



VIVEKANANDA INTERNATIONAL FOUNDATION

**NEPAL : CONTEMPORARY POLITICAL SCENARIO
AND PORTENTS FOR FUTURE**

ISSUE BRIEF

Vivekananda International Foundation

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NEPAL: Contemporary Political Scenario & Portents for Future



Nepal: Contemporary Political Scenario And Portents for Future

Background

The Maoist-Madhesi ruling combination had indicated their preference for conducting fresh elections which was announced by PM Baburam Bhattarai (BRB) on May 27 during the process of dissolution of the Constitutional Assembly (CA). Following this, the BRB government forwarded two Ordinances to the President for amending the Constitution and holding fresh elections. It is evident that the Maoists were attempting to conduct the next elections while still in power. The proposed ordinances were, however, not approved by the President. To counter the Nepali Congress and United Marxist Leninist (NC-UML) demand for the Maoists to hand over power to an NC-led unity government, the Maoists had proposed that there should first be an agreement on all the contentious issues before handing over power to a new government of national unity, based on a consensus. However, many view this to be a ploy to prolong their hold on power for as long as possible and are hence blocking any attempts to work out a consensus on pending issues. Furthermore, the Maoists have not clarified whether they preferred reviving the old CA, or conducting fresh elections for a new CA, or even an election for a new parliament, which could initially function as a CA. PM Bhattarai had averred that there were only two options to resolve the political impasse; the first was if the NC agreed to identity-based federalism, the CA could be reinstated for a short period to promulgate the constitution and the Maoists would hand over government leadership to NC according to the spirit of the five-point agreement. The second option was to agree for fresh elections for a new CA, and the formation of a national unity under an acceptable candidate to lead the polls.

The current situation in Nepal continues to be unstable following the dissolution of the Constituent Assembly on May 27, 2012. This was based on last year's Supreme Court decision that no further extension to CA can be granted beyond the fixed timeline of May 27, 2012. In what is being described as 'The Mid-night Coup', PM Babu Ram Bhattarai while announcing the dissolution of the CA, called for holding of fresh elections on November 22 this year.

Looking back at the political developments in Nepal since the end of the decade-long Maoist insurgency in 2005, the high point was the signing of the 12-point understanding between the Seven Party Alliance (SPA), and the Maoists in Delhi wherein the Maoists firmly committed themselves to multi-

party democracy and the basic values of freedom. Things started moving fast soon thereafter. The then King was forced to reinstate the parliament on account of the successful movement of April of 2006; end of armed conflict with the signing of the Comprehensive Peace Agreement (CPA) between the Government of Nepal and the Maoists on 21 November 2006; abolition of monarchy and establishment of a Republican state; promulgation of the Interim Constitution (IC) in 2007 and the holding of landmark elections to the Constituent Assembly (CA) in April 2008. *(See Nepal's Chronology of events at Annexure I)*

All of these events were actualised in short periods of time as the political parties were willing to move forward in a spirit of cooperation and compromise to establish a new order in Nepal. To some extent, the presence of the late G.P. Koirala bolstered their confidence as he was able to iron out the differences that kept arising. The CA elections resulted in the UCPN (Maoist) emerging as the largest party. The Madhesi parties for the first time in the history of Nepalese politics garnered enough seats to play the role of king-makers. Traditional parties like the NC and the communists under the UML banner took second and third spots respectively. *(See Annexure II for detailed election results)* The political implications of this could be seen in the changing of the CA from a constitution-drafting body into an arena of intense power-politics. The focus shifted to the formation of a government and appointment of a prime minister. The two-year term of the CA as mandated in the IC was extended twice to four years in the hope that it would finally come up with a draft constitution. But, it only resulted in producing four prime ministers and parties digging their heels on some of the contentious issues. The net result was that an agreed draft of the constitution could neither be finalized nor promulgated so as to facilitate an orderly transition to political stability.

Events Leading to the 'Midnight Coup'

In early May 2012, there was some hope when on 03 May a five point agreement was reached between political parties to join together to form a government and thus, pave the way for conducting elections under the new constitution. The new Statute for the Constitution was to be promulgated before May 27. The incumbent PM (BRB) was to leave office before 27th and a unity government was to be formed under the Nepali Congress, which would conduct the elections within one year. The drafting of the constitution was scheduled for completion before this timeframe. *(See Annexure III for Five Point Agreement)*

Yet again, on 15 May, the political parties had reportedly agreed to a basic structural model for the new constitution for promulgation before 27

May. Most of the contentious issues such as names and boundaries of new provinces were to be decided by a Federal Constitution Commission. Reportedly, the political parties had also reached a compromise on the questions of parliament formation, electoral system, governance system, judiciary and Constitutional Court. (See Annexure IV for 15 May Agreement)

After this, however, the political parties failed or preferred not to consolidate the progress made so far and started playing the by now familiar game of power politics. Because of the fractious nature of political parties, unwillingness to share power and the intense personal ambitions of the leaders, the above mentioned agreements could not be implemented. In fact, it is even being alleged that the manner in which the drama was played out on the last day of the CA, implied the existence of a pre-determined 'conspiracy' on the part of the Maoists to negate the agreements. Their objective was to prevent the promulgation of the draft constitution, ensure the CA's demise and prolong the tenure of the BRB government for as long as possible. In this context, according to some reports, amidst hectic consultations, a draft constitution incorporating all the points already agreed to, could have been got approved by the CA before its automatic dissolution at midnight; paving the way for elections leading to establishment of a new and stable political order. As the CA waited, BRB was left to consult the cabinet but returned only in time to announce CA's dissolution and plans to hold 'elections' on November 22, 2012. This move was made at the behest of the senior Maoist leaders and the cabinet. The CA members were shocked at this unexpected turn of events, but were unable to do anything as the CA stood dissolved. Moreover, an institution with a legislative mandate for the functioning of the government lapsed.

