Elections and Conflict in Nepal

Country Analysis

DEV RAJ DAHAL
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- The Constituent Assembly (CA) election in Nepal on April 10, 2008 increased the representation of Nepal's social diversity in political power, reduced structural conflict, legitimized the secular, federal democratic republic and sought a peaceful transformation of Nepalese society. It also marked the rise of regional parties in Tarai and the advent of the Unified Communist Party of Nepal (Maoist) as the dominant party, but short of the majority needed to form a government.

- After the election a shift from consensus to conflict and the struggle for government power produced a protracted deadlock. The failure to resolve many contentious issues, such as the integration of Maoist combatants, the form of governance, federalism, judicial autonomy, self-determination and prior use rights has contributed negatively to the promulgation of a new constitution in time, structural reforms and post-conflict peacebuilding. The reorganization of group boundaries, ethnicity and subsidiary identity factors have eroded state capacity to achieve governance goals, abolish the patronage system and shore up the national heritage of tolerance.

- The proliferation of armed groups and the poor state of law and order represent cultural and institutional challenges to reshape civic culture through effective action by the election commission, the media and civil society. Rights-based social movements representing youth, women, ethnic and other groups, are pushing for the democratization of the state and political parties. Yet, their institutionalized group rights also contest national identity and individual rights.

- The international community treats Nepal as a fragile state. It supported Nepal's CA election and called it free and fair, but its monitoring of the post-election constitutional and political process has been weak. Geopolitical interests enmeshed in many of the contentious issues, generate distrust among national and international actors, which is often counterproductive for collaborative action for the sake of Nepal's stable and peaceful democratic future.

Table of contents

1. Current Situation

Nepal's democratic transition from monarchy to a secular, federal and democratic republic has helped to establish relative peace, invent a new constitutional design, engineer broad social change and open the state to popular sovereignty, citizenship and democracy consolidation. In the midst of a historic constitution-making process by the elected Constituent Assembly (CA), Nepalese leaders now seek to establish a virtuous state ruled by law and social discipline to bring coherence to a society shattered by violent conflict and a better life to all citizens. Following the success of April the 6-24, 2006 militant mass movement against King Gyanendra's direct rule, the Nepalese government, the Seven-Party Alliance (SPA),[1] took a number of initiatives—declared the country secular, suspended the monarchy, brought the Nepalese Army (NA) under civilian control, signed the Comprehensive Peace Agreement (CPA) on November 22, 2006, with the Unified Communist Party of Nepal-Maoists (UCPN-Maoist)[2] to end a decade-long people's war, and the Agreement on Management of Armies and Arms. It also promulgated an Interim Constitution on January 15, 2007, which facilitated the formation of an interim legislature and interim government, with the inclusion of the UCPN (Maoist). On April 10, 2008, as an essential aspect of the peace plan, Nepal successfully held a post-conflict CA election after missing three deadlines (June 14 and 20 and November 22, 2007) and elected a 601-member CA to draft a new constitution.

In policy terms, the outcome of the election has made the UCPN (Maoist) the single dominant party in the country and offered it an opportunity to peacefully compete for power, transform its wartime class-based structures, ideology, leadership and policy into a mass-based competitive democratic party. The CA election also shifted the balance of power towards the forces of the left. Now they together control over 60 percent of CA seats. The inability of old parties, such as the Nepali Congress (NC), the Communist Party of Nepal Unified Marxist Leninist (CPN-UML) and the Rastriya Prajatantra Party (RPP), to absorb newly

mobilized social groups aspiring for social transformation, as well as lack of inclusiveness, the birth of regional parties, especially the Madhesi Jana Adhikar Forum (MJAF), the Tarai-Madhesh Loktantrik Party (TMLP) and the Sadbhavana Party (SP), and weak communication and organizational capacity battered their electoral base.

Following the advent of the UCPN (Maoist) to power, the state-centric conflict became society-centric and open-ended as *Madhesi* (people of the southern flatlands), *Tharus* (indigenous people), *Janajatis* (ethnic groups), *Dalits* (untouchable people), and women intensified their struggle for power, resources, representation and identity, conceptualized their condition as deprived and set the motion of inversionary discourse into full play. The global pressure for conformity with and the binding power of human rights and international law presupposed that deliberative politics would lead to universal legitimacy of its constitutional discourse. But the loss of the Nepali state's legitimate monopoly on power and taxation and fragmentation of people's loyalty into ethnic, regional, linguistic and religious identification have weakened its ability to manage diversity and conflict. The yawning gaps in security and the rule of law and politicization of functional elites such as the police, bureaucracy, educational institutions and cultural industries along partisan lines show poor *esprit de corps*, de-motivation and erosion of the efficiency of state institutions. The resilience of its patrimonial political culture has further sapped the political will for the creation of the rational state authority necessary to alter the policy and strategic development so vital to transforming the structural causes of the conflict. It has also refused to invest scarce resources in productive sectors and confiscated state capacity to distribute sufficient collective goods to inspire the solidarity of citizens with the state. As a result, Nepal is variously labeled by the international community as a soft, fragile and weak state[3] lacking autonomy from the dominant

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1. The SPA includes seven political parties—the recently unified Nepali Congress (NC) and Nepali Congress (Democratic), the Communist Party of Nepal Unified Marxist-Leninist (CPN-UML), the Nepal Sadhavana Party (Anandi Devi), the Smayukta Jana Morcha Nepal (SJN), the Nepal Workers and Peasants Party (NeWPP) and the United Left Front (ULF).

2. The Jana Morcha Nepal, led by Narayan Kaji Shrestha, has merged with the CPN (Maoist). Now it is called the Unified UCPN (Maoist). The Madhesi Jana Adhikar Forum (MJAF) suffered a split. The MJAF, led by Upendra Yadav, retained its old name, while the MJAF, led by the Bijaya K. Gachhedar faction, is now called the MJAF (Democratic).

3. This has flouted the structural equilibrium of the Constitution and the polity. In a span of 60 years of Nepal's constitutional history, the country witnessed six different constitutions, and within three and half years of the promulgation of the Interim Constitution it has been amended eight times—on May 9, 2007, to adopt the federal structure of the polity to respond to the agitation of the MJAF; on June 14 to empower the Parliament to abolish the monarchy if found conspiring against the CA election; on December 28 to declare the country a federal democratic republic subject to the ratification by the CA; on May 28, 2008, the declaration of a ceremonial president; on July 14 to clear the way for the formation of a government on a majority basis; on December 11 to allow 18–year- old Nepali citizens to vote in the by-elections for six constituencies, on January 31, 2010 to pave the way for the President and Vice-President to take oath of office in their mother tongues and put signatures in the text of the oath in Nepali, and on May 29 2010 for the extension of CA's tenure.

interest groups of society and capacity for effective action. The political sphere is highly fragmented, which fritters away any scope for long-term cooperative action for the public service. The dissolution of the rule of law into politics has set the classical Nepalese aphorism »Law for the poor, immunity for the rich« in action. The persistence of a culture of impunity poses complex human rights challenges.

Negotiation of most of its development policies in the Nepal Development Forum (NDF) indicates the Parliament's policy sovereignty deficit. It also reflects the weak representative links between the state and society, the incapacity of the political classes to set national priorities and inspire national awareness to tie nationalism with democracy. The knowledge of a majority of people about the function of the political system is pathetically low, as each political party defines democracy in its own way and applies conflicting approaches to political education. This also goes for their stake in the political system. Those in power do not make a distinction between political parties, government, the political system and even the state. This reflects the culture of a traditional polity where authorities are not clearly delineated and the utilitarian contestation of power crosses all social boundaries, thus making politicized conflict inevitable. The loosening of the vertical chain of authority from the capital, Kathmandu, to the rural periphery has provided a bargaining environment for newly activated actors, nurtured new grievances during the election, produced a constitutional crisis immediately thereafter and defied the possibility for peaceful transformation of multi-structural conflicts[4] through resolutionary change for a shared future based on democracy, social justice and peace.

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4. One can find four types of conflict in Nepal, layered at different system levels: violent conflict between the state and the UCPN (Maoist) over structural transformation; manifest conflict between the state and various political parties struggling for democracy and a sharing of political power; perceptual conflict among the leaders of various political parties and groups over social, economic, and personality-oriented issues; and latent or structural conflict between the state and societal forces, including civil society, demanding freedom, entitlements, and social opportunities articulated in the Constitution. The balance of conflict between the different system levels is constantly transforming. It is the violent insurgency that exposed the inequality in the distribution of social, economic, cultural, and political opportunities among various identity groups, weak governance, unequal distribution of political power, marginality, and the lack of an effective civil society mechanism for non-violent conflict transformation.

