truth and Reconciliation Commission (TRC), discussed below, and collected war crime petitions from April to August of 2016. During the four months of the collection process, victims filed over 50,000 petitions of alleged sexual violence, torture, extrajudicial killings and other human rights and humanitarian law violations. An additional 3,000 petitions were filed regarding war-era forced disappearances to the second government-established commission, the Commission of Investigation of Enforced Disappearances (CIEDP), also discussed below. The political instability has had a significant impact on Nepal’s transitional justice process, inevitably dragging it out and delaying it.

4.0 DRIVER 2 – Institutions Delivering Effectively and Inclusively

To deliver effectively and inclusively, Nepal needed to completely revisit its institutional design, particularly at the local level, which was in turn related to electoral politics party-positioning in the Constituent Assembly. Ultimately, the pledges of change and transformation promised in the 2006 CPA needed to be settled in a new set of values, institutions and rules for living together as articulated in a new constitution. Indeed, such demands were essential to the claims of the Maoist rebels, who demanded a new constitution that would restructure the country into a federalist republic. They argued that New Nepal was possible only by ending the centralised unitary state structure and restructuring it as a federal state. However, after the violent protests in the Tarai in 2007, federalism was included in the interim constitution as a binding principle for the Constituent Assembly. In the run-up to the elections of 2008, the political parties included federalism in their manifestos, but they differed substantially on the type and criteria for federalising Nepal.

The story of negotiating institutions to address Nepal’s deep drivers of conflict and new disputes that arose in the course of the conflict and the turbulent transition is complex.

27. To make Nepal’s civil service inclusive, the Government of Nepal, in 2007, introduced a quota system for the recruitment of marginalised groups in the public sector, including the security forces. Of these posts, 45 percent were reserved, of which 20 percent were earmarked for women. The other 80 percent of reserved positions was divided as follows: 32 percent for Janajati, 28 percent for Madhesi, 15 percent for Dalit and 5 percent for individuals from remote regions. Also see, Interim Constitution of Nepal 2007, Civil Service Act 2007, Local Level Electoral Act 2017.

28. Interview in Dhangadi, Parsa, Morang and Kathmandu, 2016.

29. Interviews in Kathmandu, July 2016.

In the context of social and political instability after the CPA, voters elected 601 Constituent Assembly (CA) members in 2008. The CA was inclusive in terms of representation and diverse in its political views. The assembly's inclusion of 197 women and representatives from Nepal's marginalised groups (Dalits, Janajati, Madhesi) was without precedent. Of the three major parties, the Maoists were the only one to give full-throated support to federalism and the establishment of ethnic provinces.

Minority claims and concerns dominated the debates. Other two parties, UML and NC, argued that an identity-based system would ruin Nepal's unity and create divisions in a society that had not seen major ethnic clashes in the past. They instead contended that geographical boundaries with a mix of identity groups were the best way to ensure the viability of federal model units. Federalism was not an international donor-driven agenda, but donors worked closely with organisations run by radical activists, such as NEFIN and different CA caucuses, which affected their neutrality in the eyes of the government. The UN and the International IDEA worked closely with the minority group caucuses, facilitating dialogue and providing technical expertise on policy and legal options.

Though the assistance was intended to be impartial, it also fuelled the debate on indigenous rights and their demands for autonomous states. Various ethnic groups – including the Newar, Magar, Gurung, Tamang, Rai, Limbu, Tharus and Madhesi – made claims for a federal structure where subnational boundaries to an extent would reflect population distribution based on ethnicity and each unit would be named after its principal ethnic group and a distinct geographic feature. The counterproposal fielded by the mainstream political parties (Nepali Congress and the Communist Party of Nepal (Unified Marxist-Leninist)) was to structure federalism according to economic and geographic criteria that would make larger and fewer units.

Identity-based struggles made consensus-building among CA members and political parties difficult, and polarisation inside the CA along ethnic, geographic, gender-based, sectoral, linguistic and occupational lines appeared.³⁰ The mistrust among political parties, political deadlocks and differences among different groups intensified and the CA failed to arrive at a consensus on the constitution. The second Constituent Assembly (CA-II) election took place in 2013 and the representation of the historically marginalised groups in the CA was reduced to some extent (see Table I).