Reasons for the Failure of CA

• Differences in perception on nature of federalism

One of the major causes for the failure of the CA was inability of the political parties to arrive at a consensus on the nature of federalism, number of states to be formed, their nomenclature, and boundaries. The State Restructuring Commission had with a majoritarian opinion recommended the formation of eleven states, whereas the minority view favoured eight states. Amongst the major parties, the NC and CPN (UML) did not favour either the identity or ethnicity-based models for the new states. On the other hand, the Maoists and the Madhesi parties supported a federal model based on ethnic aspirations.

• Differences on the form of government

The Maoists favoured a strong, directly elected Presidency while the other political parties supported a Parliamentary system with the Prime Minister as the chief executive responsible to Parliament. In a compromise move it was decided to have a mixed system in which the President too would be directly elected by the people, while the Prime Minister would be chief executive responsible to parliament.

• Other Issues

While the major reason for the CA's inability to complete the draft of the constitution was the bitter conflict on the issue of federalism, there were differences in the CA on the system of governance and parliament formation, to include the electoral system and nature of judiciary. An accord on these vexatious issues had reportedly been reached between the political parties on 15 May, 2012.

• Reintegration of Maoists combatants

Even though this issue had been discussed several times and agreements have been reached, there were problems in its implementation concerning 3001 combatants. They had yet to be integrated by end May, 2012. Most of the former combatants had opted for voluntary retirement. For those to be integrated; it was ensured that concessions are made only for one step lower educational qualification, three years of age relaxation and marital status. Since the demise of the CA, the NC representatives had been boycotting the meetings and the process had been stalled. The NC and UML parties remained firmly opposed to notification of the draft constitution and elections till the Maoists completely disbanded their armed cadres. As of the second week of October 2012, the integration of Maoists seems to have been achieved and there is some degree of closure to this long festering issue. But with the split within the Maoists, it is suspected that the breakaway faction, led by Baidya, would have access to large quantities of illegal weapons.

• Competing political objectives and strategies

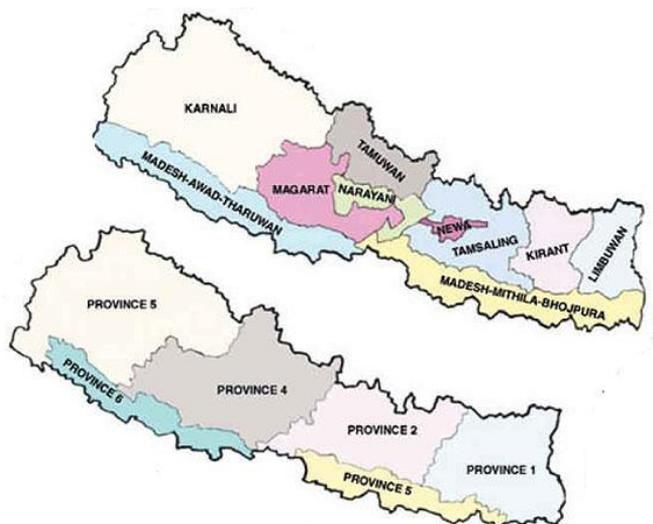
The competing political objectives and strategies of the political parties have created more friction and heat instead of achieving a consensus-based resolution of the political impasse. The political leadership of most of the parties have not been very transparent in their decision making and have indulged more in the politics of government formation and seeking bargains for sharing of power, rather than on addressing the issues of constitution- drafting

etc., which the CA was mandated for. The political parties suffer from serious internal factionalism, mostly driven by personal ambitions of individual leaders. This has created difficulties in their arriving at consensus on contentious issues. There is also a perception that some of the 'issues' are merely being used by the parties as a ploy to delay and derail the entire process. In this context, it has been alleged that the Maoists are not committed to the concept of multi-party democracy and will use all opportunities to ensure continuity in power once they capture it. Similarly, the NC is still opposed to the idea of ethnic federalism and will continue to set up roadblocks to resist this move. The UML too stands opposed to the concept but are arguing their case differently to stall any agreement. These developments illustrate that the path ahead is unlikely to be easy and smooth for genuine compromise and consensus-building.

Positions of Political Parties on Various Issues

The State Restructuring Committee (SRC) of the CA in February 2012 had in majority favoured the creation of 11 States, as against the 6-state model suggested by the minority view. The eleven-state model was eventually agreed to by the political parties in the 15th May Agreement.

A Graphic Representation of the two models is given below.



Some of the recommendations contained in both the reports were considered 'controversial'. For instance, the provision for self-determination and creation of two contiguous Madhesi states in the south, it was posited, may create problems for free passage to interior parts of Nepal. However, the 15th May agreement can be the starting point since it became possible to bridge the gap between the two reports and work towards a consensus. The

15th May agreement was not debated in the CA and there was opposition to it from various groups/lobbies which manifested itself in street demonstrations, agitations and protests all across Nepal by almost all the factions of the political spectrum. The position of the major parties on the issue is as follows:-

Nepali Congress

The party, although, initially not in favour of ethnic federalism, almost grudgingly accepted the idea of federalism in a manner which differs from that of the Maoists which, the NC considers as 'divisive' and against the long term interest of Nepal. Both, the NC and CPN (UML) also opine that identity should not be the only criteria for federalism. It should be tempered with considerations of development deficit and economic viability, backwardness/poverty and administrative convenience that could become basis for the restructuring. They are equally opposed to the creation of too many provinces, drawing of boundaries and naming of the provinces. They view it to be an arrangement for devolution of power rather than fulfilment of the aspirations of the ethnic communities. According to them, the federal structure proposed by the Maoist-Madhesi combine, would weaken the state and has a negative impact on national integration. Further, the hill states would become totally dependent on the Madhesi majority provinces for transport corridors, accessibility to India and economic viability. Grouping the erstwhile districts into provinces along North-South axis would be more convenient from administrative and economic considerations; a position that would affect the domination of the hilly regions in the political scene, which is completely unacceptable to the Madhesi.

