

Solution or Problem?
Ethnic Federalism in Post-Conflict Nepal

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Since the end of the Nepalese Maoist Insurgency with the Comprehensive Peace Agreement in 2006, the question about how to federally restructure the country has been a major problematic in post-conflict Nepal. The extent to which Nepal should be federalized along identity lines -- ethnic and regional-- coupled with economic and geographic viability for administrative efficiency, casted doubts over the Nepalese peace process. Just as international conflicts show the intractability of identity conflict, precisely the issue of identity-based federalism in Nepal emerged as the most complicated matter throughout the post-conflict decade. As Nepal promulgated an Interim Constitution 2007, and prepared for Constituent Assembly elections subsequently after the peace agreement, it quickly entered into another phase of conflict, this time with the regional political force from the southern plains of Nepal -- *Madhes*¹ -- to whom a demand for federal self-rule in *Madhes* was non-negotiable.

The-then political organization called *Madhesi Jana Adhikar Forum* (Forum for the Rights of *Madhesi* People) in *Madhes*, led by the leader Upendra Yadav, burnt copies of the Interim Constitution ensuing short but deadly clashes as the Forum cadres defied the establishment with violence. Protests engulfed the region for three weeks, consequently forcing the major political parties in the capital Kathmandu to agree to amend the Interim Constitution.

Meanwhile, as the demands of agitating *Madhesis* for enshrining federalism in the constitution gained steam, several other identity groups known as *janajati* – mostly comprising ethnic and indigenous groups from hill/mountain areas – followed suit. They became actively mobilized and demanded identity federalism as well. Emphasis on the demerits of unitary system of governance, on some historical social discrimination, and on

¹ Referring to Hindu *Pauranic* texts (i.e. *Manusmriti*) and *Veda*, *Madhesi* leaders have preferred to use the word *Madhesh* instead of Tarai or Terai (see Shrestha 2066 V.S.: 431– 432). This preference, as it came as a part of strengthening *Madhesi* identity movement, became rather controversial. Because *Madhesis* associated the term Tarai with the previous unitary system of governance and its assimilation policy; but others protested as the region was generally called Tarai.

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prospects of strong affirmative action policy that would grant significant quotas and other economic benefits to marginalized groups, gave huge momentum to the mobilization.

Owing to the protests in *Madhes* and the region's potential to take the entire nation down mainly because of its strategic significance –high population areas where Nepal's major trade and transit points with India are located -- within merely the period of three months of the promulgation, the Interim Constitution was amended from the “progressive restructuring of the state” to “progressive restructuring of the state including federal system” (Article 138).

Accepting the aspirations for the autonomous regions of *Madhesi* people, indigenous ethnic groups and the people of backward regions, Nepal shall be a federal democratic republic. The provinces shall be autonomous with full rights. The Constituent Assembly shall determine the number, boundaries, names and structures of the autonomous provinces and the distribution of powers and resources, while maintaining the sovereignty, unity and integrity of Nepal.

Interim Constitution, 2007

The new republic of Nepal – as the monarchy was declared ended the same year -- elected its first Constituent Assembly (hereafter CA1) in 2008 to write a new constitution that would craft a new institutional design with several federal states. But the task remained so daunting that the CA1 could not write any constitution even in 4 years period.² The question about how to restructure the country as a federal republic that would satisfy all stakeholders, especially ethnopolitical groups³, remained unanswered. This was

² The CA1 was extended 3 times, first two extensions for 6 months each, and then 1 year.

³ By ethnopolitical groups, this article refers to several political parties doing ethnic and regional identity politics in favor of self-rule, such as *Madhes*-based parties, and the non-governmental organizations, scholars, individuals representing certain identity groups/indigenous people and/or arguing in favor of identity politics, such as, NEFIN (umbrella organization of indigenous peoples), *Kirat Limbu* Association, *Newa* Autonomous State Joint Struggle Committee, *Tharu* Autonomous State Council and many more. There are also identity-based organizations on the opposite end, such as, NIEG Joint Struggle Committee: *Brahmin Samaj*, *Chhetri Samaj*, *Dalit Sewa Samaj*, *Dasnami Sewa Samaj* etc. But since these groups were against identity-federalism and were mobilized to secure their own interests by including themselves into “indigenous nationalists” groups list, this paper does not consider them ethnopolitical groups.

particularly difficult for a multi-cultural, multi-ethnic and multi-linguistic country like Nepal; in order to put that in perspective, the 2011 census of Nepal enumerates 123 languages, and 125 caste/ethnic groups.

However, a government led by the Chief Justice Khil Raj Regmi held the elections for second Constituent Assembly (hereafter CA2) in 2013 in order to complete the unfinished business. After huge uncertainties and tumultuous political situation, eventually the CA2, in which the three parties Nepali Congress, United Marxist and Leninist (UML) and the UCPN-Maoist had first, second and third majority respectively, managed to issue a new constitution in September 2015 – “Constitution of Nepal”. Nevertheless, despite the fact that the promulgation was largely welcomed nationally and internationally, several ethnopolitical groups expressed their dissatisfaction. In fact, the United Democratic *Madhesi* Front (UMDF)⁴ intensified their agitation claiming that: they were disregarded while drafting the constitution; the new constitution did not include what were agreed in earlier agreements; it fell short of fully recognizing the identity of *Madhes*; it did not grant them full autonomy in federal terms as they rightfully demanded.

The promulgation unleashed yet another round of conflict in the southern region. Many *Madhesi* protestors were killed, including some security personnel, in the clashes. India allegedly endorsed the UMDF’s position and imposed an undeclared embargo on Nepal strengthening the border blockades staged by the agitating *Madhesis*. During the 5-month long blockade, the entire nation which was just hit by a devastating earthquake suffered a severe shortage of vital supplies—fuel, food, medicines etc. The blockade only added to the confusion and disenchantment among the citizens regarding the *Madhesi* leaders and India, leading the bilateral relations of the two countries to the historic low. Meanwhile, *Samyukta Loktantrik Madhesi Morcha* (SLMM), an alliance of seven *Madhes*-based parties,⁵ called off their programs of border blockade, general strike and

⁴ The UMDF comprises 3 political parties representing *Madhes*: *Madhesi Jana Adhikar Forum Nepal*, *Nepal Sadbhavana Party* and *Tarai Madhes Lokatantrik Party*.

⁵ *Madhesi Jana Adhikar Forum- Lokatantrik*, *Madhesi Jana Adhikar Forum Nepal*, *Tarai Madhes Lokatantrik Party*, *Tarai Madhes Sadbhavana Party*, *Rastriya Madhesh Samajvadi Party*, and *Madhesi Jana Adhikar Forum Ganatantrik*, and *Sadbhavana Party*.

government office shutdown. Nepali Government (led by the UML) welcomed it and promised to resolve the dissatisfactions of *Madhesi*.⁶ Subsequently, the India-Nepal border became free of hurdles. It was believed that India lifted its undeclared embargo which it had presumably put in place in order to support the *Madhesi* protests against Kathmandu; India however always denied that it had done so. Meanwhile, the UDMF leaders continued to blame government for its indifferences and threatened with the possibility of next round of agitation. Their major demands include fresh demarcation of federal boundaries, and proportional representation of ethnic *Madhesi* in all state organs.