The big losers were the Madhesi and the Janajati, who lost respectively 31 and 30 seats in the Assembly. This was partly a result of the sizable defeat for the Maoist party, which retained only 80 seats in a stunning rebuke by voters.³¹ The big winners were the traditional mainstream parties, the UML and the Nepali Congress. The latter became the largest party in the Assembly with 196 seats, and with the UML and a little support from the smaller parties had enough votes to approve a constitution. The vision of a 'New Nepal' had now completely disappeared from the political discourse. The ideas of the New Nepal were republicanism, with federal provinces based on identity, proportionate representation and population-based constituencies. The CA-II drew up boundaries for seven states but ignored these ideas. Madhesi and other groups feel that the process by which it was rushed through diluted the commitments to meaningful federalism.³² However, others think that Nepal finally got the new constitution and that political leaders should now focus on economic development.³³

On 20 September 2015, the president promulgated the 2015 Constitution of Nepal amid deadly protests by the Madhesi and Tharu groups. An estimated 50 people were killed, including protestors

30. Dhruba Simkhada, Sharp Polarisation in the Constituent Assembly, Alliance for Social Dialogue Policy Analysis, 27 September 2010. <http://asd.org.np/wp-content/uploads/2015/04/sharp-polarisation-in-the-constituent-assembly.pdf>

31. The Carter Center, Observing Nepal's 2013 Constituent Assembly Election, Election Report. https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/nepal-2013-final.pdf

32. Focus Group Participants, Parsa and Dhangadi, August 2016

33. Focus Group Participants, Dhankuta, September 2016. Interviews in Kathmandu, May 2016

and security personnel. Both communities felt that the Constitution, which split Nepal into seven states on geographical basis, pushed them further towards the margins. Analysts from these communities believed that the Constitution reversed many of the achievements (guaranteed by the IC 2007) for the excluded groups – for instance, the electoral system would leave the groups from Tarai underrepresented in the national legislature and the federal boundaries were carved out in a manner to suit the ruling elite. Amending the Constitution to address the concerns of the Madhesi parties has been a stated priority of governments since 2015 September. Despite its flaws, the 2015 Constitution, if amended to meet the aspirations of different ethnic and marginalised communities, could be the basis for Nepal's social contract for lasting peace and reconciliation.

Though the Constitution has been passed by the parliament, some ethnic groups fear that the Constitution still works against them, as it was rushed through, with only brief public consultations. Nepal was devastated by two major earthquakes in April and May of 2015 that claimed nearly 9,000 lives. The earthquakes placed pressure on the leading parties, who were drafting the Constitution for seven years, to resolve their political disputes and accelerate the long-stalled writing process. Main political parties agreed to fast-track a new constitution in just a few months. Though political parties held several rounds of meetings and attempts were made to negotiate on the main contentious issues – forms of governance, electoral system and federal structure – to forge consensus to draft of the Constitution, political parties remained divided.

Despite the boycott by the Madhesi, Nepal's major parties forged an agreement and announced the Constitution on September 20 with over 85 percent of votes, with the 'no' votes coming from Tarai-based political parties.

The 2015 Constitution's institutions designed to fulfil the CPA's pledges of four fundamental changes in state and society are significant.

- Nepal is transformed into a federal republic, but with seven provinces that do not neatly coincide with distribution of identity groups: power and decision-making are to flow outward from Kathmandu. The state is described as secular and neutral toward all religions, while the Constitution also includes pledges to protect religion from jeopardy.
- The executive is presidential and a bicameral legislature features an upper and a lower federal house and a unicameral system in each of the seven provinces.
- The electoral system is reformed, offering a mixed electoral system for the lower house election that features seats filled through first-past-the-post and proportional representation. The aim of the electoral system is to balance historical patterns of democracy, measures to promote inclusivity and mechanisms to encourage transparency and accountability.
- Fundamental rights are articulated in a detailed charter of rights that directly and indirectly address historical disadvantages and discriminations. Women's rights are explicitly recognised for protection and an end to gender-based discrimination is pledged for state and society. Commissions are created as 'constitutional organs' to address transitional justice, independence of the electoral commission, fiduciary management of natural resources, women's rights and the rights of communities such as Dalits, indigenous peoples, the Madhesi, Tharu and Muslims.