2. Context Analysis

Since the unification of Nepal in 1768 AD by Prithvi Narayan Shaha, the country was ruled by hereditary Shaha monarchs. An influential member of the nobility, Jung B. Rana, staged a military coup in 1856, made the monarchy captive, introduced a family oligarchy and ruled the country for 103 years through a strong centralized administration. The success of the democratic struggle of the middle classes in 1950 introduced multi-party democracy and the constitutional state. It was, however, short-lived, as King Mahendra staged a putsch in 1960 against the elected government of the Nepali Congress (NC) and introduced the Panchayat system without the legitimacy of the political parties. But he co-opted the middle classes against his aristocratic opponents, initiated distributive land reforms to allure the poor and maintained an equidistant foreign policy. During the democracy breakdown, banned political parties and critical masses of civil society helped sustain the ideals of democracy and modernity. The referendum over the Panchayat system in 1980 and the introduction of elite competition in macro politics also helped to liberalize policy through the collaboration between banned political parties and reform-articulating civil society organizations. The success of the joint struggle of NC, left parties and civil society restored multi-party governance in 1990. But the successive political classes failed to consolidate democratic gains and break with the patrimonial political culture in favor of a more inclusive, rationalistic, tolerant, modern and humane governance. Inter- and intra-party squabbles, neglect of the mid-hills, widening urban-rural disparity, social discrimination, economic decline, ethno-territorial assertiveness and mal-governance of the ruling parties provided the structural and proxy causes of conflict (Dahal, 2005:5-18) and inspired the Communist Party of Nepal (Maoist) to launch an armed insurgency—People's War—on February 13, 1996, which expanded to the national scale, within a few years causing the deaths of more than 13,000 persons and displacing many others.

One of the key demands of the UCPN (Maoist) was to hold the CA election to draft a new constitution—a demand which was articulated in 1950 in the midst of the anti-Rana struggle but was aborted by then leaders on

geo-strategic grounds.[5] The inability of major political parties to control the growing clout of the UCPN (Maoist) inspired King Gyanendra to assume absolute power on February 1, 2005. But his effort alienated the political parties and the international community and vitiated national security. On November 22, New Delhi facilitated a coalition of the Seven-Party Alliance (SPA) and the UCPN (Maoist) in India through the signing of a 12-point agreement to end the direct rule of monarchy, to end violent conflict and restore democratic values and institutions. The fusion of the rural insurgency of the UCPN (Maoist) and the urban protest movement of the SPA in the April 2006 militant mass movement ended King Gyanendra's direct rule and restored the Parliament on April 24, the same date on which it was dissolved in 1999. Since then the government of SPA and UCPN (Maoist) have negotiated a ceasefire, a Comprehensive Peace Agreement (CPA), a UN monitored management of arms and armed forces and an Interim Constitution that stipulated the need for the election of the CA. In 2007 the UCPN (Maoist) joined the legislative-Parliament and the ruling coalition to execute the mandate of the movement, and exerted pressure towards changing the constitutional design against monarchy as a precondition to a consensual way of doing things, while others sought to entrench its constitutional behavior to accomplish democratic change through electoral politics.

Nepal's election for the CA has established the UCPN (Maoist) as the single dominant party. But it failed to get a two-thirds majority, to form a single party government as required by the Interim Constitution. The post-election phase demonstrated the reluctance of the NC-led government to hand over power to elected authorities without changing the rules of the game from consensus politics to electoral majority for fear of a Maoist perpetuation of power. On June 8, 2008, the major parties forged a consensus to elect the president, vice-president, and prime minister by a simple majority, but they also agreed on a provision that the first two can be removed only by a two-thirds majority. This led to the collapse of consensus politics, marking a systemic opening to ideological, policy and personality differences among mainstream parties. NC, CPN-UML and MJAF formed a new coalition to elect President Dr. Ram Baran Yadav

(NC), Vice-President Permanand Jha (MJAF) and Chairman of the CA Subas Nembang (CPN-UML). On August 15 the CPN-UML and MJAF, however, shifted their coalition and elected UCPN (Maoist) Chairman Puspa K. Dahal as Prime Minister, thus ending the four-month long deadlock in the power transfer. On August 31 the UCPN (Maoist) finalized the formation of a 24-member cabinet of the six-party alliance - CPN-UML, MJAF, Sadbhavana Party, CPN (United) and People's Front Nepal (PFN). The NC, unable to create an anti-Maoist coalition, grudgingly stayed in opposition.

The Maoist-led government, however, suffered a dangerous crack when it ousted Chief of Army Staff Rukumangud Katawal on May 3, 2009, for failing to furnish an explanation about the fresh recruitment of 3,010 members of the Nepal Army (NA), extension of the tenure of eight generals and boycott of the six events in the National Games by the NA players due to the participation of Maoist combatants, and appointed Lt General Kul B. Khadka as Acting Chief of the NA without the consent of coalition partners. President Ram Baran Yadav reversed the ousting of General Katwal on the request of 22 parties, which provoked Prime Minister Dahal to resign on May 4 after his 9-month stint in power. Since then the UCPN (Maoist) has begun protesting both in Parliament and on the street, exerting pressure on the President to rectify his »unconstitutional step« and establish »civilian supremacy« over the military. It also criticized India, the NC and the CPN-UML for rallying support to the President's decision. Its threat of state capture through people's revolt has cobbled 22 parties together in favor of the senior leader of the CPN-UML and Chairman of the Constitutional Committee, Madhav Kumar Nepal, as a candidate for Prime Minister. Though Nepal was sworn in as Prime Minister on May 25, the intra-party squabble about the representation of various factions and the inter-party struggle for the distribution of key ministerial portfolios has strained the process of forming the council of ministers.

The opposition force, UCPN (Maoist), refused to join the CPN-UML-led government with the hope of averting »undemocratic tendencies of the external forces and the government« and formulated pre-conditions: Reverse the decision of the President, civilian supremacy and a national unity government led by it, deploying both the armies in development works and public service until the completion of the integration process, or face par-

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5. Former Prime Minister Tank Prasad Acharya, in an interview with James F. Fisher, said, »I was worried that a constituent assembly could adopt a constitution which would abolish the kingship and make Nepal a part of India« (Fisher, 1996: 182).

liamentary deadlock and mass revolt organized by its newly constituted entity, the United National People's Movement (UNPM). In contrast, the ruling parties are demanding the dismantling of the paramilitary structure of the Maoist-affiliated Young Communist League (YCL), return of seized property to the rightful owners, bringing of the Maoist cantonment under government control and removal of the UNMIN-verified 4,006 disqualified combatants from the cantonments, as well as requesting it to join the government. Without the rehabilitation and integration of 19,602 UN-verified People's Liberation Army (PLA) members into productive life, it would be difficult to achieve durable peace. The UCPN (Maoist) wants the PLA to be integrated into the Nepal Army (NA) through its professionalization and democratization of the latter, disclosure of the whereabouts of disappeared Maoists and relief to conflict victims. The NA maintains that only those Maoist combatants will be integrated into the NA through the regular process who meet the standards. It, along with non-Maoist parties, fears the implications of the integration of the politically indoctrinated PLA into the NA for national security. A number of options, such as integration into the Nepal Police, Armed Police Force, forest guard, industrial force, border security force or national reconstruction force, and even into the UN Peace Keeping Force have come to the fore. The Army Integration Special Committee (AISC) has yet to come up with concrete suggestions. The gaps in perspectives have become too wide for a political consensus on the formation of a High Level All-Party Mechanism for conflict resolution, thus ending up in a Gordian knot— irresolvable and making the political agreements difficult to implement.

2.1 Rules of the Game

The post-conflict rebuilding of Nepalese society has involved a number of democratic initiatives to evolve rules of the game and recognize common ground upon which diverse interests can be negotiated for the forms of co-existence in a sovereign national community. In such a community all politically significant actors can stabilize their institutional behavior, legitimize their leadership through election, create public order and provide support to constitutionalism. On June 16, 2006, the SPA and the UCPN (Maoist) signed an eight-point agreement committing them to draft an Interim Constitution (IC) and announce the dates for the CA election. According-

ly, a six-member Interim Constitution Drafting Committee (ICDC), chaired by Laxman Aryal, a member of the 1990 Constitutional Drafting Committee, was formed. The ICDC was opposed by women, ethnic groups and Dalits, as they did not have any representation. By mid-July ten more names were added from the supporters of SPA and UCPN (Maoist). Most of the contents of the ICDC were based on the 1990 Constitution. But it left the questions of monarchy, the election system and the federal structure undecided, added more social rights for the people and shaped it more as a short-term political compromise between the ruling parties for political contestation than for entrenchment of the principles of constitutionalism. Essentially, for a country like Nepal which practiced a neo-patrimonial regime for centuries, constitutionalism helps to overcome the deficiencies of majority rule and reduce the amount of structural violence.

On January 15, 2007, the House of Representatives promulgated the IC, dissolved itself and opened the space for the formation of the 330-member interim Legislature-Parliament (209 of mainstream parties, 73 from the CPN-Maoist and 48 from marginalized groups and individuals). It was adopted without adequate consultation with stakeholders. The IC aims to achieve: the progressive restructuring of the state for the resolution of the problems of class, caste, ethnicity, gender and regional differences, a commitment to democratic norms and values, including a system of competitive multiparty rule, civil liberties, fundamental rights, human rights, adult franchise, periodic election, freedom of the press, an independent judiciary and rule of law, impartial, free and fair election of the CA to draft a new constitution and institutionalize the achievement of the democratic movements, peace, progress, social-economic change and independence of the nation. These are the guiding principles of the inclusive and participatory constitution-making process.