Against this backdrop, this article examines: in the process of writing a new constitution in the Constituent Assemblies, what models of federalism were presented; what were the models presented by political parties and experts on both sides of the debate: identity vs. non-identity? What were the issues that became problematic, and why? Why the newly promulgated constitution, which restructured different federal provinces, failed to satisfy the agitating ethnopolitical force, namely SLMM and *Tharus* as well as disgruntled *janajatis*?⁷

This article is structured in the following way: it discusses the theoretical premises of federalism especially in the context of ethnopolitics; then it starts with brief historical background of the political and social structure of Nepal; it presents several federal models presented in the CA or outside discussing the overall federal movement evolution. The article is not about federalism itself, but it deals with that phase of a conflict resolution when ethnopolitics is mixed-up with federalism and vice-versa; and how that mixture

⁶ <http://kathmandupost.ekantipur.com/news/2016-02-08/pm-oli-welcomes-madhesi-morchas-decision-calls-for-dialogue-to-resolve-crisis.html>

⁷ On 16 September 2015 two-third majority of the CA members voted for the Bill of the new constitution. A total of 532 members participated in the voting process, 507 voted for the bill while 25 members of the *Rastriya Prajatantra* Party voted against it. Meanwhile, 57 members of small *Madhesi* parties out of total 598 sitting members (CA had 601 members) of the CA boycotted the voting. The UCP (Maoist) that was known as the promoter of the ethno regional federalism welcomed the new constitution and voted for it.⁷ Three major political parties (Nepali Congress, UML and UCP (Maoists)) organized a combined rally in Kathmandu to welcome the new constitution on 21 September 2015.

comes to pose a big challenge to materialize a new institutional model, especially owing to the struggle for power between nationwide political force and ethnopolitical regional force.

Federalism: concept and Nepalese context

Federalism⁸ is an institutional arrangement in which political authority is divided among central (federal) and state (provincial) governments, it is a system of divided authority, and that division is constitutionally guaranteed. In Daniel Elazar's words, it is a "regional self-rule plus shared rule" (Elazar, 1987). Robert Dahl puts, in a federal system local units constitutionally have exclusive competence in some areas which is insulated from central government authority and vice versa (Dahl, 1986). However, not only the concept of federalism, but also the degrees to which countries are federal and the contexts are quite varied (Anderson, 2008).

Federalism was mainly employed for two opposing objectives, one for bringing different political units together (initially federalism was meant for that), while another is for separating (but not seceding) a single unit into several, which Alfred Stepan calls "coming together" and "holding together" federalism respectively (Stepan, 2004). For instance, US was a coming together case as different states came together to form a confederation (later changed into a federation) in the 18th century, while Spain is a holding together one because in post-General Franco period it distributed authority among several "autonomous communities" in order to protect the unity of Spain.⁹ There are some cases in which both types were employed to form a federation, for instance, Canada or India.

Regarding federal units during Soviet Union and Yugoslavia as well as Latin America however, they were a different category because federalism was employed by some hegemony as a global mechanism to dominate ethnically, culturally, linguistically, religiously heterogeneous land masses or large territories (in fact several countries in generic language) in different corners of the globe (Riker, 1964; Gibson, 2004), as opposed to present understanding of federalism in which democracy goes hand in hand. As the global order changed after the Cold War, one could imagine how these territories seceded

⁸ For the purpose of this article, the term "federalism" means the same as defined in this sentence, and the article uses the term "federation" for a country in which such system is employed.

⁹ Spanish constitution does not explicitly mention "federalism" however.

given their own history and identity, and thus self-determination. As some scholar argues in that context that there certainly lies a risk that especially an ethnic federalism may lead to disintegration (Ottaway, 1994).

In a post-conflict context however, what matters is not only what federalism is, but also why federalism? In terms of choosing federalism, William Riker argued that it was a bargain among politicians to secure their own interests rather than any normative democratic autonomous system for common good (Riker, 1964). Nevertheless, among several dynamics associated with federalism, the relationship between diversity and unity is an essential element of it; it is rather a “philosophy of diversity” (Moreno, Colino and Kincaid, 2010).

Federalism is about managing diversity, and thus it is about managing conflict in a diverse country or managing ethnic problems (Anderson, 2012). Because such devolution of power from dominantly powerful centres to provinces creating different autonomous and self-ruling units can objectively address the demands of restive ethnopolitical groups which in turn helps keep conflicts at bay. Having said that however, only 15 out of 65 culturally diverse country are federal (Moreno, Colino and Kincaid, 2010). In fact, federalism is not universal since only less than 30 countries are federal in the world. Besides, it is present in very different conditions; for instance, India with 1 billion populations and islands such as St. Kitts of few thousand people are both federal systems (Anderson, 2008).

Whatever are the historical global attributes and conditions of federalism, towards the end of 20th century federalism, for its almost inherent connection with diversity and autonomy, is employed as an instrument of conflict management. It was so in countries like Sudan, DR Congo, Iraq and Bosnia Herzegovina in recent years, and all were basically federalized in identity lines. But paradoxically these countries clearly remain fragile and seem to be at the verge of further breakdown raising scepticism about federalism. Sudan, even after its partition between South and North Sudan, is witnessing several armed conflicts especially around their border.

But when Ethiopia which was ethnically federalized in 1991, secession clause was provided for its local units, but they did not secede (keeping Eritrea case apart). But the pros and cons of federalism in Ethiopia are still debated. Similarly, while some argue that

ethnic federalism in Nigeria saved it from crumbling; others argue that it remains at the verge of disintegrating. Because how much in practice Nigeria was federal is an important question (Suberu, 2008). Nigeria started with federal system with 3 regions after independence in 1960 and by the end of the century it was divided into 36 federal states. The principle of forming new federal units renders Nigerian ethnic federalism different from one in Ethiopian ethnic federalism.

Therefore, in terms of learning any lessons, under a broader framework the federalism cases do share certain categories; in their nuances they are unique. Comparisons overlook several other factors: regime structure in both national and subnational levels, majoritarian or consociational (power-sharing) types of democracy, administration efficiency, minority policy in local units, access to natural resources, corruption, accountability, centre's encroachment in different policy areas, strategic locations of units, geopolitical interests and many more factors play a critical role. Therefore, attributing either integration or disintegration to solely federal or non-federal character is not apt.

Federalism in itself therefore does not inevitably lead to more effective governance nor does it necessarily cause conflict; as seen above, there is no convincing evidence nor are there sufficient cases to compare and convincingly claim so. Especially in terms of conflict management, it would be apt to put that federalism is an experiment which possibly has better chances to yield sustainable democratic self-ruling governance in heterogeneous societies (despite number of caveats). Nevertheless, in the mixed-result episodes of federalism in the 20th and very early 21st centuries, Nepal is the latest to join the club as it grappled with strong demands of self-rule in regional and identity lines.

Nepalese Context

Although Nepal was not a British colony, its transformation from the dictatorship of Rana Oligarchy to democracy coincided with the wave of decolonization around the world in the second half of the 20th century. The monarchy as the executive followed the political principle of centralized political system (Westminster); as did many newly independent colonies in their path of nation-building by assimilating different population groups in pursuing modernization (Neuberger, 1979; Bendix, 1964; Calhoun, 1997).