The alliance of 27 political parties led by the NC and CPN (UML) that was recently formed to promote their positions on federalism and other issues desire a parliamentary system of government with PM as the executive head, but seems to be ready for a compromise. They view BRB's government as only a caretaker arrangement that must resign and hand over the reins of government to the NC, as agreed to under the 3rd May Agreement. They argue that the Interim Constitution (IC) provided only for one election to constitute the CA, and therefore, Article 64 of IC will have to be amended to conduct another election. The President being the guardian of the constitution is mandated to protect it and can thus, take necessary steps on this issue.

CPN (UML)

The political views of the CPN (UML) are generally in alignment with those of the NC on most crucial issues. In their view, the main cause of the present crisis is that the CA stands dissolved without creating any alternative.

By 15 May, the basic agreement had been reached on the questions of federalism, form of government, electoral system, judiciary and citizenship and an agreed draft could have been promulgated. The UML was in favour of leaving the contentious issues for the new Parliament, but the Maoists wanted to pursue their own agenda in an open situation of a political power vacuum and therefore, back-tracked at the last moment. The Interim Constitution was for only one CA election; Article 64 could be amended for another election. The President could also announce holding of elections under Article 158 for CA/new Parliament or the brief revival of CA after arriving at political consensus. However, the CPN (UML) is not in favour of reinstatement of the then dissolved CA; instead favours elections for Parliament that would also work as CA in the initial phase. The UML also supports the formation of a new government and working forward from the agreement of 15 May. It is also in agreement with the proposal that some of the issues could be resolved through a referendum.

UCPN (Maoist)

The Prachanda-BRB faction of the Maoist is, at least in its public pronouncements, committed to the concept of ethnicity-based federalism, but it does not favour the 11- Province model of 15 May as proposed by the SRC majoritarian view. Before the dissolution of the CA, the Maoist and the Madhesi Morcha proposed the creation of 14 provinces on an ethnicity-based model to the NC-UML. They felt that to work out a last minute consensus, NC-UML may accept the proposal. Apart from this, Prachanda, wanted to retain the support of the Janjatis through this move who could have otherwise, shifted their loyalties to the Mohan Baidya's faction.

In the interim, the Maoists (Prachanda) along with the United Democratic Madhesi Front (UDMF) and several other smaller Madhesi and Janjati outfits formed a Federal Democratic Republican Alliance (FDRA) comprising 21 political parties to pursue their political agenda. The stated aim of the coalition is to strive for 'a constitution with federalism and federalism with identity'. Prachanda had said, "forces with a similar approach and thought process about issues of progressive restructuring of the Nepali state, identity-based federalism, and those who agree that a constitution must be promulgated through a Constituent Assembly needed to come together. This historic alliance will help bring all parties to a political consensus. It will also play the role of an electoral alliance and if necessary, go to the people together." Not to be left behind in the race for alliances, the Baidya faction also announced a grouping of 9 political parties to stake his claim for leadership after BRB's resignation. He is a hardline leader who is ideologically and politically more aligned with the Chinese, and has been pushing for the BRB government's resignation in concert with the other traditional democratic

parties. In any event, the split in the Maoist party has further added to the current political impasse and posed difficulties in the consensus-building process. Despite the reported assurance issued by the Baidya faction that there would be no return to armed conflict, there are strong suspicions among democratic parties that the cadres loyal to Baidya retain access to undeclared arms, and may not hesitate to go back to the jungles to pursue their political agenda and settle scores with the Prachanda faction.

Madhesi Parties

The two main Madhesi fronts, the Samyukta Loktantrik Madhesi Morcha (SLMM or Madhesi Morcha) and the Brihat Madhesi Morcha (BMM, or Broader Morcha), are coalitions of several smaller parties. There has been further split in the BMM. The Madhesi groups, for the first time in Nepal politics, have, by virtue of their combined strength of 82 members in the now dissolved CA, acquired a significant voice which they have used to their advantage by playing the role of king-maker. On their own, the Maoists (229) or the NC-UML combine (115 and 108) did not command absolute majority in the dissolved CA and, both had to depend on the Madhesi parties to form majority governments. This effectively ensured keeping the Maoists out of power after the first government of Prachanda resigned. The situation changed dramatically earlier this year when a large number of Madhesi political parties (like Madhesi Janadhikar Forum) decided to support the Maoists that facilitated the formation of the BRB government. It is claimed that they did so in the hope that their basic demands of ethnicity-based federalism, identity, and share in power structure and representation in government jobs are met with. However, there are others who do not trust the Maoists and other left wing parties as they feel that they are only trying to exploit their political strength, but would eventually not concede these demands. In fact, the manner in which the Maoist eased out of the situation on May 27 by dissolving the CA without getting the draft constitution approved has only strengthened their apprehensions. Some of the Madhesi parties have since left the Maoist alliance to join other groupings. It must also be noted that the other major parties namely NC and UML have not done much to instill a sense of confidence amongst the Madhesis and win back their political support. *(See Annexure V for population of ethnic groups in Nepal)*

In spite of their political disunity, all the Madhesi parties have identical views on the key issues of the current conflict i.e. ethnicity-based federal structure, inclusive system of governance, due share and representation in government/resources and developmental activities. They are opposed to any move in delineating North-South boundary of provinces and an arrangement

that could divide their vote catchment. They are not very concerned about the number and names of non-Madhesi provinces as long as their 2-4 provinces reflect their identity and heritage. Having managed to have most of their demands incorporated in the draft constitution, the Madhesi parties are disappointed over the sudden dissolution of the CA and would much rather like a brief restoration of the CA for the limited purpose of promulgation of the same draft. They harbour huge expectations from the President and India to play a role in this.

