NEPAL: IDENTITY POLITICS AND FEDERALISM

Asia Report N°199 – 13 January 2011

International Crisis Group
WORKING TO PREVENT CONFLICT WORLDWIDE

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EXECUTIVE SUMMARY

Federal restructuring of the state has emerged as a major demand of ethnic and regional activists in Nepal. The debate about it is extremely politicised. Federalism is not simply the decentralisation of political power; it has become a powerful symbol for a wider agenda of inclusion, which encompasses other institutional reforms to guarantee ethnic proportional representation and a redefinition of Nepali nationalism to recognise the country's ethnic and cultural diversity.

Activists demand the introduction of reservations to guarantee proportional representation of marginalised groups in government and administration. They want provinces to be named after the most numerous ethnic and regional groups and boundaries drawn to make them dominant minorities. Some claim to be indigenous to these regions and demand preferential rights to natural resources and *agradhikar* – priority entitlement to political leadership positions in the future provinces.

Ethnic and regional demands were important parts of the Maoist agenda during the civil war; in eastern Nepal, much of their support depended on it. State restructuring became a central component of the 2006 peace deal. After violent protests in the Tarai in 2007, federalism was included in the interim constitution as a binding principle for the Constituent Assembly.

But of the three major parties, the Maoists are the only one to give full-throated support to federalism and the establishment of ethnic provinces. Identity politics may sit uneasily with their class-based ideological framework but federalism is of great importance for them. Now that the former Hindu kingdom is a secular republic, it is the most important point left on their short-term transformative agenda. Much grassroots support, the loyalty of ethnic and regionalist activists within the party and their wider credibility as a force for change depend on them following through.

Both the Nepali Congress (NC) and the Communist Party of Nepal (Unified Marxist-Leninist), UML, have accepted federal restructuring. They have actively participated in drafting a federal model in the Constituent Assembly. There is agreement on most institutional arrangements including the division of powers between provinces and centre. But this process has been driven by longstanding proponents of federalism within both parties, none of them very influential. It is unclear whether there is a wider consensus. Both parties have agreed to federalism in the spirit of bargaining; neither of them owns the agenda. Behind the official positions there is significant resistance to it.

Backtracking on federalism is politically impossible. Both the NC and UML are already struggling to retain cadres and leaders from minority backgrounds. But deferring crucial decisions, or stalling the constitutional process altogether, could be tempting for those opposed to change. The assumption that the Maoists have both the most to gain and the most to lose from the constitutional process could lend wider appeal to the idea.

The risks are hard to calculate. Ethnic and regionalist groups, already suspicious of the major parties' commitment to federalism, threaten protests and ultimately violent resistance should it not come. Their eyes are on the 28 May 2011 deadline for the promulgation of the new constitution. Popular support is most widespread among Madhesis in the central and eastern Tarai and members of ethnic groups in the eastern hills. Many Madhesis are disillusioned with their leadership, but feel reforms are incomplete. The organisational landscape of ethnic activists in the eastern hills may be fragmented for now, but underneath lie strong personal and political networks. Activists are getting frustrated and the mood is becoming more militant. With an issue to rally around they are likely to coalesce; a politicised population would easily be mobilised for protest movements, should federalism not come.

Not all want federalism. Popular opposition to ethnic federalism in particular is substantial, by virtue of its association with identity politics. Many Brahmins and Chhetris, the dominant caste groups, fear they will lose out from the introduction of ethnic quotas and federal restructuring. But organised resistance is limited and fragmented. Open opposition only comes from a fringe of the political left which fears Nepal's unity. Several Chhetri organisations are not against federalism itself but want to defend their group's

interests in the restructuring process. Pro-monarchy groups and the Hindu right are less concerned with federalism than with the republic and secularism. But given the common uneasiness with the redefinition of Nepali nationalism, a broader conservative alliance is a distinct possibility.

The structure emerging from the Constituent Assembly, federal but with a strong centre, offers a feasible compromise. If the NC overcomes its aversion to provinces named after ethnic and regional groups, the new constitution will offer important symbolic recognition of Nepal's cultural diversity. In combination with the language rights and proportional representation in administration and government envisaged, this would go a long way towards meeting popular aspirations among ethnic and regional groups. The fact that the draft offers little scope for preferential rights beyond proportional representation as well as strong individual rights provisions should allay Brahmin and Chhetri fears of future discrimination. Not promulgating the constitution in time or deferring a decision on federalism, however, could spark serious unrest.

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I. INTRODUCTION

Nepal is experiencing a surge in identity politics and accompanying demands for federalism. Diverse groups are insistently demanding a direct say in governing their regions. Disappointed by their failure to win expanded rights and recognition during the democratic period of the 1990s, many organisations – representing ethnic and regional groups – now see federalism as non-negotiable. Although most of the main political parties have signed up to this as they write a new constitution, resistance to the end of a unitary state is strong. Federalism is now the most contentious issue in Nepali politics.[1]

The debate on federalism in Nepal is inseparably linked to resistance against political and economic exclusion on the basis of caste, ethnicity and regional identity. It constitutes a significant element in the re-negotiation of power relations in the country after the civil war. On an institutional level, the demand for federalism challenges the centralisation of political power in the hands of a small elite. But it goes a lot further, in that it will redefine an entrenched national identity and upends the dominant, state-sponsored narrative of the eighteenth century conquest of what now constitutes Nepal, which celebrates it as "unification". The pressure for "ethnic" provinces has to do with aspirations for fair representation in government and administration, but also with recognising that all the ethnically and culturally diverse groups constitute the nation.

The country has a huge number of ethnic groups – more than 100 by one count.[2] It also has complex systems of caste that vary among communities. Many of the groups are very small and most of them are widely dispersed. Across the country even the dominant ethnic group in each area is likely to be in the minority.[3] The 2001 census counts 92 mother tongues, but only twelve are spoken by more than 1 per cent of the population.[4]

During the decades before a democratic transition in 1990, the state sought to create a national culture based on the upper caste groups dominant in the foothills of the Himalayas. Centred on the monarchy, this promoted Hin-

[1] On these issues see past Crisis Group reporting: on the constitution, Crisis Group Asia Reports N°99, *Towards a Lasting Peace in Nepal: The Constitutional Issues*, 15 June 2005; N°128, *Nepal's Constitutional Process*, 26 February 2007; on identity politics, ethnic activism and group rights, Asia Briefing N°68, *Nepal's Fragile Peace Process*, 28 September 2007; and Asia Reports N°104, *Nepal's Maoists: Their Aims, Structure and Strategy*, 27 October 2005; N°136, *Nepal's Troubled Tarai Region*, 9 July 2007; N°149, *Nepal's Election and Beyond*, 2 April 2008; N°155, *Nepal's Election: A Peaceful Revolution?*, 3 July 2008; N°156, *Nepal's New Political Landscape*, 3 July 2008; N°163, *Nepal's Faltering Peace Process*, 19 February 2009. Full Nepali translations of these reports and briefings are available at www.crisisgroup.org/nepali.

[2] There is enormous diversity in ethnic and caste identity in Nepal. It is impossible to give an exact number of different groups as the boundaries of identity are often fluid, but the figures from the 2001 census give an indication. Hill-origin groups, also known as *pahadis*, are comprised of caste Hindus (*parbatiyas*, 38 per cent of the total population), which can be broken down into Chhetris (15.80 per cent), Brahmins (12.74 per cent), Thakuris (1.47 per cent), Sanyasis (0.88 per cent) and Dalits (7.11 per cent). The Newar ethnicity (5.48 per cent), also found in the hills, blurs ethnic and caste lines as 84 per cent of the group is Hindu. The largest groups within the hill and mountain ethnicities (23.02 per cent) are Magars (7.14 per cent), Tamangs (5.64 per cent), Rais (2.79 per cent), Gurungs (2.39 per cent) and Limbus (1.58 per cent). The majority of the plains-origin population consists of Hindu caste groups (19.49 per cent), with the Dalits (4.90 per cent) and the Yadavs (3.94 per cent) being the most numerous. Tarai ethnic groups (7.86 per cent), of which the Tharus (6.75 per cent) are the most numerous, Muslims (4.27 per cent) and other groups (0.08 per cent) make up the rest of the Tarai population which constitutes 31.7 per cent of the total population. See Pitamber Sharma, *Unravelling the Mosaic: Spatial Aspects of Ethnicity in Nepal* (Lalitpur, 2008); "Rashtriya janaganana, 2058: jat/jatiko janasankhya", Central Bureau of Statistics, January 2008. Available at: http://cbs.gov.np/population_caste.php.

[3] Only in fourteen out of the 75 districts does any one group comprise more than 50 per cent of the population. Chhetris form the majority in nine districts and Magars, Tharus, Tamangs, Newars and Gurungs in one each. Pitamber Sharma, *Unravelling the Mosaic*, op. cit., p. 14.

[4] These are Nepali (48.6), Maithili (12.3), Bhojpuri (7.5), Tharu (5.9), Tamang (5.2), Newar (3.6), Magar (3.4), Avadhi (2.5), Bantawa Rai (1.6), Gurung (1.5), Limbu (1.5) and Bajjika (1.1). Ibid, p. 64.

duism, the Nepali language and a certain style of dress.[5] This started to break down after the introduction of a democratic constitution that formally recognised the country's diversity to a degree.[6] New ethnic and caste organisations emerged but found that the dominance of upper caste elites grew if anything.[7]

Once again expectations of a greater role for minorities have been raised since the overthrow of the monarchy and the start of the peace process in 2006. Sceptical of the approach focusing on individual rights that was tried in the 1990s, many ethnic and regional activists now see group rights such as reservations in state organs and federalism with provinces designed to comprise ethnic groups as dominant minorities as the only way to achieve recognition and representation.

There is significant opposition. Unsurprisingly, elites in power are threatened by any redefinition of an entrenched national identity. Many have little sense of how deeply discriminatory the state has been or how much resentment exists among minorities. For these elites, the recognition of greater diversity evokes a fear that they will be discriminated against in a Nepal organised along ethnic lines.

Addressing this tension is one of the most serious problems the country faces as it writes a new constitution. This report focuses on the political challenges to the establishment of a federal system and on the risks should it fail. It examines the approaches of the major political parties, all of which contain opponents to federalism. It also looks at two key areas – the eastern hills and the central and eastern Tarai – where demands for identity-based federalism are greatest. It only touches on other areas of Nepal. While it looks at some broad risks and opportunities in a possible federal system it does not address the merits of various models nor does it examine the technical problems of implementation.

[5] Civil servants usually had to wear the *daura-suruwal* (cotton tunic and trousers) and a *topi* (a cloth cap). Similarly, male visitors usually had to wear a *topi* for entering government offices. See John Whelpton, *A History of Nepal* (Delhi, 2005), p. 160.

[6] Crisis Group Report, *Towards a Lasting Peace in Nepal: The Constitutional Issues*, op. cit., p. 2.

[7] The percentage of Brahmins in the *panchayat* legislatures had hovered between approximately 14 and 24 per cent. In the 1991, 1994 and 1999 legislatures their numbers almost doubled, to 36.6, 44.39 and 46.34 per cent, respectively. The representation of Chhetris, sank drastically after 1990, from approximately 35 to 38 per cent in *panchayat* legislatures to a maximum of 18.53 per cent during the 1990s. Newar representation remained relatively steady at around 6.5 percent in 1986 as well as in the 1990s legislatures. Other hill ethnic groups had their highest representation (21.48 per cent) in the 1981 legislature. After 1990, it dropped to 16.6 per cent in 1991, 11.7 per cent in 1994 and 12.19 per cent in 1999. Tarai caste representation increased slightly after 1990, from between 11.4 and 18.53 per cent during the *panchayat* era to 21.01 per cent in 1991, 18.53 per cent in 1994 and 17.07 per cent in 1999. The dominance of hill Brahmins, Chhetris and Newars is much less ambiguous in executive positions. All prime ministers since 1951 were Brahmins, Chhetris and Newars. Between 1951 and April 2006, 65 per cent of ministers came from these three groups. See Mara Malagodi, *Constitutional Nationalism and Legal Exclusion in Nepal (1990-2007)* (London, unpublished PhD thesis), pp. 227-229. As of June 2010, 70 per cent of chief district officers (the highest administrative position at the district level) were Brahmin, 16 per cent Chhetri, 4 per cent Newar, 5 per cent Madhesi and 1 per cent Limbu.

II. IDENTITY POLITICS IN NEPAL

There is a history of explicit and often legal discrimination in Nepal. The Muluki Ain of 1854, Nepal's civil and criminal legal code until the fall of the Rana regime in 1951, legally divided the population into distinct *jats* (this literally means "kind" and encompasses both castes and ethnic groups). The code subsumed all groups under a strict caste hierarchy and assigned differential laws and punishments for each of them; it comprehensively regulated social interaction, permitting, for example, only certain economic activities for each group and prescribing commensality and sexual relations.[8]

Today, Nepali society is still rife with stereotypes and prejudices. Individual experiences of discrimination and exclusion differ vastly but are often deeply personal. Members of hill ethnic groups who are economically relatively strong, such as Gurung, Rai or Limbu, may face mostly symbolic exclusion. Prejudices such as that of the quarrelsome drunkards, ever quick to draw their *khukuris*, and fit for serving in the army but not for education and qualified employment, may not injure but do insult. Discrimination is more tangible for other groups. A plains-origin Madhesi applying for a citizenship certificate, for example, may wait for weeks or months because a civil servant wants to make sure he is not Indian; while his neighbour who looks sufficiently "Nepali" receives his certificate the next day.

Political and economic opportunities clearly differ by caste and ethnicity. Hill Brahmins in particular are hugely overrepresented in politics and administration. For example, five out of the eight different prime ministers since 1990 were Brahmins, two Chhetris and one a Thakuri. There are big variations within ethnic groups and Madhesis, but some of the poorest communities fall within these broad categories (invariably worst off, of course, are both hill and Tarai Dalits).[9] It is unclear how prejudices, political and administrative underrepresentation and economic disadvantages are connected. An established line of argument long held the ethnic groups responsible for their own underdevelopment, blaming low economic status on non-Hindu practices such as drinking alcohol.[10] Ethnic activists identify discrimination by the upper caste groups in politics and administration as a major factor.

A. ETHNIC ACTIVISM: PAST AND PRESENT

1. Before 1990

Opposition to the state by ethnic and regional groups is not new. Between 1770 and 1979 there were at least 25 ethnic and regional-based mobilisations against the state; most occurred among ethnic Limbus and Rais in the eastern hills.[11]

Throughout the nineteenth century and up until the 1950s, the eastern hills witnessed a number of Limbu rebellions; these had their roots in the loss of land to upper caste migrants and state efforts to revoke provisions for local autonomy. Following fierce resistance and given the strategic location of Limbuwan at a sensitive border, the early Nepali state had granted far-reaching autonomy to Limbu headmen in a 1774 royal decree; under the *thekka thiti* system (1820-1951), they controlled the communally held and legally inalienable *kipat* land, collected taxes from clansmen and tenants living on it, and were allowed to maintain militias and dispense justice.[12]

[8] András Höfer, *The Caste Hierarchy and the State in Nepal: A Study of the Muluki Ain of 1954* (Kathmandu, 2004[1979]).

