

Annex G Peace Process Status and Implementation

The 2006 Comprehensive Peace Agreement set forth an ambitious agenda for transforming the ceasefire into permanent peace. This annex lays out the progress and status of the key commitments in the CPA to which development partners provided support. It also evaluates the contributions made by development partners and, where feasible, specifically the inputs of the focal development partners.

Each of the nine chapters first describes the status of the peace process in the area of the CPA point. This provides a rich narrative of recent Nepali history. It also provides an assessment of the CPA point's level of ambition. Given the starting conditions in 2006, how far could the signatories to the CPA reasonably expect to go in six years, by 2012? Finally, in each chapter, the focal development partners' contribution to the CPA area is evaluated against the DAC criteria effectiveness, efficiency, sustainability and impact.

G.1 Constituent assembly election and monitoring

Under the CPA the parties committed to holding of free and fair elections to form an inclusive constituent assembly by June 2007. This was an ambitious plan, given the need for voter registration, further political agreement on enabling legislation, and more. Already by December 2006, questions were being raised over how realistic the election timing was (ICG, 2006, p. 1). Elections by November 2007 were certainly possible, but this did not happen for political reasons.

The elections were eventually held in April 2008 with the support of the international development partner community. The election included both First Past the Post (FPTP) and Proportional Representation (PR) polls. Surprisingly, the UCPN-Maoists¹ won the most seats – though not a majority – followed by the Nepali Congress and CPN-UML. Although competing as three separate parties, the parties forming the United Democratic Madhesi Front (UMDF) came jointly in third. The other parties (and independents for the FPTP poll) accounted for less than one fifth of the PR poll and one seventh of the FPTP poll.

Electoral turnout was relatively high, though it varied considerably from the national average of 63%. However, the actual turnout was probably higher, as the 2011 Census suggests that there was some over-registration.

The situation of elections within the implicit ToCs of the development partner varied between development partners. All the development partners saw elections as a necessary step towards creating a more democratic and inclusive society. Some partners, including the larger development partners, appeared to see the elections as an end in themselves, whereas the smaller development partners saw the elections as just one step in a broader ToC. The differences in the implicit theories of change became evident in how the different development partners approached the postponement of the CA elections. This is discussed below.

Based on independent reports, it appears that Nepalis were given and indeed exercised their right to vote with little disruption reported on polling day. The Carter Center noted that “*Violent incidents, threats, and electoral malpractice marred an otherwise peaceful campaign, but [this] did not deter high*

¹ Technically, the party name was CPN-M at that time, and only became the UCPN-M in January 2009. However, we use the current name to avoid confusion with the UCPN-M splinter group founded by Mohan Vaidhya (alias Kiran) in June 2012 which is also called the CPN-M.

voter turnout or public confidence in the election.” (Bartulac-Blanc, 2008a, p. 3). While not perfect, the elections were largely free and fair.

The data in this section is based on the election results published by the electoral commission. For the purposes of analysis the full results data files were downloaded from the electoral commission website (Electoral Commission, 2008a, 2008b)

Approaching the elections

The elections were originally scheduled for June 2007. However, the election commission called for a postponement for logistical reasons, and the elections were postponed until November. Even before this first postponement, the Maoists had announced that any postponement would lead them to press for an end to the Monarchy before further elections were held. The Maoist position hardened after their 5th Plenum in August 2007, and the Maoist ministers left the government in September as their supporters began a protest campaign calling for election by Proportional Representation (PR) only and an end to the monarchy.

The Maoists did not submit any candidates for the November 2007 elections. Some development partners put strong pressure on the government to hold the elections on time², however, other development partners pushed for inclusive elections. The elections were postponed indefinitely and the crisis was resolved with the 23-point agreement of December 2007 (Seven Party Alliance, 2007). This increased the number of seats to be filled by PR from 240 to 335 and established that Nepal would become a Republic once the CA met to ratify the decision.

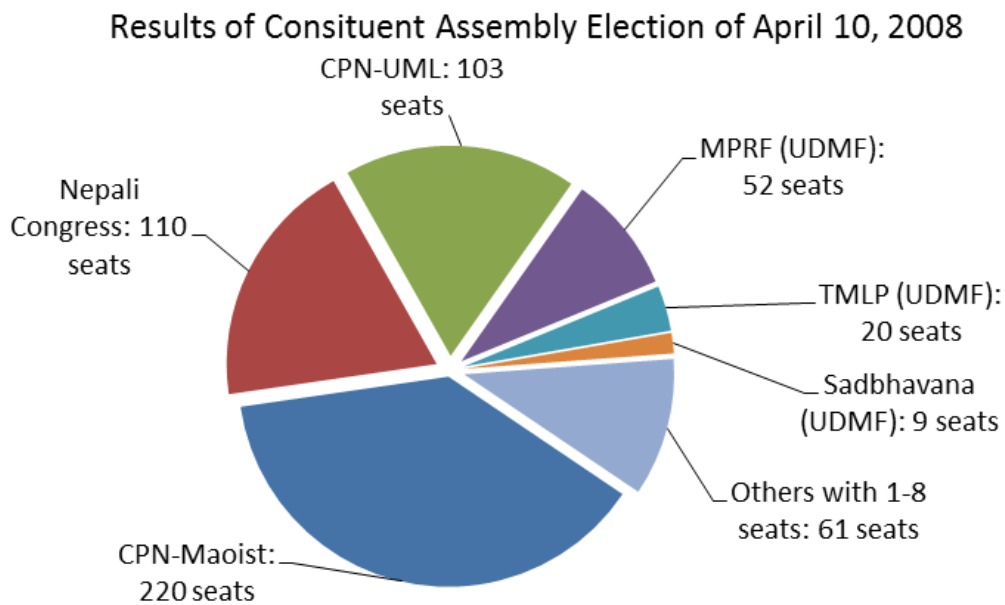
While the 23-point agreement brought the Maoists back on board, it is notable that the agreement was between the same parties that had signed the 12 point understanding of November 2005 (UCPN-M and Seven Party Alliance, 2005). However, Madhesi groups had arisen as a political force and they now formed the United Democratic Madhesi Front (UDMF) and threatened to disrupt the elections unless concessions were made. The Terai was again racked by protest, but an agreement of 28 February 2008 (Government of Nepal and UDMF, 2008) between the Government and the UMDP broke the deadlock. This agreement increased the CA quota for Madhesis and guaranteeing them access to the Army etc.

Outcome and turnout

The election was complex with 240 member of the Constituent Assembly being elected on a first past the post basis, and a further 355 being elected on a proportional representation basis. Further 26 members of the assembly were directly appointed by cabinet. The CPN-M won 38.3% of the seats overall with approximately 30% of the vote. This imbalance was due to the first past the post seats where the Maoists won 50% of the seats with just over 30.5% of the vote, they won 30% of the proportional representation seats with 29.3% of the vote.

² The US, Chinese and Indian ambassadors went to see the PM on October 4th to press for November elections (IRIN, 2007).

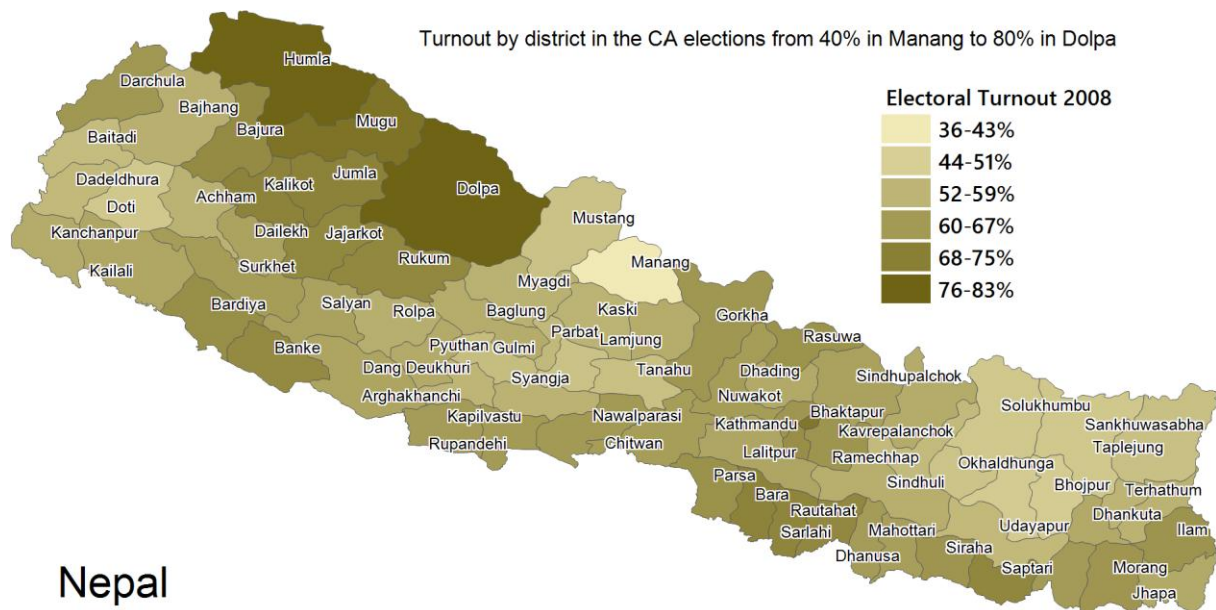
Figure 1: Results of the elections to the constituent assembly



Source: National Election Commission.

Electoral turnout was at 62% for the first past the post seats and 63% for the proportional representation seats. Over half a million votes for the first past the post seats were spoiled (5.2% of the total poll). These levels are relatively high. Turnout varied considerably, however, from 40% to 80% with some of the least populous districts having the highest turnout. Turnout was above average in some of the most troubled districts, both during the Maoist armed struggle and the Madheshi conflict.

Figure 2: Turnout for the CA Elections (based on First Past the Post Voting Numbers)



Source: National Election Commission.

Free and fair?

Initially the assessment of the election was that it was free and fair. This judgement was apparent in the press releases following the elections. The evaluation of the impact of election monitors presents eight essentially positive assessments of the election from monitoring mission including the Carter Center, the European Union, the UN, the Asia Network and national monitoring groups (Bartulac-Blanc, 2008a, pp. 3-4).

By August 2008, some of the national monitoring groups had changed their mind and now stated that they did not regard the elections as free and fair. What had happened in the meantime was the Maoists had emerged as the winners of the election as the largest political party. Numerous source refer to the Maoist election victory as a “surprise win” and the International Crisis Group referred to this surprise win as bringing about an irrevocable change to the political landscape in Nepal (ICG, 2008c, p. i).

Interestingly, the monitoring evaluation makes it clear that interviewees who had changed their mind about the election had difficulty in explaining why they had changed their mind, leaving the impression that unhappiness with the election results led to unhappiness with the elections. It was suggested that the initial statement on the elections by President Carter as too early and too positive (Bartulac-Blanc, 2008a, p. 5). Importantly though, more than a year later, the Carter Center’s assessment was largely unchanged (Carter Center, 2009, p. 55). While not perfect, the elections were largely free and fair.

A total of 17,611,832 persons were registered to vote. However this number would appear to be approximately two and a half million more than the population of voting age, estimated to be just under 15 million by IDEA International.³ Calculation from the 2011 Census using the population growth rate, age distribution and final census figure (CBS, 2012) suggests that the number of persons over 17 in mid-08 was 14.8 million. This would increase the turnout for the direct and proportional polls from 61.7% and 63.3% to 73.4% and 75.3% respectively.

As noted earlier, the election results were a shock. Shortly before the elections, the ICG analysis referred to the near universal expectations that the Maoists would fare poorly in the elections (ICG, 2008a, p. 7). The results were particularly shocking for the NC and the UML. A majority of top leaders from the NC, including four relatives of the Prime Minister, powerful cabinet ministers, and the party’s acting president, were defeated, largely by Maoist candidates. The man who had led the UML for 15 years was defeated by a little-known Maoist candidate and resigned (Sangraula, 2008).

Voting patterns

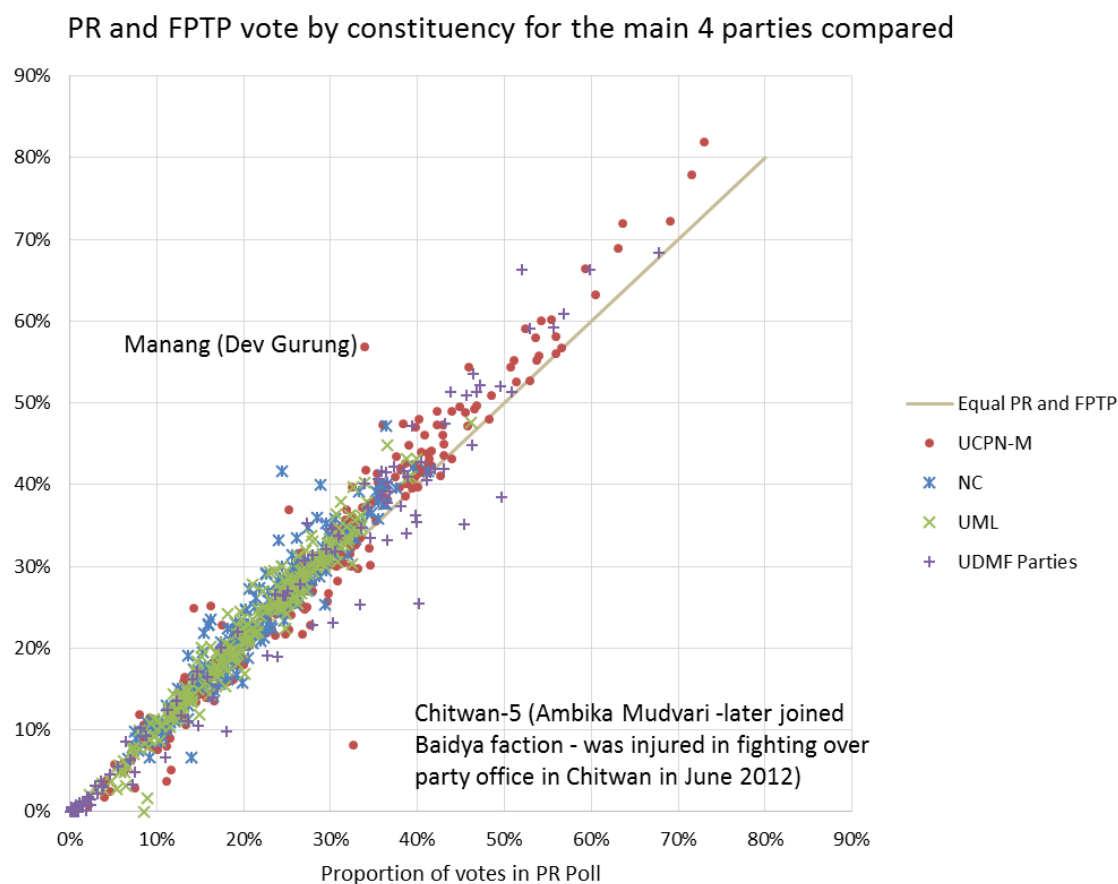
There was a very strong correlation⁴ between vote for the parties in the FPTP and the PR elections. The main parties normally got slightly higher totals in the FPTP poll than in the PR poll in the constituencies where they won. This is probably due to the fact that the PR poll allowed people to vote for parties that were not offering any candidates locally.