Conservative/Monarchist Party

Rashtriya Prajatantra Party (Nepal) is a monarchist party avowing referendum on subjects of republicanism, secularism and federalism. Although, they are not a strong political force as yet, it has gained some public support drawing from the political mess that the political parties have created over the past four years. Its objective is to revive the 1990 Constitution in the absence of a new Constitution and continue a silent campaign in support of the restoration of the monarchy in a constitutional role.

Net Assessment of the Political Situation

Nepal is currently facing multiple crises of a kind and intensity that had not been witnessed even in 2005/06. Today's political crisis is characterised by mistrust between all the major political parties. Inter-and intra-party conflicts and leadership crisis seem to have reached a stage that makes any chance of amicable reconciliation difficult. Even the Maoists no longer stand united. In this scenario, there is an absence of leadership for the resolution of the conflicts through political compromises. The other major crisis relates to the constitutional deadlock precipitated by the Constituent Assembly's failure to produce an agreed draft of a new constitution that would have helped the orderly transition to constitutional democracy by conducting elections for a new parliament. As a result, Nepal neither has the promised constitution nor a parliament, and has to make do with a Interim Constitution; and a caretaker government whose legitimacy is questionable on the grounds that the IC does not provide for a non-CA member to be the PM. This has resulted in crises of governance and institutions. While the institution of the President remains intact under the provisions of the IC, the other constitutional entities like the Supreme Court and Election Commission would witness the degradation of their powers without a provision in the IC for their replacement.

The ensuing economic crisis and socio-ethnic crisis compound the Nepalese complexities further. Nepal has always had a fragile economy, festered by the decade long insurgency and six years of political uncertainty resulting in ineffective governance. The socio-ethnic crisis driven by ethnic

aspirations and conflicts has in recent years assumed serious proportions. The Madhesi parties campaign against the century old 'exploitation', discrimination and 'victimization' grouse, at the hands of the Pahari rulers finally found strong political space in the CA. They are now determined to get their demands relating to ethnicity based federalism, restructuring of state and governance, share in state resources and recognition of their identity, culture and language, fulfilled. They are, however, suspicious of all the three major political parties who would dilute ethnic aspirations.

Significantly, Nepal faces a crisis of 'identity and ownership'. As a state in transition, trying to move from a unitary monarchy to a constitutional democracy, Nepal is caught in a cycle of 'displacement and evolution'. In the process no one 'really 'owns' the state' like the King did earlier. The absence of mature leadership of the kind in post-independent India does not exist in Nepal. This is adversely impacting the process of transition.

Contending Positions on Key Issues

An examination of the important contentious issues and the differing positions of the key political parties would provide possible options available for Nepal's future in arriving at the much needed consensus. These are issues of (i) federalism, (ii) state structure, (iii) form of government, (iv) equitable sharing of resources and (v) judiciary. The stated/perceived positions of the political parties can broadly be summarized as follows:-

- (a) While the Maoists outwardly support the concept of ethnic federalism, the Madhesies seem convinced that they are only exploiting the issue for political gains in the Tarai. UML, on the other hand, in its publicly stated position, supports federalism on the basis of identity, ethnicity, language, culture, geographic contiguity, economic viability and administrative convenience. The NC basically does support the concept, but will not rescind from the commitment given by GP Koirala in the aftermath of the Madhesi Andolan of 2007. It however, does not want too many provinces as now proposed, ostensibly on the grounds of economic unviability and administrative problems. It would prefer to have two provinces in the Tarai and four in the hills. The Madhesies will not compromise on ethnicity as the main criteria for creation of states which could be given any name even at a later date (a point of contention between NC and the Maoists). However, they remain opposed to North-South configuration of new states that would, in their view, perpetuate Pahari dominance.

- (b) The issue of state structure is in a way linked to the issues of federalism and the form of government. While initially there was strong pressure not to dilute the unitary form of government, the contending parties have by and large now agreed to a strong centre with the provinces getting a reasonable share in local administration and developmental activities through division of resources and responsibilities. The experiment with the new system may, however, lead to friction in the future till the federal government and the provinces develop a *modus vivendi*. Even the question of the status of the President has sought to be resolved through a compromise formula wherein the President is directly elected, but would function as the constitutional head while the Prime Minister elected by representative of the people will be the chief executive. This was primarily to accommodate the Maoist demand for a powerful executive President, and the position of the democratic forces in favour of the Westminster type of democracy. This compromise could sow the seeds for future conflict.
- (c) On the matter of the judiciary, the Maoists preferred elected judges but have eventually settled for a more reasonable system under which the judges to the Supreme Court will be appointed by the President, on the recommendations of a judicial council and the cabinet.

Amidst all this uncertainty, the Maoists are entrenched in power and unlikely to give this up as easily and voluntarily as the last time when Prachanda had tendered his resignation on the Katwal issue. BRB has already made it clear that he would not resign as PM till such time as an agreement is reached on all the contentious issues. But sceptics argue, and with some validity, that the Maoists would not actively facilitate a compromise settlement as they are not in favour of a multi-party, pluralistic, constitutional democracy. Therefore, they will continue to stall efforts towards the evolution of a package deal covering all issues. Meanwhile, it is becoming increasingly clear that the President would not allow BRB to govern through ordinances, but the Maoists will continue to make inroads in to the bureaucracy and other administrative structures which necessitate Presidential involvement.