Since Nepal was a highly diverse country with varying size of caste, ethnic and regional population groups, the monarchy did fairly well in terms of managing or at least averting conflict emanating from highly resentful regional and ethnic groups and developing a sense of common identity of Western conception of the nation-state (Whelpton, 2007: 4); although in development indicators Nepal showed an unenviable rate of progress (Panday 1999).¹⁰ The fact that leaders with ethnopolitical ambitions were provided perks by the Panchayat system (1960-1990) by being picked for different political, bureaucratic and cultural positions, and effective promotion of rhetoric of multiculturalism, they all helped neutralize any strong identity movement.

But the Maoist insurgency (1996-2005/06) shook the whole nation from its foundation which had already resulted into 15,000 deaths within less than a decade of war. And as the prospects of ending the insurgency created a condition in which even other democratic forces went against the constitutional monarchy who was holding an executive power at the time, and agreed with the Maoists to somehow restructure the country, the demand for self-determination (self-rule and autonomy with federal system) along identity lines became salient.¹¹

Studies show that internationally the emergence of strong ethnic demands or violent movements is not automatic because not every heterogeneous society is in armed conflict. Two major reasons can be attributed to Nepal's identity movement and consequently its national decision on federal institutional design. First, the Maoist insurgency created the favourable conditions by rendering the state mechanism the weakest in its modern history; second, it is the "significance" level of the ethnopolitical demands in terms of territory, identity, population, resources and strategic advantages (Wolff, 2009).

¹⁰ Panday, Devendra Raj. 1999 in Whelpton 2007: 137. *Nepal's Failed Development: Reflections on the Mission and the Maladies*. Kathmandu: Nepal South Asia Centre. He writes: "Although the economic record of 1951-90 may be dismissed simply as 'failed development' (part of the title of a recent book by one of the country's most prominent development economists), actual results differed from sector to sector."

¹¹ Gellner, David N., Joahha Pfaff-Czarnecka & John Whelpton. 2008. *Nationalism and Ethnicity in Nepal*. Kathmandu: Vajra Publication.

Stefan Wolff describes three key characteristics that are responsible in determining institutional design for self-determination (read self-rule in Nepalese context) conflicts:

“ the compactness of groups’ settlement patterns in a given state;¹²
the degree of ethnic heterogeneity in the territorial entities to which powers and competences of self-governance are to be assigned;
and their significance relative to the rest of the state.” (Wolff, 2009: 31)

This analytical framework proposed by Wolff aptly captures the dynamics of ethnopolitical movement of Nepal. Especially the *Madhes* movement is a good fit. Also to a large extent other hill identity movements fit, owing particularly to their capacity to unite different groups and stir up identity movement across the nation causing significant pressure on the national parties and governments (significance relative to the rest of the state).

In terms of identity politics discussed in this paper, the term “identity” refers to both region or territory and population character: caste, ethnicity, language, culture, religion. Ethnopolitical groups have sought political protagonism with a certain territorial power base. Movements such as *Tharu* in the far-west region or the *Madhes* mostly along the central southern region (and also eastern region), *Limbuwan* in the eastern region for instance are all identity movements with territorial power base claims.¹³ By contrast, in terms of *Dalits* (“untouchable” citizens), such groups neither constitute a common identity (because they speak Nepali language as the majority population—Brahmins and *Chhetris* – do and do not have any specific cultural history like other ethnic groups) nor do they possess any specific territorial power base regardless of the fact that *Dalits* constitute the biggest minority (over 13 percent)¹⁴, argues Prof. Pitambar Sharma.

¹² Wolff defines this “compactness” as: “communities of people who share a sense of identity that is distinct from other communities in the same state, who are neither dominant nor a numerical majority, and who live predominantly in their historic homeland or an otherwise delineated territory.” (Wolff, 2009:7)

¹³ It is a simplistic explanation for understanding because the territorial claims overlap

¹⁴ The Dalit population figure varies. However, according to census 2011, it is calculated as around

At the opposite end is the civic or non-ethnic federalism promoted by the dominant national parties: NC and UML.¹⁵ They emphasized economic and geographic viability though they also internalized constitutional federal self-rule for different regions. They basically stood as a bulwark against ethnopolitical self-determination, for instance, providing for secession, subnational governments in ethnic lines, imposing solely subnational majority languages, unilateral territorial claims by assertive ethnic groups, group rights, and special rights and so on.

This paper discusses Nepal's federal institutional design that became an irrevocable necessity caused by the Maoist insurgency and the ensuing identity conflicts, and the challenges to finalize a model that would satisfy restive ethnopolitical groups, namely *Madhesi*.

History of Political Structure

The point of reference of the founding of modern Nepal dates back to the middle of 18th century. During that period when the territories which roughly corresponded to current Nepal were scattered into several kingdoms, principalities, clusters of indigenous and ethnic groups, caste groups, the king Prithvi Narayan Shah from one of those kingdoms, Gorkha, won several such domains and unified them into one nation: Nepal; the kings of this Shah dynasty ruled Nepal directly and indirectly until as recent as 2006 AD.

In the year 1816 AD, the Anglo-Nepal Peace Treaty established the existence of sovereign state of Nepal in its current size and shape. In terms of this unified Shah-rule and its implications for the indigenous groups, ethnic groups, caste groups, the matter is fiercely debated in the political arena. However, during the rules of Rana oligarchy (1846-1951), the rulers institutionalized a discriminatory caste and ethnic hierarchy through 1854 legal code that allocated specific rights and responsibilities to different stratified peoples' groups. But in terms of population, administrative division, maps and surveys, although some censuses and mappings were conducted, they were not scientific; the state was concerned mainly about revenue collection and strategic interests (Kansakar, 1977). It

¹⁵ Federalism was mentioned in various forms in almost in the manifestos of almost all political parties in the CA1 elections.

was only in the 1950s Nepal started to apply a scientific method for census (Kansakar, 1977).¹⁶

In a brief democratic interlude (1951-1960) after the fall of Rana oligarchy and the rise of the party-less Panchayat system, established and led by the executive king Mahendra Shah, several identity-based organizations emerged --*Rai Limbu Samaj Sudhar*, *Tharu Kalyankari Sabha* etc. King Mahendra's *Panchayat* pursued an assimilationist national policy by promoting Nepali language as the national official language and Hindu religion as the official state-level religion. During the so-called "guided democracy" of Panchayat, the identity-based organizations or any other regionalist movements would not be able to mobilize for their political agendas but just to limit themselves with cultural promotions. Any political regionalist movement such as Nepal *Tarai* Congress formed in the 1950s that demanded autonomy in the southern plains of Tarai (currently *Madhes*) remained moribund.

¹⁶ Nepal's hill districts were divided into three groups called *gaundas* during the prime ministership of Janga Bahadur Rana (1846-77) with he himself as *gaunda* governor while southern plains Tarai districts were combined to form a single unit under a chief governor of the Tarai. Later in 1895, during the rule of Rana Prime Minister Bir Shamsher (1885-1901), it was further divided into total 35 districts: 23 *tahasil* hill districts and 12 *jillas* Tarai districts. These 12 *jillas* were organised into four circles and each circle along with some *tehsils* was placed under the charge of a *bada hakim* (chief administrator) (Michael, 2012).