There were a few outliers where particular candidates scored significantly more than their party’s PR vote as with Dev Gurung in Manang or significantly less as with Ambika Mudvika in Chitwan (Figure 3).

³ www.idea.int

⁴ Pearson’s R ranged from 0.96 for Congress to 0.99 for the UDMF, all with p_{1-tailed} <0.0001

Figure 3: Correlation between the PR and FPTP vote by constituency



Source: National Election Commission Data and news reports

In all but 21 constituencies the party with the highest PR vote also won the seat. In 12 constituencies the UCPN-M won the PR vote, as did the UDMF in 5 seats, but lost the seat to Congress or the UML.

An analysis of the geographical distribution of party support that variability in individual constituencies was higher than for districts, and that the FPTP vote was more variable than the PR vote (Table 1). Here the Gini coefficient was used as a measure of equality of support. A party that had the same level of support in every district would have a Gini coefficient of 0 and a party that only had support in one district would have a Gini coefficient of 1.0⁵.

Table 1: Analysis of geographical variability of the level of party support across districts and constituencies

Gini Coefficient for distribution of:	NC	CPN-UML	UCPN-M	UDMF Parties
Party Vote (PR) by District	0.173	0.192	0.226	0.822
Party Vote (FPTR) by District	0.180	0.208	0.238	0.842
Party Vote (PR) by Constituency	0.196	0.233	0.274	0.737
Party Vote (FPTR) by Constituency	0.213	0.251	0.296	0.755

⁵ Coefficients were calculated using the formula given by (Deaton, 1997, p. 139).

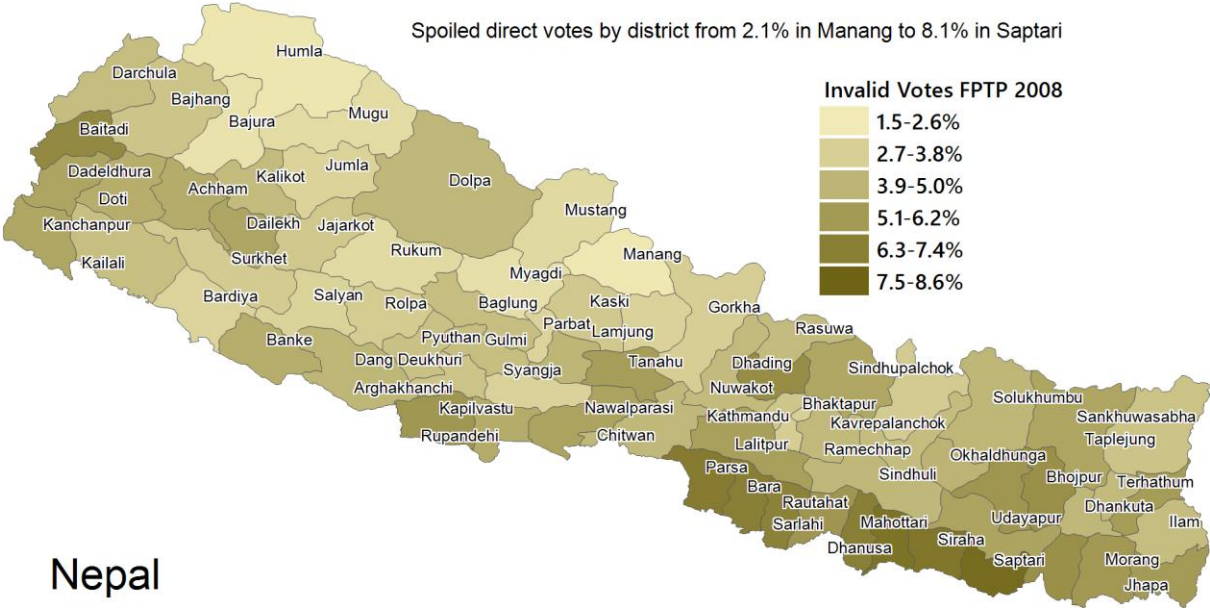
All of that statistics show that support for the Nepali Congress varies least by geography, followed by the UML and the UCPN. Support for the UDMF parties had a strongly geographical bias, hardly surprising as they were effectively concentrated in one geographical region. It should be noted that the parties appear in their age order, with the NC being the longest established party and the UDMF the newest established.

Knowledge to vote

The voting procedure was straightforward. Each voter had to stamp the box on the ballot paper corresponding to the party of the candidate they wanted to support with the swastika stamp provided in the polling booth. Symbols rather than names were used to indicate the candidates and the parties. Voters were only provided with one ballot paper at a time to minimise confusion between the two polls. Voters completed the first past the post ballot first, before then completing the proportional representation ballot.

The FPTP ballot papers had an average of 16 to 17 candidates, and the PR ballots had all 54 parties. Despite the greater length of the PR ballot the level of spoiled votes for the PR ballot (3.7%) was less than for the FPTP ballot (5.2%). This may reflect learning gained by the voters in filling the first ballot paper being used to fill the second paper correctly.

Figure 4: Spoiled voted by district for the first past the post poll



Nepal

Note: No numbers for spoiled votes were provided by the Election Commission from the proportional representation poll in any of the sources examined

Source: National Election Commission.

Development partners supported voter education either through NGOs, or through the NPTF and the UN. However, the relatively high percentage (5.2%) of spoiled (invalid) in the direct elections must raise the question about whether voters were sufficiently well informed to cast their ballots. The ICG referred to this level of spoiled votes as “low” (ICG, 2008b, p. 8), however it is higher than in any other parliamentary election in Nepal since 1986, and higher than the rate of spoiled votes in India, where no more than 2.5% of ballots have been spoiled in Parliamentary elections since 1980 (Pintor et al., 2002, p. 138). By contrast, the level of spoiled votes in the first past the post system for Parliamentary elections in the UK was 0.26% in the 2001 elections (The Independent Commission on Alternative Voting Methods, 2002, p. 17)

Table 2 *Voter turnout and spoiled votes in parliamentary elections in Nepal*

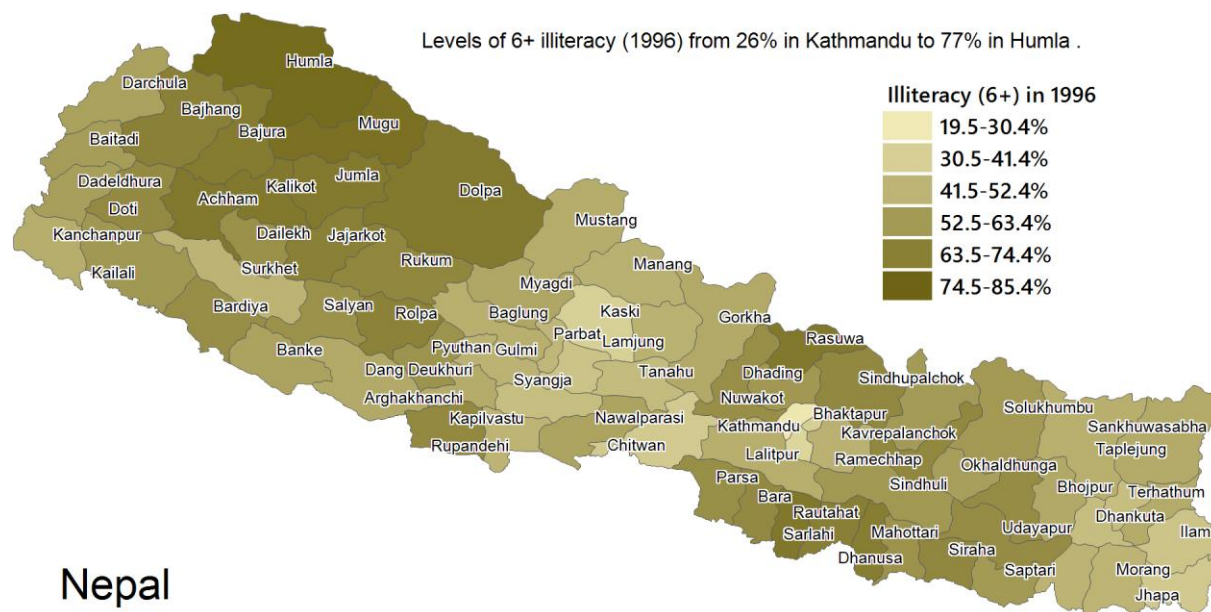
<i>Year or Parliamentary Election</i>	<i>Turnout</i>	<i>% of ballots votes</i>
2008 Direct (First past the post)	61.7%	5.2%
2008 Indirect (PR)	63.3%	3.7%
1999	65.8%	2.8%
1997	88.1%	1.5%
1994	86.7%	1.7%
1991	88.1%	1.5%
1986	60.3%	4.7%

Source: National Election Commission and (Pintor et al., 2002, p. 145)

The highest level of spoiled votes was observed in the Terai, where it reached 8.1% of the poll in Saptari. This was an area with good turnout, so the level of spoiled votes is not explained by a lack of interest in the outcome.

One explanation for the level of spoiled votes might be illiteracy. Nepal has made enormous strides in reducing illiteracy in the last two decades but of course the greatest improvement is with children of school going age.⁶

Figure 5: *Mean level of literacy among those over 6 years of age, as the average of the values for 1991 and 2001*



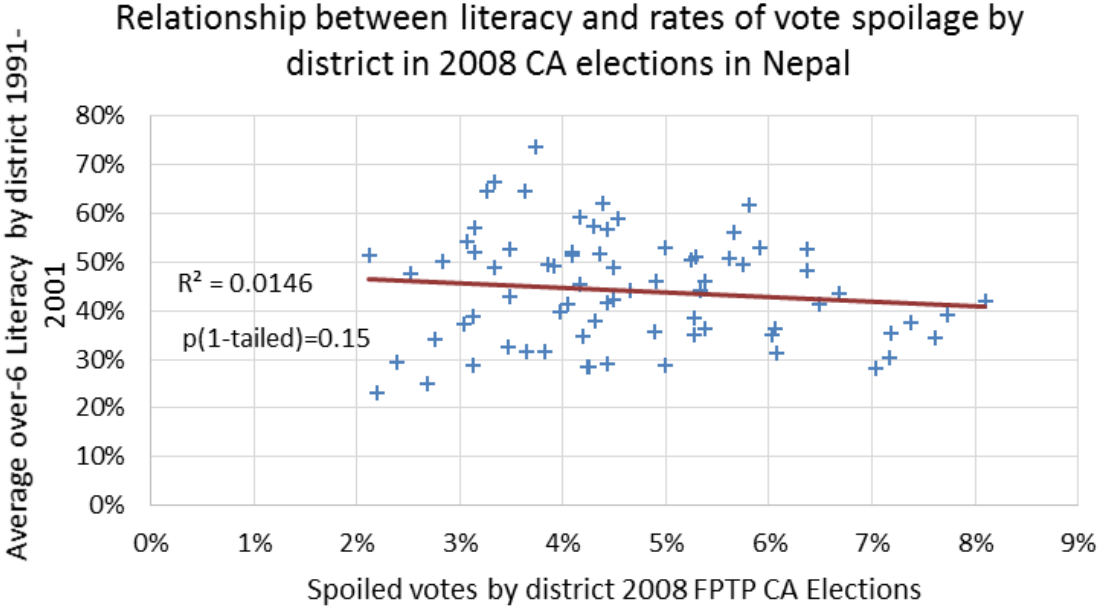
Source: National Election Commission.

⁶ The evaluation was only able to locate district literacy data for 1981, 1991 and 2001. The average of the 1991 and 2001 figure as an approximate value for 1996. The team looked at literacy among those over five in 1996, because this was the group that would be eighteen in 2008 and therefore eligible to vote. Internal migration in Nepal takes the forms of migration from the country-side to the cities and from the highland to the Terai. Given that younger people are more likely to migrate, and to be literate, the estimates of the mean levels of literacy based on 5+ literacy probably represent an underestimate of the levels of illiteracy in the more rural areas and highland areas. It should be noted that adult literacy training in Nepal has been of limited scale and of poor quality (Cumming et al., 2009, p. xvi).

Analysis of correlation between the level of literacy and spoiled showed only a very weak and statistically non-significant negative correlation ($R=-0.121$, $p_{(1-tailed)}=0.151$)⁷. In fact, the district with the highest prevalence of illiteracy had one of the lowest levels of spoiled votes.

One interviewee noted that there was no effective coordination of voter education processes, no overall “Who’s doing What and Where” mapping of voter education.

Figure 6: Correlation between levels of literacy and vote spoilage



Source: Analysis of Central Bureau National Election Commission and national census data.

The linkage between the elections and broader support for education

There is long evidence for a linkage between democracy and the level of education. Nearly one hundred years ago, Dewey noted that “*Since a democratic society repudiates the principle of external authority, it must find a substitute in voluntary disposition and interest; these can be created only by education*” (Dewey, 1916, p. 101). Lipset (1959, p. 79) noted that “*The evidence bearing on the contribution of education to democracy is even more direct and strong in connection with individual behavior within countries, than it is in cross-national correlations. ... The higher one’s education, the more likely one is to believe in democratic values and support democratic practices. All the relevant studies indicate that education is far more significant than income or occupation.*”

Both Denmark and Finland supported the Education For All (EFA) programme in Nepal, and Denmark has been a long term supporter of education in Nepal. One of the objectives of the EFA programme has been increasing literacy levels in Nepal. Literacy has grown significantly in the last few decades in Nepal. Adult literacy had grown from 36% to 57% between 1995/1996 and 2010/2011 (CBS, 2011a, p. 2). Literacy is often seen as being strongly related to the ability of populations to exercise their democratic rights. Literate populations are said to be more likely to form their own opinions rather than follow directions on whom to vote for.