Options for Resolution

In this environment there seems an expectation based on realism across the political lines that only the President can and should step in through the enabling provisions of the IC. He can do so even through measures that are 'extra-constitutional' by invoking the doctrine of 'removal of obstacles' enshrined in the IC. He has rightly turned down the BRB Cabinet's recommendation to hold elections in November 2012, since the IC provides for elections only after the draft Constitution is ready, and promulgated. An option that the President could consider is to ask the political parties to work out a compromise for a Draft Constitution, something agreed to so far, and then, as a special measure, convene a short session of the dissolved CA for its endorsement and promulgation. This would however, go against the Supreme Court's earlier ruling which led to the CA's resolution. Would the Supreme Court endorse such an approach?

Another option before the President could be to again obtain political consensus on formation of a national government under Article 38.1 of the IC, along with Article 158 on powers of the President to 'remove difficulties'. This could pave way for holding elections either for a new CA, or for a regular parliament which could also function as a CA for the purpose of finalizing the constitution-drafting exercise. There is near unanimity amongst constitutional experts and political analysts that such a move could provide political stability in that there is a newly elected parliament and not another CA with a fractured mandate.

Another line of thought favours Presidential intervention to promulgate the draft of a new Constitution as agreed upon so far, through an ordinance thus, paving the way for parliamentary elections. However, in view of the conflicting claims of the main political parties in the CA on the very existence of such a 'draft', this option has neither gained currency nor endorsement of the political parties. There is, however, unanimity on two issues; (i) that the only way to move forward is through Presidential intervention, and (ii) that he may have to, in a way, go even beyond the provisions of the IC. The President cannot afford to indefinitely delay action and must choose the right moment to move decisively. It is a given that this President can act only once and not repeatedly. This would mean that the President is unlikely to accede to the NC/UML demand to dismiss the BRB government now and look for alternatives. It would all have to come in one comprehensive package.

Recent Developments

There is some positive forward development following the persuasive efforts of the President, media, second level political leaders and the international community. On September 19, 2012 with the Unified Communist Party of Nepal (Maoist), Nepali Congress (NC), Communist Party of Nepal (Unified Marxist Leninist) and United Democratic Madhesi Front (UDMF), decided to move for fresh elections. The option to revive the CA, was contingent on a deal over the form and substance of federalism, had to be ruled out since the parties stuck to their stated positions on the names, numbers and boundaries of federal states. The UML chairman and former Prime Minister, Jhalanath Khanal, summarized the situation aptly, “we are not in a situation to agree on contentious constitutional issues. So the possibility of reinstating the CA for a short while to promulgate the Constitution is not there anymore”. The NC General Secretary, Krishna Prasad Sitaula, added that the parties had accordingly agreed to hold fresh elections for a new CA. He clarified that once “the CA does its work and the Constitution is promulgated, the same house can transform into a Parliament”. Furthermore, elections to the new CA “will take place under a national unity government.” The Minister for Health and Madhesi leader, Rajendra Mahato, said this ‘in-principle’ agreement will be followed by a package deal. “While the election system will be a mix of both first-past-the-post and proportional representation like last time, the parties will have to work out other details such as the number of seats, date of fresh polls, ways to remove the constitutional and legal difficulties in holding polls, and leadership and composition of the dispensation for holding the election”.

While these developments are indeed encouraging, clearly there are many issues still to be sorted out. These would include bargaining over the strength of the new CA, and who would lead the interim government. Even if the NC manages to eventually sort out the conflicting claims of Paudel and Deuba for leadership, the Maoists are unlikely to easily accept their demand for PM’s post under the May 5th agreement on the ground that the validity of that commitment was contingent to the resolution of all outstanding issues, which has not yet taken place. It may also not be easy to arrive at an agreement on the number of seats in the new CA since the parties would resist any formula on numbers that could dilute their possible representation, particularly if the CA after drafting the constitution turns itself in to the new parliament. This aspect of the agreement may even come up for judicial review under the provisions of the IC whereby parliamentary elections have to be held under the provisions of the new constitution after its promulgation, and not before.

In this political milieu, the President is being looked upon as the final authority and arbiter who can take necessary and decisive steps as a protector and guardian of the constitution to forge a political consensus to form a government of national unity and invoke elections at an early and appropriate time. The President is unlikely to take any action that might appear arbitrary or in contravention of the established/acceptable democratic norms and practices, or which is at variance with wishes of people.

Role of the International Community

The important players in determining Nepal's political future are the US, EU, China and India. The US and EU do not claim any direct equity with the political parties to conclusively change the course of events there. However, having an interest in establishment of a genuine democratic dispensation in Nepal, it would be prudent for them to align their efforts with India's towards this end.

China, on the other hand, is certainly in a position to do so with its influence on both the factions of the Maoists and to an extent, even with the CPN (UML). While its actions and activities are mostly carried out in behind the scene persuasions, the net impact is quite substantial. It may be recalled that China has already taken a strong position against the proposed demand for a federal structure based on ethnicity, which serves as the singular contentious issue today. This is bound to influence the Maoists and UML approach on the issue; the Baidya faction has already voiced opposition to the concept and rejected the September 19th agreement.

In the case of India, there is an expectation from the democratic parties to play a direct role in resolution of the conflict but at the same time, whatever the action may be remains in public view and is intensely debated in the media and in political circles. Indeed, there is considerable merit in the view that India should not be seen as 'interventionist'; it also cannot afford to be totally 'indifferent' to the developments in Nepal which has suffered enough, primarily due to the inability of the main political parties in arriving at a workable consensus on different issues within a reasonable time frame. Nepal cannot afford to remain in this state of political uncertainty, bitter conflict and deficiency in governance indefinitely. With most of the contentious issues already resolved, most political analysts feel that conflict resolution should not be very difficult. There is only some 'help' required in confidence building and reducing the trust deficit. India must, therefore, construct a new strategy of using its enormous influence and goodwill in helping the political parties to rediscover ways of confidence building in a spirit of accommodation and compromise.