Table 1: Regimes and Socio-Political Structures of Nepal

Source: Compilation of Various Sources

Regime Name	Regime Type	Period	Socio-Political Structure	Remarks
Shah Dynasty Rule	Absolute Monarchy	1768-1850	Specific Tasks or Occupations assigned to specific ethnic groups	Small principalities came under one rule
Rana Oligarchy	Dictatorship	1850-1954	Civil Code stratified Caste Hierarchy	Hindu Culture institutionalized
Democratic Transition	Power Sharing: <i>Nepali Congress (Political Party), Rana (absolutist rulers) and the-then symbolic Shah King</i>	1955-60	--	King Mahendra's Coup to end the democratic rule of the Nepali Congress
Panchayat Rule	Absolute Rule, One party rule under the Shah King	1960-90	New Civil Code, Caste Hierarchy Abolished	Limited Freedom
Parliamentary liberal Democracy	Multi-Party with Constitutional Monarchy	1990-2003 Maoist Insurgency (1996-2006)	Freedom of Expression, Freedom of Religion, Constitutionally Hindu Kingdom	-Significant improvement in socio-economic indicators. -Insurgency starts, 1996-2006 -Unstable Governments
King Gyanendra	Executive King	2003-2006	--	
Political Transition	Republic Order Maoist in Politics	2006-onwards	Interim Constitution: <i>Secularism, Federalism, Republicanism, ('Complete Democracy')</i>	Comprehensive Peace Agreement

Source: adopted from Sigdel, 2015

The Panchayat system however did take some progressive initiatives constitutionally. King Mahendra introduced a new constitution in 1962 with some commitments toward decentralization and economic progress and social justice; such as, abolition of various forms of exploitation, formation of Administrative Power Decentralisation Commission (APDC) to devolve power to local *panchayat* (local unit) etc. A three-tier political structure was introduced: a) village/ municipal *panchayats* at the lowest level, b) district *panchayats* at the middle and c) national *panchayat* at the national level. In further effort of decentralization, Panchayat introduced the Decentralization Act 1982 and its Regulations 1984. In terms of the discriminatory (caste/ethnic) 1854 legal code of Ranas, King Mahendra abolished it with a new code in 1963.

The Panchayat system ends in 1990 with restoration of a multi-party parliamentary democracy. The Maoist insurgency starts in 1996 and ends in 2005/06. The insurgency and the subsequent violent *Madhesi* uprising turns the tide completely towards identity politics by giving a momentum and legitimacy to the demands of radical restructuring of Nepal, mainly in identity lines.¹⁷

Nepal: from old to new

Nepal is a landlocked country surrounded by India from east, south and west, and in the north by Tibet Autonomous Region, China. Mainly 4 altitudinal landscapes run along east to west: southern flat lands in the south, hill regions and mountain regions in the middle and Himalayan regions in the north. Nepal is roughly double the size of Austria, has over 26 million population, and different ethnic, caste, linguistic, indigenous groups inhabit its territories in mixed population areas as well as in ethnic clusters. As Figure 1 shows, it was administratively divided into 75 districts through the Local Administrative Act 1971 (which were later grouped into 14 zones also; see maps no. 5 in Appendix I). The conceptual 5 regions for decentralized development which run from northern to southern borders also overlap the administrative divisions.

¹⁷ Several studies on Nepalese political history and Maoist conflict, mostly of anthropological nature, have shown somewhat close links between historical discriminatory politics and its long-term impact on different social groups, poverty and conflict (Einsiedel *et al*, 2012)

Figure 1: pre-2015 Map of Nepal



Source: Central Bureau of Statistics, Government of Nepal (modified)

Local Self-Governance Act, 1999 during the parliamentary democracy continued with those 75 districts, designated them as District Development Areas (DDA), and divided them from 9 to 17 areas (Municipalities and VDCs (Village Development Committees) on the basis of their population, infrastructure, income and other characters.¹⁸ The municipalities and VDCs are also further divided into Wards.

In terms of caste and ethnic break-up, Nepal is an agglomeration of minorities (126 caste/ethnic groups) with two largest groups comprising 16.6 percent *Chhetris* and nearly 12.2 percent *Brahmins* population, according to the census 2011; none of the other groups constitutes more than 10 percent of the population.¹⁹ The heterogeneity is to such an extent that, for example, the very remote mountainous district of Manang, which is the least heterogeneous, has 19 different caste/ethnic groups with 15 different languages as mother

¹⁸ An administrative area of the population of 10,000 in Hills and 20,000 in Tarai or Rs. 50,000 minimum annual income qualifies as a municipality. By 2015, the numbers of municipalities reached 217.

¹⁹ However, in aggregate, the Dalits constitute over 13 percent of the population.

tongues; the capital Kathmandu being the most heterogeneous with around whopping 120 different caste/ethnic groups with around 80 different languages as mother tongue.

However, the federal delineation according to the demands of some highly assertive ethnopolitical groups was irreplaceable given their significance as discussed earlier, therefore, despite the extremely heterogeneous population nationwide, ultimately the CA2 promulgated a new constitution with an institutional design of 7 federal states (see Figure 2). The preamble of the Constitution of Nepal goes:

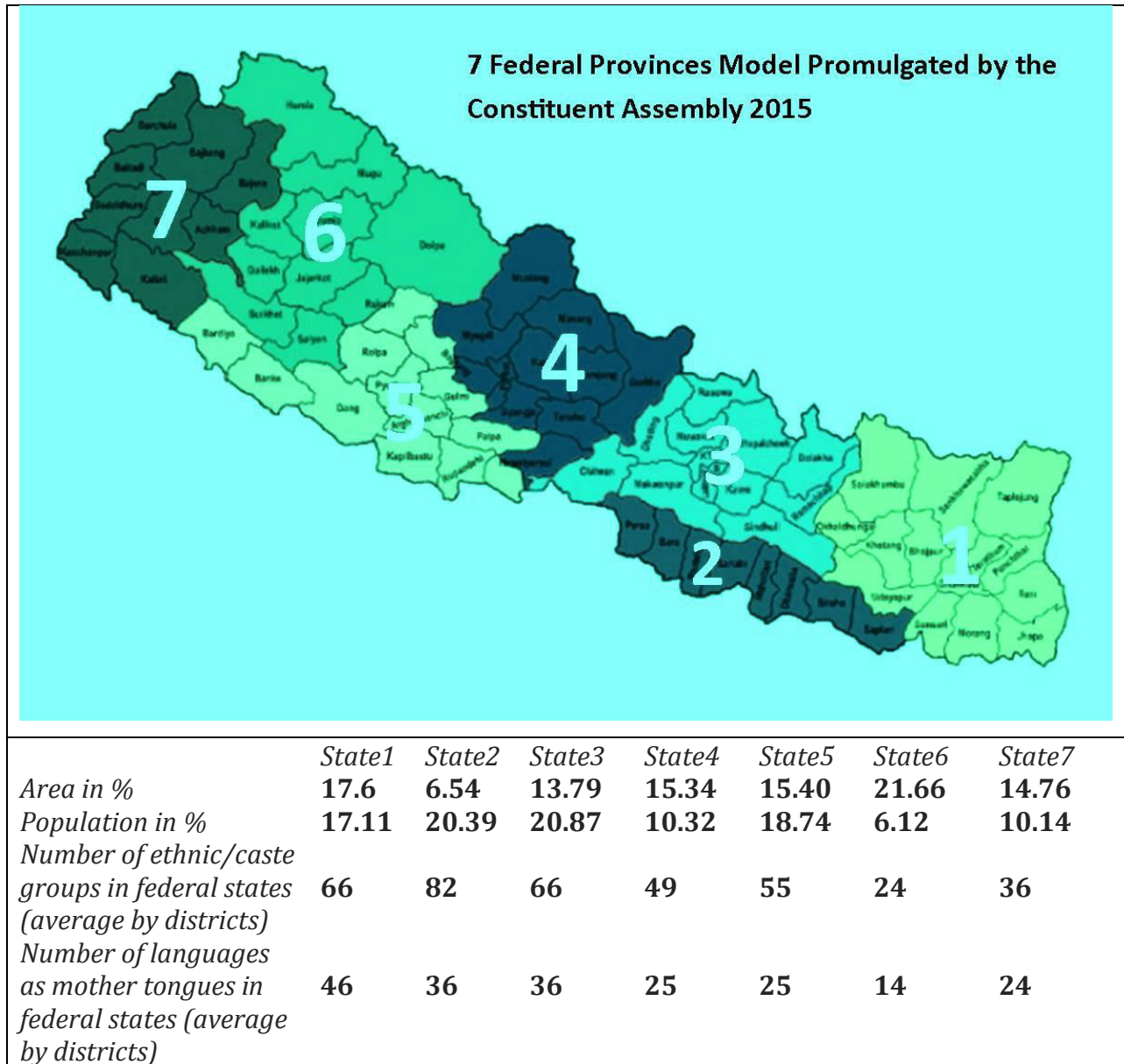
We, the Sovereign People of Nepal,
Internalizing the people's sovereign right and right to autonomy and self-rule,...
...unity in diversity by recognizing the multi-ethnic, multi-lingual, multi-religious,
multi-cultural and diverse regional characteristics, ... eliminating discrimination based on
class, caste, region, language, religion and gender and all forms of caste-based
untouchability...