[9] Aggregate categories hide significant internal differentiation. Hill ethnic groups and Madhesis may have high average poverty rates, but big groups within them are on par with Brahmins and Chhetris on important economic indicators. For example, Gurungs have an average consumption of Rs. 22,168 (approx. $230) per household per year and a poverty rate of 4.7 per cent. Yadavs have a lower average consumption of Rs. 12,477 ($130) but also a lower poverty rate at 4.0 per cent. In comparison, Brahmins have an average consumption of Rs. 23,088 ($240) and a poverty rate of 2.0 per cent. Hill Brahmins and Chhetris combined have an average consumption of Rs. 19,213 ($200) and a poverty rate of 4.2 per cent. Brahmin and Chhetri activists often point to significant internal differentiation and the high poverty rate in far-western Nepal, where they make up a big proportion of the population. Poverty in the far-western region is high at 41 per cent, more than 10 per cent over the national average (even though it has reduced by 23 per cent between 1995 and 2003). But Brahmins also have the highest average consumption and lowest poverty rate of all groups. So while there may indeed be huge economic differences between Brahmins, only very few are very poor. More Chhetris are likely poor; the aggregate poverty rate for Bahuns and Chhetris is 4.2. Chhetris then would have a higher poverty rate than both Gurungs and Yadavs. Arun KL Das and Magnus Hatlebakk, *Statistical Evidence on Social and Economic Exclusion in Nepal* (Kathmandu, 2010).

[10] Dor Bahadur Bista's book *Fatalism and Development* holds an obsession with fate, which he attributes to Hinduism, responsible instead. (Patna, 1999[1991]).

[11] Mahendra Lawoti counts 25 instances of ethnic and caste mobilisation between 1770 and 1979, ten of them in the eastern hills involving Rai and Limbu groups. Mahendra Lawoti, "Contentious politics in democratizing Nepal", in Mahendra Lawoti (ed.), *Contentious Politics and Democratization in Nepal* (New Delhi, 2007), p. 32.

[12] Philippe Sagant, *The Dozing Shaman: The Limbus of Eastern Nepal* (Delhi, 1996), pp. 319-335. These provisions differed in degree rather than in kind from the tenurial relations that had earlier linked Limbu rulers to other small kingdoms whose overlordship had largely been nominal.

The state set out to erode this autonomy almost as soon as it was established; a central strategy was to encourage Hindu caste groups to migrate into the eastern hills and to transform *kipat* land into *raikar*. The latter category could not only be bought and sold freely, but was also administered directly by the central state. Economically more powerful and better connected in the administration, the migrants expanded their landholdings at the expense of the Limbus. Largely tied to *kipat* land, the authority of the Limbu headmen diminished as land tenure was changed. This prompted considerable and often violent resistance. With Hindu migrants widely perceived as responsible for the loss of land and autonomy, most Limbu resistance was explicitly anti-Hindu and often directed against Brahmins and Chhetris living in the eastern hills.[13] During 1950, for example, when Limbus and Rais played an important role in the anti-Rana movement,[14] the eastern hills also witnessed widespread riots against Brahmins and Chhetris, killing and displacing many.[15]

The 1950s also saw the first regionalist mobilisation in the Tarai. The Nepal Tarai Congress (NTC), established in 1951, demanded an autonomous Tarai state, Hindi as administrative language and more jobs in government for people of Tarai origin. In 1956, the introduction of Nepali as sole medium of instruction in schools triggered Tarai-wide protests. But the movement remained confined to relatively narrow elites. Most were ultimately unwilling to abandon their immediate economic and political interests by breaking with central party affiliations; the NTC suffered a crushing defeat in the 1959 general elections.[16]

From the 1960s organised ethnic and regional resistance declined in the face of skilful co-option of elites by King Mahendra. Under the partyless *panchayat* system of government, the state represented its citizens as equal and promoted a homogenous culture.[17] This culture was essentially that of hill-origin high caste Hindus, but positions of authority were relatively open to minorities as long as they assimilated.[18] This in effect decapitated ethnic movements;[19] but the sentiment and grievances persisted among significant parts of the population, particularly in the eastern hills.[20] The honeymoon of ethnic elites and the state ended in the 1970s, when the latter's failure to deliver on development and the continuing capture of the administration by high caste elites became apparent.[21]

2. After 1990

The end of the Panchayat system and the establishment of parliamentary democracy in 1990 opened the door for the expression of ethnic demands. The new constitution formally recognised ethnic, religious and linguistic diversity. But national identity was fundamentally unchanged.[22]

[13] See Lionel Caplan, *Land and Social Change in East Nepal: A Study of Hindu-Tribal Relations* (Kathmandu, 2000[1970]).

[14] Tanka Bahadur Rai, *Kirat Itihasko Ruprekha* (Lalitpur, 2003). The armed insurrection against the Rana regime in 1950/1951 was led by the NC and ultimately forced the Ranas to accept the return of King Tribhuvan and the formation of a Rana-NC coalition government.

[15] T.B. Subba, *Politics of Culture: A Study of Three Kirata Communities in the Eastern Himalayas* (Chennai, 1999), p. 112.

[16] Not only did the party fail to win a single seat; all 21 candidates lost their deposits of 250 rupees for obtaining less than 20 per cent of votes in their respective constituencies. Frederick Gaige, *Regionalism and National Unity in Nepal* (Berkeley, 1975), p. 123.

[17] See Joanna Pfaff-Czarnecka, "Vestiges and Visions: Cultural Change in the Process of Nation-Building in Nepal", in David Gellner, Joanna Pfaff-Czarnecka and John Whelpton (eds.), *Nationalism and Ethnicity in a Hindu Kingdom: The Politics of Culture in Contemporary Nepal* (London, 1997).

[18] Adopting Hindu high-caste practices, ranging from observing Hindu rituals to changing eating habits, was an important strategy for individual and collective upward mobility. See Joanna Pfaff-Czarnecka, "Vestiges and Visions", op. cit. Such processes of sanskritisation – aimed at improving an individual's or a group's ritual status within a caste hierarchy – have been observed across South Asia. Anthropologist M.N. Srinivas coined the term in the 1950s. M.N. Srinivas, *Religion and society among the Coorgs of South India* (Oxford, 1952). Sanskritisation did not always mean that Buddhist or animist practices were replaced; often Hindu practices were only displayed in front of state representatives. See Thomas Cox, "Langtang Tibetans and Hindu Norms as Political Language: A Critical Perspective on Sanskritization Theory", in *Contributions to Nepalese Studies*, vol. 16, no. 1 (1989), pp. 11-20.

[19] There were ethnic organisations during the Panchayat era. But although many of them sought to preserve parts of their culture, language in particular, much of their activity was aimed at adapting to Hindu culture by sanskritising their communities, in particular by abandoning alcohol and meat consumption. On the Nepal Langhali Sangh, a Magar association, see Anne De Sales, "The Kham Magar Country: Between Ethnic Claims and Maoism" in David N. Gellner (ed.), *Resistance and the State: Nepalese experiences* (New Delhi, 2003); on the Tharu Kalyankari Sabha see Arjun Gunaratne, *Many Tongues, One People: The Making of Tharu Identity in Nepal* (Ithaca, 2002), ch. 5. There were a few more political exceptions like the Nepal Rashtriya Janajati Party, which advocated for a twelve state federal structure based on ethnicity and language. Mukta S. Tamang, "Samanta sanghiyata ra bahusanskritik rashtravad", in: Krishna Khanal, Jhalak Subedi, Mukta Singh Tamang (eds.), *Rajya punarsamrachana: Rajnitik, arthik ra sanskritik drishtikon* (Kathmandu, 2008), p. 123.

[20] For example, poor Limbu farmers continued to link their economic and political marginalisation with high-caste domination. Lionel Caplan, "From Tribe to Peasant? The Limbus and the Nepalese State", *Journal of Peasant Studies*, vol. 18, no. 2 (1991), pp. 305-321.

[21] See Joanna Pfaff-Czarnecka, "Vestiges and Visions", op. cit.

[22] On the 1990 Constitution see Crisis Group Report, *Nepal's Constitutional Process*, op. cit.

Nepal remained a unitary Hindu monarchy with Nepali as the sole official language.[23] Despite considerable formal institutional reforms, the state remained patronage based; the overrepresentation of high caste elites became even more pronounced.[24]

The number of ethnic organisations grew exponentially in the 1990s.[25] The Nepal Federation of Nationalities (NEFEN), founded in 1990 by eight groups, emerged as the most prominent organisation and key interlocutor for government and donors. The *janajati* movement drew heavily on the global discourse on indigenous rights;[26] in 2003, NEFEN changed its name to Nepal Federation of Indigenous Nationalities (NEFIN).[27] Different from most ethnic organisations during the Panchayat era, the new movements demanded language rights, decentralisation, political autonomy for ethnic groups and proportional representation in state bodies.[28]

Ethnic or regionally based political parties were still banned;[29] but two evaded the restriction. The Rashtriya Janamukti Party (RJP) and the Nepal Sadbhavana Party (NSP), both advocating a federal Nepal, contested the general elections in 1991, 1994 and 1999. They had minimal electoral success, the NSP winning a maximum of 4.1 per cent and the RJP a maximum of 1.07 per cent of votes.[30] While this may indicate the electorate's lack of enthusiasm for their agendas, they also came up against strong ethnic competition in their areas of focus.[31]

Progress on addressing ethnic demands was limited. At a time when there was considerable focus on individual rights, activists tried to address their grievances through legal channels. Results were mixed. For example, in June 1999 the Supreme Court declared illegal the use of anything other than Nepali as an official language in local government bodies.[32] In another ruling, the Supreme Court declared as unconstitutional a legal provision exempting Hindu temples from the ban on caste discrimination. However, there had been considerable resistance from the justice ministry, which claimed that some temples should be considered private places.[33]

The passage of the Nepal Federation for the Development of Indigenous Nationalities (NFDIN) Act in 2002 marked an important moment for ethnic activism in Nepal. The act recognises *adivasi janajati* (indigenous nationalities) as a legal category, establishes the criteria a group has to fulfil to qualify and lists 59 officially recognised *janajati* groups.[34]

Particularly in the eastern hills there had been a small militant fringe to the *janajati* movement from early on. Gopal Khambu in 1992 founded the Khambuwan Rashtriya Morcha (KRM) to launch an armed struggle for an autonomous Khambuwan state. The KRM's armed activity remained largely confined to burning down Sanskrit schools.[35] But its existence is indicative of some activists' appetite for a more assertive approach, which embarrassed the otherwise largely middle class-based movement and provided an opening for the Maoists.

B. ETHNIC DEMANDS AND THE "PEOPLE'S WAR"

Violent resistance to the government emerged in 1996 when the Communist Party of Nepal (Maoist), CPN(M), launched their insurgency.[36] The Maoists' policies and

[23] Art. 18(2) of the 1990 constitution allowed (but did not guarantee) primary education in mother-tongues other than Nepali.
[24] See footnote 7.
[25] Actual numbers are hard to establish. Estimates range from around 150 to several hundred. Pratyoush Onta, "The Growth of the Adivasi Janajati Movement in Nepal After 1990: The Non-Political Institutional Agents", in *Studies in Nepali History and Society*, vol. 11, no. 2 (December 2006).
[26] *Janajati* is a neologism used for non Hindu-caste communities in Nepal.
[27] Ibid, pp. 325-331.
[28] Joanna Pfaff-Czarnecka, "Vestiges and Visions", op. cit.
[29] 1990 Constitution, Art. 113(3).
[30] Mahendra Lawoti, *Towards a Democratic Nepal* (New Delhi, 2005), p. 69. Not registered were the Mongol National Organisation (MNO) and the RJP; the Limbuwan Mukti Morcha boycotted the elections. Michael Hoftun, William Raeper and John Whelpton, *People, Politics & Ideology* (Kathmandu, 1999), p. 178.
[31] In eastern Nepal, the RJP received up to 12 per cent of votes in the 1994 elections. Other parties had increasingly fielded candidates from ethnic groups. Karl-Heinz Krämer, *Ethnizität und Nationale Integration in Nepal: Eine Untersuchung zur Politisierung der ethnischen Gruppen im modernen Nepal* (Stuttgart, 1996), pp. 272-275.
[32] In 1997, the Municipality of Kathmandu had introduced Newari and the District Development Committee of Dhanusa Maithili as additional official languages. Mara Malagodi, *Constitutional Nationalism and Legal Exclusion in Nepal (1990-2007)*, op. cit., p. 253.
[33] Ibid, pp. 249-251.
[34] See Townsend Middleton and Sara Shneiderman, "Reservations, Federalism and the Politics of Recognition in Nepal", *Economic and Political Weekly*, 10 May 2008.
[35] A KRM leader explained: "In 1997/1998 we started burning Sanskrit schools. We burned three schools. This was not targeted at Sanskrit, but to dismantle the system that discriminated against people who did not speak Sanskrit. At that point if you spoke Sanskrit you had a job guaranteed". Crisis Group interview, KRM leader, Dharan, 14 September 2010. See also Sudhir Sharma, *The Ethnic Dimension of the Maoist Insurgency* (Kathmandu, 2002).
[36] The CPN(M) renamed itself United Communist Party of Nepal, UCPN(M), in January 2009 after merging with three smaller communist parties. The original name was readopted by Maoist leader Matrika Yadav when he split from the UCPN(M) in Feb-

programs included ethnic aspirations even before the start of the war. In July 1995 the party endorsed ethnic autonomy.[37] The 40-point demand called for the end of ethnic oppression in general and for a secular state, the equality of languages, and regional autonomy in particular. In February 1997, the central committee systematised the policy on nationalities by endorsing national and regional autonomy with the right to self-determination.[38] In 2000 the party established a central level ethnic department, led by Dev Gurung, which included different ethnic fronts.[39] The boundaries of the nine autonomous regions in the Maoists' people's government were drawn according to ethnic criteria.[40]

The incorporation of identity politics into a class-based Marxist organisation is less of an ideological stretch than it might appear; it has prominent precedents. Primarily formulated by senior leader Baburam Bhattarai, the Maoists' approach to the "national question" is explicitly Leninist. "Oppressed nations" need autonomy and the right to self-determination, understood to entail the right to secede, to overcome semi-feudal and semi-colonial exploitation, progress to capitalism and prepare the conditions for socialist revolution. But the ultimate aim is the dissolution of national identities in a class-less and state-less society.[41] Ethnic movements therefore are natural allies to be supported and brought into the unity-front of the Maoist movement.[42]

According to a common interpretation, the Maoists had no choice but to adopt ethnic demands; tapping into these grievances mobilised widespread support.[43] This is only partly true. The Maoists' ethnic agenda played a relatively minor role in their heartland in mid-western Nepal. The area is dominated by ethnic Kham-Magars; many people from this group did join the insurgents, but ethnic considerations seem to have played only a minor role.[44] Communist networks rather than ethnic activism had long been influential.[45] Only two smaller Magar organisations allied themselves with the Maoists; the more influential, middle-class dominated Magar activists kept their distance.[46]

In contrast, in the eastern hills, the Maoists relied heavily on alliances with existing networks of ethnic activists. Its main ally was Gopal Khambu's KRM.[47] The KRM started

ruary 2009. Except for this place, this report uses CPN(M) for Matrika Yadav's party.

[37] "Aitihasik janayuddhako pahilo yojana", CPN(M), July 1995.

[38] "Kehi tatkalin rajnaitik ra sangathanatmak prasnabare prastav", CPN(M), February 1997.

[39] Crisis Group interview, senior UCPN(M) leader, Kathmandu, January 2010.

[40] For an overview see Kiyoko Ogura, "Maoist people's governments, 2001-2005: the power in wartime", in: David Gellner and Krishna Hachhethu (eds.), *Local Democracy in South Asia: Microprocesses of Democratization in Nepal and its Neighbours* (New Delhi, 2008).