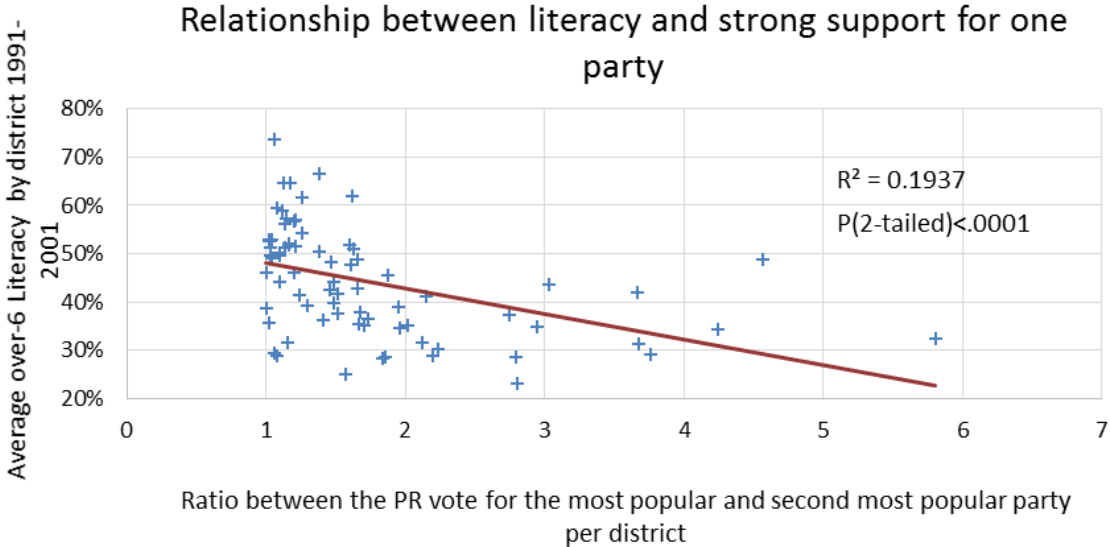
⁷ A study of spoiled votes in Latin America (where voting is often compulsory and spoilage rates are high) found that a 10% increase in literacy reduced vote spoilage by two percentage points, but that this effect was only weakly statistically significant ($p < 0.1$) (Power and Garand, 2007, p. 439),

The best performing party won over 40% of the vote in 111 constituencies for the FPTP poll and in 72 constituencies in the PR poll. This is a large proportion of the poll in elections where one candidate (in Saptari) was elected with only 15.6% of the vote. The percentage of votes won by the leading party can be taken as a proxy for the polarisation of party support. Situations where voting is polarised in this way (with strong support for one party), even though there is a large number of parties to choose from, raises questions about the sophistication of the electorate.

A better measure of such polarisation is the ratio between the most popular and the second most popular party in the PR poll⁸, as this does not treat the case where one party gets 41% and another 40% as an example of polarised voting. This ratio is strongly negatively correlated with district literacy (Pearson R=-0.44) and it statistically significant ($p < 0.0001$) (Figure 7). It should be noted that the correlation holds true even if all the ratios over 2 are excluded ($R = -.42$, $P_{(2-tailed)} = .0002$). This suggests that lower levels of literacy are associated with stronger levels of support for a particular party.

It can be seen from Figure 7 that, at the constituency level, the parties that benefit most from such unbalanced voting are UNCP-M and the UDMF. At the district level, only the UCPN-M got more than 45% of the PR poll (in 12 districts).

Figure 7: Relationship between the strong support for one party and literacy.



Source: Analysis of Central Bureau National Election Commission and national census data.

Correlation does not imply causation. Low levels of literacy being strongly correlated with a more unbalanced voting pattern does not necessarily mean that there is a causal link. For example, one potential link is that illiteracy is said to facilitate the exploitation of grievance for political ends. Literacy was also correlated with the level of party support in different districts. Congress and the UML got a higher proportion of the vote in districts with higher literacy rates than they did in districts with lower literacy rates. This moderate positive correlation was statistically significant at the 5% level. Support for the UCPN-M and the UDMF was weakly negatively correlated with literacy rate, but this was not statistically significant for the UCPN-M.

⁸ The PR poll was chosen to avoid the variations caused by personality issues seen in the FPTP poll.

The common factor here may be that illiteracy is also associated with marginalisation in Nepal, and marginalisation may be the factor leading to both low levels of literacy and strong support for particular political parties.

However, what this discussion does highlight is that the desired outcome of the peace process, an inclusive and democratic Nepal that can provide for its citizens, has much broader bases than just the peace process itself. Thus the historical programmes of development partners, whether addressing access to education or other services, exclusion, or voice, may also have impacted positively on the peace.

Development partner support, including advocacy

Support from the core development partners to the electoral process was quite broad. It predated the CPA with financial support for the electoral commission and advocacy with the parties to reach a negotiated settlement. Norway and Denmark played a strong role in encouraging the UCPN-M to engage in negotiations⁹.

Financial support for the electoral process included support to national and international election monitoring, technical support to the Election Commission and support for poll logistics. It also included support to civil society groups for voter education and for broader civil awareness of the whole process.

This financial support was also supported by donor advocacy with both the government and the political parties. Most development partners had pressed for a negotiated solution to the conflict, and continued to pressure the parties to continue to negotiate throughout the process. The appointment of a respected figure to the position of chief election officer was seen as a victory for donor advocacy on the electoral commission.

Financial support for the electoral process was channelled in a variety of ways, including through the NPTF which all three core development partners supported¹⁰. UNPFN also had two elections projects: one for electoral observation coordination (Elections Observation Coordination Centre) and technical advisory support to the ECN. UNPFN was supported by Development Partners either directly.

In addition, Finland supported the work of International IDEA on the elections. Of the three development partners, Denmark gave the largest and most widespread support for the elections and the CA. Denmark's contribution included support for the UNDP/Electoral Commission for voter registration, the election commission through the HRGGP, the work of the Carter Centre around the elections, and Denmark also funded several different groups of election observers, as well as election education by its partners.

Support for the electoral process did not stop with the elections. Danida, with other non-core development partners, supported UNDP's Electoral Support Project from August 2008 to build the capacity of the Election Commission.

In terms of advocacy, the main areas of development partners advocacy centred on the issues of election timing and of inclusiveness. These issues arose with the initial postponement (from June to November 2007) at the behest of the election commission, and the indefinite postponement announced in October 2007. Particularly in the latter case, development partners were split between those insisting that the elections be held as planned, and those advocating for inclusive elections. This reflected different conceptions of the elections either as the end-point for democracy, or only as a stepping stone to an inclusive and democratic Nepal.

⁹ Interviews with senior diplomats.

¹⁰ Danish support for the electoral commission was direct and Danish support for the NPTF was not channelled to the elections (interviews with Danida staff).

In terms of the early 2008 protests by Madhesi groups, India played a critical role in pushing for a settlement, even hosting some of the talks at its embassy (ICG, 2008a, p. 2)

Effectiveness

The elections were in themselves effective even if the CA that they elected did not achieve the main task set for it – the elaboration of a new constitution. This is discussed in the section on the constitution. The success of the elections depended not only on the support of the donors for the electoral processes or for the CPA, but also on longer term support in such areas as education and civil society.

Efficiency

The elections delivered a very inclusive CA. It is difficult to see how such an inclusive CA with a democratic mandate could have been delivered by any more efficient means. However, the initial timetable for the elections was not realistic in the Nepali context, given the need not only for voter registration and enabling legislation, but also the need to register undocumented citizens. Preparations for the elections could have been conducted more efficiently if there had been a realistic timetable from the start.

Impact

The elections were repeatedly cited by interviewees in Nepal as one of the most successful elements of the peace process. Even though they elections were not perfect, they were broadly free and fair and the results, although very disappointing for the former leading parties, were accepted by all. The success of the elections facilitated the implementation of other element of the CPA.

(Heiniger, 2011, pp. 54-55) notes that the elections changed what have been consensus politics into competitive politics. However, such changes may have come about as the first meeting of the CA formally marked the end of the Monarchy as a political power in Nepal. The removal of this common threat to the parties may have facilitated moving to a more competitive stance.

Sustainability

The CA model was seen not to be sustainable and is being changed for the next CA elections with:

An agreement by the four main parties (who won 82% of the PR vote and 86% of the FPTP vote) will reduce the number of PR seats from 335 to 240 in the next CA elections (Republica, 2013c). This would reduce the number of seats won by minorities and would remove three parties from the CA if voting were identical to 2008.

A proposal to limit the award of PR seats to parties achieving more than 1% of the total poll would remove 13 of the current 25 parties (assuming the same pattern of voting and nominations). This proposal is not agreed by all of the government parties (Republica, 2013b).

Press comment during the negotiations on the number of PR seats suggested that the four parties thought that one of the reasons for the failure of the CA to deliver a constitution was that too many different groups were represented in the CA, making it impossible to reach agreement on any proposed federal structure. The majority of PR list voting systems incorporate a threshold for representation, ranging from 0.67 per cent in the Netherlands to 10 per cent in Turkey (Reynolds et al., 2005, p. 83).

Such legal thresholds are intended to exclude extremists or those with very little popular support from parliament. The Parliamentary Assembly of the Council of Europe has recommended that such thresholds be no more than 3% (Parliamentary Assembly of the Council of Europe, 2007). However, the European Parliament is subject to a threshold of 5% if a list PR system is used

(Reynolds et al., 2005, p. 142). The issue of the size of the CA is discussed below under the effectiveness of the Constitution writing process.

Conclusions

The elections were a success in that they delivered an inclusive CA that had very broad representation across Nepali society. Women and other often-marginalised groups were reasonably well represented in the CA. However, this very inclusivity may have contributed to the inability of the CA to draft a new constitution. It should be noted that the original timetable for the elections was unrealistic in the context. Moreover, there is a conflict between the role of a parliament and a constituent assembly which became clearer the longer the CA lasted.

The success of the somewhat complicated election (two polls at the same time, one based on proportional representation, and the other for the constituency seat) was partly due to development partner support for the elections whether channelled through the UN, NGOs or directly by the international community.

Overall, the monitoring of the elections was a success and helped to contribute to the acceptance of the poll as free and fair. The evaluation concludes that the level of vote spoiling of the votes was due to some factor other than illiteracy, and must reflect at least in part on the variability and quality of the voter education delivered because the level of spoiled votes was higher than in previous elections or in similar elections in India; a lower percentage of the second ballot was spoiled, even though there were more than three times as many selections on the paper; and the insignificant correlation between illiteracy and the level of spoiled ballots.

Recommendations

In Nepal and other similar contexts, development partners should

- advocate for a threshold to be applied where the PR list voting system is used;
- advocate for realistic timetables for elections;
- advocate for a separation of roles between the acting parliament and the constituent assembly;
- continue to employ a wide range of channels;
- place greater emphasis on voter education, and on the coordination of the efforts of different partners so that coverage of the whole country is achieved with a consistent message.
- continue to support election monitoring.

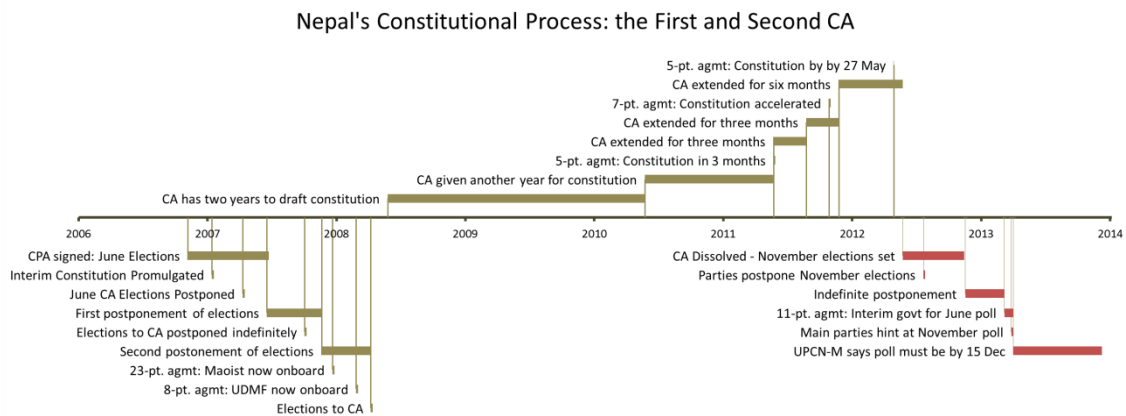
G.2 Constitution

Under the CPA, the CA was tasked with both serving as an interim parliament and with drafting a new constitution for Nepal. The CA was originally due to start its work within 9 months of the signing of the CPA, but postponements to the elections, the first of five months for technical reasons, and the second of five months for political reasons, meant that the CA did not begin work until the end of May 2008.

The yardstick of success for the success of the constitution-writing process was the delivery of a constitution that was inclusive, met with broad consent, and complied with international norms within the two year lifetime of the CA. This plan was not particularly ambitious, given that the Interim Constitution under which the CA operated took only 8 months from the formation of the drafting committee to its promulgation in January 2007.

The constitutional process has been marked by a series of delays, extensions, and postponements.

Figure 8: Postponements in Nepal's Constitutional Process



Source: (Nepal MOFA, 2004), ReliefWeb, and media reports.

The First CA itself was not able to deliver the constitution within the first two years, and the deadline was extended four times for a total of two years more. Even four years was not enough time for the CA to complete its task; it was dissolved in May 2012 without reaching agreement on the new constitution. Elections for a new CA were planned for November 2012 and then again rescheduled for 2013.

Currently there is a great deal of uncertainty over the second CA elections. The Nepali media report that:

- There is a dispute over the application of a voting threshold of 1% to the PR poll. The UCPN-M and small parties are vigorously opposed to this, NC and UML are in favour (Republica, 2013b).
- The UCP-M has disrupted registration to the extent that the Election Commission had suspended registration. They and their allies are also opposed to the election government installed under the 11-point agreement of 13 March 2013 (Pun, 2013). They have also suggested that no CA is needed if the parties can reach a consensus (Sapkota, 2013).