The IC created a parliamentary system with three branches of government—legislative, executive and judiciary. The legislators were non-elected and controlled by top party leaders. This not only made the legislature weak but also tilted the balance of power to the executive branch. As a result, judges of the Supreme Court (SC) asserted that the IC compromised judicial independence by increasing the say of the legislature on the public hearing of judges and executive primacy over the

appointment of judges. It has undermined the principle of separation of powers and checks and balances so necessary to safeguard the freedom and rights of the individual and prevent arbitrary action of governing institutions. They also disapproved the system of the SC as having weak institutional safeguards against the political branches of government, as it has to submit its annual report to the Prime Minister. Similarly, individuals and political parties who opposed the April 2006 movement are banned from the interim legislature. All the parties represented in the legislature are allowed to compete in the CA election, while old and new parties have to re-register with the EC with the signatures of 10,000 voters. It removed the power of the palace and centralized executive authority by making Premier G. P. Koirala both head of state and government with the power to promulgate ordinances when the legislature is not in session. The Constitutional Council, which appoints key persons to constitutional bodies, is controlled by the Premier, three ministers selected by him, the Chief Justice of the SC and the speaker of Parliament. Due to a lack of elected local bodies it also neglected the real devolution of power to the people and to foster reconciliation and peace through local peace committees. The concentration of broad discretionary powers in the office of the Prime Minister created a distorted system of a pre-modern type. The 12-point agreement, IC and CPA theoretically bind the SPA and UCPN (Maoist) to common accountability to their commitments, but non-implementation of these commitments proved to be a new source of conflict. The pre-modern patrimonial centralization of political power was, however, justified by the leaders of coalition government on the ground that it will sideline the monarchy, the old political classes, the bureaucracy and judiciary and transform arbitrary authority into rational authority subject to the scrutiny of sovereign citizens.

The government coalition agreed to abolish the monarchy[6] by a simple majority of the CA in its first meeting. It also decided to pass all the articles of the new Constitution by consensus if possible, or by two-thirds vote. The absolute two-thirds vote can also decide to go for a referendum on matters of national importance. But this excluded a referendum on monarchy, federalism and a secular state, which have been fiercely contested by Ras-

triya Prajatantra's Party-Nepal (RPP-N), independent journalists, intellectuals and several Hindu organizations. The RPP-Nepal is soliciting public opinion in favor of monarchy. The CA's dual function—Constitution drafting body and legislature—has created tension as the latter was seen as an arena of power struggle in which collective identities, interests and coalitions are forged. The CA election produced no clear winner and the Parliament often faced deadlock. This inspired the legislators to become more interested in power struggle than in the constitution making process, which has caused delay in the formation of 14 CA committees,[7] solicitation of public opinion and their synthesization into the draft Constitution for further deliberation, feedback and refinement. Ironically, the thematic committees are acting more like rights advocates than lawmakers formulating implementable laws and necessary policies. Democratic procedures themselves support the rationality and legitimacy of the law-making process and derive their validity from the consent of the governed. But without the solidarity and support of the UCPN (Maoist), which wields veto power, it would be difficult to establish effective governance, find negotiated solutions for many contested constitutional issues that led to violent conflict and consolidate the gains of the democratic struggle. Its commitment to constitution-making and the peace process provides the template for Nepal's hopeful constitutional future.

2.1.1 Electoral System and Electoral Laws

For the CA election Nepal has changed its earlier First-Past-The-Post (FPTP) election system, adopted for the 1991, 1994 and 1999 elections, to a mixed one to make it sufficiently representative of its culturally and territorially segmented groups and resolve multi-structural conflicts. The provisions of the IC and five electoral laws[8] have defined the basic procedures for electoral integrity. After prolonged negotiation and compromises to address the demands of several protesting groups, such

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6. The first meeting of the CA abolished the over two-century old monarchy and declared the country a federal democratic republic on May 28, 2008.

7. The thematic committees of the CA are: a) constitutional, b) state restructuring and resource allocation, c) fundamental rights and directive principles, d) minorities and marginalized communities' rights protection, e) delineation of legislative organs, f) delineation of state rules, g) judiciary, h) delineation of constitutional bodies, i) natural resources, economic rights and revenue collection, j) cultural and social solidarity, and k) national interest protection. The procedural committees are: l) civic relationship, m) public opinion solicitation and coordination, and n) capacity enhancement and resource management.

8. These laws are: the Electoral Rolls Act, the Election Commission Act, the Election Offence and Punishment Act, the Constituent Assembly Court Act and the Constituent Assembly Members Election Act.

as women, Madhesis, Dalits, ethnic and indigenous people, for proportional representation, Nepal has decided on a 601-member CA—240 members elected through the FPTP, 335 through a proportional electoral process and 26 nominated by the cabinet. Each voter received two ballots, one for FPTP and the other for Proportional Representation (PR). Under the FPTP the winner is the one who scores the highest number of votes. The ballot is marked with the electoral symbols of the candidates registered as representatives of political parties, or independent candidates. Candidates were allowed to compete in up to two constituencies. Those who won both constituencies had to resign in one in favor of a by-election.

Under proportional election, political parties registered with the Election Commission (EC), contested the election on a national basis. The winning candidates were determined on the basis of the number of votes received by the parties. This system required the political parties to submit a closed list of their candidates to the EC in order to have a party symbol marked on the PR ballot. The candidates listed were declared winners according to the number of votes scored by the political parties. When submitting lists of candidates to the EC, parties were required to ensure a certain level of representation on these lists for various groups in the following order: Dalit 13 percent (6.5 percent male: 6.5 percent female), oppressed castes and indigenous groups 37.8 percent (18.9 percent male: 18.9 percent female), backward region 4 percent (2 percent male: 2 percent female), Madhesi 31.2 percent (15.6 percent male: 15.6 percent female) and other groups 30.2 percent (15.1 percent male: 15.1 percent female). It is possible, however, for candidates to meet several quotas by having, for example, a Dalit Madhesi female as their candidate. The category »backward region« refers to nine districts in western Nepal chosen on the basis of low human development indicators.

Lists not in compliance with these quotas were corrected by the parties within seven days and re-submitted to the EC. Adult voters, 18 years of age and above, cast a vote for their party of preference but do not have control over which individuals the party selects to become members of the CA. The seats are allocated to the parties according to the proportion of the total votes they obtain, and the parties choose the candidates from the list submitted to the EC. The candidate lists submitted by political parties for the PR election must cover at least 10 per-

cent of the seats to be elected under the PR system, i.e. there must be at least 34 candidates on a candidate list submitted. These lists also required the inclusion of one-third women and fair representation from the groups. But the institutionalization and autonomy of these five groups may hold the possibility to deepen inflexible attitudes and undermine the liberal conception of universal individual rights that derives the authority of society from the authority of the individual and can make shared governance conflict-prone.

2.1.2 Election as a Mechanism for Peaceful Transformation

A total of 17.6 million Nepalese cast their votes in the CA election. The invalid vote, however, increased from 2.8 percent in the past elections to 5 percent now. Introduction of a new election system in a largely illiterate country, weak public campaign communication and disruption of the civic education and voters' information program in a number of districts by militant groups were responsible for this. Still, the CA turned out to be highly representative of Nepal's 103 ethnic and caste groups. The election has established the supremacy of ballots over bullets and recognized the UCPN (Maoist) as a dominant party in the country by allocating to it 220 out of a total 575 seats. Over 62 percent of 17,609,408 adults cast their votes to elect the assembly. Nine of the parties secured seats through both systems of election, while 25 parties gained access to seats through the proportional system. Parties receiving more than 23,512 votes in the proportional system garnered at least one seat in the CA. The evolution of the fractured popular mandate, with none of the parties commanding an absolute majority, has provided considerable space for many small parties to play influential roles in the participatory constitution-making exercise.

The UCPN (Maoist) outmaneuvered the two traditional ruling parties—the NC scored 110 seats, the CPN-UML 103 seats. Of the 116 seats allocated for the Tarai plains, the southern flatland, the UCPN (Maoist) captured 42 seats, thus posing a competitive challenge to regional parties. The regional parties are an offshoot of the Madhesi movement, which based itself on identity politics that ranged from the pursuit of inclusion, rights and identity to outright secession. The leaders of the Madhesi movement showed that they were capable of join-

ing the mainstream if only to guarantee autonomy for their region in the new Constitution. The MJAF scored 52 seats, the TMLP 20 seats and the Sadbhavana Party (SP) 9 seats only (See Table). The existence of various ethnic groups, a multi-class society with a mixture of indigenous and hill people across the Tarai, and the cultural pluralism practiced by Hindus, not to mention the inclusion of hill candidates by the MJAF, were the reasons for a softening of the ferocity of the exclusionary identity appeal bandied about by the Madhesi movement. Cross-party affiliation of the Madhesi candidates also re-channeled loyalties into multiple identifications, ensuring political pluralism.

The parties that believe in the parliamentary system have demonstrated their skill in persuading the UCPN (Maoist) to join the democratic struggle, with support from civil society and the international community. They were able to bring the Maoists in to sign a peace accord, participate in the election and become an agent of peaceful social transformation. A modicum of cohesion in its apex party structure, massive support of the voters and international legitimacy worked together to offer the UCPN (Maoist) an opportunity to transform its wartime structure, ideology, strategy and leadership into a vote-seeking competitive democratic political party.

The CA election marked the decline of the old Kathmandu-centric establishment, exposed the pitfalls of secretive bargaining by ascriptive elites and the rise of new political forces such as the UCPN (Maoist) and regional parties such as the MJAF, TMLP and SP. The coming to the fore of ethnic, indigenous, women, Madhesi, Dalit and youth groups from the periphery to seek representation in mainstream politics has evolved a new disposition for power-sharing. The electoral trend indicates that a bulk of NC voters in the Tarai voted for Madhesi parties while indigenous, ethnic, Dalits and poor Madhesi voters shifted their support from the CPN-UML to the UCPN (Maoist). The increased political clout of the UCPN (Maoist) among the marginalized social groups has thus ignited a radical shift in the historically evolved, caste-based, patriarchal and hierarchical agrarian social order in favor of a new egalitarian society. The resilience of a few old leaders would merely indicate that they are weaker and less legitimate today than before, as they are presiding over a feeble institutional structure often challenged by youths, workers, women, Dalits and civil society groups for inner party democracy. This is a healthy

trend, as popular demand for institutional participation in political parties can cement the ties of social classes with the state and respect for the preferences of the governed.