[41] Lenin wrote: "[i]n the same way as mankind can arrive at the abolition of classes only through a transition period of the dictatorship of the oppressed class, it can arrive at the inevitable integration of nations only through a transition period of the complete emancipation of all oppressed nations, i.e. their freedom to secede". Vladimir I. Lenin, "The Socialist Revolution and the Right of the Nations to Self-Determination", Lenin, *National Liberation*, *Socialism and Imperialism – Selected Writings* (New York, 2002 [1968]), p. 114. Cited in Baburam Bhattarai, "The Question of Building a New Type of State", *The Worker* (9), 2004. For an excellent overview see Mukta S. Tamang, "Culture, Caste and Ethnicity in the Maoist Movement", in *Studies in Nepali History and Society*, vol. 11, no. 2 (December 2006). This does not mean that the Maoists actually expect secession; Lenin believed that – given the advantages of bigger states – secession is the less likely to happen the more firmly the right to secede is established. Rather, it allows for the elimination of inequality between nations. Lenin, "The Socialist Revolution and the Right of the Nations to Self-Determination", op. cit., p. 113.

[42] Baburam Bhattarai, links the emergence of the "question of nationalities" in Nepal to its semi-feudal structure and semi-colonial dependency and resulting regional exploitation: "Because those inhabiting backward and oppressed regions are often indigenous peoples, where there is confluence of common territory, language, economy, and culture, such regional oppression manifests itself as national oppression and in this way regional issues and questions of nationality become intertwined with each other". Baburam Bhattarai, "The Political Economy of the People's War", in Arjun Karki and David Seddon (eds.), *The People's War in Nepal: Left Perspectives* (New Delhi, 2003), p. 150.

[43] This view is put forward, for example, by Krishna Bhattachan, "Possible Ethnic Revolution or Insurgency in a Predatory Hindu state, Nepal", in Dhruba Kumar (ed.), *Domestic Conflict and Crisis of Governability in Nepal* (Kathmandu, 2000); and Mahendra Lawoti, "The Maoists and Minorities: Overlap of Interest or a Case of Exploitation?", *Studies in Nepali History and Society*, vol. 8, no. 1 (2003), pp. 67-97.

[44] Crisis Group interview, senior UCPN(M) leader, Kathmandu, December 2010.

[45] Anne De Sales, "The Kham Magar Country: Between Ethnic Claims and Maoism", op. cit., pp. 345-346.

[46] The two groups close to the Maoists were the Magarant Liberation Front and the Magar National Liberation Front. See Marie Lecomte-Tilouine, "Ethnic Demands within Maoism: Questions of Magar Territorial Autonomy, Nationality and Class", in Michael Hutt (ed.), *Himalayan People's War: Nepal's Maoist Rebellion* (London, 2004).

[47] Khambu is the term used by Rai ethnic activists to describe their group. The KRM was fighting for the establishment of a federal Nepal with an autonomous Khambuwan state. It described itself as an armed group, but their army, the Chomelungwa Brigade, probably consisted of no more than 100 untrained young men with a limited supply of firearms. Crisis Group interviews, Sunsari, Udaypur and Kathmandu, September-November 2010.

affiliating itself to varying degrees with the Maoists from 1997; its own small militia subsequently joined the Solu-Salleri Brigade of the People's Liberation Army. The relationship was difficult from the start. Despite incorporating ethnic demands into their ideological framework, the Maoists' class-based analysis clashes with the outlook of activists for whom ethnic or regional identity is valuable in its own right. Tensions resulted from the Maoists' reluctance to include non-communist ethnic activists in decision-making bodies. Anxious about being used, Gopal Khambu insisted they be included. Faced with Maoist foot-dragging, he disassociated himself several times. Only after he in 2002 set up the Kirat Workers Party, a decoy organisation, did the Maoists in July 2003 bring him into the Revolutionary People's Council, although not into the more important politburo.[48]

Similarly, in the eastern and central Tarai, backing for the Maoists was based on their support for regional autonomy. The area was of strategic importance to the insurgents from the beginning of the war, which explains their willingness to accommodate local demands.[49] But here as well the Maoists soon ran into difficulties with supporters motivated by a regional agenda.

Many of the Maoists' early leaders in the eastern and central Tarai were middle-caste Yadavs, who heavily relied on their own caste networks for organisational expansion;[50] rather than social transformation, the support of this powerful landholding group rested on their aspirations for regional autonomy.[51] Indeed, Maoist attempts to challenge the dominance of landlords and entrenched caste hierarchies in the Tarai put local leaders in an awkward position. Discontent with the low priority of Tarai autonomy in the Maoist movement and the limited role of Madhesis in the upper ranks of party and People's Liberation Arme (PLA) rose. From 2004, many key Madhesi leaders, and the cadres linked to them, left to form their own groups with a focus on autonomy. These leaders were to drive much of the movement for political recognition from 2006 to 2008.[52] As a result, Maoist influence in the Tarai weakened significantly.

The tension between fundamental ideological contradictions and dependency on locally influential groups of activists remains salient today. The fact that ethnic and regional leaders still see the Maoists as a potential alliance partner crucially depends on the latter's unambiguous commitment to federalism.

C. FEDERALISM AFTER THE PEACE DEAL

In November 2005, the Maoists and the alliance of seven democratic parties signed a twelve-point agreement to challenge royal rule together. A year later, after King Gyanendra had given up power, the Comprehensive Peace Agreement (CPA) ended the decade-long civil war.[53] It also began the process of institutionalising the idea of federalism at a time of rapid political change. The CPA called for a democratic restructuring of the state and social, economic and cultural transformation through the decisions of a constituent assembly. Maoist leaders now say the formulation implied federalism.[54] But ethnic and regional activist complained at the time that major issues had not been sufficiently addressed.[55]

On 15 January 2007, parliament passed the interim constitution. During the drafting process, Madhesi and *janajati* leaders within the UML and NC had unsuccessfully lobbied their respective parties for including an explicit commitment to federalism.[56] In the negotiations between the Seven-Party Alliance (SPA) and the Maoists, only the latter had raised the issue, but had quickly given in when

[48] Khambu played an important role for the Maoists in the eastern hills, for example negotiating access with reluctant local Limbu leaders in Ilam and Panchthar. Crisis Group interviews, senior UCPN(M) leaders, Kathmandu, October-November 2010.
[49] The Maoists used in particular the border districts of Siraha and Dhanusa to secure access to arms and ammunition and for training purposes. Crisis Group interviews, CPN(M) and UCPN(M) leaders, Siraha and Dhanusa, October 2010.
[50] Crisis Group interview, CPN(M) leader, Siraha, 26 October 2010.
[51] See Magnus Hatlebakk, "Economic and social structures that may explain the recent conflicts in the Terai of Nepal", CMI, 2007.
[52] See Crisis Group Report, *Nepal's Troubled Tarai Region*, op. cit., pp. 8-10.
[53] The seven-party alliance which signed the twelve-point agreement consisted of NC, UML, Nepal Sadbhavana Party (Anandi Devi), Nepali Congress (Democratic), Janamorcha Nepal, Nepal Workers and Peasants Party and United Left Front. See Crisis Group Asia Report N°106, *Nepal's New Alliance: The Mainstream Parties and the Maoists*, 28 November 2005. On the CPA see Crisis Group Asia Report N°126, *Nepal's Peace Agreement: Making it Work*, 15 December 2006.
[54] Crisis Group interview, senior UCPN(M) leader, Kathmandu, December 2010. The CPA's text said: "In order to end discriminations based on class, ethnicity, language, gender, culture, religion and region and to address the problems of women, Dalit, indigenous people, ethnic minorities (Janajatis), Terai communities (Madhesis), oppressed, neglected and minority communities and the backward areas by deconstructing the current centralised and unitary structure, the state shall be restructured in an inclusive, democratic and forward looking manner". CPA, Art. 3.5.
[55] Crisis Group Report, *Nepal's Peace Agreement: Making it Work*, op. cit., p. 13.
[56] Crisis Group interviews, Kathmandu, November 2010.

UML and NC negotiators dug in their heels.[57] As a result, the interim constitution reiterated the commitment to state restructuring but did not mention federalism.

This and an electoral system perceived as discriminatory sparked outrage among Madhesi activists. The Madhesi Janadhikar Forum (MJF) and the Nepal Sadbhavana Party (NSP) organised protests demanding the amendment of the interim constitution and the establishment of the entire Tarai as a single province. The protests quickly spread across the Tarai and turned violent, as Maoist cadres killed one Madhesi activist and the security forces shot dead more than 30 protestors and wounded 800. The blockade of key supply routes led to severe shortages and price hikes in Kathmandu.

On 31 January 2007, Prime Minister G.P. Koirala backed down and in a televised address guaranteed federalism and the redrawing of constituency boundaries. In a second address after a further week of protests, he promised representation of minority groups in elected state bodies and administration on a proportional basis.[58] Protests and violence persisted and only died down after the legislature-parliament on 12 April 2007 passed the 1st amendment to the interim constitution, which calls for the state to be restructured into a "democratic, federal system".[59]

A series of subsequent agreements between the interim government and agitating ethnic and regional activists reiterated the commitment to federalism and proportional representation.[60] The agreements are of limited legal consequence. "They were painkillers", said a legal expert. "Not treatments".[61] But they heightened expectations of *janajati* and Madhesi activists that federal provinces would be established along ethnic lines. Quotas were introduced for the CA elections as well as for administration and security forces.[62] When the interim constitution was amended a fifth time to say "[a]ccepting the aspirations of the Madhesis, indigenous nationalities, the marginalised and peoples from other areas for autonomous provinces, Nepal shall be a Federal Democratic Republic", the issue was sealed in the minds of many.[63]

[57] Crisis Group interviews, party leaders and civil servants, Kathmandu, November 2010. Senior Maoist leaders say the original formulation in Art. 138(1), "by eliminating the centralised and unitary form of the state, the state shall be made inclusive and restructured into a progressive, democratic system", implied federalism clearly enough. Crisis Group interview, Kathmandu, 2 December 2010.

[58] On the first Madhesi movement see Crisis Group Report, *Nepal's Troubled Tarai Region*, op. cit.

[59] Interim Constitution, Art. 138(1).

[60] An agreement between the interim government, NEFIN and the Indigenous Nationalities Joint Struggle Committee. "Agreement between the Government and Janajatis", 7 August 2007. Agreement between MJF and the government. "Agreement between the Government of Nepal and the Madhesi People's Right Forum, Nepal", 30 August 2007. Between the government and the Chure Bhawar Pradesh Ekata Samaj. "Agreement letter", 13 September 2007. The 28 February 2008 eight-point agreement between the government and the Samyukta Loktantrik Madhesi Morcha (SLMM) reiterated the commitments of the earlier 22-point agreement, adding group entry of Madhesis into the army and increasing the Madhesi quota for CA seats from 20 to 30 per cent. The 2 March 2008 agreement between the government, the Federal Limbuwan State Council (FLSC), the Federal Democratic National Forum (FDNF), the United Tharu National Front, the Dalit Janajati Party and the Tamangsaling Autonomous State Council promises Limbuwan, Khambuwan, Tharuhat and Tamangsaling autonomous states within a federal Nepal. The 19 March 2008 agreement between the government and the FLSC includes the formation of a Limbuwan state within a federal Nepal. All agreements are available on www.unmin.org in Nepali original as well as English translation.

[61] Crisis Group interview, Kathmandu, November 2010.

[62] For the CA elections, there were quotas for the overlapping categories of women, Madhesis, Dalits, "oppressed and indigenous", individuals from "backward region" and "others". For details see Crisis Group Asia Report N°149, *Nepal's Election and Beyond*, 2 April 2008. The August 2007 amendment to the Civil Service Act 2049 (1993) reserved 12.5 per cent of all open competition vacancies in the civil service for indigenous nationalities, 14.85 per cent for women, 9.9 per cent for Madhesis, 4.05 per cent for Dalits and 1.8 per cent for candidates from backwards regions. Civil Service (Second Amendment) Act, 8 August 2007. The November 2007 amendments to the Police Regulations 2049 (1992) and the Armed Police Force Regulations 2060 (2003) reserved 14.4 per cent of all open competition vacancies for indigenous nationalities, 12.6 per cent for Madhesis, 9 per cent for women, 6.75 per cent for Dalits and 2.25 per cent for candidates from backwards regions. Police (Twelfth Amendment) Regulations, 19 November 2007; Armed Police (Fourth Amendment) Regulations, 19 November 2007. According to the Army Act 2063 (2006) the Nepalese Army's makeup will have "national character". The fifth amendment to the Interim Constitution specifies that the entry of Madhesis, indigenous nationalities, Dalits, women and individuals from "marginalised areas" into the army will be ensured.

[63] Interim Constitution, Art. 138(1A).

III. THE POLITICS OF FEDERALISM

Ahead of the April 2008 polls, the political parties were almost unanimous in their public endorsement of federalism.[64] But of the major political groups, only the Maoists offered any details in their manifesto with a plan for thirteen federal units. Scant attention in other party manifestos hinted at the ambivalence behind the façade of support. The weak agreement on the issue emerged from bargains over what many leaders regarded as short-term deals to which they would not be held. The parties had done little to think through federalism and there had been next to no internal discussion in the NC or UML, which both have significant conservative fronts. Likewise, the parties were almost mute on the issue in their public activities.

The eleven thematic committees of the Constituent Assembly (CA) have prepared concept papers suggesting draft language for the final document. These papers all point towards a future federal system recognising ethnic and regional identities. But opposition has been building in the parties. This raises the question of whether their professed support will translate into action in the final votes on the constitution.

Should parties want to go back on their federalism promises, they would possibly face legal challenges.[65] But the more important questions are political. All parties – most of all the Maoists – are juggling ethnic claims internally. Ethnic and regionalist groups are eyeing the parties with suspicion and warn of revolt if federalism does not provide ethnic autonomy.

A. THE MAOISTS

The Maoists are the only main political party with a strong public commitment to federalism. Not only did they use it during the war to build support but they campaigned on it in the elections, giving more detail than others on how the system should work.

The Maoists' draft constitution envisages a federal structure with twelve provinces, established on the basis of "caste, language and region".[66] It also includes sub-units to provide autonomy to geographically concentrated ethnic or linguistic communities, to protect particularly small, marginalised or "endangered" groups, and develop "backward" areas.[67] Maoist leaders also openly say they endorse the right to self-determination (as in a right to secede) in principle but not in practice. Questioning the economic viability of breakaway states, they say secession has to be discouraged. Pointing out the risk that India and China could encourage secession, they argue for a strong central state.[68]

Accordingly, the division of powers is heavily tilted towards the centre; residual powers lie with the federal state.[69] Several provisions would allow extensive central control over provincial affairs. The most important example is the provincial chief as representative of the central government. Any provincial legislation and senior appointments including that of the elected provincial chief minister require his consent.[70] No effective provision binds the provincial chief to the provincial council of ministers;[71] but he can be dismissed fundamentally unchecked by the central president.[72]

Internally, there is less division over federalism within the Maoists than within other parties. There are no second thoughts on the issue itself, but concerns about the number of provinces do exist. Leaders of other parties say that both Prachanda and Baburam Bhattarai have spoken in favour of six provinces in private conversations.[73] Moreover, some leaders from the *janajati* and Madhesi communities are concerned that the leadership might be too

[64] Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 23.
[65] Analysts differ on the degree to which the parties are bound by their previous commitments as they draft the constitution. The interim constitution does in general appear not to bind the Constituent Assembly but lawyers differ over whether federalism may be an exception. Some lawyers say that the interim constitution cannot bind the CA as a sovereign body; nor do the agreements between the government and different agitating groups have legal force. Crisis Group interview, senior civil servant, Kathmandu, 26 November 2010. Others claim that the interim constitution binds the CA in this one respect, emanating from Art. 138. Crisis Group interview, constitutional expert, Kathmandu, December 2010.