The Constitution restructured Nepal into a three tier government: Federation, State and Local. The federal legislature will have two houses: House of Representative and National Assembly (federal parliament), and the state legislature will be unicameral.²⁰ The local legislature will have village assembly and municipal assembly. The Constitution has taken the existing districtwide structure (75 districts) as a base unit for federal division.²¹ Giving the continuity, the Nepali language remains the nationwide official language. However, the States have the authority to make their majority language as the official language of their States along with Nepali as the second official language.

²⁰ In federal legislature, 165 members of House of Representatives are to be elected through the first-past-the-post electoral system, and 110 members through proportional electoral system; political parties have the obligation to make the proportional list inclusive of different social groups. State legislature will also follow the first past the post and the proportional electoral system. States will have the number of members twice what they have sent to the federal legislature.

²¹ Except for the two districts, Nawalparasi and Rukum, that are divided into two as they fall into different provinces.

Figure 2: Final 7 States Model



Source: map: authors' own modification; the data is from Census 2011, CBS, Nepal Government

Note: Although the number of ethnic groups and language groups seem to be very large, the population of the groups lying below the top 5 groups (or also top 10 at times) is insignificant. In terms of tiny districts, such as Mugu, Humla,, Kalikot etc. in which there are 10 to 20 languages, only up to top 2 to 3 groups the number is significant.

Meanwhile, before the ink was dried of the new constitution, *Madhesi* front and *Tharus* in the Far Western region burnt the copies of constitution that resulted in several deaths in ensuing violence and agitation on both protestors' and government's sides. Mainly the *Madhes* agitation in State 2 led by the highly charged *Madhesi* leaders of the UMDF and the use of force by the government took a nasty turn resulting into several civilian deaths and 5 months long border blockade by the agitators. Ultimately the government agreed to address their concerns, and subsequently conducted clause-wise discussions and passed a bill to amend article 42, 84 and 286 of the newly promulgated Constitution of Nepal.²²

Why the Dissatisfaction?

Different views among the political parties regarding the restructuring the country was seen right from the beginning at the CA1's thematic committee on State Restructuring and Distribution of State Powers. Different models were developed and proposed, but none of them were unanimously accepted (see Appendix for some of the models). The committee received a total of 22 maps proposals from various political parties and individual CA members. In 2010, the State Reconstruction Committee of the CA1, in which the Maoists were the majority, managed to pass a 14 states model map proposal (see Figure 3) ; the ethnopolitical parties garnered majority that time since some dissent members of the UML who themselves belonged to some caste/ethnic minority sided with the ethnic advocates.²³

But this model did not make it to the CA1 for ratification as the NC and UML, the second and third biggest party of the CA1, stood against it. It was not undeniable that they feared that such restructuring would undermine their constituency base in several regions; but what was more obvious was that the majority population groups were seemingly wiped out of the entire map. The revenge politics, prospects of power and of economic opportunities with less competition apparently led the proponents to such an extent. While

²² Article 42: From principle of inclusion to principle of *proportional* inclusion; Article 84: in terms of dividing electoral constituencies, from the basis of population and geography to the basis of first population and second geography, with every district with at least one constituency (286).

²³ The dissent leader Ashok Rai of UML left the party and formed a new ethnopolitical party ahead of the CA2 elections. But his party fared badly in the elections.

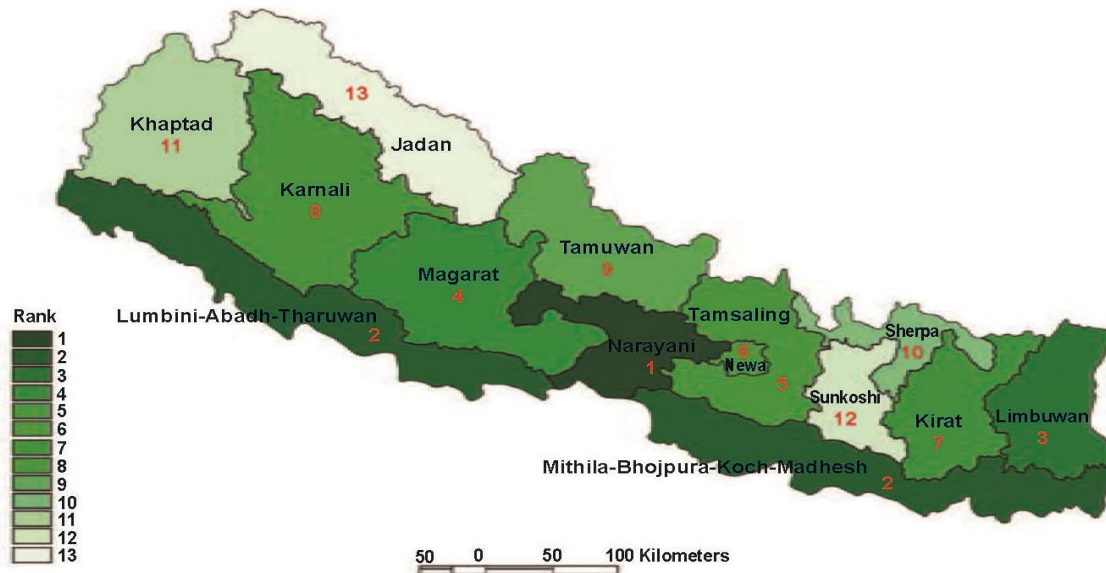
every highly charged group had a province in its name – *Limbuwan, Kirat, Sherpa* in the east; *Newa* and *Tamsaling* in the center; *Tamuwan* and *Magarat* in the west; and *Madhes* and *Tharuwan* in the south – the regions in which Brahmins or *Bahun*s and *Chhetris* were the majority, were named after the geographical regions.