Many top leaders of the NC, the CPN-UML, the Rastriya Prajatantra Party (RPP), the RPP-Nepal and the Rastriya Janashakti Party (RJP) lost their electoral bid. The defeat of old leaders has provided an opportunity to democratize the leadership structure, build a party structure from the villages, become inclusive of existing social diversity, people-oriented, and abolish the spoils and hereditary privilege distributed by the leadership factions to those swirling around them. The UCPN (Maoist) has successfully played with the contradictions it generated within the parliamentary parties and became closer to each of them than they were with each other.

Socially, the CA election produced more inclusive outcomes. It increased the scope for power sharing and lowered the risks of conflict. For example, women captured 33.22 percent of total CA seats and substantially increased their voice and representation. The previously under-represented Dalits have noticeably improved by scoring 8.17 percent; ethnic and indigenous communities have also enhanced their presence by receiving 33.39 percent of seats; Madhesis too scored 34.09 percent, backward regions 3.83 percent and other high caste and unspecified groups of people 33.91 percent seat representation. The political representation of broad segments of people in the CA is expected to contribute to the social democratization of civic institutions, address the root causes of conflict and serve as an exit strategy for the nation's peace process. The electoral outcome also illustrates the entry of rural societies into national political cultures and a generational shift in Nepali politics, as increasingly young candidates have been elected. The direct election of 184 persons below 50 years of age in the FPTP is a significant achievement for the resolution of the generational conflict, as over half of the nation's voters belong to the 18-35 age group. Promotion of constructive, non-violent engagement of youth in the political process is indispensable to sustain the transformation process.

Certainly, poverty, illiteracy and unemployment made the mass of voters vulnerable to the innovative appeals of the UCPN (Maoist). There are other factors—initiative in the agenda setting of the CA, such as republicanism,

secularism, federalism, the right to self-determination, forward-looking transformation, the socially inclusive nature of candidature, a systematic electoral campaign, projection of the negative image of other parties as a comprador class and corrupt, mobilization of nationalist sentiments to woo supporters of the King and critical remarks against India's vocal support to the NC, mobilization of Nepalese voters in India, promise of collective goods, such as social justice, land reforms and emancipation of the downtrodden and marginalized sections of society, and articulation of an open-ended choice, with the party saying that in the case of its defeat by conspiracy, it will wage a peaceful revolt. Fed up with the politics of violent conflict, the Nepalese voters expressed their preference for a demilitarization of politics, protection of human rights and peaceful transformation.

Inability to maintain a semblance of unity among fractious leaders, defection of influential cadres of NC, CPN-UML, RJP, RPP, RPP-Nepal and NSP (A) to newly emerged Tarai groups and forceful political agitation for property rights, redistributive justice and Madhesi cultural identity of these new regional parties had a cohesive impact against the political base of the old parties. Mainstream parties, crippled during the decade-long Maoist People's War, could not even repair their grassroots connection and mobilize their support base for the election. All the parties of the *ancien regime*—RJP, RPP, RPP-Nepal—staged their presence in the CA only through the proportional system. The pre-election environment was, however, highly violence-prone due to the security and authority vacuum in the countryside and non-enforcement of the election code of conduct. The election, therefore, recorded fake, proxy, underage, absentee, enticed, coercive and multiple voting, and even anti-election campaigns of armed groups. Re-polling took place in 106 out of 20,890 polling centers, owing to electoral fraud and violence, and by-elections took place in 6 constituencies where candidates were elected from two places.[9]

The outcome of the CA election has been accepted by political actors and the international community, who consider it fair and peaceful. The first meeting of the CA took place within 21 days of the final election results. With its tenure of two years from its first meeting, the

CA has two major roles: to draft a new constitution by the May 28, 2010, deadline and to exercise legislative functions until national elections are held under the new Constitution. The Interim Constitution provides for an additional six month to finalize the new Constitution in the case of a national emergency but the CA extended its tenure for one more year as it failed to draft the constitution in time. The new election system has democratized the franchise, increased the representation of the diverse society in political power and reduced the amount of direct conflict through the distribution of political power. But it has also institutionalized the group rights of a certain strata of people, leaving many eligible candidates to resort to discontent and conflict, and stabilized the social differences in society. The recognition of group particularisms and ethno-territorial identity have eroded the meaning of citizenship equality and undermined the national framework of secularism. Similarly, the election also contributed to the formation of a new political equation and moved consensus politics to competition and conflict. Moreover, it has also ethnicized, communalized and territorialized the politics of Nepal, weakened the process of both social and national integration and reinforced the traditional political culture of non-democratic and extra-constitutional challenge to the political system.

2.1.3 Traditional Forms of Governance and Political Culture

Modern elite traits reflect the persistence of indigenous Nepali life evolved through an interaction between feudal land tenure and custom, modes of satisfying basic needs and a vertically organized caste and gender system of social, economic and political relationships of elites and masses with the state that for long prevented non-elites from competing for political power. The People's War fully exposed the structural contradictions of Nepali society, shattered many old social, economic, political, cultural and religious structures and questioned the utility of many conflict-resolving mechanisms that helped to sustain political socialization, social order, caste, class and gender domination, unequal economic exchanges, top-down communication and a patrimonial political culture where people look to their leaders for everything. Considering the judicial system and its accessories, such as the Alternative Dispute Resolution, community police, the business initiative for peace, village arbitration,

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9. In the by-election of April 10, 2009, the UCPN (Maoist) won 3 seats, NC 1, MJAF 1 and CPN-UML 1.

NGO and civil society mediation, village elders and religious institutions, an oppressive instrument of the ruling classes, the UCPN (Maoist) created People's Courts to adjudicate disputes and effect systemic transformation of societal norms, values, attitudes, laws and institutions in favor of new ones (Dahal and Bhatta, 2008:15-17).

The micro conflicts continue to destroy every seam of the national fabric, the 'connectors' of society, upsetting the equilibrium of local systems built on historically evolved internal social hierarchies, patriarchy and institutions without putting in place effective transitional structures to support inclusion, participation and the rule of law. Violence at the local level does not foster a political climate of trust at the decision-making level and vice versa. Moreover, the People's War destroyed the status quo of the *ancien regime* and opened up change in local power relationships. To prevent the fear of counter-revolution by the traditional classes who lost power following regime change, the UCPN (Maoist), Madhesi parties, Tharus, ethnic groups, women, human rights groups and civil society are adopting three strategies: isolating the hardliners, providing spaces for soft liners for their cooptation in the parties and their civil society organizations, and also mounting effective resistance against their activities. However, the power-sharing mechanism is skewed and is often faced with tension and conflict.

From the beginning of Nepal's history, the political authority that emerged from the social power of village chiefs, members of privileged elites, priests, teachers, police and elected leaders have used several formal and informal methods to resolve community-level conflicts. It has treasured a tradition of coordinating action of people based on local power equations, cultural practices and religious treatises and helped to stabilize behavioral patterns. Where direct coordination in pursuit of collective goals failed to yield the payoffs, conflict parties either invited third parties to help resolve their disputes or resorted to district court and abstained from imposing their will against each other. Traditional governance aimed at keeping social cohesion and co-existence intact by searching for common ground, optimizing each actor's position, integrating the interest of the weaker side into the compromise and persuading the victors and victims to accept an integrated solution as mutually binding. But there is considerable decline in the traditional authority of elites. Ethnic, ideological and identity-based

conflicts are rendering the old patterns of conflict resolution irrelevant, but they will not vanish entirely. The Nepalese assign secondary importance to law and public institutions which have been given the greatest significance in developed countries. Many leaders maintain pre-democratic privileges through party and community control, as they know how to play politics even after losing the electoral game, and this strains unconsolidated democratic institutions. The government has yet to establish a Truth and Reconciliation Commission (TRC) to address conflict residues and institutionalize local peace committees to resolve the structural contradictions of society. Disaggregating the unitary state has become a complicated challenge for the High Level State Restructuring Commission because the conflict between unitary and federalist and between ethnic and territorial federalist remains unresolved.

2.2 Key Players and their Interests

Nepal's political parties can be labeled as catch-all types originating from the democratic struggle rather than completely ideological and class-based ones. Nepal's main political actors can be grouped under three headings:

2.2.1 Constitutional Actors

Seventy-four political parties are registered with the EC, 54 of them contested the CA election and 25 of them have representation in the CA. The constitutional actors, however, lack common constitutional behavior to foster coherence in policy platforms across the nation-state and resolve the crisis in law generated by the conflict between socialist, liberal and conservative worldviews. The goals and orientations of the major parties also differ. For example, the UCPN (Maoist) is seeking to establish an anti-feudal and anti-imperialist Federal People's Democratic Republic through »unity, struggle and transformation,« the NC prefers incremental reforms of parliamentary-style governance, the CPN-UML prefers to establish a people's multi-party democracy, the MJAF, the TMLP and the Sadbhavana Party are seeking to set up an inclusive democracy, and the Rastriya Prajatantra Party-Nepal is calling for a constitutional monarchy. The UCPN (Maoist) and the MJAF are demanding a presidential form of government, while the NC and the CPN-

UML prefer a prime ministerial form of government. The CPN-UML, though, is demanding direct election of the Prime Minister by the people, which conflicts with the NC's stand of electing the prime minister through parliament. The demand for structural transformation brings all Madhesi parties closer to the UCPN (Maoist), while the question of land reforms paraded by all left parties divides them and brings them closer to the non-communist parties, such as the NC, the RPP and the Rastirya Jana Shakti Party (RJP). They also differ on the nature of federalism,[10] the system of governance, integration of armies, the electoral system, the economy and foreign policy, and this makes conflict resolution protracted and peace building complex.