The 2015 Constitution was not without controversy. Madhesi living in the southern part of Nepal launched a prolonged agitation between September 2015 and February 2016 against the implementation of the new Constitution, which they felt marginalised the Tarai community. They argued that the Constitution eroded their political representation, reframed citizenship provisions and gerrymandered federal provinces in a way that hurt their interests.³⁴ The Madhesi protests of late 2015 resulted in the death of at least 50 people and were fraught with claims of international influences:

34. Prashant Jha, "India must firmly push for Madhesi inclusion with Nepali President", The Hindustan Times, 18 April 2017.

many in Nepal blamed India for quietly supporting the Madhesi protestors, a charge that New Delhi denied.

There is a growing demand for wider representation of marginalised groups while a New Nepal is created. It is a crude reality that a large number of people have remained on the margins owing to different cultural, religious and social norms or customs. Though Nepal has been declared a secular state, the dominant Hindu traditions continue to prevail. It is no wonder, then, that members of high-caste groups hold all prominent positions of power and responsibility in the political, executive, judicial and other fields, a fact that legitimises exclusion and discrimination.

In the struggle to shape the post-war 'New Nepal', class, ethnicity, caste and region vied for primacy as categories of entitlements. Affirmative action in the name of social inclusion had started earlier, but was constitutionally validated by the Interim Constitution of 2007 as a matter of fundamental rights. Groups that traditionally had been marginalised or excluded from state power were designated for proportional inclusion, mostly through quotas ('reservations') in education, public employment and political representation. In the civil service, 45 percent of the total seats are allocated to marginalised or underrepresented groups. As an outcome of this policy, more than 3,000 women, 2,500 indigenous people, 1,800 Madhesi, 700 Dalit, 400 people with disabilities and 300 people from remote and backward regions have joined the service, following the amendment. This is a highly important policy innovation that has facilitated the inclusion of women and marginalised groups in the bureaucracy.

Furthermore, in terms of women's political representation, there has been a remarkable improvement, as 33 percent of current Constituent Assembly members are women. In the 1997 elections, seven women members were elected to the House (parliament), which had a total of 205 members. Nepal has been defined as a 'multiethnic' and 'multilingual' country since at least the 1990 Constitution, with that definition expanded to include 'multireligious' and 'multicultural' in the 2007 and 2015 Constitutions.

The CPA ended the decade-long conflict and paved the way for a peaceful settlement of Nepal's political conflict that had strong socio-economic underpinnings in the form of a centralised administrative structure, inequality, exclusion and identity conflict. Following the adoption of the 2015 Constitution and three tiers of elections, the Government of Nepal is now in the midst of a complex restructuring of administration at central, provincial and local levels. However, the government, elected as per the new constitution, seems to have exclusive focus on the agenda of growth and economic prosperity, and the relevance of inclusion has ceased to exist in dominant policy discourse.

5.0 DRIVER 3 – Social Cohesion Broadening and Deepening

In Nepal, there is a great deal of discrimination based on socially constructed values and beliefs that prevent some groups from performing certain activities or from participating in the public arena. This indicates a low level of social cohesion. The belief that Dalit people are 'untouchable', for example, has fuelled various types of discrimination, including physical segregation. Beliefs and values of this kind restrict the freedom of groups to practice their own culture without the risk of exclusion. Changes in such values and beliefs are the drivers of social inclusion that would lead to the creation of more inclusive societies.

The Government of Nepal in 2017 issued the Caste-Based Discrimination and Untouchability Regulation making the practice of untouchability, exclusion, restriction and expulsion on grounds of caste, creed or descent punishable. Nevertheless, caste-based discrimination still affects the country's 'untouchables'. Interreligious conflict has occasionally flared up between Hindus and religious minorities, particularly Muslims and Christians. Hindu-Muslim conflict, which initially occurred in the

western part of Nepal prior to the civil war in the 1990s, resurged in 2007. The political landscape remains volatile in post-conflict Nepal. Following the promulgation of the Constitution, the conflict between the Madhesi parties and the government in the Tarai region escalated. Despite the violence, the local, provincial and parliamentary elections in late 2017 were free and fair.