In the same way, the entire *Tarai (Madhes)* regions were structured into two states—1) *Mithila-Bhojpur-Koch-Madhes* and 2) *Lumbini-Awadh-Tharuwan* –in such a way that these states would outdo the mountain states in terms of strategic significance: all the major rivers running down through the plains and major trade and transit points with India would lie in those two states.²⁴ In addition, given the fact that they are highly populated states (southern plains population in such structure would be over 50 per cent), ethnopolitical parties would have an ideal constituency base in an electoral system that is based firstly on population and secondly on geography and other factors (this was one of the major demands of *Madhesi* parties and the new constitution of 2015 was amended already to that end).

Despite the fact that the *Madhesis* reasonably made their case on the basis of the fact that they were looked down upon socially and politically in Nepal mainly due to racial, cultural and linguistic incompatibility with the Hill regions, their genuine looking ambition of creating another pluralistic region of *Madhes* in which *Nepalese* with different race, culture and language could freely reside caused huge scepticism in Kathmandu.

²⁴ In fact, the *Madhesis'* major demand all along had been of “One *Madhes* one province”, meaning, the entire southern plains from west to east must be carved as a single state, which ultimately they abandoned.

Figure 3: 14 Provinces Model



Source: Karki 2014²⁵

Similarly, in order to put the ambitions of some hill ethnopolitical groups –*janajati*-- in perspective, Gellner and Adhikari argue that the *janajati* activities hoped:

“1) that the different states of provinces would be named after the ethnic group whose ancestral home they were; 2) that 51 per cent of seats in the state assembly as well as the position of chief minister would be reserved for that group regardless of population size; 3) that the ‘home group’ would have prior rights (Adhikari & Gellner 2016: 18).”²⁶

²⁵ In January 2010, the CA Committee on State Restructuring and Distribution of Powers proposed the creation of 14 provinces. Proposed provincial boundaries demonstrate significant disparities between these units in many respects: size of population, topography, infrastructure, economy and resource availability, and accessibility.

²⁶ In terms of the claims that the state was discriminatory, an amendment in the Civil Service Act (1993) reserved 45 per cent of posts for disadvantaged groups: 33% Women, 27% indigenous nationalities, 22% *Madhesis*, 9% Dalits, 5% disabled and 4% backward regions. (Adhikari & Gellner 2016).

There were several other efforts in the CA1 to pass a federal design, but to no avail. In 2012, the high level State Restructuring Commission comprised of social scientists and experts from major parties could not produce a design with unanimous agreement; while the ethnopolitical sides proposed 10+1 federal model (1 state without territory for *Dalits*), the non-ethnic side submitted its own dissent proposal. One particular fact, that the ethnic advocates categorized the majority population of *Khas Arya* as “others,” complicated the matter to such an extent that in a highly vulnerable environment the CA1 lapsed without any constitution (Adhikari and Gellner, 2016). Overall, except for the politically motivated individuals, organizations and politicians, general population had a passive outlook towards the evolution of federalism debate and ethnopolitics (see the survey report in Appendix II).

Afterwards, in the CA2 the NC and the UML became the first and the second party with Maoists in the third position with a huge margin, ultimately the Assembly promulgated a new constitution. However, the new structure divided the southern plains in such a way that the areas claimed by the *Madhesis* in State 2 was given to State 1 and those claimed by *Tharus* in State 5 was given to State 7. At this instance, some gerrymandering by top leaders –KP Oli of UML, and Sher Bdr. Deuba of Nepali Congress, among others, who had their constituency base at stake in these areas, could not be ruled out. Meanwhile, the process of designing an all-satisfying federal institutional design seems to be an unresolvable continuous dispute.

Conclusion

The identity movements that were dormant during the Panchayat system began to reactivate from the Maoist insurgency. The subsequent *Madhesi* uprising for federal autonomy firmly prepared the field for ethnopolitics. The unfolding identity movements, bolstered by the arguments that past regimes such as Shah-rule, Rana-rule and Panchayat-rule –pursued discriminatory policy against different social groups in Nepal which was allegedly mainly responsible for an unevitable socio-economic conditions, succeeded to create a tripolar ethnic cleavage between *Bahun-Chhetri*, *Hill janajatis*, and *Madhesis*,

among others. Consequently, in order to subdue ethnic and regional conflicts, NC and UML agreed to the idea that an institutional design that could work as an effective antidote to Nepal's long-standing problems of social discrimination and under-development is federalism.

But federalizing Nepal was easier said than done. The questions about how to cut the "national cake" and who is getting the most of it and why? posed enduring problems. On the one hand, there were ambitions of highly charged ethno-political groups—*janajati*, *Madhesi* and *Tharu*, and on the other, were the political parties with long history and nationwide popularity and domination—NC and UML. Such complexities unfolded the imbroglio that ran through two Constituent Assemblies, such as, fight for numerical superiority in the newly carved regions, politico-distributive advantage, strategic and geopolitical advantage etc. Despite the fact that several federal provinces or states were developed and presented, not a single model got unanimous support. Eventually the CA2 promulgated a new constitution with 7 states, but only managed to ruffle the feathers of the *Tharus* and *Madhesis* who did not get their "fair share": they lost the districts that fell into their states in some proposed models earlier. In terms of the implementation of the new institutional design, uncertainty looms large.

References

Adhikari, Krishna Prasad & Gellner, N. David (2016) New Identity Politics and the 2012 Collapse of Nepal's Constituent Assembly: when the dominant becomes 'Other'" In *Modern Asian Studies* February:1-32.

Anderson, George (2008) *Federalism: An Introduction*. Oxford University Press

Bendix, Reinhard (1964) *Nation-Building and Citizenship*. Berkeley: University of California Press

Calhoun, Craig (1997) *Nationalism*. Minneapolis: University of Minnesota.

Dahl, Robert (1986) Federalism and the Democratic Process, in *Democracy, Identity and Equality*. Oslo: Norwegian University Press

Einsiedel, S.V., Malone, D. and Pradhan, S. (2012) (eds.) *Nepal in Transition. From People's War to Fragile Peace*, New York: Cambridge University Press.

Elazar, Daniel (1987) *Exploring Federalism*. Tuscaloosa: University of Alabama Press

Gellner, David N., Joahha Pfaff-Czarnecka & John Whelpton (2008) *Nationalism and Ethnicity in Nepal*. Kathmandu: Vajra Publication

Gibson, Edwar (2004) ed. *Federalism and Democracy in Latin America*, Maryland: John Hopkins University Press.

Kansakar, Vidya Bir Singh (1977) *Population Census of Nepal and the Problems of Data Analysis*, Kathmandu: CEDA.

Karki, Buddhi (2014) State Restructuring and Federalism Discourse in Nepal, *The Federalism Debate in Nepal Vol. 2*, eds., Buddhi Karki & Rohan Edrisinha. Kathmandu: UNDP & SPCBN: 1–22

Moreno Luis, Colino Cesar, Kincaid John (2010) (Eds) Diversity and Unity in Federal Countries in *A Global Dialogue on Federalism, Vol VII*. McGill-Queen's University Press

Neuberger, Benyamin (1979) Federalism in Africa: Experience and Prospects, in *Federalism and Political Integration*, ed. Daniel J. Elazar (Tel Aviv: Turtledove Publishing, 1979), 171-188.

Ottaway, Marina (1994) *Democratization and Ethnic Nationalism: African and Eastern European Experiences*, Washington, D.C.: Overseas Development Council.