2.2.2 Free-Riding Actors

Lack of respect for opposition parties has generated multiple forms of resistance in Nepali politics since 1990—parliamentary, extra-parliamentary, extra-constitutional, anti-systemic and even revolutionary, thereby often attracting crowds large enough to weaken the government's authority. Mainstream parties such as the NC, the UCPN (Maoist), the CPN-UML, the MJAF and the RPP have developed a faction-ridden character of leadership[11] in which one faction develops close links with the leaders of a rival party to overcome the resistance of the elites within its own party. Similarly, most of the smaller political parties have developed a tendency to stay in the government and also play the role of opposition so as to squeeze more concessions than their

actual representative strength would allow. These semi-loyal groups often switch sides based on their power calculus and competitive opportunities. The fractured electoral mandate has created a situation where political actors have shown interest more in absolute gains than win-win outcomes for all. In a warn-torn country like Nepal, a shift from a rationalist concept of politics to the entrenchment of civic culture is essential to make democratic peace sustainable.

2.2.3 Social Movement Actors

The response of the system to demands of critical masses of people, institutions and movements for security and service delivery, relief to conflict victims, fair working conditions for workers, implementation of agreements with Janajatis, Tharus, Madhesis, backward classes, women and Dalits for redistributive justice and cultural groups for their political representation have made the political environment competitive and conflict-prone. Inspired by global discourse and the UN resolutions as reference points, these groups strengthen one another, maintain politics of difference with the state's policies and demand recognition of group rights. 219 indigenous and ethnic members were elected to the CA, but unlike the Madhesis, they do not have their own political parties to find better ways to form coalitions. These groups and Dalits support the mainstream parties' position in the CA. Their civil society organizations have created spaces for critical discourse and distributional struggle, built solidarity across party lines for resistance and developed alternative approaches to collective action. This is broadening the nature of electoral and party politics and bridging ideological divides between the right and the left. Democratization of these forces, including youth organizations of all parties and efforts to bring their violent protest under the code of human rights and law, are essential preconditions for conflict resolution between traditional privileges and modern equality of opportunity and between institutional closure through »essentializing others« and political inclusion. Democratization entails de-radicalization of youth and several ethnic armies of parties by opening choices for them to engage in civic and peace-building activities. Modern democracy asserts the primacy of national identity in relation to subsidiary group identities, but allows its authority to facilitate conflict resolution on the basis of consensually defined laws.

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10. The NC prefers five to seven vertically carved federal states on a north-south basis, the CPN-UML has proposed carving out 15 provincial states (five in Tarai Madhesh and 10 in the hills and mountains), the UCPN (Maoist) has proposed 11 autonomous federal states and two other sub-states within them on the basis of ethnic composition, geography, linguistic base, and economic viability. Seti-Mahakali and Bheri-Karnali states have been proposed on their geographical appropriateness, while the rest—Magarat, Tharuwan, Limbuwan, Kochila, and Madhesh—are based on ethnicity. Within the Madhesh autonomous state, 3 sub-states–Mithila, Bhojpura and Awadh have been proposed on a linguistic basis. These versions conflict with the Madhesi parties' demand for »One Madhesh, One Province.«

11. The NC reflects three factions—Sushil Koirala, Sher B. Deuba and Bhim B Tamang, the UCPN (Maoist) two groups—soft liners Puspa Kamal Dahal and Dr. Baburam Bhattarai and hardliners Mohan Kiran Baidya and C.P. Gajurel inside the party and its splintered groups, the CPN (Maoist), led by Matrika Yadav, and the Revolutionary Left Wing, led by Mani Thapa. Both groups consider current Maoist leadership reformist and opportunist. The CPN-UML reflects three factions—a soft leftist group led by party chairman Jhal Nath Khanal, a centrist group led by M. K. Nepal and K. P. Oli and a radical group led by Bam Dev Gautam. The MJAF has already suffered a split between the Upendra Yadav and Bijaya Gachhedar factions.

2.3 Cultural and Institutional Challenges to Democracy

2.3.1 Inner-Party Democracy

The institutionalization of the competitive party system is characterized by the existence of strong party organizations not dependent on powerful individual leaders. Contrary to this, in Nepal political decisions in the parties tend more to be made by a small circle of high caste male leaders mainly coming from Bahuns, Chhetris and Newars than through dialogue, public hearings, consultation and compromise with party members. Party leaders maintain their strength through a close circle of *affno manchhe* (relatives), friends and clientelist networks. As a result, the commitment of cadres to party platform, organization and ideology is very weak and candidate selection often becomes conflict-prone. Elected once every five years, national and district leaders maintain more contacts with the top leadership than their electoral constituencies. This has undermined a sense of accountability to the commitments they made to the people during the election. Absence of leadership terms for the natural circulation of leaders in each generation, dominance of hereditary traits and cronyism, weak representation of Dalits, indigenous people, ethnic groups, women, youth and workers in the various committees of parties and almost non-existence of sound think tanks to update vision and policies as per the spirit of the age have weakened the ability of political leaders to democratize and change (Mayer, 2007:11). Adoption of federalism will be likely to restructure political parties and even contribute to the formation of regional parties in the future.

There are also some positive trends, as CPN-UML and UCPN (Maoist) have adopted a multi-post system and the NC's taskforce on party reforms has already recommended the need for inner-party democracy. Introduction of quotas for the CA has increased the level of representation of five groups in the CA, but they do not have adequate influence to shape public policies. This is the reason why political communication is still characterized more by threat and conflict than by peaceful negotiation, compromise and consensus—the ideal path to democracy (Mayer, 200726). All the parties of Nepal face factionalism and even split due to the non-practice of a culture of listening, deliberation, peaceful handling of issues and perpetuation of unjust structures of power.

A dispute resolution mechanism in the party is a must to ensure the coexistence of groups that, while diverse, still have a common goal orientation. The local party leaders, however, employ locally evolved civil society, watchdog agencies and popularly accepted all-party dialogue to settle their conflicts.

2.3.2 Financing of Political Parties

Political parties need appropriate resources to run administration and election campaigns, to buy basic equipments, to fund political activities and carry out necessary political tasks. The financial resources of the Nepalese parties, however, remain uncertain. The annual fees are hardly paid by party members. Contributions by CA members to their respective parties are deducted from their allowance, donations from businessmen and well-off party workers, sales of licenses, extortion (in case of radical groups), support from party-based NGOs, friendly donors, rent-seeking through the selling of public properties and promotion of—incumbent—public servants are the primary sources of financing for political parties. Political parties also sell political posts such as chief of state corporations, legislative positions and ambassadorships to rich persons for the sake of funding and election, although these persons may not conform to the party ideology and principles. This practice has distorted democracy and policy priorities and even contributed to illegitimate enrichment of many individual leaders, while leaving the party de-institutionalized. Legally, political parties have to submit annual financial reports to the EC, but no one complies. Auditing of party funds by the Auditor-General and a ceiling on election expenditures by the EC are only ritual affairs. As a result, it has become very difficult to enforce the transparency and accountability of politicians to the public and to guarantee democratic functioning.

2.3.3 Clientelism and Patronage

The main feature of Nepalese political culture is the dialectical interplay of modern democratic concepts and traditional patron-client behavior of leadership and masses operating within the state and political parties. Hope for democratization rests on the ability of young leaders to step out of the shadow of the old politics of fighting for status, power, pelf, patronage and revenge.

The culture of distribution of leading government posts, massive transfers and promotion of security officials and distribution of resources and positions to *affno manch-he* in every regime change bears the continuity of the pre-democratic Rana regime of annual *pande pajani,* a system which promoted individuals not on the basis of performance but on the basis of personal connections. The decision of NC, CPN-UML and UCPN (Maoist) to distribute 26 CA nominees among the nine big parties[12] rather than to constitutional experts, civil society and non-represented social groups, as planned originally, marks the dominance of the patronage character of politics. The entry of defeated candidates into the CA and cabinet and maintenance of a party whip indicate the complexity of giving weight to individual conscience (Martin Chautari, 2009:6) of the CA and democratization of political power. The Nepal Federation of Ethnic Nationalities (NEFIN), a loose coalition of 54 ethnic groups, criticized the parties for a lack of political interest for the representation of non-represented 20 ethnic groups and even organized crippling strikes. Small parties dubbed these »dictatorial tendencies« of big parties a threat, one that is bound to convert democracy into monopoly rule.

Social movements of trade unions, Dalits, women, and ethnic and indigenous people are seeking »autonomy« from party politics and building a cross-party alliance for their representation and voice. Eight trade union confederations affiliated with various parties have formed a Joint Trade Union Coordination Center (JTUCC) and submitted their agenda[13] to the Chairman of the Constitutional Committee of the CA to be included in the future Constitution. Weak representation of women and backward classes in the various committees of political parties has propelled their anti-institutional social movement, broadened the domain of political action and facilitated structural changes in society. The National Human Rights Commission often blames the political parties for maintaining a culture of impunity and »shielding criminals,« which has weakened the morale of law-enforcing agencies. The struggle for hu-

man rights—liberation of bonded labor, entitlement of newly entitled Dalits, women and minority groups and social opportunities for the poor—remains unfinished. Unless the cost of violence is increased and incentives are provided to comply with democratic values, it will be difficult to abolish patronage and maintain a national integrity system for the polity.