Under the 11-point agreement of 13 March 2013, the polls must be held by 21 June, or if not possible then, by 15 December (UCPN-M et al., 2013 Article 1.7). While these happenings are outside the timeframe of the evaluation, they illustrate again the way in which reaching a consensus on the constitution has been blocked by power plays by particular parties.

The Dual Mandate of the CA

The CA was mandated not only to develop the constitution, but also to act as an interim parliament. (Heiniger, 2011, p. 55) makes that point that the first of these roles requires a consensual approach, and that the second is normally based on a competitive political approach. He suggests that this led to an over-emphasis on political party goals in the constitutional process.

The dual mandate may not have been such an issue if the CA had agreed a constitution quickly, but the delay in reaching consensus increased competition between the parties.

The Size of the CA

The size of the CA may be one factor influencing its performance. Large assemblies guarantee more inclusion but may create “an unwieldy legislative process and generate a need for more complex intra-assembly committee structures or encourage the delegation of more legislative authority to the executive branch” (ACE Electoral Project). In the Nepali context, the size of the CA has led to the delegation of more decisions to the party leadership.

At 601 seats, it is far larger than one would expect for a country of this size. Taagepera developed the cube root law for assembly size that suggests that the ideal size of an assembly for a developing country (with a large young population of limited literacy) is twice the cube root of the adult literate population¹¹ (Taagepera, 2002, p. 5).

Table 3: Calculation of the ideal assembly size for Nepal using Taagepera’s Cube Root Law for Assembly Size

Popn >14 (Millions) (2011 Census)	Adult Literacy rate (2001 Census >5 rate)	Literate Adults (Millions)	2 x Cube root of literate adult population
26.49	54.1% ¹²	9.28	420

Sources: 2001 and 2011 Census.

Originally the interim constitution allowed for a CA with 425 with 205 FPTP seats, 204 PR seats, and 16 seats filled by cabinet nomination (Cottrell et al., 2009, p. 124). Such a CA would have been better fitted to the size of Nepal, and might have been better able to deliver a constitution.

The limits of external influence on an internal process

The peace process in Nepal has been nationally led and owned, and the apparent influence of development partners has varied depending on whether it was in line with the agenda of the different parties.

The development partners have a number of levers in their grasp for influencing the parties. The first of these is funding for development cooperation, and the second is international status. If Nepalese politicians were motivated solely by the national interest, then development cooperation funding could be a very significant lever. Unfortunately this does not seem to be the case. However, different parties have different constituencies and may be influenced by the channels used for development cooperation.

- The Nepali Congress is seen as being closely linked with the bureaucracy. Development partner funding that is channelled through the bureaucracy might have some influence here.
- The CPN-UML is seen as being very closely associated with the national NGO sector; and NGO sector funding might have some influence.
- The UCPN-M was always very keen to internationalise the conflict, and have met this objective with donor assistance. They were also keen to secure good conditions for the Maoist ex-combatants. Now they have achieved clear national legitimacy through their electoral performance and the cantonments are closed, it is difficult to see what lever donors can use to influence them.
- The UDML parties were very anxious to get Madhesi issues on the table. They have done so. Traditionally, the Terai was not the focus of development partner funding.

¹¹ While this rule was established by regression analysis, the cube root law is not arbitrary, but is based on the minimisation of three types of communication channels: representative to constituent, representative to other representative, and other representative to other representative. These number of the three communication channels are at a minimum when seats = Population^{1/3}(Taagepera, 2002, p. 6).

¹² We used the figure of the over five literacy from the 2001 census as the best estimated for adult literacy as adult literacy education has been limited and of questionable quality (Cumming et al., 2009, p. xvi). While the Department of Education gave a figure of 63% for 15+ literacy in 2008 (Cumming et al., 2009, p. 17) this is not credible given the Census Data for 2011, as it would suggest that the 5-14 literacy rate was less than 75%. It should be noted that the Department of Education stated that 6+ literacy was 72% in 2008, but that the 2011 census found that 5+ literacy was only 66%, casting further doubt on the accuracy of Department of Education’s figures.

- The CPN-M appears to be xenophobic, blaming foreigners for political development within Nepal (Pun, 2013). This suggests that they are not likely to be influenced by diplomatic pressure.

India has strong links with all of the parties, and interviewees were generally of the opinion that Indian influence was far stronger than of other development partners. It was notable that the conflict analyses seen contained relatively little analysis of how the development partners could specifically influence particular stakeholders.

The limited openness of the Nepali stakeholders to external influence has been compounded by differences among donors, both in policy and in analysis. Development partners have not always been on the same page, in terms of what they wanted from the parties. Interviewees reported that India and the US were very opposed to Maoist participation in the Government. However senior diplomats and other interviewees noted that the changes of the US and Indian envoys introduced a much more open attitude towards the Maoists.

The other issue that has sometimes split donors is the differences in the implicit theories of change under which they are operating. This was most evident at the time of the second postponement to the elections for the first CA. Some development partners at that time pushed very hard for elections to be held as per schedule while others favoured postponement to allow for more inclusive elections. These different approaches appear to have been based on the position of elections in the different implicit theories of change for different donors.

The position that the parties should strive to advance through negotiation rather than confrontation is one that all of the development partners support and is probably the message that they have pushed most successfully.

Conformity with international norms

There is no final constitution so it is not possible to see if the constitution complies with international norms. However, most of the potential constitutional provisions seem to be compliant with international norms. One area where there may be a significant deviation from international norms is whether the constitution would permit a blanket amnesty for human rights abuses (including murder, torture, and rape). Another area of concern that has been raised is that of citizenship.

This is an issue that has swung backwards and forwards with initial success by civil society (with development partner backing) for a prohibition on a blanket amnesty. However, the political parties rowed back on this commitment, and a blanket amnesty is again on the cards. The development partners, led by Denmark, have pushed-back hard on this issue on the diplomatic front, but the outcome is uncertain. A key problem is that several leading political figures have been accused of involvement in (or even direct commission of) human rights abuses.¹³ Thus, some of those framing the constitution have every interest in ensuring that there is no prohibition on a blanket amnesty.

Transitional justice is a related issue and one of the biggest gaps of the peace process. Despite pressure from the development partners, the parties are not at all keen to confront this issue, and seem to favour the granting of unconditional amnesties.

The new constitution could strengthen rights for women, but provisions about exploitation and equal right might not produce participation of women in elected bodies or active participation in public life. The quota system for the Constituent Assembly elections has produced a dramatic difference, however. The Interim Constitution does have rather vague provisions about

¹³ The families of conflict victims interviewed by the team stated that particular politicians were directly responsible for the disappearance of their relatives.

'proportional inclusion' in state structures, but there is room for discussion as to how these provisions might work for the benefit of individual women.¹⁴

Consultation with the population

The fieldwork showed great variance in population awareness. Some groups, for example in Gorkha and Tanahu were not familiar with constitution issues, whereas groups in other districts were fully aware of the constitutional process. The latter groups also stated they had benefited from the efforts of different development partners to make them aware of the process.

However, being informed is not the same as being consulted. While different surveys have consulted the Nepali people on different issues such as the ICTJ survey on perceptions of truth, justice, reconciliation, and reparations in Nepal (The International Centre for Transitional Justice and Advocacy Forum, 2008) it is not clear to what extent this has been taken on board by the political parties.¹⁵ This question of the extent to which input from civil society is taken aboard also applied to the development of the interim constitution. While about 5,000 submissions were made by civil society groups to the interim constitution drafting committee, it is not clear if these were even read (Cottrell et al., 2009, p. 8).

The lack of progress on the constitution in the face of strong popular discontent, demonstrates that the parties do not necessarily hold themselves accountable to the Nepali people. During the fieldwork the team asked local party workers if they had been consulted within the party on the position that their party should take. In many cases, the answer was negative, with a hint of surprise that the party leaders might even do so.¹⁶ Maoist parties are more organised and systematic and – as a result – party workers in Gorkha for example may have been consulted.

Sticking points in constitutional development

One of the key issues that prevented the agreement on the constitution was the issue of federalism, in particular on the structure of a new federal Nepal.

It should be noted that although there was a lot of discussion around the structure of the new federal state, there was no detailed discussion on how the additional bureaucracy would be funded, or on what the transitional arrangements would be, or on how the federal structure would work in practice. Interviewees commented that for many groups, federalism was seen as a panacea for centuries of marginalisation. In fact, while this was one of the Maoists' main demands during the conflict they did not follow through once in power, which has since caused broad dissatisfaction among their supporters.

Arguments around the federal structure were also seen as a potential source of conflict by interviewees. Internationally, decentralisation is seen as reducing conflict at the national level, but increasing it at the regional level due to the reinforcement of ethnic and regional identities by regional parties (Brancati, 2006).

The UNDP publication of the interim constitution – admittedly bilingual, annotated, with details of amendments, is 390 pages. It appears that the new constitution will also be a long document. Some of the clauses in the interim constitution are very detailed, for example the clauses setting out the electoral arrangements. (Taagepera, 1999, p. 1) suggests that such rules should be stated simply in constitutions, and that the detail be ironed out in the legislation.

¹⁴ The Constituent Assembly of Nepal: An Agenda for Women. International Institute for Democracy and Electoral Assistance. 2008.

¹⁵ Great effort made by SPCBN to make constitution making inclusive and give voice to excluded groups.

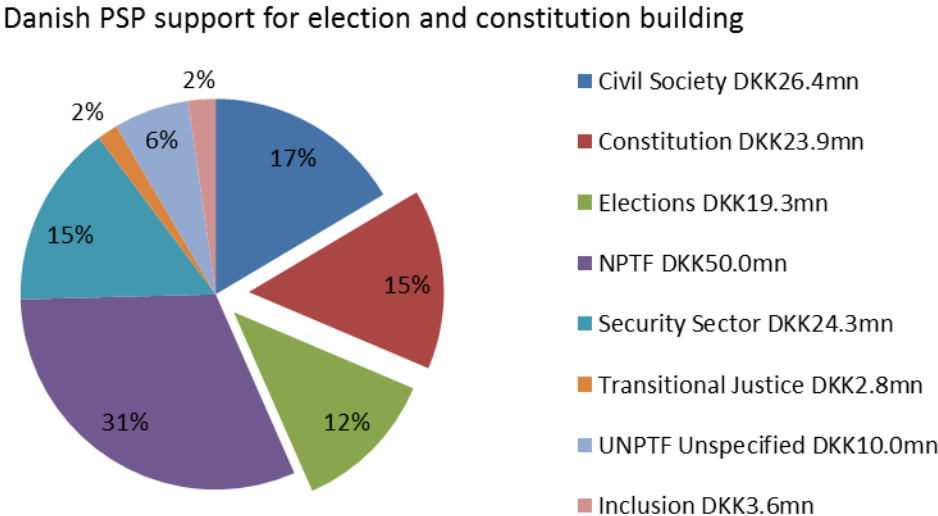
¹⁶ It should be noted that there are major differences between how democratic the parties are with some electing leaders every few years in a transparent way. Other have no such internal democratic processes.

It may be the some of the sticking points in the constitution could be addressed in this way, with a statement of general principle in the constitution, and the details of implementation to be worked out between the parties at the legislative stage.

Development partner support including advocacy

Together with other development partners, Danida provided significant support for the constitutional process. Support to the constitutional process and to the elections accounted for more than one quarter of all Danish PSP expenditure. Five (out of 35) PSP projects were for the elections and another seven for the constitutional process. All of these projects were concentrated in the first two phases of the PSP with elections mainly in the first phase (four out of the five projects) and constitution building in the second phase (six out of seven projects).

Figure 9: Support from the PSP budget for CA elections and the constitutional process



Source: PSP Programme documents

Danida PSP support for the elections, for the constitutional process, and Danish diplomatic pressure to address inadequacies in the draft, has supported the process, but to overturn the blockages caused by the ambitions of the party leaders would have required a concerted effort from development partners, and even that may not have been sufficient for achieving a home-grown and sustainable constitution.

The reason why the CA failed to agree on a construction was because the leading political parties had conflicting objectives for the constitution. The constitutional process is very much Nepali-owned and external development partners have relatively little influence over it. The fact that the party leaders, rather than the CA as a whole, control the constitutional process makes it even more difficult to influence, as the process is consumed by the struggle for power between parties.

The Swiss embassy (through the Human Security Division, in particular) has supported the CA and constitutional process in two key ways. The first is in terms of providing constitutional technical expertise. A constitutional expert was contracted by the Swiss embassy for four years to provide high level expertise to the drafting process. This advisor was also engaged in providing specific technical advice to the State Re-structuring Commission. Although the constitutional drafting process has not moved forward as hoped, it is considered that this technical input had a

value-added in boosting the technical capacity and knowledge of the individuals involved in the re-structuring and drafting process and thus enabling high levels of informed debate.¹⁷

The Swiss have also tried to provide facilitation and mediation support. Facilitation and mediation initiatives have taken different forms between each of the development partners. The Swiss approach has been to provide a neutral space (outside of Nepal) for key political actors to meet and find consensus. However, this initiative has at times been affected by external actors and readers of the Nepali media who judge political leaders' overseas trips an unnecessary luxury. Finally, Switzerland supported UNDP's 'Support to Participatory Constitution Building in Nepal' (SPCBN) project.

Finland has supported the constitutional process through its funding of NPTF and International IDEA, and both the Swiss and the Finns have supported overseas trips to give members of the CA an idea of how presidents and parliament shared power in different countries.

Conclusions

Despite four years of effort, and the setting of repeated deadlines by the key stakeholders, Nepal has not yet achieved a new constitution. As such, this element of the CPA has not been implemented and there are even voices who now question whether this is the best approach. The same political issues that dogged the first CA are being repeated in the run up to the second CA. The CA has suffered from several issues that have constrained it. The first of these is the dual mandate as a parliament (adversarial politics) and as a constitutional drafting body (collaborative politics). The second is that the CA is nearly 50% bigger than the ideal size for such an assembly. A third factor is that many of the constitution clauses appear to be quite detailed and thus take longer to negotiate.

Development partners have only very limited leverage with a home grown process like the peace process in Nepal. However, there is little explicit discussion of potential levels of influence on specific actors in the conflict analysis documents seen. Development partner advocacy has been at its most effective when the development partners have all had a common message. This has rarely been the case, and even the overall strategy is rarely explicitly expressed via a theory of change.

The draft constitution appears to be largely in conformity with international norms. The one glaring exception is over the proposal to introduce a blanket amnesty for crimes committed during the conflict.