[66] "Janatako sanghiya ganatantra Nepalko samvidhan", UCPN(M), 29 May 2010, Art. 62(1). The twelve provinces are: Limbuwan, Mithila-Bhojpura- Koch-Madhes, Kirat, Sherpa, Tamsaling, Newa, Tamuwan, Magarat, Lumbini-Abadh-Tharuwan, Karnali, Jadan and Khaptad. Ibid, Appendix 1.
[67] The three forms of "special structures" are "autonomous areas", "protected areas" and "special areas". Ibid, Art. 65.
[68] Crisis Group interview, senior Maoist leader, Kathmandu, December 2010.
[69] "Janatako sanghiya ganatantra Nepalko samvidhan", UCPN(M), 29 May 2010, Art. 66 and schedules 5-7.
[70] Ibid, Art. 95. The appointment of the chief minister is regulated in Art. 98.
[71] While Art. 95(2) states that "[g]enerally, the Provincial Chief shall, while exercising powers under this Constitution and the laws in force, exercise the powers on the advice and consent of the Provincial Council of Ministers", Art. 95(3) establishes an exemption, provided the provincial chief acts "on the recommendation of any other body or authority".
[72] The dismissal of the provincial chief is regulated in Art. 92(3) and 94(1(b)).
[73] Crisis Group interviews, Kathmandu, November-December 2010.

willing to compromise on federalism. The mostly Brahmin leadership of the party is sometimes seen as insufficiently enthusiastic; party leaders from the eastern hills say they have to remind them of the importance of the issue in sustaining grassroots support.[74]

Some minorities within the party are concerned for ideological reasons. For the Maoists, autonomy is a means to diminish inequality between ethnic groups; once this is achieved, they want ethnic sentiments to dissolve into a greater national identity. This sits uneasily with the views of ethnic activists, many of whom base their views in the global indigenous rights movement, under which culture and identity are valuable in their own right.[75]

The longstanding paternalistic undertones in the party line are a source of unease as well. The pre-1997 stance denied the right to self-determination with reference to the "low level of development of the nationalities". The new line to support self-determination in principle but not in practice suggests the change, rooted in ideological terms, is superficial. For many ethnic activists this is worrisome in combination with the Brahmin-dominated leadership of the Maoist movement. There is a tendency to liken ethnic groups to children that need supervision. "It must be clear that under any form of government, the centre would command the nation as a whole," said a Maoist supporter. "That is true in many other examples. The father rules the family, the principal the school".[76]

Their clear commitment to federal restructuring has brought the Maoists huge political benefits. It contributes to their image as a credible force for change. But it has also created vulnerabilities for the party. Now that Nepal is a republic and a secular state, the democratisation of the Nepal Army and federalism are the two major points remaining on the Maoists' short-term transformative agenda. Inability to deliver, particularly on the latter, is likely to cost them support and may challenge the unity of the party. The leadership still believes that it can force the other parties' hands on the issue. "The Maoists compelled them to accept it in the first place but their acceptance is fake," said a party leader in eastern Nepal. "It's the Maoists' duty now to drive the process".[77]

B. THE MAINSTREAM PARTIES

The two other major parties – the UML and the NC – support federalism but it evokes deep anxieties; many leaders are uncomfortable with the end of a unitary state. Both parties are infected by inchoate but sincere fears, centring on the possibility of a weakening national identity and the emergence of communal tensions. Elite groups control the parties and few of their leaders have much sense of the grievances felt by those who have endured discrimination. They have also been slow to recognise the deep failures of the political system in the 1990s when they held power.

As with the Maoists, the mainstream parties are under pressure from regional cadres who are trying to maintain support in areas where federalism is popular, particularly the eastern hills and the Tarai east of Chitwan. A Madhesi NC leader from the eastern Tarai said: "Even family members told me they couldn't vote for me because the NC can't guarantee Madhesi rights".[78]

Both UML and NC are aware of how much the Maoists have to lose if federal restructuring fails.[79] This may explain some of their foot dragging. But backtracking openly would be politically disastrous. A referendum or a deferral of a decision on the details of a federal system would be tempting and leaders increasingly discuss them as options.[80]

1. The UML: if you can't convince them, confuse them

Federalism had not been a policy goal of the UML prior to the Madhesi movement in 2007; the party had focused on decentralisation. The formal acceptance of federalism marked a fundamental shift in the UML's position on identity politics. In the years following its establishment in 1949, the Communist Party of Nepal (CPN) – the UML's precursor – had initially endorsed ethnic demands including the right to self-determination. But in ideological discussions, class-based analysis became predominant and ethnic activism was discouraged. Frustrated, many communist leaders from ethnic communities left the party and either focused on ethnic activism or started their own left-wing parties. Opposition to identity politics became more pronounced after 1990, when the UML endorsed the development of a "common Nepali culture"; it identified

[74] Crisis Group interview, UCPN(M) central committee member, 9 November 2010.
[75] See Mukta S. Tamang, "Culture, Caste and Ethnicity in the Maoist Movement", op. cit., pp. 294-295.
[76] Crisis Group interview, journalist, Birtamod, 20 September 2010.
[77] Crisis Group interview, UCPN(M) district in-charge, Sunsari, 16 September 2010.
[78] Crisis Group interview, October 2010.
[79] According to one daily newspaper, UML leader Bam Dev Gautam accused senior NC parliamentary leader and prime ministerial candidate, Ram Chandra Poudel, of suggesting to him personally to not write the constitution and blame it on the Maoists. "Emale pradhanmantri chayan hun nadine rananitima: Gautam", *Rajdhani*, 10 December 2010.
[80] Crisis Group interviews, Kathmandu, November 2010.

ethnic activism as reactionary and divisive and caste and ethnicity discrimination as amenable to class struggle.[81]

Since the first amendment of the interim constitution made it necessary to develop a position on federalism, the UML has skilfully avoided taking actual decisions beyond broad endorsement. Before the CA elections, a concept paper endorsed by the central committee of the UML accepted federalism and formed the basis for the party's position in the election manifesto.[82] It then took three further committees to develop a position for the CA state restructuring committee, envisaging fifteen states to be formed according to wide-ranging criteria.[83] UML CA members in the state restructuring committee allied with the Maoists on the delineation of provincial boundaries: while the Maoists retracted purely identity-based provinces, the UML accepted a limited role for language and ethnicity.[84]

The position endorsed in the concept paper likely does not reflect a wider consensus among senior leaders in the party. Negotiations in the CA restructuring committee were driven by leaders favouring federalism on the basis of ethnic identity, such as Mangal Siddi Manandhar and Ram Chandra Jha. There is little open opposition to federalism in the UML.[85] But there are clear differences between the two main UML factions. Party chairman Jhalanath Khanal and those close to him have shown a level of commitment to federalism by writing about it in party documents and other publications.[86] Leaders Madhav Nepal and K.P. Oli, in contrast, rarely speak about the topic and only in the vaguest terms when they do.[87]

The vocal supporters of ethnic federalism within the UML are mostly from *janajati* or Madhesi backgrounds. They doubt senior leaders' public commitment to federalism is genuine. They accuse them of dragging their feet by avoiding specific commitments and conspiring with conservative NC leaders to dilute federal restructuring.[88] "They can't backtrack", said a UML CA member. "But they want semi-federalism and they don't want states based on ethnicity".[89]

The UML's public image as anti-federalist embarrasses local leaders in areas with strong support for ethnic and regional autonomy. Particularly in eastern Nepal, they are struggling to retain cadres drawn to ethnic and regionalist

[81] Mukta S. Tamang, "Culture, Caste and Ethnicity in the Maoist Movement", op. cit. The Sixth National Congress of the UML in 1998 produced a policy specifically dealing with identity politics. It approvingly noted a trend of cultural and linguistic homogenisation as necessary steps towards the formation of a Nepali nation. It further criticised ethnic and regionally based organisations as divisive and demands for ethnic autonomy and federalism as threatening to Nepal's territorial integrity. "Jati, bhasa, dharma ra samskriti sambandhi hamro niti", CPN(UML), undated. A document passed at the UML's Seventh National Congress in February 2003 was more ambiguous. It acknowledged ethnic inequality, but maintained that it is amenable to class-based policies. It also indirectly criticised the Maoists' policy of establishing autonomous regions. "Rajnitik/sangathanatmak prativedan", CPN(UML) central office, March 2003.

[82] The paper was drafted by a committee led by Shankar Pokharel. Crisis Group interview, UML CA member, Kathmandu, November 2010. The UML's CA election manifesto stressed the primacy of class struggle and described ethnic and regional grievances as its derivatives. It proposed a federal system with centre, provinces and local bodies. Provinces were to be formed according to factors ranging from geography to cultural distinctiveness. "Samvidansabha nirvachan chaitra 28, 2064 nekapa (emale) ko ghoshanapatra", UML Central Committee, 2008.

[83] Crisis Group interviews, Kathmandu, November 2010. A policy report passed at the UML's eighth national congress described federalism, in combination with reservations and positive discrimination, as means to address the grievances of marginalised groups. At the same time, the report reiterated the primacy of class-struggle and accused reactionary forces of abusing ethnic and regional sentiments. "Nepal communist party (ekikrit marxbadi-leninbadi) ko athaun rashtriya mahadhivesan (5-14 Falgun 2065, Butwal) dvara parit rajnitik prativedan", UML central office, August 2009. The concept paper said provinces should be based both on identity and viability, further breaking down the former into ethnicity, language, culture, geography, and historical continuity, and the latter into economic interrelationship and viability, condition and possibility of developing infrastructure, availability of natural resources, and administrative access. "Nekapa (emale) dvara prastut rajya punasamrachanako khakako prarambhik prastav", UML, undated.

[84] Crisis Group interview, journalist, Kathmandu, 24 November 2010.

[85] Within the party itself, it mostly comes from the fringes. One example is Dr Pushpa Kandel, who in a publication prepared for the UML's eighth national congress labelled federalism as divisive. "Nekapa (emale) ko athaun rashtriya mahadiveshanma prastut mahasachivko prativedanko sanghiyatasambandhi vishayama pharak mat", Dr. Pushpa Kandel, 14 February 2009. But some influential supporters are openly opposed to federalism as well. For example, the editors of *Dristhi* and *Janaastha*, two weekly newspapers close to the UML are both members of the RJM's joint anti-federalism front.

[86] For example, Jhalanath Khanal presented a policy report including a section on state restructuring at the party's eighth national congress. "Nepal communist party (ekikrit marxbadi-leninbadi) ko athaun rashtriya mahadhivesan (falgun 5-10 2065) Butwalma prastutgarine rajnitik prativedan", UML central committee, 25 January 2009.

[87] K.P. Oli, for example, has expressed openness to the possibility of a referendum on federalism. "UNMIN- the white elephant in Nepal: K.P. Oli", telegraphnepal.com, 10 January 2010.

[88] Crisis Group interview, UML CA member, Kathmandu, 25 November 2010.

[89] Crisis Group interview, UML CA member, Kathmandu, 24 November 2010.

organisations.[90] "People want federalism more than anything else right now", said a UML leader in the eastern Tarai. "This boils down to the struggle for rights. The public hasn't really discussed the specifics but people want equality and an end to discrimination – and they think the only way to achieve this is federalism".[91] At the same time, some are wondering whether stalled progress on federalism could be an advantage. The same leader continued: "The most contested issues in the CA right now are 'one Madhes one province' and ethnic federalism. This affects the Maoists the most because they have publicly committed to it. So they will face the most trouble if they can't deliver".[92]

2. The Nepali Congress

As with many key decisions, then Prime Minister G.P. Koirala committed to federalism without much consultation with his party. The question was never formally discussed by the central committee.[93] In fact, like many NC leaders, the late G.P. Koirala had been "dead against federalism".[94] When he conceded to the Madhesi parties' demand to declare Nepal a federal state, some senior leaders only learned about it from his televised address to the nation.[95]

The NC included the call for federalism in its CA election manifesto. It affirmed the transformation of Nepal into a federal state but remained vague on how autonomous provinces would be formed.[96] In private, G.P. Koirala has continued to speak of turning the five existing development regions into provinces.[97] The manifesto did not suggest an exhaustive catalogue for the division of powers.[98] The most lucrative taxes would be collected by the centre.[99] The manifesto committed to proportional representation and positive discrimination for marginalised groups, without providing further details.[100]

A concept paper of February 2009 contained models for both six and thirteen states, the former based on "resources and viability" and the latter on "identity and the protection of representation with special focus on linguistic and cultural specialities".[101] The NC's proposed constitution of May 2010 decided in favour of the six provinces model, two of them pure Tarai provinces but all of them with at least some access to the southern border.[102]

The development of the NC's position on federalism within the party as well as the state restructuring committee was largely driven by a small group around Narahari Acharya, a central working committee member known for favouring federalism. But the shift in official position did not change broader Congress thinking. Its leaders still oppose federalism in private.[103] The large conservative section of the senior NC leadership complains that federalism has been accepted with insufficient discussion. They concede that federal restructuring is now unavoidable, but insist that it must not take place on the basis of language and ethnicity and warn against more than five or six federal provinces.[104]

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[90] Crisis Group interview, UML district secretary, September 2010.
[91] Crisis Group interview, UML district leader, Siraha, 27 October 2010.
[92] Ibid.
[93] Crisis Group interview, NC central committee members, October-November 2010.
[94] Crisis Group interview, NC central committee member, 24 October 2010. On the debate over state-restructuring in the NC in early 2007 see Crisis Group Report, *Nepal's Constitutional Process*, op. cit., p. 15.
[95] Crisis Group interview, NC central committee member, October 2010.
[96] By inclusion rather than omission: "The creation of provinces will be based on the principles of national integrity, geographic viability, population size, natural resources and prospects, interrelation among the provinces, linguistic, ethnic and cultural affinity, and political and administrative feasibility. The creation of these provinces will also respect the unique character of indigenous Janajati, Madhesi, Dalit and other groups living across Tarai, Hills and Himali regions". "Samvidhan nirvachan 2064 Nepali Kangresko ghoshana-patra", NC central publishing committee, 10 March 2008, p. 12.
[97] Crisis Group interview, NC central working committee member, October 2010.
[98] "In dividing the powers, foreign affairs, monetary policy, national security and important inter-provincial issues such as air transportation, highways and large hydropower will be with the centre and other political, economic, social, cultural and lingual rights along with agriculture, forestry, education, health, employment and other issues will be under the control of the provincial and local governments". "Samvidhan nirvachan 2064 Nepali Kangresko ghoshana-patra", NC central publishing committee, 10 March 2008, p. 12.
[99] VAT, income tax, excise and unspecified "others". Mentioned for provincial and local revenue collection are land tax, property tax and vehicle registration fees. Ibid.
[100] Ibid, p. 13.
[101] "Constitutional concept paper: the structuring of the federal republic of Nepal", NC, 26 February 2009. The paper was prepared by a committee of 25 NC CA members, chaired and presented by Narahari Acharya.
[102] The province names are Karnali, Lumbini, Gandaki, Sagarmatha, Simraunagadh, Sirijunga. The proposed constitution also suggests a unicameral provincial parliament which elects a chief minister by majority, and a bicameral system at the centre. "Proposed constitution of Nepal (Summarised features)", NC, 28 May 2010.
[103] Crisis Group interview, NC central committee member, 24 October 2010.
[104] Crisis Group interview, NC central committee member, 25 November 2010. See for example Ram Sharan Mahat, "Challenges of federalism", myrepublica.com, 17 and 18 August 2009.