2.3.4 Emerging Group Boundaries, Ethnicity and Identity Politics

The UCPN (Maoist) started to mobilize ethnic constituencies (Magar, Gurung, Tamang, Limbu, Rai, etc) against the centralized monarchy and feudalism and promised federal states for them based on self-determination (Baechler, 2008:57); but these ethnic groups soon found themselves abandoned in the peace deal and power-sharing arrangement and subsequently raised their grievances against the governing elites of Kathmandu. Madhesi, Tharus, Dalits and Janajati »advocates accuse the prevailing multiparty Nepali nationalism of employing a hegemonic nationalistic ideology, rooted in the Bahun-Chhetri axis of power and authority« (Bhandari, Shrestha and Dahal, 2009:18). Several ethno-political groups have signed accords with the government to address their demands before the election.[14] But the poor implementation of those accords continues to serve as a driver of conflict in the post-election period. Nepal has 103 ethnic and caste groups caught in a multiple social and economic and caste hierarchy and patriarchy. Heterogeneity in itself is not a problem for national integration and social peace if they are not oblivious of a common national identity.

Most of the Hindu groups want Nepal to be declared as a Hindu state. Over 93 languages are spoken in the country. The Nepali language serves as a *lingua franca* which is widely used by the people to meet their communication needs. But all Madhesi parties prefer Hindi, the local language of northern India, as a national lan-

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12. The UCPN (Maoist) 9, NC 5, CPN-UML 5, MPRF 2 and 1 each for TMLP, People's Front Nepal (PFN), CPN—Marxist Leninists (ML), Nepal Workers and Peasants Party (NWPP) and Nepal Sadbhawana Party – Anandi Devi (NSP –A) .

13. They are: rights to collective bargaining, abolition of forced and child labor, equality, social security and justice, employment, workers representation in state policy and institutions, gender rights, formation of a National Labor Commission, etc.

14. The government signed accords with the following groups: Oppressed Backward Community, Hailya Community, Joint Muslim Struggle Committee, Federal Limbuwan Autonomous State Council, Federal Republic National Front, Tharuhat Struggle Committee, Joint Dalit Struggle Committee, Kirant Janabadi Workers Party, Khambuan National Liberation Front, Tamsaling Joint Struggle Committee, Janamukti Morcha, Chure Bhawar Ekta Samaj, United Madhesi Democratic Front, Badi Community, Tarai Joint Janakranti Party, Madhesi Mukti Tigers, Liberation Tigers of Tarai Eelam, Madhesi Virus Killers and Joint Janamukti Tarai Mukti Morcha, Jana Adhikar Forum. Negotiation of consensus with heterogeneous groups has led to complexity.

guage for Madhesis in Tarai. The promulgation of the Interim Constitution ignited a semi-militant political mobilization of the United Madhesi Front (UMF), an ethno-political coalition of the MPRF led by Upendra Yadav, the TMLP, led by Mahanta Thakur, and the Sadbhavana Party, led by Rajendra Mahato—against Kathmandu elites, demanding a federal state structure with a separate identity for Madheshis, and a fully proportional representation system of election and self-governance.[15] The identity claim of the Madhesis—roughly a third of Nepal's population—gained ground, as the only cement of a common Hindu identity between the hill and Madhesi people was torn apart following the declaration of a secular state. Frightened by the articulation of redistributive land reforms by all hill-based and left parties, they demanded: »One Madhesh, One Pradesh (province).«

The confrontation between UCPN (Maoist) and MPRF cadres caused a series of clashes, kidnapping and brutal acts before the election. The Gaur massacre, on March 21, 2008, killed 28 Maoists and two civilians and the deadly communal riot in Kapilvastu killed 6 persons in September following the murder of Mohit Khan, leader of a former anti-Maoist group. Communal violence has already claimed over 100 lives in the Tarai and unabated killing, kidnapping and extortion have forced people of hill origin to silently migrate to safe areas and create the Chure Bhavar Unity Society (CBUS) for self-defense. But Madhesi politics faces a new polarization. The TMLP is dominated by high caste elites, the MPRF leadership is dominated by intermediary caste groups and has now suffered a harsh split, and the JTMM (Singh) is manned by lower caste groups. The re-codification of social boundaries based on linguistic, ethnic and territorial identities during election has built up intractable conflict potential since the election. Similarly, the manifest class and caste conflict between high caste and backward groups added a new dynamic to it. Citing security reasons, the government had deployed a Special Task Force (STF) in Kathmandu and eight eastern Terai districts to create a favorable environment for the CA election and has now prepared a special post-election security plan. Local people, however, argue that the reach of the state on security, service delivery and market exchange has not improved.

For various ethnic and indigenous groups, identity assertion has become cost-effective politics. The Tharuhat United Struggle Committee (TUSC) opposes »One Madhesh, One Province« and demands proportional representation; the Tharuhat an autonomous region for Tharus and recognition of their rights to use land, water and forest. Ethnic hill groups have even gone a step further and claimed the right to self-determination. In the eastern hills of Panchthar and Ilam districts, the Federal Limbuan State Council (FLSC) and the UCPN (Maoist) collect livestock, road and export taxes. The Kirant Workers' Party (KWP) is demanding a separate »Kirant republic.« The government signed pacts with many groups, but its failure to implement them has led to the politicization of issues along ethnic, linguistic, class and communal lines, and these constitute new sources of conflict. After a series of protests and negotiations, the Nepal Federation of Ethnic Groups and Nationalities (NEFIN) signed a 20-point deal on August 7. The accord guarantees the representation of 59 out of 103 ethnic groups in the CA election and endorses ILO Convention 169 on the Rights of Indigenous People. The struggle of Backward Classes in Tarai reflects the reality of institutionalized social, economic and political divides. Tharus and Madhesis are united by religion, language and territory but divided by the concept of indigenous and outsiders. The Muslim identity, however, is defined more by religion than territory. In the absence of any comprehension of a larger national community—the state, contesting demands could intensify the struggle of subsidiary identity politics in future elections and politicize national political domain.

2.3.5 Non-State Armed Actors

There are over 109 para-military groups acting as warlords in Nepalese politics and pursuing private gains by unleashing a spiral of violence. Many of them boycotted and disrupted the CA election. But they are not monoliths based on collective self-defense and common political strategies. All of them have their own interests and are motivated by multiple aims — ideology, identity, self-determination, separatism and loot, and they often fight against each other for individual group supremacy. There is a fragmentation of concern on the part of dominant actors over these issues, especially those of the Madhesi parties, and toleration of the non-resolution of conflict by the ruling classes. Significant para military groups are:

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15. »Initially all parties—including the monarchists—tried to use Madhesi upheaval to weaken the Maoist movement, which had some stronghold in western Tarai; in particular Maoist splinters used the Tarai card to fight against their previous mother party and to strengthen their position vis-à-vis the central government« (Baechler, 2008:57).

The All Tarai Liberation Front, led by Jaya Krishna Goit, the Janatantrik Tarai Mukti Morcha (JTMM-Jwala Singh) and the Tarai Tigers of Ajya Lal Yadav—all previously associated with the UCPN (Maoist). They were expelled from the party for their criticism of the discrimination of Tarai by top Maoist leaders. Others, such as the Nepal Defense Army, the Madhesh Liberation Tigers and the Nepal Ranbir Sena, etc., have emerged due to sovereignty-free conditions, political instability, poor civil-military relations and lack of concern for them from law and order agencies. Most of these para-military groups are operating in Tarai because of the soft attitude of the Madhesh parties towards them, sanctuary in the lawless state of Bihar and Uttar Pradesh in India and the insistence of the Indian government on resolving this problem through negotiation. So far the government has been able to engage only 8 armed groups in protracted peace talks.

2.3.6 Stakes and Capacity of Actors for Conflict Resolution

Individually, none of the political actors—constitutional, free riders and social movement—has sufficient capacity to mitigate political conflict in Nepal and alleviate the lingering fears of uncertainty. And neither the Maoist nor the anti-Maoist alliance that have now been formed have the strong political will and institutional capacity to stick society to the common good, settle the major constitutional issues and foster a culture of civilized co-existence in diversity. A national unity government and a high level political coordination mechanism are instruments necessary to steer the political process in the desired direction. Coordination at the center fosters trust building at vertical levels. Given the trends of Nepali politics, one can extrapolate that violence will likely occur at the level of demarcation of federal units, forms of governance, recognition of Hindi as a national language, representation of minorities, land reforms, integration of Maoist combatants, ethnic and territorial identity, a power and resource sharing mechanism and cultural politics of identity. The formation of an autonomous federal state based on ethnic self-determination and the raising of ethnic armies by Tharus, Limbus, Tamangs, Madheshis, etc have opened prospects of a new fault line of conflict and increased the cost of cooperation between the minority and the state. The demand of all Madhesi parties for Hindi as national language collides

with all other parties. This is evident from their common stand against the decision of the Supreme Court suggesting that Vice-President Permanand Jha take his oath in the Nepali language. They even blamed the judiciary for meddling with the executive. But the Madhesi parties are relatively closer to the NC because of its relaxed attitude on land reforms and a common foreign policy outlook. They are close to the leftists on state restructuring along federal lines, structural reforms and inclusive governance. These parties are strategically positioned in the nation's economic heartland, control the supply routes to the capital and hills and have shown a propensity to organize blockades against hills and Kathmandu and to engage in collective action.