Annexure I

Nepal: Chronology of Political Events

1959: A multi-party constitution is adopted.

1960: King Mahendra is opposed to Prime Minister B.P. Koirala 'Nepali Congress Party' (NCP) and seizes control – suspending parliament, the constitution and party politics.

1972: King Mahendra dies and is succeeded by his son, Birendra.

1980: Popular agitation for reform results in King agreeing to allow direct election to national assembly on a non-party basis.

1985: Civil disobedience campaigns in favour of restoration of multi-party politics.

1990: Pro-democracy forces push for reform. King Birendra eventually agrees to new democratic constitution for the first time in 30 years.

1991: NCP wins first democratic elections. Girja Prasad Koirala becomes Prime Minister.

1994: Vote of no confidence in Koirala's government. New elections see formation of Communist government, subsequently dissolved.

1996: Nepal Communist Party (Maoist) attack rural police posts, heralding the beginning of a decade long bloody insurrection aimed at abolishing the monarchy and establishing a people's republic.

1999: Birendra dissolves parliament.

2000: Koirala returns as Prime Minister, heading the ninth government in 10 years.

2001 (June): King Birendra, Queen Aishwarya and other close relatives killed by Crown Prince Dipendra, who also shoots himself. Prince Gyanendra crowned King after Dipendra dies of his injuries. Widespread uncertainty and social chaos exploited by Maoist insurgents, who step up their campaign. Prime Minister Koirala quits and is succeeded by Sher Bahadur Deuba.

2001 (Nov): 4 months old truce between Government and Maoists breaks down and peace talks fail. Maoists launch coordinated attacks on army and police posts. State of emergency declared, King Gyanendra orders army to crush the Maoist rebels.

2002 (May): Pro-democracy forces and government in political confrontation over renewal of state of emergency.

2002 (Oct): King puts off elections indefinitely and dismisses Deuba.

2003 (Jan): Rebels and government declare ceasefire.

2003 (May-June): King appoints Surya Bahadur Thapa, his personal choice, as new Premier.

2003 (Aug): Ceasefire agreement and peace talks collapse.

2004: Surya Bahadur Thapa quits as Prime Minister after weeks of protests. Gyanendra reappoints Deuba as Prime Minister Popular during under popular pro-democracy protests.

2005 (Feb): King declares state of emergency, dismisses government, and assumes direct power. Britain and India stopped all military aid to Nepal.

2006 (Apr – June): Weeks of popular pro-democracy strikes and protests force the King to reinstate Parliament – which promptly votes to curtail his political powers. For the first time in 3 years, the government and the Maoists initiate peace talks and agree the Maoists should be brought into an interim government.

2006 (Nov): Ten years of Maoist insurgency come to an end as the government and Maoists sign a Peace Accord.

2007: Elections for constituent assembly first pushed back, then scrapped as Maoists quit interim government in an attempt to force the abolition of the monarchy. Parliament agrees as part of a peace deal designed to bring the Maoists back to the government.

2008 (Jan): Ethnic groups in the southern Terai region start violently demanding autonomy in a potential dangerous precedent.

2008 (Apr): Elections to the constituent assembly give the Maoists the largest bloc of seats but not an outright majority.

2008 (May): Nepal becomes a republic.

2009 (May): Prime Minister Prachanda resigns, stating an “unconstitutional and undemocratic” move by President Yadav in stopping the elected Maoist government from sacking the army chief. Veteran communist leader Madhav Kumar Nepal is elected as the country’s new Prime Minister.

2010 (Jan): Nepal begins to reintegrate former Maoist combatants who have been held in camps since the signing of the peace agreement in 2006

2010 (May): The government declares the 28th May deadline for a new constitution an impossibility, while the PM-question splits Maoists and other parties. This is accompanied by the largest anti-government protests since the election of the new government

2010 (June): PM resigns after increased pressure and widespread Maoists demands for his resignation. This marks the beginning of a 7 months period of deadlock with no candidate being able to get a majority of votes.

2011 (Jan): UMIN troops leave the country after the end of an already extended mandate; final decision of the integration of 19,000 Maoist ex-combatants under control of a cross-party committee

2011 (Feb): UML party candidate Jhala Nath Khanal is elected as new PM, after a change in voting rules.

2011 (May): Constituent Assembly fails to meet 28 May deadline for a new constitution.

2011 (August): PM Jhalnath Khanal resigns after government fails to reach an agreement on shape of constitution and fate of former Maoist fighters. Parliament elects the Maoist party's Baburam Bhattari as prime minister.

2011 (November): Major political parties agree deal on reintegration of Maoist combatants

2011 (Dec): Nepali Congress declares a countrywide general strike to protest the fatal attack on Shiva Poudel, chairman of Nepal Tarun Dal.

2012 (April): Army moves into ex-combatants' camps to complete the reintegration process.

2012 (27 May): The CA mandate expires, without a Final Constitution being agreed. Standing Prime Minister Baburam Bhattarai calls elections for November, and claims executive power until then. However President Yadav insists Bhattarai's role is caretaker Prime Minister only, and calls on all political parties to move ahead through consensus.