Riker, William (1964) *Federalism: Origin, Operation, Significance*, Boston: Little, Brown & Co.

Sigdel, Anil (2015) The Ethnic Federalism Governance Model vs. Civic Model Debate in Nepal, *Science of Politics (SCOPE) Conference*, University of Bucharest, Romania. DOI: [10.13140/RG.2.1.3740.0085/2](https://doi.org/10.13140/RG.2.1.3740.0085/2)

Stepan, Alfred (2004) Federalism and Democracy: Beyond the US Model, in U.M. Amoretti & N. Bermeo (Eds), *Federalism and Territorial Cleavages*, pp. 441–456. Baltimore: Johns Hopkins University Press

Suberu, Rotimi (2001) *Federalism and Ethnic Conflict in Nigeria*, Washington DC: United States Institute of Peace

Whelpton, John. 2007. *A History of Nepal*. Cambridge: Cambridge University Press.

Wolff, Stefan (2009) Complex Power-sharing and the Centrality of Territorial Self-governance in contemporary Conflict Settlements, *Ethnopolitics*, 8:1, 27-45, DOI: 10.1080/17449050902738853

Appendix I

1. Nepali Congress

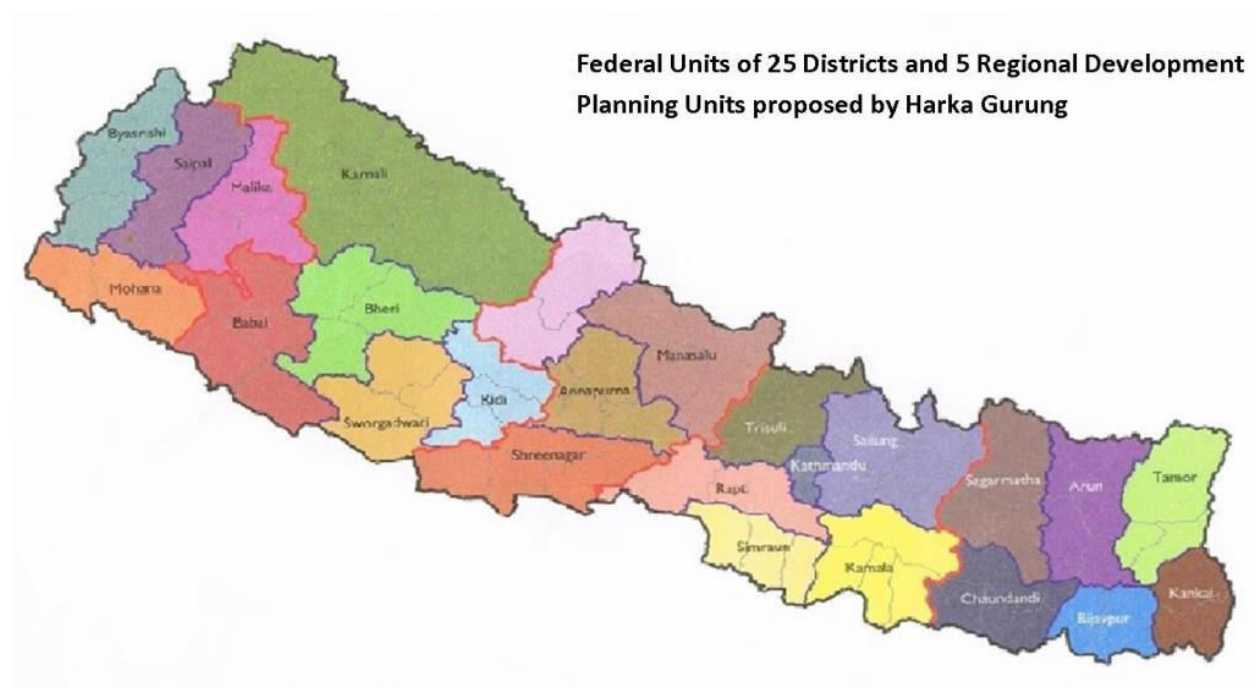
Nepali Congress party proposed six- or seven –state models of state restructuring on the basis of identity and capability. Party claimed that use of and access to natural resources, administrative viability, economic capability and physical infrastructure were taken into account while dividing the states. Their proposal read: Two prime regional languages spoken in a particular state apart from Nepali will be accredited as state languages. Prime cultural festivals in a particular state would be considered as state festivals.



Source: Kathmandu Post 12. 10. 2014

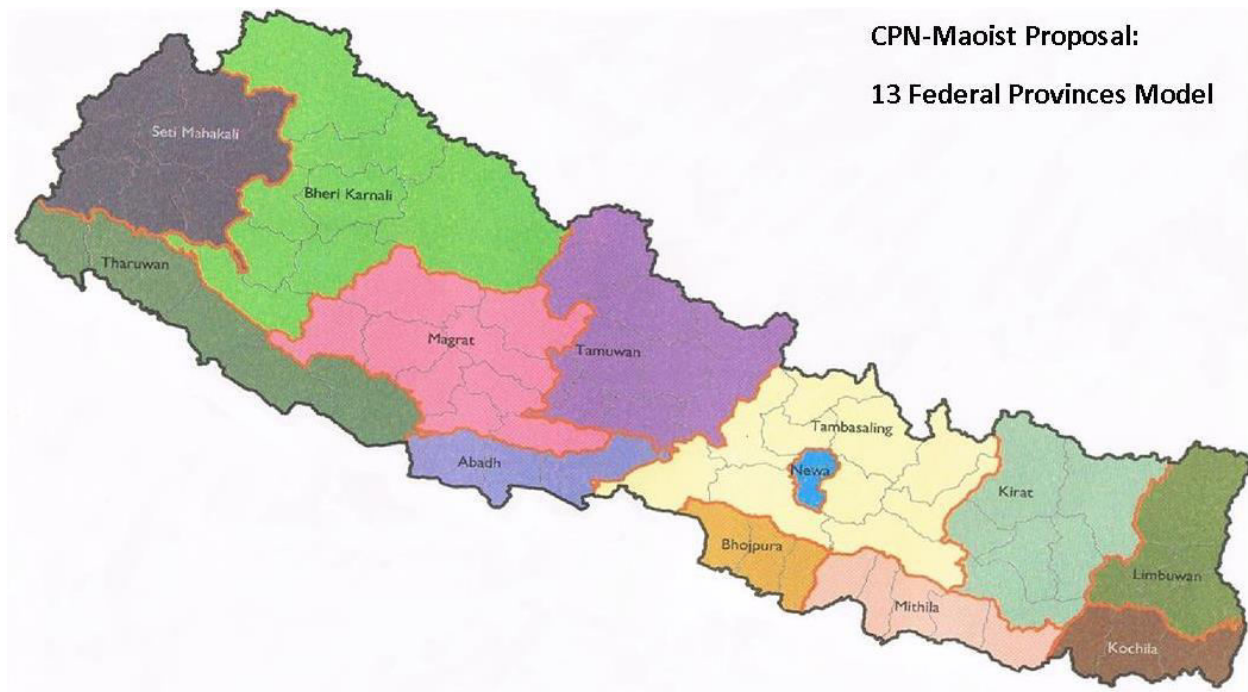
2. Harka Gurung (1939-2006) Geographer/Planner

Harka Bahadur Gurung, a prominent Nepalese scholar with a PhD in geography and an anthropologist, died in a helicopter crash on September 23, 2006 in Taplejung District, Eastern Nepal. Gurung attempted to show in his study that *adivasi/janajatis* in Nepal are socially, economically and politically backward compared to groups like the Brahmin, *Chhetri* and *Newar*. He sketched a new model of regional development based on five development regions and proposed to divide Nepal into 25 districts. Gurung's model was not proposed for federal Nepal and he did not live to see the CA elected for rewriting new constitution for Nepal. It was proposed only to achieve regional balance in national development through decentralisation and devolution of power and authority by restructuring sub-national political and administrative units. However, his model was widely discussed during federal restructuring of Nepal. He proposed: 5 planning and development regions, 25 administrative and development districts, 75 service delivery areas, 3000 VDCs, 34 Municipalities.