Fifty-four ethnic groups, Madhesis, Dalits, indigenous people and Muslims are struggling to make sure their voice will be represented in the new constitution. The CA election has increased the clout of marginalized groups in politics and threatened to undercut the power base of the traditional coalition of Bahun, Chhetris and Newars. Similarly, ethnic assertiveness will also corrode the power of the left parties' class-based politics. Likewise, in the federal model for example, Dalits might face marginalization as they are spread all over the country. The protection of their human rights and those of minorities such as the Banter, Musahar, Hayu, Chepangs, Kusunda, Rautes, etc requires affirmative action in the areas of education and employment and willingness of leaders to negotiate beyond their own reference group. The single dominant social group—the Chhetris, frustrated by their declining percentage in the CA, are organizing themselves into caste groups and seeking common identification with indigenous people and *Khas*, a group of caste hill peoples which played a crucial role in the unification of Nepal. The Rastriya Jana Morcha (RJM) is opposing the concept of a federal structure, arguing that it is externally induced to weaken, divide and disintegrate Nepal. This argument is shared by the cadres of many parties, lawyers and intellectuals. Reducing the intensity of conflict requires the invention of common grounds for the optimization of all actors in the conflict over electoral and constitutional safeguards and investment in building state capacity to manage political transition.

The lack of opportunities outside the state has heightened the stakes of electoral competition for elites, as no political party prefers to stay in opposition. In policy

terms, this has a double effect: first, inclusion of marginalized and deprived groups in the CA election has increased their competitive strength vis-à-vis old classes and also strengthened ethnic group boundaries, heightened cleavages between them, opened the fault-lines of conflict and loosened national identification with the state; and second, constant accusations and demands by newly empowered groups and parties have defied a search for solutions for important interests, power-sharing, amnesties, justice to victims of conflict, losers guarantees and post-conflict peace building priorities they shared in common. This is widening the rifts between major political parties and eroding common grounds for compromise for speedy constitution making, structural reforms and the peace process.

2.3.7 Election Commission

The Election Commission (EC) of Nepal consists of a chief election commissioner and four commissioners. They are appointed by the Prime Minister on the recommendation of the Constitutional Council for a term of six years, subject to parliamentary and public hearings and can be removed only through impeachment in parliament by a two-thirds majority. They have the power to adjudicate electoral disputes that may arise from the organization, administration and conduct of an election and can impose fines, disqualify candidates and cancel an election. It is funded by the state, but technical and hardware support is provided by the international community. As most of the election commissioners are recommended by political parties, it is hard to establish its institutional autonomy. The CA election witnessed many flaws in the election administration: voters lists were incomplete, intimidation and violence were rampant, candidates from small parties were threatened by militant groups, while the electoral campaigns and efforts to circulate the message to voters were not smooth. The EC settled 440 election-related complaints, while the CA Court, manned by the 3 sitting judges of the Supreme Court, has received 16 cases of electoral disputes and settled 5 (EC, 2009:11). The cost of the election has also increased, as candidates spent more than the stipulated ceiling of UD$ 640 for a candidate and those elected on the basis of huge investments developed a propensity to indulge in corruption, factionalism, party splits and ultimately served as a course for governmental instability.

2.3.8 Partiality or Impartiality of the Media

Nepal has a pluralist media landscape. Free media, the fourth pillar of democracy, is entrusted with the authority to establish citizens' constitutional right to information about public affairs and foster a political culture conducive to transparent and accountable governance. The bulk of media organizations in Nepal are, however, run by government, political parties, foreigners and business groups to cater to their particular interests rather than collective goods. The professional ethics and conflict sensitivity of the responsible media during the election contributed to forming a vibrant public sphere, enlightening the public about electoral and public issues and enabling them to exercise their informed choice. The media, however, also felt insecure and maintained self-censorship due to the activities of armed groups. The Press Council of Nepal took the initiative in a media monitoring program to assess media coverage of the CA election, candidates and campaigns in the light of the EC-prepared Election Code of Conduct for Mass Media and submitted reports to it for action. The monitored media—print, radio and television—provided opportunities to all registered political parties to express their views.

The outcome of media monitoring during the election indicates that there were instances of violation of the code, news bias, ideological assertion, conducting of opinion polls, communal framing of news, external manipulation, foreign hands, etc., despite prohibition by the code, and fuelling the sources of misunderstanding and conflict. The negative posters of many old leaders of CPN-UML and NC were pasted in public places to undermine their image. Newspapers also projected the corrupt and crony image of many old leaders. The UCPN (Maoist) projected the image of the NC as status quoist, the CPN-UML as reformist and itself as pro-people, patriotic, socialist and transformational. The CPN-UML, in contrast, attacked the leftist extremism of the Maoists and status quoist NC, depicting itself as a democratic-progressive force in the middle. The Madhesi parties and their media branded the national parties as anti-Tarai and themselves as *messiah*, the liberator of the oppressed, highlighted historical grievances and demanded inclusive governance.

2.4 Socio-Economic Reality

Nepal is one of the poorest states in the world. Its per capita gross domestic product is US$ 457, the human poverty index value is 38.1 and (parity) purchasing power is $1 day. The human poverty index puts Nepal 84th among 108 developing countries. Nepal's population is 29 million, with growth of 2.09 percent, while the GDP growth rate stands at 2.3 percent. Nepal ranks 143rd out of 177 countries in the Global Human Development Report 2008. The Human Development Index stands at 0.534, life expectancy at birth is 60.94 years (male 61.12: female 60.75), and adult literacy stands at 51.4 percent (62.7 percent for male: 34.9 percent female). Of every 100 children in Nepal, 84 live in villages, 47 are malnourished, and 40 belong to extremely poor families. Agriculture provides a livelihood for three quarters of the population and accounts for 38 percent of GDP. The top 5 percent of landholders own 27 percent of the agricultural land, the bottom 44 percent occupies only 14 percent of the land. About 20 percent of rural households do not own land at all. Many households are unable to sustain their livelihoods from subsistence agriculture based on pre-capitalist modes of production and organization. The World Food Program has identified Nepal as a »hunger hotspot,« as 42 out of 75 districts are food deficient, while over one-third of districts fall below the minimum food security supplies. A Nepalese proverb captures the modern political culture this way: »An empty belly is the devil's pouch« . Violence is also scaring away foreign direct investment in the modernization of agriculture, agro-based industries, tourism and hydro-power, where Nepal has competitive advantages.

The state is not structurally tied to society, as foreign aid contributes to over 60 percent of its development outlays while taxes contribute only 12 percent to the GDP. Easy borrowing from international institutions has established the government's autonomy from its tax paying citizens. As a result, national leaders are less concerned with the institutional capacity of the state to deliver on governance goals and exercise systemic power for productive investment, exchange and distribution. Much of the country is barely accessible by road. The deficiency of power affects industrial development. The relationship between civil society and private capital is marked by distrust and a lack of collaborative action. Every year over 300,000 migrant workers enter into the global labor market, with nearly 70 percent finding menial labor as construction workers, porters, security guards and restaurant help. Remittances contribute 22 percent to GDP and have become the lifeblood of the rural economy. The weaknesses of the Nepalese economy in addressing the underlying social and political inequities have increased the chances of conflict and eroded the recognition of the common interest.

Feudal, caste, gender, ethnicity and geographic-based social exclusion in Nepal have a strong relation to ongoing multi-structural conflicts. The poor record of the mainstream political parties of Nepal in addressing social exclusion is a key factor in accounting for the increased level of support by excluded groups for the UCPN (Maoist) in the CA election. The demographic factor is also emerging as a conflict potential, since the leaders-for-life concept has inspired youths and several social groups to desert the old political parties and form cross-party organizations and associations to articulate their demands. Youths, along with lower social classes, women, workers and minorities, are struggling for leadership renewal in the government, political parties and civil society to ensure that the public spheres maintain inter-generational, social and gender justice and foster reconciliation and peace.

2.5 External Influences

2.5.1 Regional Influences

Nepal is highly dependent on external forces for power, such as aid, legitimacy and military cooperation; for development, such as market, access, trade, transit, employment and remittance; and for scholarship and policy formulation and institutional support. Caught in a strategic location between India and China, Nepal's leadership has often been faced with a security dilemma and sought to become closer to both than they are with each other. But the influence of India in Nepal is omnipresent due to open borders, common culture, recruitment of Nepalese into the Indian army, affiliation of major parties and civil society with their Indian counterparts, the treaty regime, development cooperation and the will and ability of India to change the government through its linkages to internal forces. India has facilitated the 12-point agreement between the SPA and the Maoists for a democratic movement, the peace process and the CA election and avoided a Maoist takeover of

the state. But its geopolitical interest in «One Madhesh, One Province»[16] is designed to create a buffer zone, for the protection of its heartland, the Gangetic belt. This geopolitical notion, clashes with the Tharu's demand for Tharuhat, the Backward Communities' for social justice and the interest of major parties in the vertical carving out of a federal Nepal, in particular in creating 4 to 5 federal states in Madhesh on a linguistic and cultural basis. India's attitude toward Nepali Maoists has also undergone major change following the CA election, particularly after the formation of a new government in India, its perceived feeling that the UCPN (Maoist) is moving closer to China and its declaration of Indian Maoists as terrorists. »Never able to digest the Maoist victory and uncomfortable with popular demands for change, it has pursued increasingly interventionist tactics through proxies in Nepali political parties while continuing its policy of ring-fencing the army as the most reliable bastion against Maoist takeover or anarchy. Its resolute opposition to all but token People's Liberation Army (PLA) integration has unbalanced the peace equation without offering any alternative.« (ICG, Executive Summary and Varadarajan, 2009)

China has supported Nepal's transition from violence to peace. It expected that new Maoist leadership would contribute to political stability, peace and progress, maintain the »one China policy« and disallow free-Tibet activities from Nepalese soil. On June 17, 2007, the Chinese Ambassador to Nepal, Zheng Xialing said, »China will not tolerate any foreign intervention in Nepal,« showed interest in actively engaging in Nepal's peace process and developing better relations with the UCPN (Maoist). It has even invited a senior member in the Maoist hierarchy, Barshaman Pun and Defense Minister Ram B Thapa, to China twice. It has expressed anxiety over the events taking place in Tarai and advised the Nepalese to take »independent decisions, depending less on outside forces.« On December 1, 2009, the Chinese Foreign Minister, Yang Jiechi, expressed China's commitment to extend possible assistance to Nepal in protecting its »sovereignty, independence and territorial integrity« and offered Nepal a proposal to sign a new comprehensive peace and friendship treaty based on the new reality.