(Adapted from 'Nepal Conflict Timeline' available at

<http://www.insightonconflict.org/conflicts/nepal/conflict-profile/conflict-timeline-2/>)

Annexure II

Constituent Assembly Election Results

Party	FPTP			Proportional		Seats				
	Votes	%	+/- %—	Votes	%	FPTP	Prop.	Nom.	Total	%
<u>CPN</u> <u>(Maoist)</u>	3,145,519	30.52		3,144,204	29.28	120	100	9	229	38.10
<u>NC</u>	2,348,890	22.79	— 14.50	2,269,883	21.14	37	73	5	115	19.13
<u>CP Nepal</u> <u>(Unified</u> <u>Marxist-</u> <u>Leninist)</u>	2,229,064	21.63	— 16.62	2,183,370	20.33	33	70	5	108	17.97
<u>MJA Forum,</u> <u>Nepal</u>	634,154	6.15		678,327	6.32	30	22	2	54	8.98
Tarai- Madesh Loktantrik Party	345,587	3.35		338,930	3.16	9	11	1	21	3.49
<u>R P Party</u>	310,214	3.01	— 10.84	263,431	2.45	0	8	—	8	1.33
<u>CP Nepal</u> <u>(Marxist-</u> <u>Leninist)</u>	168,196	1.63		243,545	2.27	0	8	1	9	1.50
<u>Sadbhavana</u> <u>Party</u>	174,086	1.69		167,517	1.56	4	5	—	9	1.50
<u>Janamorcha</u> <u>Nepal</u>	136,846	1.33	—0.89	164,381	1.53	2	5	1	8	1.33
<u>CP Nepal</u> <u>(United)</u>	39,100	0.38		154,968	1.44	0	5	—	5	0.83
<u>R P Party</u> <u>Nepal</u>	76,684	0.74		110,519	1.03	0	4	—	4	0.50

<u>Rastriya Janamorcha</u>	93,578	0.91		106,224	0.99	1	3	—	4	0.66
<u>Rastriya Janshakti Party</u>	79,925	0.77		102,147	0.95	0	3	—	3	0.50
<u>Nepal Workers Peasants Party</u>	65,908	0.64	+0.08	74,089	0.69	2	2	1	5	0.83
<u>SLR Manch</u>	36,060	0.35		71,958	0.67	0	2	—	2	0.33
<u>NS Party (Anandidevi)</u>	45,254	0.44	-2.78	55,671	0.52	0	2	1	3	0.50
<u>Rastriya Janamukti Party</u>	38,568	0.37	-0.70	53,910	0.50	0	2	—	2	0.33
<u>Nepali Janata Dal</u>	17,162	0.17	+0.0	48,990	0.46	0	2	—	2	0.33
<u>CP Nepal (Unified)</u>	51,928	0.50		48,600	0.45	0	2	—	2	0.33
<u>Dalit Janajati Party</u>	31,444	0.30		40,348	0.37	0	1	—	1	0.17
<u>Nepa Rastriya Party</u>	11,352	0.11		37,757	0.35	0	1	—	1	0.17
<u>SPJ Party</u>	13,246	0.13		35,752	0.33	0	1	—	1	0.17
<u>CBRE Party</u>	18,908	0.13		28,575	0.27	0	1	—	1	0.17
<u>NLS Dal</u>	10,432	0.10		25,022	0.23	0	1	—	1	0.17
<u>Nepal Parivar Dal</u>		—		23,512	0.22	—	1	—	1	0.17
<u>CP Nepal (Marxist)</u>	1,759	0.02		21,234	0.20	0	0	—	0	
<u>Tamsaling Nepal Rastriya Dal</u>	5,468	0.05		20,657	0.19	0	0	—	0	
<u>Rastriya Janata Dal</u>	5,556	0.05		19,305	0.18	0	0	—	0	
<u>CP Nepal (United)</u>	10,076	0.10	-0.04	18,717	0.17	0	0	—	0	

	<u>Marxist</u>									
	<u>Lok Kalayankari Janata Party</u>	6,700	0.06		18,123	0.17	0	0	—	0
	<u>Nepal Janabhavana Party</u>	104	0.00	±0.00	13,173	0.12	0	0	—	0
	<u>Rastriya Janata Dal Nepal</u>	4,497	0.04		12,678	0.12	0	0	—	0
	<u>Nepal Janata Party</u>	5,635	0.05		12,531	0.12	0	0	—	0
	<u>MN Organisation</u>	6,349	0.06	-0.01	11,578	0.11	0	0	—	0
	<u>Nepal Shanti Kshetra Parishad</u>	45	0.00		10,565	0.10	0	0	—	0
	<u>Shanti Party Nepal</u>	970	0.01		10,511	0.10	0	0	—	0
	<u>Rastriya Bikas Party</u>	2,612	0.02		9,329	0.09	0	0	—	0
	<u>NSP (Loktantrik)</u>	1,459	0.01		8,322	0.08	0	0	—	0
	<u>Nepal Rastriya Bikas Party</u>	1,603	0.01		8,026	0.07	0	0	—	0
	<u>NDS Morcha</u>	93	0.00	-0.08	7,107	0.07	0	0	—	0
	<u>Samajbadi Party Nepal</u>	1,197	0.01		6,564	0.06	0	0	—	0
	<u>MSN Party</u>	2,490	0.02		6,292	0.06	0	0	—	0
	<u>NC (Rastrabadi)</u>		—		5,721	0.05	—	0	—	0
	<u>Nepal Samyabadi Dal</u>	60	0.00		5,478	0.05	0	0	—	0
	<u>Nawa Janabadi Morcha</u>	992	0.01		5,193	0.05	0	0	—	0
	<u>HP Party</u>	265	0.00		4,902	0.05	0	0	—	0