The more progressive wing of the party around Acharya, sees the electoral risks of ignoring the issue. They are frustrated with the NC's reactive stance towards federalism and press for developing a vision of their own. Even this group is not keen on ethnic federalism, preferring geographic divisions that ignore cultural boundaries. "If you want to de-link federalism from ethnicity, you need to link it with development," said a central committee member. "You can't just be silent. You need to lead the debate …. We need to say it loud and clear: we are for federalism".[105]

These divisions run right through to the party base, often along ethnic lines. Many district leaders from hill Brahmin and Chhetri backgrounds warn against ethnic federalism. In the Tarai, many non-Madhesi NC officials were dismayed by the movement for Madhesi rights but realise that they cannot openly oppose it. They may grumble in private about "giving citizenship to Indians" but they also know that they have to "speak the local political language", as one cadre put it.[106] In contrast, many local leaders from indigenous and Madhesi backgrounds are ardent supporters of ethnic federalism. They often maintain extensive links with ethnic and regional activists. Many threaten to abandon the party should ethnic or regional autonomy not materialise.[107]

C. Ethnic and Regional Activists

As ethnic and regional activists have begun to lose their confidence that the constitution drafting process will implement federal restructuring, some have started to prepare for the struggles ahead.[108]

In terms of public support for identity-based federal states as well as organisational capacity of ethnic and regionalist movements, eastern Nepal stands out. Support is most widespread among Limbus in the eastern hills. Across the Tarai, support in general is particularly high and explicit opposition to federalism particularly low among Madhesis and Tharus.[109]

1. Eastern hills

There are two broad autonomy movements in the eastern hills. Limbu activists claim a Limbuwan state in Nepal's easternmost districts along the Indian border. Rai groups demand a Khambuwan state to the west of Limbuwan, although the borders of the states that both groups demand overlap. Nationally Limbus make up 1.4 per cent of the population and Rai 2.6 per cent. Limbus are the largest single group in only three districts of the nine that make up the area they describe as Limbuwan. Rai are the largest group in five districts. Neither group is the majority in any district.[110] The two ethnic groups are similar in culture and religion, and intermarriages are frequent.[111]

Limbuwan. The most active Limbuwan groups are the three factions of the Federal Limbuwan State Councils (FLSC). The FLSC was established in December 2005, with Sanjuhang Palungwa as its first president. The first, and more significant, split occurred in early 2008 over the question of participating in the CA elections. FLSC leader Kumar Lingden decided to contest the elections under the umbrella of the Federal Democratic National

[105] Crisis Group interview, NC central committee member, 24 October 2010.
[106] Crisis Group interview, NC district leader, Birgunj, 7 October 2010.
[107] Crisis Group interviews, Saptari, Siraha, Panchthar, October-November 2010. An NC leader in an eastern hill district, who had already left the party to join the KRM, had returned after he was offered district committee membership before the September 2010 NC general convention. However, he still complained about the difficulty of bringing federalism on the agenda for intra-party discussions. Crisis Group interview, November 2010.
[108] The rare instance of open high-caste chauvinism hardly lowers suspicions. Ethnic activists still discuss articles and pamphlets from the 1990s. For example, a pamphlet stating it must only be distributed among Brahmins and Chhetris notes with consternation the rising political awareness among *matwalis* (an old-fashioned and now rather derogatory term for ethnic groups who traditionally drink alcohol) in Nepal and Sikkim. Asserting "our birthright, which is to rule", it calls for unity to maintain high-caste domination and for slandering aspiring "matwali" leaders as "racist, treacherous, immoral, anti-social and corrupt" in order to undermine their support. "Gayatri-Mantra 3", Taghadari Surakshya Samaj, 1992. Less secretively, a magazine article titled "Mongols are the Avatars of evil", accuses Nepal's ethnic groups of planning to capture the state. Depicting *janajatis* as unpatriotic, barbaric drunkards, it declares them unfit for any kind of political leadership. "Mongolharu rakshaska avatar hun", *Nava Smriti Masik Patrika*, Issue 2, 1999.
[109] According to a 2009 survey by Interdisciplinary Analysts, only 13.9 per cent of the overall population supports ethnic federalism. This number is significantly higher for Limbus, at 42 per cent. Among Madhesis and Tarai *janajatis*, only 16.6 per cent oppose federalism. But there are marked variations; the largest percentage of Madhesis support one state spanning the entire south of Nepal, to which there is a high degree of opposition among Tharus particularly in the western Tarai. See "Federalism and Constitutional Issues in Nepal: Perspectives from the Local Level", The Carter Center, 22 February 2010, pp. 8-10.
[110] Pitamber Sharma, *Unraveling the Mosaic*, op. cit., p. 17.
[111] Kirati is an overarching ethnic category; of the number of groups it encompasses, Limbus and Rais are by far the largest. Dor Bahadur Bista, *People of Nepal* (Kathmandu, 2000[1967]). Rais in turn consist of at least fifteen linguistically distinct groups. Martin Gaenzle, *Origins and Migrations: Kinship, Mythology and Ethnic Identity among the Mewahang Rai of East Nepal* (Kathmandu, 2000), p. 2.

Forum (FDNF).[112] Later, FLSC(Palungwa) leader Misekhang and a number of cadres decided to establish the FLSC(Revolutionary). This group is much smaller than both FLSC(P) and FLSC(Lingden) and is often considered politically less sophisticated.

In the beginning of 2010, the FDNF split when Tharu leader Laxman Tharu together with several important FLSC(L) leaders registered the Federal Democratic National Party (FDNP). Leaders of this new party accuse Lingden of prioritising Limbu issues over the FDNF's national agenda.[113] In the meantime, there has been rapprochement between Lingden and Palungwa, who say they have come close to an agreement on reunification.[114] There are no significant differences over policy; the main obstacle to reunification appears to be disagreement over leadership positions.

What they want: Limbuwan groups cite the autonomy provisions in past royal decrees as proof of the prior existence of a Limbuwan polity and as an argument for an autonomous state with the right to self-determination.[115] The FLSC(L) and the FLSC(P) lay out their visions of this future state in detailed policy documents.[116] Both demand a Limbuwan autonomous state comprising the nine easternmost districts within a federal Nepal. They demand a high degree of autonomy. Federal states are to have the right to write their own constitutions; only defence, foreign affairs and monetary policy are to be under exclusive jurisdiction of the centre.

Both want substantial privileges for *adivasis* – by which they basically mean Limbus – in Limbuwan.[117] In the political and economic domain, both want a 50 per cent reservation for *adivasis* in the state legislature, Lingden also for the provincial council of ministers. Palungwa envisions an all-indigenous upper house, with veto-rights for state legislation and the use of natural resources. They also demand privileged rights to natural resources traditionally used by indigenous people, but do not specify details.[118]

Level of support: There appears to be widespread support for a Limbuwan state among Limbus in the eastern hills.[119] At the heart of the Limbuwan claim lies a sense of a shared history of discrimination by the Nepali state. The independence of pre-"unification" Limbu kingdoms and the autonomy status granted by Prithvi Narayan Shah are widely debated among Limbus. The loss of land to high-caste settlers still fuels a sense of injustice, but is no longer a direct source of grievances.

Today's claims are mostly about cultural issues and the end of direct rule by Kathmandu-based high caste elites, whom many perceive as neglectful at best and hostile at worst towards Limbus and their culture. "The support we have here comes from the realisation deep inside that we have lost our rights and are prevented from practising our culture", said a young activist. "The politics of identity guide us in this movement, not the politics of Marxism or capitalism. We believe identity politics is the stronger form of politics".[120] When asked what they want to see come of a Limbuwan state, many focus not just on having a less remote government but on recognition of their culture, language and religion in particular.

The appeal of Limbuwan cuts across party affiliation; at the village level there appears to be near unanimity among people of diverse political affiliation. Even longstanding NC members are keen supporters.[121] It is this that gives the movement strength, rather than its organisation.

Organisational Capacity: Of the three main groups, the FLSC(P) and FLSC(L) have the strongest presence in the eastern hills. Both have district committees in all nine districts of their proposed Limbuwan, and village committees in many of the Village Development Committees (VDCs).

Each group has a youth wing called the Limbuwan Volunteers (LV), which they say provides security for their organisations. But the LVs also represent what activists

[112] The FDNF was established in December 2005, with Palungwa as president and Lingden as general secretary. Tharuhat Autonomous State Council leader Laxman Tharu also contested the CA elections under the umbrella of the FDNF. It was registered as a political party on 18 January 2008.

[113] Crisis Group interview, FDNP central leader, Kathmandu, December 2010.

[114] Crisis Group interview, FLSC(L) district leader, Kathmandu, December 2010.

[115] Sanjuhang Palungwa, *Terhathume Dhaka Topi Modelma Limbuwan Swayata Rajyako Khaka* (Biratnagar, 2009).

[116] For the position of Sanjuhang Palungwa's FLSC see ibid. For Lingden's position see "Sanghiya loktantrik ganatantra Nepal antargat Limbuwan swayatta rajyako samvidhan 2067", FLSC, 25 July 2009; "Sanghiya loktantrik ganatantra Nepalko samvidhan 2067", FDNF, 1 April 2009. Misekhang's group does not have any policy document.

[117] Neither document defines what the term *adivasi* means in Limbuwan, but for both Palungwa and Lingden, it basically encompasses Limbus plus several other smaller *janajati* groups which will not have their "own" state in federal Nepal. Crisis Group interviews, FLSC(L) and FLSC(P) leaders, December 2010.

[118] Some of the ambiguity in their documents results from borrowing language from international indigenous rights documents, which are often ambiguously worded themselves. Parts of the FDNF's manifesto, particularly those pertaining to self-determination and privileged access to resources, are either directly copied (and translated) from the UN Declaration on the Rights of Indigenous Peoples, or closely mirror its language

[119] See footnote 109.

[120] Crisis Group interview, FLSC(L) district spokesperson, Dharan, 14 September 2010.

[121] Crisis Group interviews, Panchthar, November 2010.

hope will be the core of a Limbuwan security structure once the state is set up. Activists say there are thousands of LVs with one FLSC(P) district organiser in Panchthar claiming around 5,000 in each of the nine districts of the proposed Limbuwan. This is almost certainly an exaggeration; membership is not clearly defined. Organisers say that all have received some sort of training but admit they are unarmed. Nevertheless, the volunteers have a presence across villages in the eastern hills.[122]

There is also the ominous suggestion that the LVs will ensure the Limbuwan state is actually established. If federalism does not come, they have the potential to be organised into a fighting force. Activists stress that many retired members of the British and Indian Gurkhas live in the area and support Limbuwan. They would bring military knowledge and discipline to the movement.

The involvement of both LV wings in extortion has attracted many who are less interested in Limbuwan than in material gain. Other cadres are genuinely dedicated to the cause. Many young supporters come from educated backgrounds and are well versed in the party line. Almost all senior leaders have had long political careers, many of them as central leaders of the Rashtriya Janamukti Party or in the middle ranks of the UML. Possibly realising the need to develop a wider support base, Palungwa's LVs appear to be undergoing reform. Local observers say their involvement in criminal activities has diminished.[123]

Communal Tensions: Many supporters of Limbuwan are quick to say that the state will treat all residents equally. The language of inclusion has permeated political life in Nepal in recent years and most activists know it would be unacceptable to push too aggressively for an exclusive ethnic agenda. They recognise that Limbus will be a minority in Limbuwan and that they cannot afford to alienate other communities.

Nevertheless there is considerable anxiety among Brahmins and Chhetris about possible future discrimination. There are signs communal tensions have increased. In Taplejung there is open hostility from Limbus towards their Brahmin neighbours; there have been threats and physical assaults. In several VDCs in Taplejung, either all or the vast majority of Brahmins left after 2000, when the war started in the eastern hills. In one VDC for example, none of the 50 Brahmin households which existed in 1990 remains today, and most of their land is now owned by Limbus.[124] Tensions in Panchthar are more implicit, but have nevertheless prompted many Brahmins and Chhetris to sell their property and migrate to the Tarai.[125] Anxieties are based less on actual violence, than on an underlying hostile atmosphere and occasional threats.[126]

Khambuwan. The most important groups in the Khambuwan area of the eastern hills are the KRM and the Kirat Janabadi Workers Party (KJWP). The KRM consists of leaders and cadres who did not follow Gopal Khambu when he joined the Maoists. It is led by R.K. Khambu and Indrahang Khambu, both of whom have been with the KRM since its inception in 1992. They insist that they are no longer an armed movement, since the government in the March 2008 five-point agreement conceded the establishment of a Khambuwan state.[127]

The KJWP, describing itself as an underground armed group, was formed in 2007 by former KRM cadres who had broken with the Maoists (after previously having joined them together with Gopal Khambu). After two splits in 2009 and 2010, the KJWP is now led by Binod Rai ("Biswas Bidrohi"). Former leader Nabin Kirati has joined the FDNP and is now its vice-chairman. Binod Rai's brother Ananta Kranti has formed the Samyukta Jatiya Mukti Morcha.

What they want. The KRM demands a Khambuwan state in a federal Nepal.[128] There is no reference to special rights for Rais in their documents; rather, they demand proportional representation in the state government. The division of powers is tilted towards the federal units; only foreign affairs, monetary policy and defence are to be handled by the centre.[129] The KJWP wants a single Kirat state for the Limbuwan and Khambuwan areas, encompassing districts east of Ramechhap. They also demand proportional representation in all state organs.[130]

[122] Crisis Group interviews, Sunsari, Jhapa, Panchthar, September and November 2010.
[123] Crisis Group interviews, Jhapa, September 2010. On the involvement of the LVs in criminal activities see Crisis Group Report, *Nepal's Political Rites of Passage*, op. cit., pp. 14 and 17.
[124] Crisis Group interview, NC district leader from Taplejung, Kathmandu, October 2010.
[125] "Fear makes non-Limbus sell out, flee villages", myrepublica.com, 30 May 2010. According to a news article, the number of non-Limbus selling their land more than doubled after the end of the war, from 1,294 in 2004/2005 to 2,253 in 2006/2007 and 2,933in 2008/2009. "Ethnic violence stokes fear among non-Limbu", myrepublica.com, 5 June 2010.
[126] Crisis Group telephone interview, journalist, December 2010.
[127] Crisis Group interview, KRM leaders, Dharan, September 2010.
[128] Encompassing Udaypur, Khotang, Bhojpur, Dhankuta, Solukhumbu, Sankhuwasabha, Okhaldhunga, Ramechhap, Sindhuli, Dolakha, Saptari, Sunsari, Siraha and parts of Sarlahi, Mahottari, Dhanusa and Morang. "Khambuwanko rajnaitik prastav", KRM, 2010.
[129] "Khambuwan Rashtriya Morcha, vidhan-2009", KRM, 2009.
[130] Crisis Group telephone interview, KJWP leader, September 2010.