There is little evidence of ongoing consultations with the general population. Even local party officials stated that there had been no consultation within party ranks at the local level on the positions taken by the party leaders in Kathmandu.

The main outstanding sticking point on the constitution at the end of May 2012 was the proposed federal structure of Nepal. It is not known how many of the previous compromises will unwind when and if a new CA is elected.

Development partners have provided a significant amount of support for the constitutional process. However, this support has turned out to be a necessary, but not a sufficient, condition for the development of an inclusive constitution for Nepal.

Recommendations

Development partners in Nepal should:

- Continue to support the CA process.

¹⁷ Interview in May 2012.

- Advocate for the constitution to set out general principles, and for the details to be agreed in legislation.
- Develop explicit theories of change so that the underlying assumptions are exposed. This would facilitate strategic cooperation between them.
- Consider developing a common advocacy position towards the peace process stakeholders.

Development partners should continue to advocate for the constitution to meet international norms.

In similar situations outside Nepal, development partners should:

- Consider advocating for the separation of the legislative and constitutional drafting roles.
- Consider advocating for assemblies to be of the size suggested as the ideal by political research.

G.3 Good governance

A commitment to good governance is made under Section 3 of the CPA under Political-Economic-Social Transformation and Conflict Management¹⁸. The yardstick here would be a significant improvement in governance and a reduction in corruption from the signing of the CPA. This was a moderately ambitious target, as anger at corruption was one of the driving forces for support of the UCPN-M (Caldecott et al., 2012, p. 16) and it was reasonable to expect that official corruption would now be much more risky.

Corruption in Nepal

Development partners have been working on governance issues for some time, but Nepal is more corrupt than its neighbours and remains one of the more corrupt countries in the sub-continent (Table 4).

Table 4: Perceived levels of public sector corruption. Lower scores means more corrupt.

Country	Nepal	Bhutan	China	India	Bangladesh	Pakistan
TI Score in 2010 (0-10)	2.2	5.7	3.5	3.3	2.4	2.3
TI Score in 2011 (0-10)	2.2	5.7	3.6	3.1	2.7	2.5
TI Score in 2012 (0-100)	27	63	39	36	26	27

Sources: (Transparency International, 2011, Transparency International, 2010 #507; 2012).

Corruption is rife in Nepal from the Village Development Committees all the way up to the Commission for Investigation of Abuses of Authority (CIAA), the anti-corruption commission (Bhusal and Paudyal, 2013). The all-pervasive nature of corruption means that the control mechanisms that should prevent corruption are also corrupt. One interviewee described how investigators from the national audit office would be corrupted by those they were sent to investigate. Sharada Bhusal tells a similar tale about a CIAA investigation (Bhusal and Paudyal, 2013). However, the CIAA has at times effectively prosecuted the corrupt.

¹⁸ The Comprehensive Peace Agreement 3.4 states: “To adopt a political system that complies with [...] rule of law, social justice, equality, independent judiciary, periodic election, monitoring by civil society, complete press freedom, people's right to information, transparency and accountability in the activities of political parties, people's participation, impartial, competent, and fair concept of bureaucracy.”

Many development partners present a negative picture on progress towards good and inclusive governance. Among the population there is an overall sense of lack of trust in government, partly due to high unfulfilled expectations of the peace process. Similarly, political parties are generally viewed as participating and contributing to corruption and there are no credible mechanisms to make them accountable.

Development cooperation and corruption

Development partners are aware of corruption issues and many mentioned it as a concern in interviews. The prevalence of corruption in Nepal has influenced how some development partners channel funding or Nepal with some avoiding SWAps for this reason (Caldecott et al., 2012, p. 19).

Aid transparency is an issue – interviewees expressed frustration that development partner funding appears to arrive in government coffers but actual disbursement is not clearly accounted for. Some interviewees alleged that channelling development partner funds through Kathmandu means that they do not reach the beneficiaries due to corruption in the capital.

Even the projects intended to improve local governance, such as the Local Governance and Community Development Programme (LGCDP) face problems with corruption. 71% of the citizens survey for a Public Expenditure Tracking survey for the LGCDP agreed or strong agreed that local government development programmes were influenced by corruption, and identified addressing corruption as the main way to improve value for money (Adam Smith International, 2011, pp. 14-15).

Corruption not only affects the level and channelling of development cooperation, but also the level of Foreign Direct Investment. (Alemu, 2012, p. 404), in his analysis of 16 Asian economies (including Nepal), found that a 1% improvement in the freedom from corruption index was associated with an increased FDI of 9.1 percentage points.

Corruption and the peace process

The evaluation of the Country Programme between Finland and Nepal found that: *“The NPTF and its implementing agencies is neither immune to corruption or political interference, but it does carry out field inspections to curb malfeasance, and instances of very high-level corruption have been discussed in the NPTF Development partners Group monitoring meetings”* (Caldecott et al., 2012, p. 49). These discussions led to the PFM analysis and PFM action plan for the NPTF. However, the NPTF programme is implemented via the line ministries, all of which have major problems.

However, although citizens typically have to pay a “fee” for every form, every stamp, and every signature that they need from the bureaucracy, none of those interviewed had to pay any fee to apply for compensation. However, some had to pay “fees” to get supporting documents for compensation claims, and others reported that they had not received the grant cheque until they had enlisted the support of local party leaders or civil society organisations. Their perception was that the compensation would otherwise not have been paid without them paying a “fee” to the official concerned.

Interviewees requested that future support to the peace process be more transparent and accountable. People want to know where the resources are coming from and how they are being used. The Citizens' Charter supported by DFID is a step in the right direction in this regard. Development partners are asked to play a more active role in reducing discrimination in peace process funding by, for example, providing funding directly to victims' own organisations and not through larger NGOs.

It is not just government

Interviewees alleged that local NGOs also corrupt. Some NGOs have allegedly charged high administration costs. (Dhakal, 2007, p. 61) found that among others, the key challenges for NGO

governance in Nepal included the lack of monitoring and evaluation, lack of transparency, and the absence of public oversight. The RDIF capacity building efforts focus on five areas: project management; financial management; institutional good governance and inclusion; coordination and linkages; and reporting and communications (Brown et al., 2011, p. 9).

Local NGOs generally have weak financial and governance systems. The mid-term review of the RDIF Phase II identifies weak financial management and accountability of partners as a high probability risk (Brown et al., 2011, p. 20). RDIF has assisted many of these local organisations to improve their governance systems but such systems take time to be internalised and practiced. However, it is a concern that, despite the pervasive nature of corruption, this issue is not addressed at all in the recent evaluations of the RDIF (Brown et al., 2011; Thapa et al., 2012). This is despite the emphasis on risk management as part of the overall RDIF strategy.

Governance worsening?

The UN stated in January 2013 that *“the most serious long-term risk of the ongoing political deadlock is a slow but persistent deterioration in democratic institutions and effective governance”* (RCHCO, 2013). The evaluation, too, found that most of the Nepali’s interviewees had little faith in their own institutions.

In 2006, Nepal scored 2.5 on the Transparency International corruption perception index, a significantly better score than the 2.2 score in 2011 (Transparency International, 2006, 2011). So the general perception is the public sector corruption is worsening in Nepal. Cross year scores have to be treated with caution as the methodology of the index continues to evolve, but the ranking slipped from 121 of 163 countries in 2006 to 154 of 183 in 2011.

The World Bank’s Worldwide Governance Indicators Control of Corruption indicator for Nepal slipped from a percentile rank of 30.2 in 2006 to 23.2 in 2011¹⁹.

More generally, the fieldwork conducted in May 2102 suggest that VDC level governance is slowly improving (in some locations) in relation to financial transparency and providing allocated budgets to women, other marginalised groups. Part of this may be due to efforts to improve the inclusiveness of VDCs as there is evidence that more inclusive VDCs pay more attention to the vulnerable (Bishai et al., 2002)²⁰.

Development partner support

Good governance has long been a priority area for Danida interventions in Nepal. The HUGOU managed HRGGP has focused on human rights and on several aspects of good governance. The HRGGP project has supported the CIAA, the LGCDP, and the RDIF projects. In addition HRGGP has supported a broad swath of civil society organisations engaged in promoting transparency, social inclusion, and voice.

Transparency is the enemy of corruption, and this is assisted both by ready access to accurate information and inclusion in decision making. Danida has supported both of these, with projects including the support for community radio, and projects focused on excluded groups. Danida has also supported projects for civil society oversight of local authorities, the formation of pressure groups for service delivery at the local level etc. However, the major issue with such groups is their sustainability (Dix, 2011, pp. 79-80) as they can evaporate once external funding ceases.

¹⁹ The percentile rank gives the percentage of countries in the index that are worse than the target country, reducing rank indicate a worsening of the indicator.

²⁰ This study of the financing of primary care found that VDCs with a majority of member in middle or lower castes are more likely to contribute financially to the local health facility.

Inclusion is also important because it reduces the social cohesion of the bureaucracy, where the domination of one particular ethnic group makes for tighter networks and facilitated corruption (Dix, 2011, p. 2).

Switzerland has aimed at contributing to good governance in both of their two domains of programming. The first domain focuses on the consolidation of the peace process and state building. The latter includes helping to ensure that relevant stakeholders engage for the state transformation process and the implementation of international human rights standards, with a focus on impunity and reconciliation. Good governance is also addressed in the second domain which focuses on contributing to inclusive and connected local development (with a focus on Disadvantaged Groups). A key strategic objective of this domain is that the local government delivers services effectively in response to demands and aspirations of the people, especially DAG's.

Although no fieldwork was conducted in Swiss cluster sites to evaluate the how Swiss programming has met these objectives, other evaluations do indicate that SDC and Helvetas have achieved some progress in contributing to good governance at VDC level. There is some evidence that community governance is most effective when there is a strategic balance between internal and external social capital (Shrestha, 2013, p. 154). The close engagement of SDC with local government in the SDC projects districts appears likely to promote such a balance.

In addition, the Swiss have taken a slightly different approach to inclusion than some other development partners. The conflict sensitivity programming principles advocates that community meetings and project related activities include not only the marginalised groups but also the advantaged groups. In this way, all parties become aware of the needs and obstacles to change.

Both Denmark and Switzerland have supported the LGCDP. However, the results from this programme appear to have been somewhat mixed with accusations of gross irregularities and corruption (The Economist, 2012). Some of the allegations made in the media, such as NGOs having to pay commissions to take part in the project, were supported by interviewees from local NGOs.

The work of DEMO Finland²¹ has contributed to the proper functioning of political parties and parliaments, which is also indirectly advanced through Finnish support to inclusive education and for improvements in the lives of the least advantaged in the WASH sector projects, as well as the promotion of democratic participation in school management committees, water user groups and forest user groups. Up to 27 political parties have been involved in formulating the new constitution, with 601 delegates considering issues such as the precise nature of the federal system that will be create, e.g. whether it should be based on administrative units or ethnic homelands), measures to protect the rights of minorities, citizenship issues, and the choice of official languages. In all this, Finland's approach has not been to provide a blueprint for the new constitution, but rather to offer neutral advice and a framework for constitutional development.

Conclusions

While there have been some gains in better governance in some VDCs, the broad perception is that governance is deteriorating in Nepal. Corruption remains endemic in Nepal. It also has constrained some development partner support, and has constrained the use of particular channels. It has also lessened FDI in Nepal.

While the NPTF programmes are not free of corruption or political influence, the compensation programme appears to operate in a less corrupt way than many other services. Corruption is not restricted to Government, but is also a problem for NGO governance.

²¹ DEMO Finland is an NGO which brings together all political parties represented in the Finnish Parliament. Working in Nepal and Tanzania, it aims to advance pluralistic democracy and multi-party systems. www.demofinland.org

Development partners have supported a range of interventions to promote good governance, but as with broader support to the peace process, they have only limited ability to influence the struggle played out between different Nepali groups.

Transparency has been one of the most effective tools in combating corruption. Inclusion has also proven to be effective in ensuring broader access to information and breaking the stranglehold of one group on the bureaucracy.

Recommendations

Development partners need to make a greater effort against corruption, while at the same time recognising the essentially national context of the issue. This could be done by:

- Including an analysis of the potential risks of corruption in all project plans and identify mitigating measures.
- Specifically addressing the issue of corruption in all project reviews and evaluations.
- Conducting surveys of project beneficiaries to determine their perception of the extent of the impact of corruption on particular projects.
- Development partners should continue to advocate for greater transparency, and ensure transparency in their own operations, by publishing grant details, etc.
- Continue to promote inclusion and voice as these promote transparency and remove the stranglehold of one group on resources.
- In addition, development partner agencies could also hire conflict victims as staff. They could also provide funding directly to victims' own organisations and not through larger NGOs.

G.4 An end to discrimination

CPA ambition

Ending discrimination in a stratified culture context of Nepal is a very ambitious aim and progress cannot be expected to be very high in a period of six years. Considering the thousands of years of historical legacy of exclusion based on gender/caste/ethnicity/sexual orientation/religion/location, it is in a way remarkable that the agenda of inclusion has become such a strong mandate now. That is in itself a major contribution of the decade long conflict which the development partners were able to work with. Not only community level women and men or representative organisations are voicing the issue but the Government also has made various efforts to respond to the issues. The contribution of development partners is high in this area as evidenced by the different projects which they have supported to address deeply embedded inequalities of Nepalese society (e.g. UNSCR 1325 support, investment in caucuses of women and Janajatis, media and other campaigns against Dalit discrimination) and they tried to mainstream gender and inclusion in their regular programming (support to education sector, WASH). Due to the systemic issues of implementation and due to the dominance of non-representative groups in project and programme implementation (both of government and non-state actors), it is imperative to keep the pressure high for continued work on these issues.

The dissolution of the CA and the ensuing protest against federalism indicate that the objective of ending discrimination is still a long way off. Development partners were unable to contribute to creating an environment where a balanced discussion between different identity groups could be facilitated for better and clearer communication between different identity groups about their respective visions of the state and how each group would accommodate the aspirations and demands of other identity groups. A more intense influencing work with the Government and political parties as well as with the different identity groups was required. Efforts like the NTTP and support for constitution writing was inadequate for addressing the inconsistencies between

some of the multiple demands and aspirations of different social groups and for these to be brought out into the open so that a framework of mutual accommodation based on a common core of rights for all citizens could be worked out in the constitution.