5.1 State weakness, informal institution strength

Although Nepal is one of the oldest countries in South Asia, its laws and institutions have not been able to override its wider range of customary laws, dispute resolution mechanisms and land/forest management systems that govern Nepal's ethnically diverse societies, cultural practices and values. During the Maoist insurgency, traditional justice providers in many areas were replaced by the Maoist People's Court. Since the CPA, traditional justice mechanisms have re-emerged, creating a patchwork of informal, society-led ethnic and caste-based justice systems throughout Nepal. Due to Nepal's geographic diversity and weak infrastructure, people are often unable – or cannot afford – to travel to the nearest police station or access other state services. However, a nationwide survey on security and justice by Saferworld (2009) shows that most people would prefer to go to the Nepal Police and courts to seek justice.

However, the 2015 earthquake resulted in a sense of solidarity, led by Nepal's younger generations, mutual support among neighbours and an outpouring of good will from the international community. Unlike in similar disasters elsewhere, there were no major incidents of looting, pilfering of humanitarian aid, violence or breakdowns of law and order. A recent survey shows that 58 percent of the respondents feel that relationships between castes, ethnicities and religions are improving, while 12 percent think they are getting worse.³⁵

5.2 The state and the people

The CPA was meant to strengthen the relationship between the state and the people to facilitate the state-building process in Nepal by improving the basic service delivery provisions. The Maoist insurgency severely weakened state capacity to deliver necessary services and heavily divided the people. The legitimacy of the state was questioned during wartime.

Murshed and Gates (2005) argue that “horizontal inequalities” in Nepal were the causes of the Maoist insurrection. The government failed to deliver basic services in rural areas, whereas certain groups at the central level captured state power and resources and deepened the economic and political exclusion of the majority Nepali (ICG 2007).

The CPA sought to address Nepal's political and economic exclusion through a complete reform of the state, making it more inclusive and offering redress for longstanding oppression, neglect and discrimination based on caste, class, region and gender. However, mistrust among political parties led them to engage in various power games to weaken each other rather than focus on implementing the peace agreements. There have been attempts to reform institutions during Nepal's transition to federalism through measures for inclusive representation (CA-I & II, 2008 & 2013) and through affirmative actions and policies targeting historically marginalised groups, i.e., quotas in education, public employment and political representation.

Nepal is a multilingual, multiracial, multicultural and multireligious nation state that has yet to forge a common identity and common destiny. This has challenged the building of vertical social cohesion within a context marked by the economic, social and political exclusion of the poor and ethnic minority

35. A Survey of Nepali People in 2017, The Asia Foundation, Kathmandu, 2018.

groups. Demands made by marginalised groups, including political inclusion, social and economic justice, continue to go unmet. This link between identity-based exclusion and weak social cohesion dates to state-formation processes, when caste-based discrimination went hand in hand with a state apparatus that prioritised elite interests, a time characterised by rent-seeking politicians, political exclusion and political parties dominated by upper-caste Hindus. However, the return of elected local government after nearly two decades represents an opportunity to bridge the historical gap between the Nepali state and its citizens.

In addressing issues of (ethnic) identities, the use of natural resources and political differences and divisions are at the forefront of challenges that threaten to disrupt the social cohesion across the country in the coming years. Bringing communities together, promoting inter-community good will and increasing ownership of people in the political process are going to be key for Nepal to move towards democratic stability. As the country moves ahead in the transitional course, strengthening social cohesion is a key to a successful implementation of the new constitution and for Nepal to achieve the Sustainable Development Goals.

The roots of discontent in Nepal lie in the economic, social and political exclusion of communities and their members. There is a close correlation between a person's being poor and being a member of an ethnic minority group. These demands made by marginalised groups are not merely demands for the recognition of cultural or linguistic diversity. They constitute a claim for political inclusion and, in a fundamental way, these demands are about social and economic justice.

6.0 Analysis and Conclusions

Eleven years since the CPA is long enough to lament the inability of politicians in Kathmandu to cooperate to bring some dividends of peace and beginnings of change to the marginalised majority of Nepal's people. The 2006 peace agreement, however, was a landmark agreement to forge a new social contract in Nepal, one based on a pledge toward greater equality, inclusion, prosperity and an end to discrimination – a rights-based promise. To realise these rights, Nepal's transition ran a decades-long course to solidify the new social contract in its 2015 Constitution, one that institutionalises the pledges for greater inclusivity and that reforms the state in its basic structure and prioritisation of service delivery. Nepal's transformation is long-term, but its social contract toward redressing historical grievances now seems firm.