Level of support. The main aim of the Khambuwan movement, an autonomous state, appears to enjoy widespread support among Rais in the eastern hills. This may have more to do with longstanding sentiment than with active mobilisation; there has been little campaigning by either the KRM or the KJWP. Residents do not necessarily have a precise idea about what an autonomous province would look like or follow a party line; some are, for example, agnostic about whether autonomy will come in the shape of Khambuwan or a larger Kirat state. The demand for autonomy has more to do with concerns about the influence of Hinduism and the loss of Kirati culture (language in particular) than with economic opportunity and resource access.[131] Local Rai elites, even though they may officially belong to major political parties, often actively support the Khambuwan movement.[132]

This has not translated into militancy. Both KRM and KJWP are single-issue groups. Given the formal endorsement of federalism along ethnic lines in the interim constitution, they will have difficulties mobilising people as long as there is some confidence in the constitutional process. A teacher in Khotang said: "If the new constitution addresses these issues, then the KJWP has nothing to mobilise on. But if the country continues like this in a limbo then there are good chances they could".[133]

Organisational capacity. The KJWP draws strength less from a widespread base of cadres than from a tight-knit network at its core. Most of its top leaders are related and hail from the same village in northern Udaypur; so do most of their militia.[134] Although the KJWP established some presence in other eastern districts such as Jhapa, their influence remained limited to northern Udaypur and Sunsari and southern Khotang and Bhojpur. After splits and the spate of arrests earlier in 2010, it is hard to assess the KJWP's capacity.[135] Only Binod Rai and his sister Mina Rai remain of the original KJWP leadership. Their brother Hangsa Kirati was arrested. Nabin Kirati is now vice-chairman of the FDNP, several other cadres have also joined.

The KRM maintains offices at district and village levels in a number of districts and has a network of experienced leaders in their core districts.[136] They also say they have transformed part of their militia into a politically trained volunteer force for outreach campaigns.[137]

Longstanding networks between Khambuwan activists may prove more important than factions and individual affiliation. Many have shared parts of long political careers; strong personal, sometimes kinship, ties cut across organisational boundaries. There is much interaction on a personal level. Certain places, Dharan, Birtamod and some villages such as Beltar in northern Udaypur, are hubs for activists.

Communal tensions. Residents in the Khambuwan areas note underlying communal tensions although there are no pervasive reports. A government official in Bhojpur spoke of tensions between "sharp-nosed and flat-nosed" (expressions for hill Hindu caste groups and *janajatis*, respectively) within the Maoists.[138] A Chhetri in Khotang said villagers had harassed their Brahmin and Chhetri neighbours after encouragement from the KJWP some four years ago.[139]

Relations between Limbuwan and Khambuwan groups. Among activists, mistrust towards the constitutional process is huge. Leaders of almost all Limbuwan and Khambuwan organisations do not expect their demands to be met, even if the constitution is written. Their eyes are on the 28 May 2011 deadline, after which they expect conditions conducive for mobilising wider support. There is a real sense of urgency that there is a limited window for pressing ethnic demands. Referring to the NC's 2009 introduction of quotas for its party organisation, a Khambuwan leader expressed concerns that limited concessions by the major parties will threaten the movement's cohesion.[140] Indeed the question in the east – as it has been in the Tarai – is whether the movement can reach the tipping point at which like-minded leaders of major parties will defect.

Ultimately, organisational boundaries may be of limited importance. Leaders of Khambu, Limbu, Tharu and Tamang groups maintain close personal ties and understand themselves as parts of a joint movement. Besides the major organisations, a growing network includes influential individuals from *janajati* backgrounds previously affiliated with other parties, underground leaders and small groups of former Maoist combatants. Short of a joint

[131] Crisis Group interviews, Udaypur and Khotang, November 2010.
[132] Crisis Group interviews, Bhojpur, January 2010.
[133] Crisis Group interview, teacher, Khotang, November 2010.
[134] Crisis Group interviews, Udaypur, November 2010.
[135] See Crisis Group Report, *Nepal's Political Rites of Passage*, op. cit., fn. 101.
[136] KRM leaders say they have both district and village committees in Bhojpur, Khotang, Sunsari and Udaypur and district committees in Dhankuta, Sankhuwasabha, Ramechhap, Solukhumbu and Okhaldhunga. Crisis Group telephone interview, December 2010.
[137] Crisis Group interview, KRM leaders, Dharan, September 2010.
[138] Crisis Group interview, Bhojpur, January 2010.
[139] Crisis Group interview, Khotang, November 2010.
[140] Crisis Group interview, Kathmandu, December 2010.

strategy, there are intense discussions about the effectiveness of peaceful agitation.[141]

2. Eastern and central Tarai

The population of the eastern and central Tarai is dominated by plains origin Madhesis. Most Madhesis are caste Hindus who speak plains languages close to Hindi and have extensive economic and social ties across the border in India. Nepalis from the hills and those who dominate the state have long suspected that their loyalties also lie across the frontier. Madhesis had long complained about underrepresentation, discrimination by state policies on citizenship, language and revenue distribution, and state sponsored migration of hill communities to the Tarai.[142] Longstanding grievances broke into several week long protests in 2007 and 2008.

The Madhesi movement has now lost much of its momentum.[143] Participation in the movement in 2007 and 2008 cut across class and party lines and was rooted in a widespread sense of discrimination. Since the first movement in 2007, the government has introduced measures to address some of the issues. Constituency boundaries were redrawn in June 2007 to ensure greater representation. Madhesis, long denied citizenship, have been granted full rights. Many say the attitudes of a previously hostile bureaucracy have changed significantly.

The major actors in the movement are five Madhesi parties represented in the CA. The MJF(Democratic), the Sadbhavana Party and the Tarai Madhes Democratic Party (TMDP) are in government;[144] the MJF(Nepal) led by Upendra Yadav and the Nepal Sadbhavana Party (Ananda Devi), NSP(A), remain in the opposition. The Tarai armed groups show no signs of overcoming their extreme fragmentation or recovering a political agenda.[145]

The central demand of all five major Madhesi parties is a single Tarai province spanning the entire south of Nepal.[146] MJF(L) and both Sadbhavana Party and NSP(A) explicitly mention sub-divisions.[147] Differences on the division of powers are minor; all Madhesi parties envisage strong provinces.[148] There is similar convergence on the language question; all the parties want Hindi to become a second official language at the centre.[149]

The demand for one Madhes is a maximalist demand, and Madhesi leaders privately say they are willing to compromise on it. "Publicly we demand one Madhes", said a Madhesi leader in Nepalgunj. "But in the party we know that like this we will get at least three or four. The only thing we are firm about is that it has to be east-west, not north-south. That would just perpetuate the old exploitation".[150]

The sense of disillusionment with the leadership of the Madhesi parties is tangible in Siraha and Saptari, core districts of the 2007 and 2008 movements. Many Madhesis feel ill represented by their leaders in Kathmandu and complain there have been few tangible benefits on the

[141] Crisis Group interviews, Kathmandu, November-December 2010.
[142] See Crisis Group Report, *Nepal's Troubled Tarai Region*, op. cit., p. 2-6.
[143] On the movement in 2007 see Crisis Group Report, *Nepal's Troubled Tarai Region*, op. cit.; on the second movement see Crisis Group Report, *Nepal's Election and Beyond*, op. cit.
[144] The status of the TMDP is unclear. Party leader Mahendra Yadav on 31 December 2010 registered a new party, the TMDP(Nepal), which includes nine of the TMDP's CA members, two of them cabinet ministers. The TMDP's remaining four ministers then tendered their resignation, which has not yet been accepted by caretaker prime minister Madhav Nepal.
[145] On the Tarai armed groups see Crisis Group Report *Nepal's Political Rites of Passage*, op. cit., pp. 14, 17, 18.
[146] "Samvidhan sabhako nirvachanko lagi Madhesi Janadhikar Forum, Nepalko ghoshanapatra – 2064" 16 March 2008, MJF central office, Birgunj, p. 10; "Madhesi Janadhikar Forum, Nepal ko rajnitik dastavej", MJF(N) central office, 17 January 2009, p. 6; "Avadharana Patra", MJF(L), undated; "Sadbhavana Party dvara prastut sanghiya loktantrik ganatantra Nepal ko samvidhanko avadharana", Sadbhavana Party Central Office, 2 April 2009, p. 7; "Ghoshana Patra", TMDP Central Office, undated, p. 4.
[147] The MJF(L) wants an autonomous Madhesi province with two sub-provinces (Eastern and Western) in lieu of the demands of the Tharu community. "Avadharana Patra", MJF(L), undated. The map submitted to the CA state restructuring committee by the NSP(A) divides the Madhes region, spanning the entire south of Nepal, into five sub-regions.
[148] The MJF(N) wants provincial authority over any matter not explicitly under the centre. The MJF(L) wants several issues (such as language policies, citizenship and peace and security) to be handled jointly by central state and provincial levels.
[149] The NSP(A) wants Hindi declared an official and national language. "Nepal Sadbhavana Party (A) Appeal", NSP(A), July 2009. The MJF(N) and MJF(L) both demand at least two official languages at the centre and the authority for provinces to appoint their own official languages. "Madeshi Janaadhikar Forum, Nepal ko Rajnitik Dastavej", MJF(N) Central Office; "Madheshi Jana-Adhikar Forum, Nepal (Loktantrik) ko Ghoshana Patra", MJF(L), Central Committee. Sadbhavana Party demands official language status for Hindi alongside Nepali and a trilingual policy in the provinces where Nepali, Hindi and a provincial mother tongue are used officially. "Sanghiya Loktantrik Ganatantra Nepal ko Samvidhanko Avadharana", SP, 2 April 2009. The TMDP demands a trilingual policy on both central (Nepali, Hindi, English) and provincial (Nepali, Hindi, provincial mother tongue) levels. "Vartaman rajnitik sthiti – hamro dharana, hamro disha", TMDP, undated.
[150] Crisis Group interview, July 2010.

ground. Ministers from Madhesi parties are accused of blatant self enrichment.[151] "We took part in the Madhesi uprising. The leaders had told us to participate and that we would get our rights; we hoped that our situation would improve, but nothing happened", said a Dalit villager in Siraha. "The leaders went to Kathmandu and are only focused on power".[152] Indeed, the attendance of the Madhesi parties is well below the already low average.[153]

Some analysts suspect this could translate into opportunities for the previously dominant UML and NC;[154] this is unlikely, unless the new constitution addresses popular aspirations. The image of both parties is still tarnished by their sluggish response to the previous movements; their commitment to Madhesi rights perceived as disingenuous. Discontent with the Madhesi parties does not mean that the cause has lost any support. Indeed, activists as well as many common Madhesis see the politicisation of their identity as the movement's most important result.[155] Aspirations still mainly revolve around autonomy status and quotas.

Among the Madhesi parties, the MJF(N) may still be in the best position to cash in on popular sentiment. Upendra Yadav retains a special status.[156] "The TMDP is a party of high castes; Sadbhavana basically represents the Indian establishment", said an independent Madhesi analyst. "Upendra may be discredited, but there is also no other alternative".[157] A spontaneous movement without leadership is very unlikely. As participants in the previous movements in a village in Morang said: "How can the public start an uprising? It has to be started by the political leaders. They have to organise the demonstrations. The people are more concerned with making ends meet".[158]

The Madhesi parties have solid local representation throughout the eastern and central Tarai; most leaders build on previous party networks. For example, many Madhesi party CA members in Siraha were previously with the NC.[159] Their district leaders stay in close contact with the population and provide valuable services, for example in dealings with the administration.[160]

The re-emergence of the United Democratic Madhesi Front (UDMF) in July 2010 for the unsuccessful prime ministerial elections shows that the Madhesi parties are still able to cooperate on their core agenda.[161] But the movement is split along several lines. Caste politics still, and maybe increasingly, creates rifts in the movements. Many upper caste Madhesi leaders are weary of the perceived domination of the MJF(N) by middle-caste Yadavs.

Particularly in the MJF(N), mistrust in the top leadership has seeped into the district structures; local leaders are getting impatient. They expect another revolt and want their leaders to come back to the districts to help prepare it. "The MJF may call all its representatives back … to the districts and explain to the people why there has been no progress".[162]

Some Madhesi leaders may indeed be in no hurry to establish Tarai provinces. The Madhesi movements and their success in the 2008 elections have improved their bargaining position in Kathmandu. Some have secured plum ministries. The background threat of further revolts provides an additional means of pressure – one they would lose, should they succeed. "Why would Rajendra Mahato want to be chief minister in Mithila", said an independent Madhesi analyst, "When he can be supplies minister in Kathmandu?"[163]

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[151] Crisis Group interviews, Janakpur, Siraha, Saptari, October 2010.

[152] Crisis Group interview, Dalit villagers, Siraha, 28 October 2010.

[153] The average attendance rate of members at full CA meetings is at 63 per cent. The attendance rate of senior Madhesi leaders is particularly poor. MJF(N) leader Upendra Yadav's rate is 19.8 per cent, NSP leader Rajendra Mahato's rate 11.88 per cent and MJF(L) leader Bijay Gachhedhar's rate 9.9 per cent. "Attendance and participation in the Constituent Assembly", Martin Chautari, 4 September 2010, pp. 6-7. Available at www.martinchautari.org.np.

[154] Crisis Group interviews, Janakpur and Lahan, October 2010. Dalit villagers in Siraha said: "We voted NC before and we will vote for the NC the next time". Crisis Group interview, 28 October 2010.

[155] Crisis Group interviews, Birgunj, Janakpur, Siraha, Saptari and Morang, October 2010.

[156] "People may hate Upendra Yadav because they loved him before", said an independent Madhesi analyst. "Gachhedhar they don't hate; there is nothing even to hate about him". Crisis Group interview, Biratnagar, 30 October 2010.

[157] Crisis Group interview, independent Madhesi analyst, Biratnagar, 30 October 2010.

[158] Crisis Group interview, local residents, Katahari, 31 October 2010.

[159] Crisis Group interview, journalist, Lahan, 26 October 2010; NC district leader, Siraha, 27 October 2010.

[160] For example, a district leader in Morang personally helps villagers obtain their citizenship certificates. Crisis Group interview, Katahari, 31 October 2010.

[161] After Prime Minister Madhav Nepal stepped down on 30 June 2010 and the three major parties were unable to agree on the leadership of a consensus government, the legislature-parliament has not been able to elect a new prime minister. Madhav Nepal continues to head the caretaker government.

[162] Crisis Group interview, MJF(N) district leader, Biratnagar, 30 October 2010.

[163] Crisis Group interview, Madhesi analyst, Kathmandu, 26 November 2010.

Madhesi-*pahadi* tensions during the Madhesi movement and extortion by Tarai armed groups have prompted many *pahadis* in the eastern and central Tarai to leave, often leaving behind property or selling it below market price. Madhesi politicians and journalists in Siraha say this was the case for up to 70 per cent of *pahadis* in the district. Those who stay are often too poor to move.[164]

The current picture is mixed. People in a Tamang community living along the highway in Siraha said they feel safe and well-integrated.[165] Teashop talk and the rants of youth politicians in Biratnagar have lost their communal edge. But all is not well everywhere. Although many *pahadis* say they feel significantly safer than in 2007 and 2008, they feel they need to keep a low profile. Often only some male family members stay with the property or business, but have sent their families to live in Kathmandu – with no plans of bringing them back.[166]

D. FEDERALISM AND ITS SCEPTICS

The assertiveness of ethnic and regional movements has led to considerable anxiety. Taken together, the movements' demands are directed against almost the entirety of the official definition of what it means to be Nepali. A significant minority of the Nepali population opposes federalism altogether. More than a quarter of respondents in a 2009 poll said they did not want it.[167] Of the almost 50 per cent who supported federalism, less than half wanted to see the country divided along lines of ethnicity or language. These deep concerns shared by about half the population have not translated into widespread organised opposition.