Progress on ending discrimination

The Interim Constitution brought promise that a new federal structure would transform Nepali society towards ending exclusion of marginalised groups. It looked likely that a federal state would lead to more representative governance structures.²² The February 2012 report of the State Restructuring Committee of the Constituent Assembly proposed 10 provinces,²³ claiming that all forms of discrimination could be addressed and an inclusive system would be established. The government and the opposition political parties were unable to reach agreement based on this report, however, and with the subsequent dissolution of the CA in May 2012 state restructuring efforts are on hold until a new CA convenes.

Meanwhile, the policy environment to end discrimination has grown more positive. Gender equality and social inclusion have been recognised as critical to equitable development by the government. The present Three Year Plan (2010-13) has specific recognition of gender and inclusion issues and shows strong alignment with the CPA, with a particular focus on promoting social inclusion, equitable growth, employment generation and good governance. One of the most important long-term development priorities of the CPA is a commitment to end discrimination against various social groups.²⁴ Similarly, the long-term vision of the Three-Year Plan envisages that “[a]ll forms of discriminations and inequalities such as legal, social, cultural, linguistic, religious, economic, ethnic, physical, gender and regional will be ended from the society.”²⁵

Nepal has signed several conventions and other international instruments aimed at combating discrimination.²⁶ These all provide a strong mandate to address a root cause of conflict, inequality and discrimination.

But implementation gaps exist. While there has been progress e.g. in legal sanctions against gender based violence and caste-based discrimination, it has been slow and in some areas, like a more responsive tax regime and a more diverse civil service, almost negligible. The sub-sections below discuss different aspects of this issue linked to the peace process.

Policies to end discrimination

The Interim Constitution 2063 (2007) of Nepal has provisioned for social justice and affirmative action for women, Dalits, indigenous groups, the Madheshi community, and other excluded or disadvantaged groups (Article 13.3 on Fundamental Rights). It also proposes the future restructuring of the state to promote and institutionalise an inclusive, democratic and progressive local governance system, maximising people’s participation based on decentralisation, devolution of power and equitable distribution of resources. Key national policy documents like the PRSP (2002-07) with its social inclusion pillar, Three-year Interim Plan (2007-10), which had a separate section on social inclusion and gender mainstreaming, clearly provided a mandate for addressing inclusion issues. The ongoing Three Year Plan (2010-13) also has specific recognition of gender and inclusion issues. Various global commitments have been made by Nepal with the signing of

²² Interim Constitution of Nepal, 2006-7, Part 17 (1) “To bring an end to discrimination based on class, caste, language, gender, culture, religion and region by eliminating the centralized and unitary form of the state, the state shall be made inclusive and restructured into a progressive, democratic federal system.”

²³ State Restructuring Higher Commission Report, February 2012, Constituent Assembly, Kathmandu.

²⁴ For example, see the Comprehensive Peace Agreement (English Translation), Articles 3.5, 3.6, 7.1.1. extracted from RCHCO FB #49.

²⁵ Three-Year Plan, 2010/11 - 2012/13 (English Translation), Chapter 2, p. 20. Extracted from RCHCO FB #49.

²⁶ Nepal is a signatory of 16 international HR instruments including CEDAW, CRC, CERD, ICCPR, ILO169.

conventions and other international instruments. Institutional mechanisms have been established and programs implemented, sometimes targeted, many times incorporating gender and inclusion aspects.

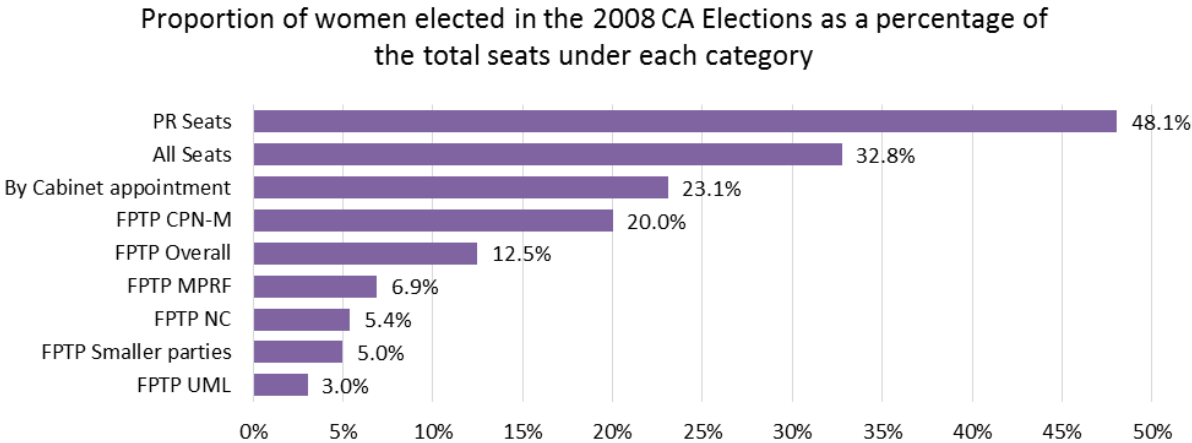
In Nepal, over the last few years, there has been a growing practice of developing gender- and inclusion-sensitive interventions, especially in the Government’s sector-wide programmes supported by multiple development partners (e.g. Local Governance and Community Development Programme, Health, Education and Rural Transport SWAps). Various sectors have also developed their own GESI strategies, e.g. Forestry, Agriculture, Health, Local Development and WASH.

The CA reflected a fair representation of Nepal’s caste and ethnic groups because of the policy change to allow such representation. Women held one-third of the Assembly seats which was one of the world’s highest.²⁷ The adoption of a quota for women’s representation in political institutions was a crucial first step to open the doors for women to take part in decision-making in Nepal. The rules required that one third of the total number of candidates nominated by the parties for both the PR (335 seats) and FPTP lists (240 seats) be female, and that additionally one half of the PR list be female²⁸, and that women be appointed to fill half of the PR seats won by any party. No gender quota was given for the 26 to be filled directly by Cabinet Nomination.

Women were also represented in each of the eleven thematic committees that were set up to discuss the draft of a new constitution, giving them an unprecedented opportunity to influence national decision-making and the development of a new constitutional framework for the country.

While the percentage of women elected to the CA overall is positive, looking at the figures more closely shows that this was due almost entirely to the 50% PR quota for women. Of the parties, only the CPN-M had a significant proportion of successful women candidates in their FPTP seats.

Figure 10: Proportion of Women Elected in the 2008 CA Elections as a percentage of the total (by seat type)



Source: Analysis of Election Results from Electoral Commission.

²⁷ Along with Timor-Leste, Nepal is the Asian country with the highest ratio of women in parliament. Both countries adopted gender quotas for parliamentary elections in the later stages of the peace processes. “From clause to effect: including women’s rights and gender in peace agreements”. December 2012, HD Centre, Geneva

²⁸ The maths of these requirements means that parties can meet them with only 10% of female candidates on the FPTP list.

Figure 10 shows that even the Cabinet did not respect the 33% guideline, but only appointed women to 23% of the seats. The election results show that for FPTP seats, apart from the Maoists, most parties only had women candidates in 3-7% of the constituencies where they were successful. This suggests that parties fielded male candidates where they thought they were most likely to win. Women candidates won 11.1% of the FPTP vote even though they only represented 9.4% of the overall FPTP candidate list.

The data for the number of women on the FPTP lists suggests that despite all the changes in Nepal, women and minorities are still effectively marginalised within political parties. This is hardly surprising as in a power struggle, to survive parties prefer to rely on traditional candidates and are unwilling to try approaches which may have risks. Additionally mind-sets and attitudes towards women and people from different social groups, takes a very long time to achieve.

The apparent agreement by the four main parties to reduce the number of PR seats from 335 to 245 in the next CA elections (Republica, 2013c) will effectively reduce the representation of women and other minorities in the next CA.

Access to employment and public services

The Civil Service Bill, 3 August 2007 amended the Civil Service Act 1993, and among others it provided seat reservation to excluded people and backward regions, and trade union rights. The reservation/ quotas in the civil service are as follows: women (33%), Janajati (27%) Madhesi (22%), Dalits (9%), persons with disabilities (5%), and backward regions (4%). Ordinance on Social Inclusion, 2009 makes the public service inclusive. The ordinance reserved 45% of posts to women, Adivasi, Janajati, Madhesi, Dalit, people with disabilities and residents of “backward regions”, while filling vacant posts through free competition.²⁹

The existing diversity profile of civil service is non-inclusive. Hill Brahmins/Chhetris and Newars collectively constituted 36.4% of the total population in Nepal but occupied 77.4% of jobs in public, political and private sectors, and civil society in 2010,³⁰ notably the situation in terms of representation had remained the same as two decades earlier. In comparison, Madhesi who comprise approximately 31.5% of the total population however had only 13.9% representation in these sectors and Muslims held only 0.43% of the total workforce (gazetted third class and above) in the civil service even though their population is at least 4.2%.³¹

A review³² of the civil personnel of the Government in seven sectors (agriculture, education, health, forest, irrigation, water supply and sanitation and rural infrastructure) found that³³: there were 41,000 staff members of whom 16% were women in the seven key sectors reviewed. Compared to the national population³⁴, there was over-representation of Brahmin/Chhetris and Newars (who are primarily in key decision-making positions), almost an equal proportion of “Other backward Class” (OBCs) (who are mostly in non-gazetted technical positions), while all

²⁹ Civil Service Act, (Amendment), 2007.

³⁰ Public sector includes: supreme court, constitutional bodies, cabinet, secretaries, lower and upper houses; political sector includes leaders of political parties; private sector includes leaders of the Federation of Nepali Chamber of Commerce and Industry (FNCCI) and Chamber of Commerce; civil society includes the chiefs of different professional groups and media houses. Nepal Human Development Report, 2009.

³¹ Nepal Human Development Report, 2009.

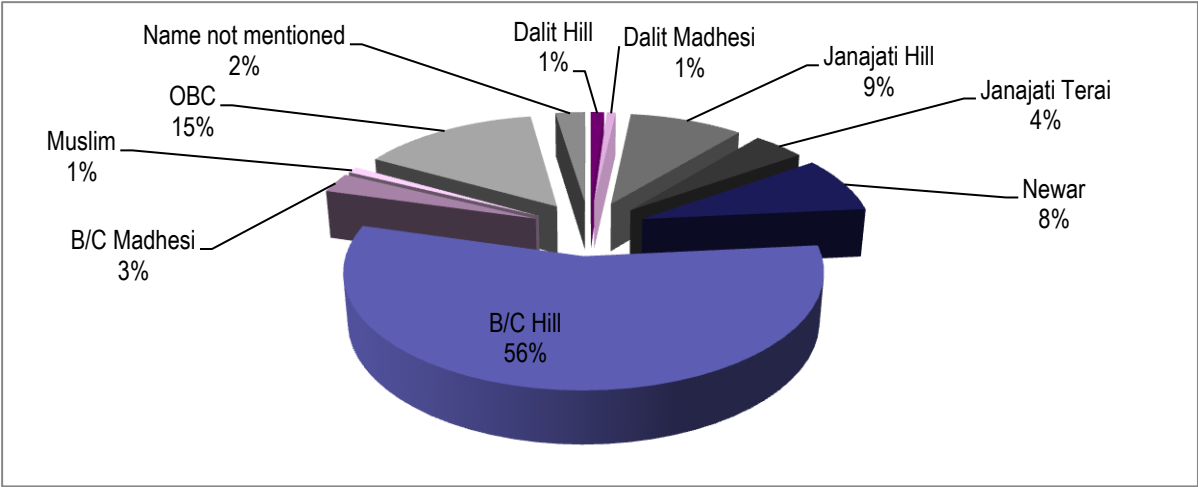
³² Records of civil servants maintained by Department of Civil Personnel Records (Nijamati Kitabkhana)/MoGA/GoN were reviewed and disaggregated according to the surnames place of permanent residence. Rules applied were those developed by the Social Inclusion Index development team of WB, and caste/ethnicity groupings were drawn from the census. This process can to a certain extent be erroneous, as the same surnames can be for different social groups.

³³ Source about diversity profile of seven sectors: Making it Happen, Sectoral Monographs, Vol. 2, GSEA Update, WB, ADB, DFID, June 2011.

³⁴ The national population as of Census 2001 is: Brahmin and Chhetri: 32.5%; Janajati (excluding Newar): 32% Newars; 5.4%; Dalits: 13%, Muslims: 4.3%, Other Backward Class: 14% and Others: 1.4%.

the other groups are under-represented. Thus despite the Civil Service Bill, there has been little result / achievement to diversify the civil service

Figure 11: Diversity profile of civil personnel in seven sectors



Source: Nijamati Kitabkhana, Feb 2010; assessment by study team.

The judiciary is still lacking legislation to deal with exclusion. Observers of the courts note that “the Bahun hegemony and prejudice in the judiciary, whose representation is more than 90 per cent, will continue for the next decade if judges are selected under the recent guidelines.”³⁵ For any change an inclusive approach is necessary and this will require not only “courage to argue logically with the Bahun-Chhetri power holders”, but also a willingness and commitment by the dominant groups to change the existing situation.

Progress towards an inclusive, democratic system

The federal structure of the state was a crucial issue of the peace process. A commitment in the Interim constitution,³⁶ the people, especially those from socially excluded groups, expected a transformation and freedom from political structures that constrained their growth once the federal state structure was announced. They believed that a more representative group as decision-makers would be possible in a federal structure.

With the dissolution of the constituent assembly in May 2012, the state restructuring efforts have been left inconclusive. The report of the State Restructuring Committee of the Constituent Assembly had proposed 10 provinces³⁷, claiming that all forms of discrimination were addressed and an inclusive system would be established. But there was dissatisfaction with the proposed suggestions and despite various other options being promoted by different political parties, there was no consensus. Various protests and strikes had greeted the proposed federal structure. These protests reflected the underlying identity-based politics of federalism demands; fears and

³⁵ “Dubious distinction”, Paper presented by Dipendra Jha, 5 December 2012.
³⁶ Interim Constitution of Nepal, 2006-07, Part 17 (1) “To bring an end to discrimination based on class, caste, language, gender, culture, religion and region by eliminating the centralized and unitary form of the state, the state shall be made inclusive and restructured into a progressive, democratic federal system.”
³⁷ State Restructuring Higher Commission Report, February 2012, Constituent Assembly, Kathmandu.

expectations over so-called ‘ethnic federalism’; perceived irreconcilable overlapping territorial claims; and intersection of local conflicts with national political fault lines.³⁸

Through the UNDP SPCBN project on constitutional dialogue, supported by many of the core development partners, various interactions and consultations were made to ensure the voice and perspective of people of different social groups was heard regarding the constitution over the period up to the dissolution of the CA. Another project (implemented by IDEA, supported by both Embassies of Norway and Finland) worked with women CA members, supported them to form a caucus, strengthened their capacity on drafting of a constitution and assisted them in identifying issues of gender and women’s empowerment to be included in the different chapters of the constitution. Likewise, the Indigenous Peoples’ caucus was supported.