<u>NS Party</u>	459	0.00		4,697	0.04	0	0	—	0	
<u>RU Morcha</u>	496	0.00		4,772	0.04	0	0	—	0	
<u>LNSE Party</u>	316	0.00		4,443	0.04	0	0	—	0	
<u>RE Party</u>	43	0.00		4,150	0.04	0	0	—	0	
<u>Sa-Shakti Nepal</u>	532	0.00		3,752	0.03	0	0	—	0	
<u>JP Nepal</u>	281	0.00	-0.11	3,396	0.03	0	0	—	0	
<u>Nepal Rastriva Loktantrik Dal</u>	57	0.00		3,216	0.03	0	0	—	0	
<u>Nawa Nepal PD</u>	34	0.00		3,016	0.03	0	0	—	0	
<u>LSD Party</u>	152	0.00		—		0	—	—	0	
<u>NRJ Party</u>	96	0.00		—		0	—	—	0	
<u>Indpendts</u>	123,619	1.20	-1.54	—		2	—	—	2	0.33
Source: www.election.gov.np , nepalnews.com , kantipuronline.com , kantipuronline.com . Madhesi parties won 82 seats.										

Annexure III

Five-Point Agreement between Political Parties

Agreement of 03 May, 2012

1. All members of the incumbent cabinet will resign and a new unity government will be formed within two days as per the earlier seven point agreement.
2. All issues of constitution drafting including the state restructuring, form of governance etc. will be resolved in three days.
3. New Statute for the Constitution will be promulgated before May 27. The present incumbent PM will leave office before 27th and a unity government that will be formed under the Nepali Congress will conduct the elections within one year.
4. All outstanding work on peace process will be completed immediately as per the earlier agreements.
5. Top leaders of the political parties will hold regular meetings to expedite constitution drafting process.

Annexure IV

Agreement of 15 May between Political Parties

On the 15th of May the political parties finally agreed on a basic structural model for the new constitution to be promulgated within the dead line of 28 May, leaving most of the contentious issues to a future Federal Constitution Commission to decide on the names, delineation of provinces and most importantly the boundaries.

The text of the agreement reads as follows:

A) Federal Structure:

1. All states in Nepal will embrace multi-ethnicity, entailing that every citizen will have equal political, economic, social and cultural rights regardless of their ethnic, religious or cultural backgrounds.
2. The central, the provincial and the local governments shall be responsible in upholding and defending the fundamental rights and the human rights of each citizen.
3. There shall be 11 federal provinces. The names for the provinces shall not be proposed for the time being.
4. Central Federal Commission shall be empanelled to address the issues concerning delineation, naming and regional distribution of the provinces.
5. The Legislative Parliament shall make the decision pertinent to the aforementioned point based on the recommendation made by the Central Federalism Commission.
6. Regarding provincial nomenclature, the decision taken by provincial assembly shall be held supreme.

B) System of Governance:

1. There shall be a mixed system of governance.
2. There shall be a directly elected President as mentioned in the law.

3. Prime Minister shall be elected by parliament. The parliament-elected Prime Minister shall constitute the cabinet of ministers. The cabinet and its members shall remain responsible towards the parliament.

C) Parliament Formation:

1. Parliament shall be formed through mixed-electoral system.
2. The House of Representatives shall have 171 directly and 140 proportionally elected members.
3. The National Assembly shall have five representatives elected from each province. Based on the recommendation of the cabinet of ministers, the President shall nominate 10 distinguished individuals from different fields as assembly members.
4. The central constituency shall be divided into two electorates while conducting election for the Provincial Assembly members.
5. Local government shall be formed as per the law.

D) Court:

1. Remaining tenure of a Justice shall not affect his/her eligibility from becoming Chief Justice
2. Judicial Council shall appoint the justices.
3. The Chief Justice shall preside over the Judicial Council that shall have two senior-most justices, Minister of Law and one representative from the Bar Association as councillors.
4. The incumbent justices sworn in under the interim constitution shall automatically retain their appointment with the promulgation of a new constitution. They shall, however, be required to re-take the oath of office under the new constitution.

E) Constitutional Court

1. Constitutional Court shall be constituted under the Chief Justice.

2. The Constitutional Court shall consist of the Chief Justice, two senior-most Supreme Court justices and two legal experts, with the eligibility on a par with Supreme Court justice, appointed by the President based on the recommendation of the cabinet of ministers.

3. The Constitutional Court shall adjudicate the disputes between the provinces; province and the centre; and between province and local government. The Constitutional Court shall have a five-year term.

F) Pertinent to the demand for incorporating the nine districts of Seti and Mahakali zones under one single province, public opinions shall be collected in the region as proposed by the senior leaders of the three political parties. By public opinion collection, it is understood that a proper referendum could also be conducted to decide on the matter.

Annexure V

Ethnic Groups: Population

<u>Population of Ethnic Groups</u>		
Group	Population	%
Caste hill Hindu elite (Bahuns and Chhetris)	7,023,220	30.89
Indigenous Nationalities	8,271,975	36.31
Mountain	190,107	.82
Hill	6,038,506	26.51
Inner Tarai	251,117	1.11
Tarai	1,786,986	7.85
Unidentified indigenous nationalities	5,259	.02
Dalits	3,233,488	14.99
Hill Dalits	1,611,135	7.09
Madhesi Dalits	1,622,313	6.74
Unidentified Dalits	88,338	.76
Madhesi*	3,778,136	16.59
Caste Madhesi	2,802,187	12.30
Muslims	971,056	4.27
Churaute Muslims	4,893	.02
Others	265,721	1.16
Total	22,736,556	100.00
<p>Sources: Lawoti (2005: 99). Note: * Most Muslims are from the Tarai area so they are counted as Madhesi. The total percentage of the Madhesi population is 32.29 percent when Madhesi who are also Dalits and indigenous nationalities from the Tarai and Inner Tarai are included.</p>		

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