There are three broad responses critical of current change. A leftist, secular, pro-republican position perceives identity politics as reactionary and federalism as a risk to Nepal's unity. Many Brahmins and Chhetris feel threatened by assertive ethnic demands; several organisations seek to include them in the emerging group-based order despite being fundamentally critical of it. The last is a conglomerate of Hindutva groups and royalists, primarily opposed to secularism and the republic. Federalism is a secondary issue for them. Although not necessarily fundamentally opposed to it, they are critical towards provinces based on identity.

1. Who's who:

Chitra Bahadur K.C.'s Rashtriya Janamorcha (RJM) is the only party which openly opposes federalism altogether. It admits the polity needs to be radically decentralised. But given the extent of ethnic diversity it fears a landslide of demands for federal states. It also sees risks of increasing interference from India and points to a united Madhes province as a particular threat to Nepal's integrity. K.C. has also established the National Anti-Federalism Campaign; without statute and with open membership, it aims to be a platform for anti-federalists of diverse political affiliations.

The Chhetri Samaj Nepal (CSN) was founded by Prof. Dil Bahadur Chhetri in Pokhara in 1996/1997. A small organisation initially, it grew significantly from 2009 onwards. The CSN's official program says it is not against federalism, but against federalism based on identity. It is in favour of proportional ethnic representation; but it demands the recognition of Chhetris as indigenous and not, as currently, to be listed under "others". This position appears to have been adopted for damage limitation, rather than out of conviction. Essays in a book published by the CSN are highly critical of identity politics.[168] Members and district leaders say they want to protect Chhetris from discrimination under a future federal Nepal.[169]

The Khas Chhetri Ekata Samaj (KCES), led by Yubaraj Karki, in contrast, says it is in favour of ethnic federalism; it demands indigenous nationality status for Chhetris and proportional representation of ethnicities in the political domain. Chhetri Samaj leaders blame the KCES for demanding indigenous nationality status, while they themselves oppose describing any group except extremely small and marginalised ones as such.[170]

All three organisations tap into a widespread unease about the changes to come. The RJM had little electoral success in the 2008 elections, winning four seats in the CA, three of them under the proportional representation system. But K.C.'s anti-federalism front has drawn some support. Demonstrations in Kathmandu in late 2009 attracted significant crowds. Maybe more importantly, the front has attracted some from the Kathmandu political circles, in-

[164] Crisis Group interviews, October 2010.
[165] Crisis Group interview, October 2010.
[166] Crisis Group interviews, Dhanusa, September 2009 and October 2010.
[167] For details of a 2009 survey by Interdisciplinary Analysts see Crisis Group Report, *Nepal's Political Rites of Passage*, op. cit., fn. 219.
[168] Describing, for example, ethnic federalism as "poison" and ethnic psychology as a backward concept weakening class-based politics. "Kshatri avaj", CSN central committee, November 2009.
[169] Crisis Group interviews, Jumla, Dadeldhura, Sunsari and Jhapa, July and September 2010.
[170] Crisis Group telephone interview, Chhetri Samaj armed wing commander, November 2010.

cluding NC and UML politicians, intellectuals and the editors of two major UML-affiliated weekly newspapers.[171]

Many Brahmins and Chhetris are anxious of losing out. Federalism and the prospect of quotas and special reservations for minorities, from which they expect particular disadvantage, are connected in the minds of many. For current elites, who have money and children safely deposited abroad, this may be less problematic. But for struggling middle-class families, concerns about losing access to important opportunities are real. Commenting on the listing of Chhetris and Brahmins under the "other" category in the CA elections a KCES leader in Jumla said: "with quotas, a poor Chhetri won't stand a chance".[172]

There is a wider fear that the new Nepal will have little space for Brahmins and Chhetris. For most ethnic activists, Hinduism, the exclusive status of the Nepali language and high caste domination are linked. Many Brahmins and Chhetris take the increasingly effective efforts at redefining Nepali nationalism personally. Anxiety that ethnic federalism could result in inter-ethnic hostility is widely echoed by Brahmins and Chhetris throughout the country, and particularly in the eastern hills.[173] "Hinduism has been removed", said a local KCES leader. "And at this rate, with federalism, Bahuns [Brahmins] and Chhetris might also be removed. They are the group under attack".[174]

The CSN and the KCES have a presence in districts across Nepal.[175] The top leadership consists of established intellectuals and businessmen.[176] Particularly the KCES has attracted many cadres from the UML's Youth Force.[177] Both also say they have formed armed wings, consisting of retired servicemen in the Nepalese security forces or the British and Indian army. Highlighting their role in Nepal's "unification", they say they will counteract attempts at secession. They indeed appear to have called meetings of up to several hundred former servicemen in a few districts. Up to now there are no signs of further activity, but in particular the CSN is working hard to strengthen its organisation, with leaders travelling widely to rally support. None of these organisations has yet attracted mass support. Mobilisation may become easier once the effects of quotas and reservations start being felt more widely. If this happens, the networks which are currently being built are likely to serve as organisational backbone.

2. The former royals and the religious right

Royal supporters hope that disillusionment with political parties might throw up opportunities for the Shah family; but there is no significant support for a comeback at the moment nor does it seem likely to emerge. After a quiet period, the Shahs have resumed a public role through religious patronage and charity work.[178] But in the Tarai, where the former king and crown prince have made a number of appearances, observers warn against confusing attendance with real support. "Given the diversity in the Tarai even Gyanendra can show his power here. Paras can visit and people will come just to see his long hair", said a journalist in Birgunj, referring to the dethroned king and the former crown prince.[179] Given their propensity for scandals, the biggest obstacle to a political comeback of the former royal family may be itself.[180]

Royalists are trying to link their issue with the end of Nepal as a Hindu state; uneasiness with the latter is more widespread than nostalgia for the king.[181] The Rashtriya Prajatantrik Party (Nepal), RPP(N) – the only "royalist" party still supporting the king – has consistently demanded referenda on secularism, monarchy and federalism. Although not opposed to quotas and reservations in a number of sectors, it laments the weakening of national identity by identity politics.[182] Hindu groups organised the visits by the former royals to the Tarai. A hankering for the former status as a religious kingdom is common among right-wing Hindu groups in India which could provide funding and organisational support for the anti-secularism movement.[183]

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[171] See footnote 85.
[172] Crisis Group interview, Jumla, July 2010.
[173] Crisis Group interviews, Khotang, Udaypur, Sunsari and Panchthar, September and November 2010.
[174] Crisis Group interview, July 2010.
[175] See "Local Political and Peace Process Trends", The Carter Center, 23 November 2010, p. 6. KCES leaders say they have committees in 37 districts including in all sixteen districts of the eastern development zone. Crisis Group interview, Itahari, September 2010.
[176] Home Minister Bhim Rawal, for example, is a member of CSN. Crisis Group telephone interview, CSN leader, December 2010.
[177] On the UML's youth wing see Crisis Group Report, *Nepal's Political Rites of Passage*, op. cit.
[178] Throughout 2010, former king Gyanendra Shah and former crown prince Paras Shah travelled widely in Nepal and made public appearances at religious functions, for example inaugurating temples. Former crown princess Himani Shah founded a charity organisation, the Himani Trust, the board of trustees of which exclusively consists of members of the Shah family.
[179] Crisis Group interview, journalist, Birgunj, 7 October 2010.
[180] In December 2010, former Crown Prince Paras Shah was accused of pointing a gun at Deputy Prime Minister Sujata Koirala's son-in-law. "Parasle goli chalae", *Kantipur*, 13 December 2010.
[181] Crisis Group interview, journalist, Birgunj, 7 October 2010.
[182] "Rashtriya prajatantra party Nepalko sankalpa-patra: samvidhansabha nirvachan 2064", RPP(N), 2008.
[183] For example, former Bharatiya Janata Party (BJP) president Rajnath Singh said that the BJP wants Nepal to be a Hindu

Right-wing Hindu activism exists in Nepal, but unlike in India it has never been strong. The Vishwa Hindu Mahasangh (VHM) was established in Birgunj in April 1981; it maintains a close relationship with the Vishwa Hindu Parishad in India and has enjoyed the patronage of Nepal's former royal family.[184] Its main focus now is the fight against secularism. A chapter of the Shiv Sena was established in 1990 in Nepalgunj; besides opposition to secularism, it shares the Islamophobia of its Indian counterpart. Five out of the six Hindu-Muslim riots in Nepal since 1990 have taken place in Nepalgunj.[185] Like the VHM, the Nepal Shiv Sena maintains close relations with its Indian counterpart.

Neither group has an effective countrywide organisation. A local leader of the Hindu Yuva Sangh (HYS), the youth wing of the VHM, complained about the lack of support from the Kathmandu leadership: "when we call these people it is: it's too hot, too cold, it's raining. It is difficult to work because we have no support from the centre".[186] But both groups have strong if small networks in Birgunj and Nepalgunj. There is significant overlap between local networks. In Nepalgunj, the HYS and the Shiv Sena cooperate closely and HYS leaders at the same time hold positions in the RPP(N).[187] In Birgunj, the HYS – which acquired a national reputation attacking the Maoists during their May 2010 protests – appears to have become a rallying point for upwardly mobile businessmen but is also backed by senior local politicians.[188]

The weakness of the Hindu right in Nepal may well have to do with the absence of secularism; in a state so permeated by conservative Hindu values there was little need to "make Nepal Hindu".[189] The advance of federalism could change this. Both Brahmin and Chhetri resistance to ethnic assertion and the Hindutva movement are likely to grow in the years to come. Given significant ideological overlap and a common enemy in ethnic movements and the Maoists, broad alliances between these networks are a distinct possibility.

state. "Nepal hindu rajya nai hunuparchha", *Ghatna ra Vichar*, 8 December 2010.

[184] Gerard Toffin, "The Politics of Hinduism and Secularism in Nepal", in *Studies in Nepali History and Society*, vol. 11, no. 2 (December 2006). Birendra welcomed the VHM's second conference in 1988 in Kathmandu. Gyanendra equally expressed his support for the VHM since 2001. His honorary aide-de-camp, Major-General Bharat Kesher Simha, was VHM chairman. Ibid. Since 2008, retired general Hem Bahadur Karki has taken over chairmanship.

[185] Mahendra Lawoti, "Contentious Politics in Democratizing Nepal", op. cit., p. 38.

[186] Crisis Group interview, July 2010.

[187] Crisis Group interviews, HYS and Nepal Shiv Sena leaders, Nepalgunj, July 2010.

[188] Crisis Group interviews, Birgunj, October 2010.

[189] A paraphrase from David Ludden (ed.), *Making India Hindu* (New Delhi, 2005[1996]). Gerard Toffin, "The Politics of Hinduism and Secularism in Nepal", op. cit.

IV. RISKS AND OPPORTUNITIES

The drafting of a constitution and the design of a new political structure presents Nepal with a chance to address many decades of pent-up grievance. It offers an opportunity to shape a more egalitarian and fairer political system. Federalism is only one part of this process, which will have to address a vast array of issues. There are many stark forms of discrimination that will be unchanged by federalism and will require different forms of affirmative action that may clash with the agendas of ethnic and regional groups. Caste discrimination, the most pernicious source of inequality in Nepal, and gender inequality are examples. Cultural recognition for the larger minorities may crowd out smaller groups. The demands for federalism and proportional representation do not aim to change the nature of the state as a patronage system, nor are they likely to achieve it.[190] They seek wider distribution of the pie. But politically federalism is important because it confirms the legitimacy of demands for inclusion and sets the tone for change to come.

A. COMMON GROUND

According to the concept papers of the CA's eleven thematic committees, Nepal will be a federal country.[191] The only significant disputes are over the number, boundaries and naming of future provinces and a limited number of provisions aiming at ethnic inclusion. But the institutional arrangements and division of powers, the nuts and bolts of the future system, are detailed and comprehensive. Experts describe the emerging model as eminently workable.[192] The picture so far envisages between six and fourteen provinces. Apart from centre and provinces, local government in villages or municipalities forms the third constitutionally guaranteed level of governance.[193]

Central control will remain relatively strong, but not uncommonly so in international comparison. Many important competencies, such as policing, banking and insurance regulation and land management, will be devolved to sub-national units. Some areas will be managed jointly, for example foreign assistance, health policy and education. The centre will retain exclusive power over areas such as foreign policy, defence, monetary policy and criminal law. Importantly, residual powers – ie, all those not explicitly listed – will also rest with the centre.[194] The most lucrative taxes – VAT, income tax, and import and excise duties – will still be collected by Kathmandu. Provinces own resources according to current tax collection would amount to a maximum of 10 per cent of Nepal's total revenues; substantive transfers will be necessary.[195] There will also be direct central supervision. As discussed, the form of governance concept paper includes a provincial chief as representative of the centre to sit alongside an elected chief minister.[196]

The major political parties have all produced maps outlining the boundaries of the federal units. All but the NC drew up the units along ethnic lines. But even the NC is not entirely united in its opposition to ethnic federalism as long as the naming of states is fudged. "We all agreed that Panchthar, Ilam, Taplejung and Terhathum will be one state. All agreed that Limbu, Rai and Nepali will be state languages", said a senior NC leader. "So what's the difference? It's only about the name", he added, referring to the NC's desire not to use the word Limbuwan.[197]

The concept papers indicate common ground on state restructuring; the expectation is that they will outline the main points of the draft constitution. These papers emerged from the committees either unanimously or with majority support. But it is unclear whether their content has wider backing within the major parties. Nevertheless, having a workable model for federal restructuring is a crucial step. While it cannot guarantee in itself that the process moves ahead, it raises the political risks for those who want to backtrack and removes opportunities for further foot-dragging.

B. LANGUAGE, CULTURE AND RECOGNITION

The vision of federalism laid out in the committee papers is unlikely to satisfy all ethnic activists. Many activists in the eastern hills and the Tarai have a vision of the central government only retaining powers over defence, foreign affairs and the currency, which is unlikely. But the emerging model may well address popular aspirations. In interviews across the eastern hills, for example, the primary concern of many people was a federalism that ac-

[190] See Crisis Group Report, *Nepal's Political Rites of Passage*, op. cit.
[191] The concept papers contain preliminary draft language, but do not represent binding agreements.
[192] Crisis Group interview, constitutional expert, Kathmandu, December 2010.
[193] The state restructuring concept paper further envisages autonomous regions protected areas and special zones. Art. 8(1-3).
[194] State restructuring concept paper.
[195] Marcus Brand, "Nepal: Constitution Building, Federalism and Peace – Managing the Transition to Federalism and Implementation of the New Constitution", UNDP discussion paper, September 2010, p. 21.
[196] Form of governance concept paper, pp. 23-26. See Section III.A.
[197] Crisis Group interview, NC central committee member, 24 October 2010.

knowledged their culture, language and position within a Nepali state.[198]

Naming provinces after prominent ethnic groups could be an effective way to achieve this. For many activists, having a state that acknowledges their ethnicity will go a long way towards satisfying demands. As a senior FLSC(P) leader put it: "Limbu identity is already acknowledged in the name Limbuwan and the fact that there is a Limbuwan state and government".[199]

Nepali nationalism was previously based on three ideas: monarchy, Hinduism and the Nepali language. The monarchy has been abolished and secularism introduced so an important remaining issue of contention is the dominance of Nepali.