Although women were both involved in and significantly affected by the armed conflict, women leaders from both sides and women’s advocates were almost entirely absent from the peace negotiations. After the signing of the agreement, various institutions were set up in order to develop several of the key issues included in the peace agreement, including the National Monitoring Committee, on which only two of the 31 members were women, and the Interim Constitution Drafting Committee, initially made up of six men and subsequently expanded after a campaign led by women’s organisations to include six women and representatives of the Dalit community.

With the political situation uncertain, no clear picture has emerged about the constitution and state restructuring. GoN has announced elections but the proposed date has already been postponed. Unless there is political consensus on the federal structure, the political stagnation may not break in Nepal and this may impact negatively the efforts to end discrimination.³⁹

Development partner support

The focal development partners have contributed to addressing class, ethnic, linguistic, gender, cultural, religious and regional discrimination through social mobilisation and empowerment of people in their project/program areas. Many groups are now able to negotiate with the VDC/DDC for the budget and to influence the allocation for different projects which are supportive of women, poor and the excluded.

Since development partners did not have much influence over public sector jobs, the level of diversity within that was more a result of the government’s own civil service recruitment processes and the ability of women and the excluded to access those opportunities. The low level of diversity indicates that many do not have access to the process of government civil service recruitment. Traditional structures within the civil service in Kathmandu also made progress slow. Nearly all senior officials are male Brahmins who have been reluctant to promote diversity and lower discrimination. In order to further advance the peace this group must be encouraged to embrace reform. Donor support too must have an objective to promote civil service diversity for better inclusion.

With its partners, Denmark has directly invested in influencing the constitution and other Nepali institutions to be more inclusive. In Phase II, for example, PSP funded Support Nepal to ensure the inclusion of minority rights provisions in the constitution; and the NGO Federation to move towards an inclusive and democratic Nepal. The former project sought to strengthen the capacity of minority civil society constitutional issues and increase the knowledge in the local population about the needs, rights and issues of minority communities. With a similar objective, the latter project established interactions amongst local civil society organisations, people at large and local

³⁸ UNRCHCO FIELD BULLETIN, Confrontation over federalism: emerging dynamics of identity-based conflict and violence, Issue No 41, May 2012.

³⁹ Based on general discussions in the consultation meetings, field work, Evaluation Team and media reports, May-June, 2012.

authorities, thereby pressuring local authorities to be responsive to the needs and aspirations of the people. These kinds of initiatives have supported CSOs and community women and men to strengthen their voice and abilities to influence decision makers.

Switzerland has fully mainstreamed social inclusion (support to disadvantaged groups) across its programmes and as such contributes to lowering discrimination in a variety of ways. In its three cluster districts, SDC has also funded specific empowerment efforts within component 2 (inclusive and connected local development), such as new livelihood options, or better local services, e.g. ensuring that official budgets are proportionally allocated to disadvantaged groups.⁴⁰

Through its combined support to OHCHR during 2005-11 and NHRC from 2001 onwards, Finland has been part of the development partner efforts to strengthen national capacity on monitoring human rights, including economic, social and cultural rights. The activation of EU Human Rights Defenders' (HRD) group and its working relationship with local HRDs were also critical inputs for protecting, promoting and respecting the human rights situation of marginalised communities during political transition. OHCHR's work was also directly relevant to social inclusion. The agency supported legislation to redress the untouchability of *Dalits*, while also promoting the signing of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of Indigenous Peoples.⁴¹

Focal development partner objectives

All the focal development partners have a strong mandate to work on addressing discrimination. Denmark seeks to promote gender equality and women's rights, "both as a goal in its own right and as a means to reach other development goals" and has address gender and inclusion in all the three components of its programme – HRGGP.⁴² Activities that target women specifically and that will promote women's participation are highlighted in the programme document. Issues of inclusion of excluded groups is addressed in the third component which mandated inclusive, responsive and accountable local governance and participatory community-led development to ensure increased involvement of women, Dalits, Adibasi Janajatis, Muslims, Madhesis and disadvantaged groups in the local governance process.

Finland has always had a strong focus on inclusion, security and protection of human rights. Mainstreaming and institutionalisation of gender equality and rights of women and girls and rights and equal participation of marginalised groups was emphasized in all programmes and projects. Gender was prioritised into major activities by Finland for its development cooperation. Even the existing Finnish country strategy for Nepal aims at empowering the most marginalized and vulnerable people in order to advance their human rights and to reduce inequalities in society.

Switzerland in its Nepal Cooperation strategies has emphasized respect for human rights and better living conditions for disadvantaged population groups. In its development programmes during 2005-08 it provided services to all disadvantaged groups and in its cooperation strategy of 2009-12 equity and inclusion were included as guiding principles. The cooperation strategy recognized the unequal access of women and men of DAG (disadvantaged) groups (defined as economically poor people who also suffer from social discrimination based on gender, caste/ethnicity/regional identity), to resources and decision making processes. Gender and DAG equity were identified as integral themes of planning, implementation and monitoring of all Swiss funded and implemented activities.

⁴⁰ Nepal Annual Report 2011. SDC.

⁴¹ "Finland's Contribution to Building Inclusive Peace in Nepal", Evaluation for the Ministry for Foreign Affairs, Finland. 2012.

⁴² Danish Ministry of Foreign Affairs/Danida, Human Rights and Good Governance Programme, Phase III (2009-13) Nepal Programme Document, Kathmandu, 2008.

Conclusions

Development partners' efforts to address discrimination have resulted in ensuring that the agenda is kept alive, that representative constituencies have a stronger voice and are able to influence some local and national policies. Their funding support has enabled projects and programmes to be implemented at community level engaging women and men of different social groups. Over years of work, differences in gender and caste/ethnicity based discriminatory practices have occurred.

Despite a strong national and development partner specific mandate to address discrimination, many times there have been inadequate efforts to address these issues as an integral part of planning, implementation and monitoring, especially in the activities implemented jointly with the government. Development partners have been able to address these issues in the programmes they have implemented independently.

A key gap in the support of the development partners has been in the inadequate ability to recognize and facilitate a reasoned debate and a consensus on accommodating multiculturalism in a context where demands for individual identity rights were becoming more strident in Nepal over the years after the CPA was signed.

Recommendations

Development partners must continue their support to government bodies, other institutions and Nepali civil society to address discrimination as attitudes and practices that sustain inequality are deep-rooted in Nepal and require sustained actions. To address deep rooted societal structures, multi-pronged strategies are necessary with community level women and men of different social profiles, with people of advantaged groups, with civil society, civil servants and government agencies.

There is a need to identify social groups, including women, poor and the excluded that are not getting access to resources and benefits of the Government interventions and ensuring good monitoring systems to see whether all groups actually get the services and benefits.

Development partners should also promote civil service diversity for better inclusion.

Systematic and comprehensive support should be provided for the implementation of different policies and laws of GoN that guarantee equal rights to different excluded groups and for their access to justice. The National Action Plans of 1325 and 1820, on GBV, policy on civil service diversity need to be implemented effectively.

It will be an important contribution of development partners if they are able to facilitate a clearer communication between different social groups about their respective aspirations and demands and how these relate with the demands of other social groups. This would allow the current discourse of inclusion to shift from a focus of each identity group fighting for its own rights to a clearer understanding of a multicultural state where different social groups have to live in harmony with each other.

Reducing discrimination requires action across all the other recommendations made in this evaluation. Hence, these issues would need to be mainstreamed in all actions of the development partners.

G.5 Cantonment and demobilisation/reintegration

The verification, cantonment, rehabilitation and reintegration of combatants are complex interventions that require significant resources. The cantonment process can also involve substantive risks as demonstrated in other countries emerging from conflict. In Nepal, the ability to successfully initiate a cantonment, demobilisation and reintegration programme was the key locus for the initiation of other aspects of the CPA.

In early 2007 nearly 32,000 PLA combatants were registered, but after a process of verification only 19,200 PLA combatants entered into the cantonments.⁴³ In 2011, combatants were given the choice of opting for voluntary retirement, opting for a development partner sponsored rehabilitation package, or opting for incorporation into the Nepal Army. In the first phase, 9,705 opted for integration, 7,365 opted for voluntary retirement, and just six opted for the rehabilitation package. By April 2012, a further 5,800 opted for early retirement. In the end 1,460 combatants of the Maoist Army passed the written and medical tests for integration into the National Army.⁴⁴ 72 of these were selected for officer level posts including one colonel and two-lieutenant colonel at the senior levels. The CPA provided for 6,500 PLA members to be integrated into the National Army.

By early 2007, 4,008 VMLR's were also identified. In 2010, 2,394 VMLRs were formally discharged at the cantonment sites and 1,614 VMLRs were discharged *in absentia*. VMLRs were offered one of four rehabilitation choices: (1) vocational skills training; (2) training and start-up capital for a micro-enterprise; (3) education; or (4) health-sector training. In May 2011, UNICEF with the support of the UNDP, conducted a tracking survey of 773 VMLRS through its CAAFAG network about those absent during the official discharge ceremonies in the cantonments. The survey stated that 60 per cent have taken up foreign employment, whereas 13 per cent have engaged in self-employment within Nepal. The actual available caseload for UNIRP therefore had been 3,040 instead of 4,008.⁴⁵

Focal Partner Development Activities

Denmark, Switzerland and Finland contributed to the cantonment, demobilisation and reintegration process by supporting three key bodies. Initially support was through UNMIN's mandate to assist the parties to meet their commitments for managing arms and armies under the CPA via a Joint Monitoring Coordinating Committee⁴⁶. The second key channel of support for the cantonment process was via the NPTF. The core development partners also supported UN agency projects and UNPFN funded projects regarding the cantonment and rehabilitation process. Denmark also supported specific projects such as demining and the control of explosive remnants of war (including the UNPFN Mine Action project – Nepal is now minefield and IED-field free).

Seven main cantonments and 21 satellite camps were set up in accordance with the Comprehensive Peace Agreement (CPA). In early 2007, nearly 32,000 PLA combatants were registered, but after a process of verification only 19,200 PLA combatants entered into the cantonments.⁴⁷

Verified Minors and Late Recruits

Some 4,008 persons were discharged from the cantonments in January 2010. Of these, 74% (2,973) were discharged as minors (having been under 18 at the time of the 26 May 2006

⁴³ It should be noted that only rarely do the numbers on the cantonment and demobilisation process agree. This is because there were at the same time deaths among the combatants, as well as desertions by combatants. One reason for desertion may have been that some grew tired of waiting for the end of the long process.

⁴⁴ Nine combatants left during the beginning of training session. Kantipur. March 11, 2013. *Forge Ranks*. Kathmandu: Kantipur Publications.

⁴⁵ UNDP. June 2012. *UN Interagency Rehabilitation Programme (UNIRP)*. Kathmandu.

⁴⁶ The Joint Monitoring Coordinating Committee was chaired by UNMIN and has representatives of the Nepalese Army and People's Liberation Army. It was the mechanism for coordinating all decisions on the process of monitoring arms and armies.

⁴⁷ It should be noted that only rarely do the numbers on the cantonment and demobilisation process agree. This is because there were at the same time deaths among the combatants, as well as desertions by combatants. One reason for desertion may have been that some grew tired of waiting for the end of the long process.

ceasefire). The remaining 1,035 were discharged as late recruits (having joined the Maoist army after the start of the ceasefire). Of the 4,008 discharged, 1,614 were absent from the cantonments and were discharged in their absence. Of these a follow-up study traced 773 of those discharged in their absence and found that about 60% had migrated to take up foreign employment (UNDP, 2012).

The UNDP coordinated the management of the USD 12.5 million UN Interagency Rehabilitation Programme (UNIRP). This ran from mid-10 (in partnership with UNICEF, ILO and UNFPA) and has been extended. UNIRP's main objective is to support the transition of the discharged from military to civilian life by providing them with training and education to access employment and livelihood opportunities. UNDP coordinates the management of this programme. Development partners, including the core development partners, funded the programme through the UNPFN.

By June 2012, 2,689 discharged had contacted the programme's toll free phone to learn about the rehabilitation options. Of these 2,460 have gone on to receive career counselling and 2,384 of them have opted for one of the four available rehabilitation options: vocational skills training (UNDP); micro-enterprise development (UNDP); health-related training and education (UNFPA); and formal or non-formal education (UNICEF). In addition UNFPA coordinated gender specific support, and the ILO supported building the capacity of the service providers and providing information on the jobs market.

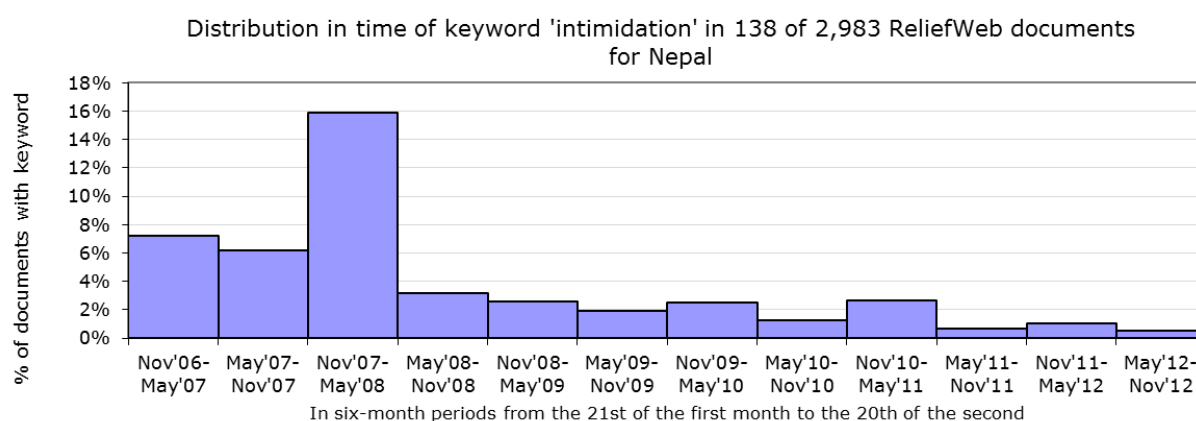
As noted above, 4,008 VMLR were discharged in 2010. With a substantial trend of outward migration among all segments of Nepal's population, only 3,040 remained contactable in Nepal following discharge from cantonments. Of these, 2,743 made contact with the programme through a toll-free number and 2,231 (31% Female/62% Male) have been enrolled for training or education. Of these 60 (7%F/93%M) have dropped out, 1774 (38%F/62%M) have completed and 397 (42%F/58%M) are currently in training or education. 2,149 VMLR had previously been the reported figure for those enrolled in training and education. The GoN asked the UN to consider or reconsider 151 additional VMLR for training and education and this, minus those who dropped out, raised the overall figure to 2,231.