Nepal's newfound social contract has proven initially resilient, having weathered its first true test. In late 2017, Nepal made a significant leap towards the implementation of the new constitution and the sensitive debates on federalism by successfully holding three-tier elections. The completion of three historic polls – local level, provincial assembly and federal parliament – also brought Nepal's long-drawn transition to federal democracy to an end. A once-unitary Nepal has now been transformed into a federal state. The call for a federal Nepal itself was motivated primarily by a desire for a greater political inclusion by those who felt bypassed by the state.

Although elections and leadership transitions were completed in a credible and peaceful manner with the broad participation of Nepalis, the actual power continues to remain in the hands of the historically dominant groups. However, Nepal of today is politically a much more inclusive state than at any time in the past. Electoral laws were formulated to increase the presence of the marginalised in the Constituent Assembly (CA) and, although the presence of such groups decreased somewhat in the second CA, the two CAs were much more inclusive than any of the national legislatures that preceded it.

In terms of symbolism, Nepal has come a long way. The country has seen a Madhesi as president and another as vice-president, followed by a female president and a Janajati vice-president. There have

been Dalit ministers and Muslim women have become politically prominent. The provincial assemblies are much more representative of the populations they serve, while local governments are even more so. Nearly 40 percent of all representatives are women – and Dalit women make up nearly half that number.

This analysis suggests that a resilient national social contract is still possible, provided Nepal designs an effective system that will ensure good governance, economic prosperity and social justice. While progress has been episodic and ‘non-linear’ and the transition has been fraught with instability, through the CPA, the interim period, the first and second constitution-making process, and, more recently, through the reconstitution of local authorities, it has been progress nonetheless. The issues that fiercely divided hill and Madhes have not been resolved, but only swept aside. The needs and demands of the various disadvantaged groups are different. It is important not to group disadvantaged groups together, but rather to understand in what particular ways groups are marginalised and excluded.

Yet the process continues to evolve and it is unclear whether the new political institutions at national and local levels will prove resilient over time. For local governments, the transition presents opportunities to better engage local communities in governance after an absence of almost two decades. The lack of adequate legal frameworks and policies that align with the constitution and provide clarity to local leaders on the functions of local institutions and their respective roles and responsibilities is causing confusion, anxiety and dispute. Because of this, Nepal’s mainstream political parties should work with political leaders and civil society organisations to strengthen the process of federalisation and governance reform. If not, post-transition political institutions will remain fragile and sustainable peace in Nepal will remain elusive due to the lack of state effectiveness and responsiveness regarding development and security.

International development assistance has been pivotal in helping Nepal sustain its political transition and remain focused on addressing inequality and exclusion, yet donors have at best a mixed record of support. Among the concerns about donor engagement are a lack of scale and reach, inconsistency, dialogue without results and an inability to address ‘backlash’ against their support for marginalised groups. International actors should continue to facilitate local initiatives for interparty dialogue, support the political inclusion of marginalised populations and help build capacity of the political parties.

Nepal has seen a remarkable commitment in terms of norms of inclusion. Given the rather fluid political context in Nepal, where the peace process is fragile, most people have not yet benefited from peace. The successful nationwide elections in 2017 might help consolidate political and democratic stability. Similarly, the people’s expectations regarding local, provincial and federal government are high. Now is the time for the country to re-focus from a democratic transition toward good governance. The leaders and people of Nepal should put prosperity ahead of politics. However, the country is still marked by strong inequalities across geography and social groups and prolonged tensions between communities in a post-conflict environment. This runs the risk of setting Nepal’s development results back and spoiling the efforts to achieve national development objectives.

Addressing issues of ethnic identities, the use of natural resources and political differences and divisions has been at the forefront of challenges that threaten to disrupt the social cohesion across the country in the next few years. Building communities together, promoting inter-community goodwill and increasing ownership of people in the political process are going to be the key for Nepal to move towards democratic stability. As these challenges pose potential threats to peacebuilding, it is critical that enabling environments, mechanisms and capacities be created to promote social harmony and livelihood opportunities to sustain peace.

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