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16. Shayam Sharan, the special envoy of Indian Prime Minister, on May 20, 2008, stressed the implementation of the accord between the Nepal government and the Madhesi parties for a single federal autonomous Madhesh.

2.5.2 Role of the International Community/ International Interventions

International Attention

For an international community caught in a fluid political climate, it will be hard to enlarge development space, as agreed in the Basic Operating Guidelines (BOG), other than relief and humanitarian supplies. The presence of the international community in Nepal acts as a deterrent against excessive use of violence and abuse of human rights. The international community has put Nepal in the category of a »fragile state.« By definition, a fragile state creates a situation for humanitarian intervention owing to anarchy of free wills, poor governance and failure to enforce the rule of law as well as to deliver services.

Upon the request of the government and the UCPN (Maoist), the United Nations Mission to Nepal (UNMIN) was established in Nepal by the UN Security Council in January 2007 to build trust among Nepalese political actors and to move forward the peace process by providing logistical as well as technical support in areas such as monitoring of ceasefire, armies and arms, human rights and efforts to facilitate the CA election. Since the CA election, it has reduced its presence and now monitors the arms of both sides. The European Union (EU) has extended support for Nepal's return to peace, electoral support, support for democracy, settlement of conflict by breaking the cycle of escalating violence, ending impunity, linking concerns about the political and security situation, the rule of law, human rights and peace building.

The United States has extended electoral support and support for Nepal's transition to peace. But it has not removed the Maoists from the US list of terrorists. On January 18, 2008, the US Ambassador to Nepal, Nancy J. Powell, suggesting the government and political parties fulfill earlier commitments made in the peace accord, said, »The CA polls will not guarantee sustainable peace in Nepal. What is necessary for the sustainable peace is loyalty to the nation.« With the visit of former US President Jimmy Carter to Nepal twice and the meeting of the leadership with the Ambassador of the US, relations with the Maoist government have improved. The Swiss government facilitated the visit of top UCPN (Maoist) leaders Puspa K. Dahal and Dr. Baburam Bhattarai to gain knowledge about the state system, democ-

racy and the economy. Dr. Bhattarai participated in the Fifth Oslo Forum in Norway, organized by the Norwegian Foreign Ministry and the NGO Center for Humanitarian Dialogue, and shared his experience of the peace process in Nepal. Prime Minister Dahal also visited China to attend the concluding ceremony of the Beijing Olympics, latter travelling to Norway, Finland, Germany, the US and the UK.

The US, the UK, Germany, China, Japan, South Korea, Switzerland, Norway and Denmark have supported Nepal's transition to the peace initiative through development cooperation and electoral support. Similarly—through the formation of the International Technical Resource Support Group—the Peace Secretariat is receiving expertise on different aspects of the peace process such as inclusion, dialogue, security and reconciliation. To enhance the peace process, Germany has extended assistance in civic education, health services, medicine, roads, sanitation in the cantonments and surrounding areas and promotion of skills for reconstruction, reintegration, and reconciliation of displaced people. It has also facilitated the visit of the leader of the Maoist PLA to Germany to acquire knowledge about the integration of the armies following the unification of East and West Germany. Donor support for the creation of indigenous capacity of local institutions is central to fostering development-oriented transformation and breaking the culture of clientelization of citizens.

Aid coordination and coordination of government-donor practices have become particularly important in Nepal, especially to engage both sides in abolishing the historical practice of clientelism and paternalism, building trust in each side's role and engaging in multi-dimensional aspects of the peace-process, such as state-building, support for constitution-making, transport, communication, energy development, education, agriculture, rural development, water supply, finance, health and sanitation and sustainable development. Conflict mitigation projects should involve rehabilitation of damaged infrastructure and internally displaced people, rural reconstruction and eradication of the root causes of mal-development, which triggered the cycle of conflict in the first place.

International Election Observers

In a post-conflict election, where application of the rule of law is difficult, the presence of international observers provides a conducive environment for independent, free and fair elections. International election observation has the potential not only to ensure the integrity of the overall election process but also to promote democratic development, especially by monitoring the impartiality of elections, human rights standards, the rule of law, and even mitigating the election-related conflict. To gain international and domestic legitimacy, the EC tried to make the overall electoral process open and transparent. It created the Electoral Observation Resource Center to coordinate both 148 national civil society organizations, with over 61,000 observers, and 32 international groups, with over 900 observers, spread out throughout the country, to monitor and report the conduct of the election (EC, 2009:9-10). The pre-election environment was conflict-prone due to both the security vacuum and non-enforcement of the code of conduct, while Election Day was relatively peaceful. Still, reelection was needed in 106 polling centers due to irregularities, violence, booth capturing, intimidation of polling agents, pouring water in ballot boxes, etc. The election had to be postponed in Surkhet due to the killing of one candidate.

The UN Secretary General expressed his appreciation of the »desire and commitment of the people of Nepal for peace and change,« while the EU hailed the commitment of the Nepalese people »to select their representatives« and the popular support for »constitutional reform and a return to accountable and elected multi-party democracy.« Former United States President Jimmy Carter observed, »The CA poll was largely free and fair« and added that the »terror tag of the US on Maoist is a mistake.« The international observers could not focus on the impact of the pre-election environment on the CA election, had a more urban focus, and failed to understand the local style of electoral manipulation. Nepalese migrants, estimated to be 2.5 million, and over 150,000 conflict-displaced people were deprived of their right to vote, and youth who became 18 years of age in April 2008 were also disenfranchised because the CA election took place almost one year latter, when the list of voters was finalized. Increasing the stake of left-out groups in the future political process is essential to avoid the potential for conflict.

Seats and Votes Won by Parties

Political Parties	Vote Scored in In PR	% of Vote in PR	Seats in PR	% of seats in FPTP	Seat through FPTP	Total %	Total Seats
CPN (Maoist)	3,144,204	29.28	100	50.00	120	38.26	220
Nepali Congress	2,269,883	21.14	73	15.42	37	19.13	110
CPN-UML	2,183,370	20.33	70	13.75	33	17.91	103
Madhesi Jana Adhikar Forum	678,327	6.32	22	12.50	30	9.04	52
Tarai Madhesh Loktantrik Party	338,930	3.16	11	3.75	9	3.48	20
Sadbhavana Party	167,517	1.56	5	1.67	4	1.57	9
Rastriya Prajatantra Party (RPP)	263,431	2.45	8	0.00	O	1.39	8
Janamorcha Nepal	164,381	1.53	5	0.83	2	1.22	7
CPN-Marxist Leninist	243,545	2.27	8	0.00	0	1.39	8
CPN-United	154,968	1.44	5	0.00	0	0.87	5
Nepal Majdoor Kisan Party	74,089	0.69	2	0.83	2	0.70	4
Rastriya Janamorcha	106,224	0.99	3	0.42	1	0.70	4
RPP-Nepal	110,519	1.03	4	0.00	0	0.70	4
Rastriya Janashakti Party	102,147	0.95	3	0.00	0	0.52	3
Rastriya Janamukti Party	53,910	0.50	2	0.00	0	0.35	2
Nepal Sadbhavana Party (A)	55,671	0.52	2	0.00	0	0.35	2
Nepali Janata Dal	48,990	0.46	2	0.00	0	0.35	2
Sanghiya Loktantrik Rastriya Manch	71,958	0.67	2	0.00	0	0.35	2
Nepal Pariwar Dal	23,512	0.22	1	0.00	0	0.17	1
Nepa: Rastriya Party	37,757	0.35	1	0.00	0	0.17	1
Samajbadi Parjatantrik Janata Party Nepal	35,752	0.33	1	0.00	0	0.17	1
Dalit Janajati Party	40,348	0.38	1	0.00	0	0.17	1
Churebhavar Rastriya Ekta Party Nepal	28,575	0.27	1	0.00	0	0.17	1
CPN-Unified	48,600	0.45	2	0.00	0	0.35	2
Nepal Loktantrik Samajbadi Dal	25,022	0.23	1	0.00	0	0.17	1
Independents		0.83	0	0.00	2	0.35	2
Total votes cast	10,739,078	100.00	335	100.00	240	100	573

Source: Election Commission 2008

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About the author

Dev Raj Dahal is head of the FES office in Nepal.

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