Source: Sharma, Khanal and Tharu 2009

3. CPN (Maoist)



Source: Sharma, Khanal and Tharu 2009

The objective of CPN (Maoist) party's proposed division was based on ethnicity, territorial identity, nationalities, ethnic structure, geographical accessibility, major language and economic potential. It presented 13 autonomous republic states based on territorial identity (*Seti-Mahakali* and *Bheri-Karnali*), ethnic identity (*Magarat*, *Tharuwan*, *Tamuwan*, *Newa*, *Tamsaling*, *Kirat*, *Limbuwan* and *Kochila*) and major languages (*Mithila*, *Bhojpur* and *Abadh*). It proposes and allows for more sub-autonomous state or units and autonomous areas based on ethnic concentration at the local level but no details provided. It proposed 3 tiers of government: central, autonomous federal state and local level.

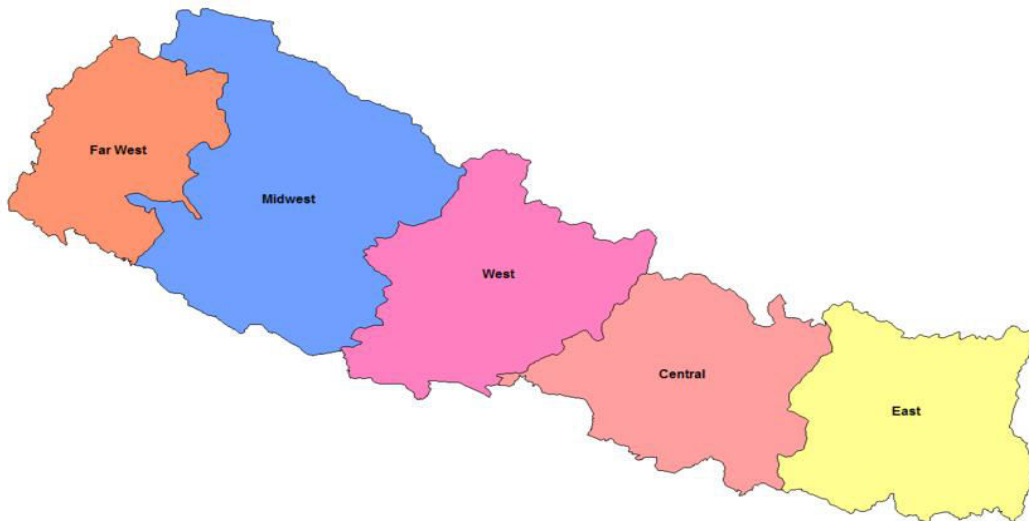
4. High Level State Restructuring Commission (HLSRC)



Source: Karki, 2014

HLSRC was formed with a limited mandate to review the CSRDSP's (Committee for State Restructuring and Distribution of State Power, CSRDSP – a committee of the Constitution Assembly) draft proposal, taking into account divergences of opinions expressed within and outside the CA but retaining both identity and capability as basis of constituting federal units. While reviewing on the proposed 14 provinces (see Figure 3 in the article) by applying 29 indicators of capability, the HLSRC suggested removing 4 provinces, which are lowest in ranking, and reallocating this territory into other proposed neighbouring provinces. Hence, it recommended a federal Nepal constituted of 10 (+1) provinces shown above.

5. Maps of 14 Zones and 5 Development Regions of Nepal created during the Panchayat.



Source : Wikipedia.org

References

Sharma, Pitambar, Narendra Khanal and Subhash C. Tharu (2009) *Towards A Federal Nepal: An Assessment of Proposed Models*, Kathmandu: Social Science Baha & Himal Books

Karki, Buddhi (2014)State Restructuring and Federalism Discourse in Nepal, *The Federalism Debate in Nepal Vol. 2*, eds., Buddhi Karki & Rohan Edrisinha. Kathmandu: UNDP & SPCBN: 1-22

Appendix II

Questionnaire (with responses)

1. Do you support the case of ethnic federalism in Nepal?

Yes: 7 No: 27

2. Have you understood what ethnic identity based federalism is?

Yes: 24 No: 5 do not know: 4

3. Do you think that federalism is important/necessary for sustainable development and conflict management in Nepal

Yes: 9 No: 23 do not know: 1

4. What is ethnic identity based federalism in your opinion? An agenda proposed by political leaders for power and authority or people's choice?

People's choice: 7 Leaders' agenda: 26 do not know: 1

5. Do you agree that the constitution has addressed the wish of people from different ethnic groups?

Yes: 15 No: 16 do not know: 3

6. Is ethnic revolt spontaneous or outside influence in your opinion?

Spontaneous: 8 outside influence: 23 do not know: 3

7. Are you satisfied with current division of the states?

Yes: 7 No: 23 do not know: 4

Survey type:**Convenient sampling:** whoever was available and willing to answer during the survey.*Survey was conducted by the journalist and commentator Rudra Chudal in Nepal.***List of the respondents: 32 Men, 2 Women**

S.N.	Name of the persons	Age	Gender	Ethnicity
1.	Krishna Prasad Bhandari	53	M	
2.	Kamal Prasad Chudal	--	M	
3.	Rameshwar Thapa	47	M	
4	Rabina Rayamajhi (Karki)	30	F	
5	Pashupati Ghimire	70	M	
6	Surya Subedi	69	M	
7	Basanta Sharma	62	M	
8	Madhav Ghimire	52	M	
9	Nijamuddin Miya	62	M	
10	Khagendra Khatri	48	M	
11	Tanka Kumar Khatri	55	M	
12	Dhun Raj Panthi	50	M	
13	S. Thapa	--	M	
14	Ratna Chaudhari	47	F	
15	Sahil Chudal	21	M	
16	Laya Prasad Chudal	83	M	
17	Mohit Rajak	16	M	
18	Santosh Kumar Sahani	19	M	
19	Pankaj Rajak	18	M	
20	Gunjan Chuda	24	M	
21	Pradeep Agrawal	36	M	
22	Nil Vkram Lekhali	55	M	
23	Dhaniram Chaudhari	38	M	
24	Gopal Prasad Shah (Madheshi)	40	M	

25	Bhola Khatiwada	62	M	
26	Vishva Bhattarai	35	M	
27	Durga Prasad Chudal	58	M	
28	Anil Kumar Marwari (Nepali)	59	M	
29	Ranjan Subba	31	M	
30	Til Bikram Nembang	70	M	
31	Prem Khujum Limbu	36	M	
32	Lakshman Sunuwar	33	M	
33	Harka Bahadur Mohang	51	M	
34	Maniraj Ingam	60	M	