The language question is – with a few exceptions – about cultural recognition. Language exclusion may be a significant factor for limited groups, such as some Madhesi women, but is overall probably less keenly felt than other forms of exclusion.[200] Given the importance of Nepali, and indeed English, for educational and career opportunities, practical considerations often prevail.[201] Introducing mother tongues as medium of instruction in schools is not a popular demand. But many are keen for themselves (and their children) to retain mother tongue skills and would like to see their languages promoted. Guaranteeing and funding opportunities to learn mother tongues in schools, introducing additional official languages locally, extending state patronage to studying them and promoting literature in languages other than Nepali could help tackle language-based exclusion.

The culture concept paper offers good scope for this. It commits the state to protect, preserve and develop languages and lists "[r]espect for existing lingual and cultural diversity of the country, and … recognition and equality of all languages" as state responsibility.[202] It guarantees "basic education" in mother tongues although it fails to define what this means (currently mother tongue education is allowed but not guaranteed in primary schools). Although Nepali will for the time being remain the sole official language for the central government, other languages can be added later. Provinces can choose further languages as official languages in addition to Nepali.[203]

C. Resources and Quotas

The concept papers guarantee proportional representation for ethnic, regional and caste groups across all branches of the state.[204] Definitions are often not specified or ambiguous and no numbers provided; but quotas for proportional representation are firmly enshrined as a general principle and mentioned for almost all institutions.[205] This policy is relatively uncontested and almost universally endorsed by political parties.

The CA concept papers are vague on whether ethnic and regional groups will have privileged rights to government positions and natural resources.[206] The clearest provision, in the concept paper on state restructuring, suggests reserving leadership positions in state governments for members of the majority ethnic group for two terms.[207] Others leave the scope of positive discrimination to later legislation. The fundamental rights concept paper envisages "compensation" beyond proportional representation in state organs for Dalits;[208] it also mentions "special privileges" in health, education and social security for them.[209] But most

[198] Crisis Group interviews, September-November 2010.
[199] Crisis Group interview, Sanjuhang Palungwa, FLSC(P) president, Birtamod, September 2010.
[200] David Gellner, "Modernism vs Ambivalence? Some Comments on the Question of Linguistic Policies in Nepal", in *Studies in Nepali History and Society*, vol. 9, no. 2 (December 2004).
[201] Even within activist groups, younger activists often see little practical advantage in promoting mother tongues. See for example Uma Nath Baral, "Ethnic Activism in Nepal: An Account of the Magar Organizations in Kaski District", in *Contributions to Nepalese Studies*, vol. 35, no. 2 (July 2008).
[202] Culture concept paper, Art. 8(1).
[203] Culture concept paper, Art. 14-17.
[204] Proportional representation here refers to the representation of groups in different branches of the state in proportion with their overall share in the population; not to be confused with proportional representation as an electoral system.
[205] On inclusiveness and proportionality in the appointment of judges see the justice system concept paper Art. 29(3). On proportionality in federal and provincial legislature see the legislative concept paper. On proportional inclusion for the appointment of central and provincial council of ministers see the form of governance concept paper.
[206] The two most important natural resources apart from land are forests and water. The forestry sector is of significant commercial value. It also plays an important role in rural livelihoods; forest resources supply almost all energy for rural areas. The hydropower sector is potentially very lucrative, even though only a fraction of its current potential is developed. Some mineral resources are of low grade and tonnage.
[207] "In case of the states constructed on the basis of ethnic/community under the main composition, political parties at the time of election and during the formation of state government should give preference to the member of ethnic/community in majority at the concerned state at the main leading position. But such rights of political preference will be ineffective automatically after two tenures". State restructuring concept paper, Art. 13(1).
[208] "The dalit community shall have the right to participation in all the organs, agencies and sectors of the state mechanism on the basis of inclusive proportionate system, along with compensation. The provision for compensation shall be as prescribed by law". Fundamental rights concept paper, Art. 25(2).
[209] Fundamental rights concept paper, Art. 25(3).

provisions are unclear about their scope and who they apply to.[210] Draft text in the natural resources concept paper, for example, could both suggest privileged access to natural resources for indigenous communities or for local communities overall, regardless of ethnicity.[211] The fundamental rights concept paper mentions "special privileges" for a wide range of groups, but fails to specify the nature of those privileges.[212]

Linking resource access to community membership is fraught with risk. Collective rights also require clearly demarcated groups with unambiguous membership. Only an individual belonging to a group can access a group right. The necessary result is an un-mixing of ethnic identities and more rigid ethnic boundaries. The example of Darjeeling, where different groups scramble to qualify as distinct communities is instructive.[213] The more resources are distributed according to group identities, the stronger ethnic difference becomes politicised.[214]

However, group rights may be the only way to address the kind of deeply entrenched forms of group-based discrimination prevalent in Nepal. The crucial question is which and how many resources have to be distributed through such rights.

Quotas for proportional representation in government and administration are relatively unproblematic in principle; representational inequality is glaring and hard to justify. But how inclusive a system based on proportional representation is crucially depends on the categories used for quotas. The categories the electoral system for the 2008 CA elections used to ensure proportional representation were very broad.[215] As a result, dominant communities have profited disproportionally and are overrepresented in the CA, while marginalised groups within the Madhesi and *janajati* categories are grossly underrepresented.[216]

Current proposals for future legislative elections at the centre are likely to produce even more exclusionary results. The Maoist proposal for the unicameral central parliament suggests proportional representation in each constituency (congruent with the provinces), which would favour bigger and geographically concentrated groups. The NC and UML joint proposal suggests proportional representation only for the 75 PR list seats in its 151 member house of representatives. The categories used are similar to those used in the CA elections (women, *adivasi janajatis*, Dalits, Madhesis and other communities). The 76 "first past the post" seats would only be subject to an inclusiveness provision for the nomination of candidates.[217]

Privileges beyond proportional representation are dangerous. If applied outside a relatively small group of extremely marginalised communities, such as Dalits, they are bound to be perceived as deeply unjust. Measures like FLSC(P)'s 50 per cent quota for Limbus in the lower house of their proposed Limbuwan and the mostly Limbu upper house are extreme examples. The same is the case with privileged access to natural resources. It would be dangerous for another reason. Natural resources distribution is a common cause of local conflicts and indeed local clashes. Ethnicising these frequent local distributional struggles is a fast-track to communal strife.

As group rights including quotas are starting to be implemented, the scramble for recognition is likely to pick up pace and intensity. Symbolic measures and group rights to resources are important means to address discrimination; but they will only go so far in making Nepal a more equal society.

D. INDIVIDUAL RIGHTS: THE FORGOTTEN DEBATE

The 1990s constitution contained an impressive catalogue of individual rights, including explicit bans on ethnic, caste and gender discrimination. Nevertheless, the domination of the state by Brahmin and Chhetri elites increased, and

[210] For example, the state restructuring concept paper says: "[t]ribal people, indigenous nationalities, Madheshi shall have the rights of self-determination internally and locally in the form of politics, culture, religion, language, education, information, communication, health, settlement, employment, social security, financial activities, commerce, land, mobilization of means and resources and environment. These will be fixed by making laws". Art. 12(1).

[211] The natural resources concept paper mentions priority use rights for "indigenous, ethnic and other communities" in its preamble, but in later articles only speaks about "local communities".

[212] Fundamental rights concept paper, Art. 27.

[213] See Townsend Middleton and Sara Shneiderman on the dilemma of bounded and unchanging definitions of culture for ethnic activists in India and Nepal. Criteria for legal recognition rarely match existing cultural practice – with the result that ethnic activists often attempt to homogenise cultural practices to comply with these criteria. "Reservations, Federalism and the Politics of Recognition in Nepal", op. cit., p. 42.

[214] See Neera Chandhoke, "The Political Consequences of Ethnic Mapping", Crisis States discussion paper no. 14, December 2005.

[215] See footnote 62.

[216] See Kåre Vollan, "Group representation and the system of representation in the Constituent Assembly and future parliaments of Nepal", January 2011. Available at www.follesdal.net/projects/ratify/nepal/Vollan-2011-The-development-of-an-electoral-system.pdf.

[217] Ibid.

informal discrimination continued, at times with formal backing. There are two theories of what went wrong.[218]

The first is frequently put forward by ethnic activists. It claims that liberal individual rights cannot be effective in a society as deeply unequal as Nepal's. A conservative, intransigent state apparatus, which simply refuses to implement individual rights, needs to be forced to address the grievances of marginalised groups through collective rights which explicitly acknowledge forms of exclusion and grant differential rights. This argument is backed by eminent constitutional experts.[219]

The second argument builds on the first, but comes to a different conclusion. It agrees that a conservative state managed to render the individual rights granted in the 1990s constitution ineffective. But it was able to do so because it could use the Constitution's definition of Nepal as a Hindu monarchy, the special status it granted to the Nepali language and its vague references to tradition to legally justify exclusion. The implication is that individual rights could have been more effective, if socially conservative definitions of the nation had not been enshrined in the constitution as a ready excuse for a judiciary loath to accept social and cultural change.[220]

There are good practical reasons – beyond legal and moral obligation – for not discarding individual rights as means of empowerment. With measures aiming at proportional ethnic representation highly likely, politics, administration and judiciary are bound to become more inclusive. In conjunction with a constitutional nationalism which explicitly endorses diversity, this could create a context in which individual rights can become more effective. While some group-based provisions are clearly necessary, there are good arguments for using them as much as necessary but as little as possible. The risks have been outlined above. Strong individual rights provisions, guarded by central authorities, would also assure those who fear future domination in "ethnic" provinces.

E. FLASHPOINTS

There are real risks attached to disappointing popular aspirations on federalism. An open reversal of the commitments to federalism is unlikely. But stalling the CA process overall, or deferring difficult decisions could be tempting for those who oppose change. This would be dangerous. Already mistrustful, ethnic and regional activists will perceive further postponements as decoys for reneging on previous commitments. Countrywide protests would be likely. Given the widespread support, including among local political elites, for federalism in the eastern hills, a movement there could reach the critical momentum which would allow ethnic leaders from major parties to join. Should a heavy-handed state response escalate the situation, then longstanding and strong political networks could facilitate violent insurgency.

The threat of a conservative backlash is real. It may not play out in the short term; the movement is too fragmented and until substantive change has occurred, it lacks momentum. But poor implementation of federalism and quotas could lend traction to the movement. Those bound to lose out are only going to take so much. Measures aiming at proportional distribution in administration and government will invite some protest but are ultimately hard to argue against. But differential rights such as preferential access to natural resources or leadership positions are likely to be perceived as unjust and could bring together the emerging network of activists and the upper caste population.

Disputes over provincial boundaries are a further potential source of future tensions. There are significant overlaps between the territorial claims of different ethnic and regional groups. For example, almost all suggested hill-based provinces also want access to the Tarai. This necessarily clashes with the Madhesi parties' maximalist demand of a single Madhes province as well as with their minimalist demand that all provinces in the Tarai must run from east to west. Tension is likely but these competing demands should be possible to resolve by compromise. However, much will depend on how inclusive provincial politics will be.

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[218] For an excellent overview see David Gellner, "From Group Rights to Individual Rights and Back: Nepalese Struggles over Culture and Equality", in Jane K. Cowan, Marie-Bénédicte Dembour and Richard A. Wilson (eds.), *Culture and Rights: Anthropological Perspectives* (Cambridge, 2001).

[219] Yash Ghai, "Ethnicity, Identity, Participation and Social Justice: A New Constitution for Nepal?", paper presented at the conference "Constitutionalism and Diversity in Nepal", Tribhuvan University, 22-24 August 2007, p. 8.

[220] Constitutional expert Mara Malagodi argues against Yash Ghai's conclusion that individual rights have proved ineffective at addressing the grievances of different groups for reasons to be found outside the text of the constitution and that group rights would have led to better treatment of marginalised groups. Examining the use of constitutional provisions in SC judgments, she asserts that the judiciary was able to render individual rights granted in the 1990 constitution ineffective because of the model of constitutional nationalism adopted. Mara Malagodi, *Constitutional Nationalism and Legal Exclusion in Nepal (1990-2007)*, op. cit.

V. CONCLUSION

Federalism and proportional representation offer a significant opportunity to unravel entrenched patterns of discrimination on the basis of caste, ethnicity and regional identity. This will not be the end of the road to inclusion, nor will it change the patronage based nature of the state. Ethnic elites are likely to benefit first. But this is not an argument against group rights. New ethnic, regional and Dalit elites would hardly be less legitimate than the established ones. No one set of measures will address all the diverse forms of exclusion.

A further hardening and politicisation of ethnic and caste identity is probably inevitable. Their riskiest forms can be avoided. Symbolic recognition of ethnic and cultural diversity will go a long way to satisfy popular demands. Greater language rights and proportional representation could help level a very unequal playing field. But differential rights, for example granting certain groups preferential access to natural resources or political leadership positions, are bound to alienate many, if they are granted beyond a relative small proportion of the population.

Some backlash by those who are losing out may be hard to avoid. The tensions accompanying the transformation are probably just about to start. Change up to now has mostly been in tone. Once substantial shifts are underway and specific measures are introduced, those losing out in the short term are likely to mount opposition. The reaction will probably unfold through the caste organisations and networks of die-hard royalists and the Hindu right which are now being built.

Despite the risks to federal restructuring and the introduction of group rights, not doing so would be more dangerous. A failure of the CA to address the core demands of ethnic and regional activists will resonate widely with members of ethnic groups in the eastern hills and the central and eastern Tarai. In both areas, the confluence of widespread politicisation and presence of established networks of increasingly frustrated activists could lead to serious unrest.

Kathmandu/Brussels, 13 January 2011

APPENDIX A

MAP OF NEPAL



Map No. 4304 UNITED NATIONS
January 2007 (Colour)

Department of Peacekeeping Operations
Cartographic Section

APPENDIX B

GLOSSARY

BJP	Bharatiya Janata Party
CA	Constituent Assembly
CPA	Comprehensive Peace Agreement
CPN	Communist Party of Nepal
CPN(M)	Communist Party of Nepal (Maoist)
CSN	Chhetri Samaj Nepal
FDNF	Federal Democratic National Forum
FDNP	Federal Democratic National Party
FLSC	Federal Limbuwan State Council
FLSC(L)	Federal Limbuwan State Council (Lingden)
FLSC(P)	Federal Limbuwan State Council (Palungwa)
HYS	Hindu Yuva Sangh
KCES	Khas Chhetri Ekata Samaj
KJWP	Kirat Janabadi Workers Party
KRM	Khambuwan Rashtriya Morcha
LV	Limbuwan Volunteers
MJF	Madhesi Janadhikar Forum
MJF(L)	Madhesi Janadhikar Forum (Loktantrik)
MJF(N)	Madhesi Janadhikar Forum (Nepal)
MNO	Mongol National Organisation
NC	Nepali Congress
NEFEN	Nepal Federation of Nationalities
NEFIN	Nepal Federation of Indigenous Nationalities
NFDIN	Nepal Federation for the Development of Indigenous Nationalities
NSP	Nepal Sadbhavana Party
NSP(A)	Nepal Sadbhavana Party (Anandi Devi)
NTC	Nepal Tarai Congress
RJM	Rashtriya Janamorcha
RJP	Rashtriya Janamukti Party
RPP(N)	Rashtriya Prajatantrik Party (Nepal)
SLMM	Samyukta Loktantrik Madhesi Morcha
SP	Sadbhavana Party
SPA	Seven-Party Alliance
TMDP	Tarai Madhes Democratic Party
UCPN(M)	United Communist Party of Nepal (Maoist)
UDMF	United Democratic Madhesi Front
UML	Communist Party of Nepal (Unified Marxist-Leninist)
VDC	Village Development Committee
VHM	Vishwa Hindu Mahasangh