The calming effect of cantonment

The cantonment process was remarkably peaceful. In contrast to many other peace processes where cantonments have been flashpoints no major clashes were reported in the cantonments. Members of the civilian population report that in the early stages of the process there were occasional minor fist-fights between PLA member and the local population, but these were rare and were generally over personal issues, or after drinking bouts. Civilians generally credited the presence of the cantonment as increasing their security significantly, due to almost complete suppression of normal criminal activity.

The figure 22 indicates a gradual longitudinal reduction in perceptions of intimidation from November 2006 to November 2012.

Figure 12: *The decline of concern about intimidation in reference to the peace process*



Source: Analysis of ReliefWeb postings.

However, interviewees reported that intimidation and extortion by criminals was still a problem in the Terai, but most of those interviewed regarded the absence of the PLA and National Army as a big improvement.

Disqualification

The main points of contention over the cantonment process were around the disqualification of combatants either on the grounds that they had not joined the PLA before 25 May 2006, or had been born after 25 May 1988.

The regards to the packages offered to the ex-combatants, the generous nature of the retirement packages has caused some problems:

- Verified Minors, who fought in the Maoist Ranks but were under 18, were excluded from the early retirement package. This has led to protest by the former minors who seek the same package as the adult Maoist fighters (Agence France-Presse, 2012). Late recruits (those who joined the Maoists during the final ceasefire) are also excluded.
- Young Communist League (YCL) members. Many of these (and especially those in leadership positions) were former Maoist combatants who did not enter or who left the Cantonments (Carter Center, 2011, p. 3) as part of the Maoist strategy of maintaining a military capability outside of the cantonments (Pun, 2012). The YCL members who are ex-combatants expect to get equal treatment with the ex-combatants who stayed in the cantonments.
- The lack of any training element in the retirement package. During the field work, both community leaders and former combatants expressed their concern that the retirement packages on their own will not address the livelihood needs of the ex-combatants without training or other inputs. Development partners interviewed were not very sympathetic to this concern, and took the view that preparation for a livelihood was available as part of the rehabilitation package.
- The contrast between a single payment (albeit in two tranches) for the ex-combatants, compared with the pension received by security force personnel on their retirement.

Initially, of the 17,018 verified Maoist Combatants, 9,454 opted for integration the first time around, 7,556 opted for early retirement, and only six for the rehabilitation package. The low take-up of the rehabilitation packages was not well received by the development partners, some of whom had made a significant effort in the design of the packages.

Dissatisfaction among small contingents of VMLRs has continued to manifest since 2010. According to an article by IRIN in 2012, “Although the former combatants (disqualified VMLRs)

have been protesting every year since 2006, it appears they are intensifying their protests, which they claim will be violent unless their demands are met. As part of their demands, the men are calling for the immediate removal of the *ayogya* or 'disqualified' label, as it is fast becoming a derogatory term among local communities, implying "useless or "incapable".⁴⁸ Despite these setbacks DFID has highlighted that, "Rehabilitation support to over 2,000 child soldiers and late recruits has helped Nepal to be removed from the special monitoring conditions set by the UN Security Council under its resolution 1612 in relation to child soldiers. By June 2012, there have been no reports of any violations. This is a remarkable achievement by international standards."⁴⁹

The cost of cantonment

The cantonment of ex-combatants for nearly six years was not cheap, but it was far cheaper than the conflict⁵⁰. It gave space for the peace process to work out some of its knots. Fighters remained in cantonments not because of development partner support, but because there was no agreement on integration into the National Army⁵¹. It was only political agreement on this that eventually allowed the closure of the cantonments.

The evaluation team heard some criticism that development partners were too generous to the fighters in the cantonments, and that their comfortable conditions there meant that they were in no hurry to leave. In terms of politics, the Maoists were in favour of support for the cantonments, and Nepali Congress was opposed. The paradox is that it was Congress opposition to integration in the National Army (under strong Indian influence) that prevented an early closure of the cantonments.

The most expensive element of the cantonments was the payment of stipends for the ex-combatants. However these were funded by the Government. Of course all development partner contributions are fungible, in that development partner support for other sectors such as education allows the state to spend its money elsewhere.

The retirement package was from NPR 0.5 million to NPR 0.8 million (USD 5,700 to USD 9,120) depending on rank. In interviews development partners were critical of the scale of these payments, especially in comparison to the payments made to conflict survivors. These payments are very generous in the Nepali context, amounting to between 13 and 22 times the Gross National Income per capita for 2010 or two and a half to four times that average annual household income for 2010/2011 (CBS, 2011b).

One interviewee noted that someone in the National Army would need to do two UN tours, or work for many years overseas, to build up a nest egg of this size, and that there was no reduction in the compensation for ex-combatant couples. Development partners did not support the early retirement packages and during interviews the general view was the packages were disproportionate and overly generous. The retirement packages were so generous that more and more ex-combatants opted for early retirement over time. By May 2012, only 3,124 were still opting for integration into the National Army. In the event only 1,462 opted for integration and were accepted with the rest opting for early retirements (Pun, 2012).

⁴⁸ Nepal: "Disqualified" Maoist ex-combatants threaten to step up protests," (IRIN, March 2012).

⁴⁹ DFID Annual Review, Nepal Peace Support Programme (February 2013), p.2.

⁵⁰ Ex-combatants stipends from the end of 2006 had cost the Government USD63.6 million(ICG, 2011b, p. 19), or about USD 14 million a year. By contrast The 2011 World Development Report estimates that violent conflict results in a reduction in GDP of 2 to 3% (World Bank, 2011, pp. 64-65) equivalent to USD 393 million in 2010.

⁵¹ Some suggest that the fact that the cantonments represented a useful revenue stream for the UCPN-M (through the control of stipends) was one factor that delayed the closure of cantonments. Combatants were reported to be paying 20% of their stipends back to the party on top of any other deductions (ICG, 2011b, p. 19).

Conclusions

The cantonment process was remarkably peaceful. In contrast to many other peace processes where cantonments have been flashpoints, no major clashes were reported in the cantonments.

The process regarding the VMLRs was problematic in two ways. The label of '*ayogya*' or 'disqualified' was viewed as a derogatory term among local communities, implying "useless or "incapable". This perceived affront has continued to be a rallying call for small elements of VMLRS who have continued to protest after discharge.

Secondly, the discharge packages were viewed as unequal between the VMLRS and other ex-combatants. According to the UN, this caused problems with expectation-management in regards to the final negotiations around the remaining 19,000 which were heavily cash-focused. This problem might have been avoided if the discharge of these VMLRs had been done several years earlier as anticipated in the peace agreements and the dust had been allowed to settle.⁵²

The core development partners supported the UN agencies with resources and some technical assistance to work with the GoN and national stakeholders to implement the cantonment and reintegration processes. Support was also given via the NPTF after the departure of UNMIN. Given the complexity of the process, the donor decision to give support the UN was appropriate to the circumstances. The NPTF proved to be an effective body in regard to the process and enabled greater national ownership over this sensitive issue.

Recommendations

The verification, rehabilitation and reintegration of VMLRs should be a distinct process to that of other general ex-combatants. If the VMLRs had been released as per the CPA timeframe, there would have been less tension over the comparative advantages of the packages provided to the general combatants.

The cantonment period for all ex-combatants was long and expensive. However, given the Maoists' close control over the cantonments and general lack of access; it is hard to see how the UN activities could have reduced this experience. However, given the allegations of the overly high expenditure on the camps, a thorough Value for Money (VfM) analysis could have been undertaken to demonstrate maximum cost effectiveness in this process.

The decision to enable the UN and later the NPTF to manage these complex processes enabled a more straightforward negotiating platform than if the donors had positioned for greater engagement with national stakeholders on these issues.

G.6 Action on the disappeared and establishing the MoPR

Establishing the mandate and infrastructure for the MoPR was achievable. However, the political composition of the LPC's meant that their ability to effectively expedite their mandate was less certain. Although the objective to provide compensation to families of the disappeared realistic, the establishment of formal truth and reconciliation processes was significantly more ambitious given that a number of the conflict parties remain in senior government positions.

In 2003 and 2004, Nepal had the highest number of disappeared people in the world, according to the United Nations Working Group on Enforced or Involuntary Disappearances. As of

⁵² "Putting the Recorder Straight," E-Kantipur, February 2012: <http://www.ekantipur.com/2012/02/12/oped/putting-the-record-straight/348830.html>

August 30, 2010, some 3,397 complaints on the disappeared persons during the armed conflict were registered at the National Human Rights Commission. In fact, there is no consensus on the precise numbers of those disappeared. The International Committee of the Red Cross (ICRC) estimated in April 2011 that there were more than 1,300 people missing in Nepal due to conflict-related causes. Some local NGOs or family groups put the number of missing much higher. For example, the Society of the Families of the Disappeared (SOFD) has said that there are about 5,700 cases of conflict-related disappearances in Nepal.⁵³

The origins of the Ministry for Peace and Reconstruction (MoPR) lie in the formal peace talks initiated between the Government and the Maoists in 2001 which led to the establishment of a Peace Secretariat to provide physical, technical, and other assistance to advance the peace process. Following the CPA, the Peace Secretariat was dissolved and the MoPR created on 1 April 2007. The MoPR was given a very broad mandate including: the reconstruction of physical infrastructures damaged during the conflict; relief and rehabilitation of the conflict survivors; and management of the Maoist combatants.

It should be noted that the CPA does not refer the MoPR specifically, but instead calls for a National Peace and Rehabilitation Commission to “maintain the peace in the society, and run relief and rehabilitation activities for the victims of the conflict and or those displaced” (Government of Nepal and UPCN-M, 2006 Article 5.2.4). In reality the MoPR has responsibilities for the planned activities of this commission and can be thought of as a replacement for the commission⁵⁴.

In terms of providing compensation for families of the disappeared, the MoPR reports that 1,287 families have received a total of NPR 386 million (USD 4.4 million). Each family received an amount in the range of NPR 100,000-300,000 (USD 1,200-3,500).⁵⁵

Focal partner development objectives

The core development partner’s main support for compensation has been through the support of the NPTF and the Ministry of Peace and Reconstruction. Support for the NPTF has not only been in financial terms, but has also included technical assistance. The NPTF has a special budget line for technical assistance. The establishment of truth and reconciliation processes, beyond financial compensation, are important objectives for development partners such as the Swiss.

One of the key stakeholders in the compensation process has been the Local Peace Committees. Although their performance has varied greatly, the best of these have been effective as getting compensation moving. The peace committee structure is supported by then NPTF, with development partner support.

Development partner support for NGO’s outside of the process had helped some claimants to press their claims. Development partner support for partners such as INSEC during the conflict has helped to ensure the preservation of documentary evidence that claimants need to make their claims. The core development partners have all supported the NHRC, which despite weaknesses, is very involved in the process.

Development partners have tried to promote justice by support for TJ and also through the publications of the organisations that they support such reporting the impact of the conflict on women, victims perceptions, and the issue of impunity (Advocacy Forum Nepal and Redress, 2011; ICTJ and Forum, 2010; The International Centre for Transitional Justice and Advocacy

⁵³ Nepal Monitor.

⁵⁴ One case in point is the way in which the MoPR has been involved in the bandh disputes of 2012, and has actively worked to bring the different parties to the negotiating table.

⁵⁵ Ministry of Peace and Reconstruction, January 2013.

Forum, 2008). The recent publication of the Nepal Conflict Study is another landmark in combating impunity (UNOHCHR, 2012b).

The World Bank Emergency Peace Support Project (EPSP) provides USD 50 million to MOPR through three core areas: i) rehabilitation support to the conflict-affected families and individuals; ii) cash benefits to the families and widows of those killed as a result of conflict; and iii) capacity building of key institutional structures in support of peace process and project management support. The EPSP came into effect on September 19, 2008 and is scheduled to close by June 30, 2014.⁵⁶

The main activities related to action on the disappeared and establishing the MoPR are –

- Establishment of the Ministry with a clear mandate
- Investigation of cases of the disappeared
- Presentation of the facts to families
- Compensation packages provided to families of the disappeared
- Establishing agreed mechanisms for truth and reconciliation processes.

Effectiveness

Information collected from fieldwork suggests that some families of the disappeared have still not received adequate information in regards the loss of their family member(s). (KF 3 May, LPCRaj 1 May). Evidence also suggests that families may have been given the wrong information in regard to their cases (LPCRaj 1 May). In many instances, information about disappeared family members was linked more to compensation mechanisms or the need to perform burial rites rather than a need for ‘truth and reconciliation’.

Local Peace Councils (LPCs) have served as redress systems and have performed to varying degrees of satisfaction according to families of the disappeared. For LPC officials, the key concern is that questions of political affiliation are influencing the process and they also report a lack of resources to reach more remote areas. Meanwhile the justice system is costly in terms of financial and time resources. As a result few families embark on the formal legal process to get redress and if they do, they often require the support of NGO’s.

Fieldwork indicates that there is not a high level of satisfaction with action taken by the Government. “Both Maoists and Army kidnapped people, but say they don't have records - they simply don't want to acknowledge what they have done.” (LPCRaj 1 May); “If the problems of the families of the conflict victims (extrajudicial killings, disappearance, missing and severely tortured) could not fulfilled, then conflict is inevitable [sic].” (CS-01 4 May). People’s overall perception of the GoN is very low and this undoubtedly impacts on how people feel the Government has acted in relation to this matter. It also needs to be borne in mind that many of those in Government are seen as perpetrators of crimes leading to disappearances in the conflict period so the general level of trust in the Government is very low. At a field level, people were more focused on receiving compensation for their family members but were not much aware of higher level mechanisms such as commissions and policy drafting to address this issue.

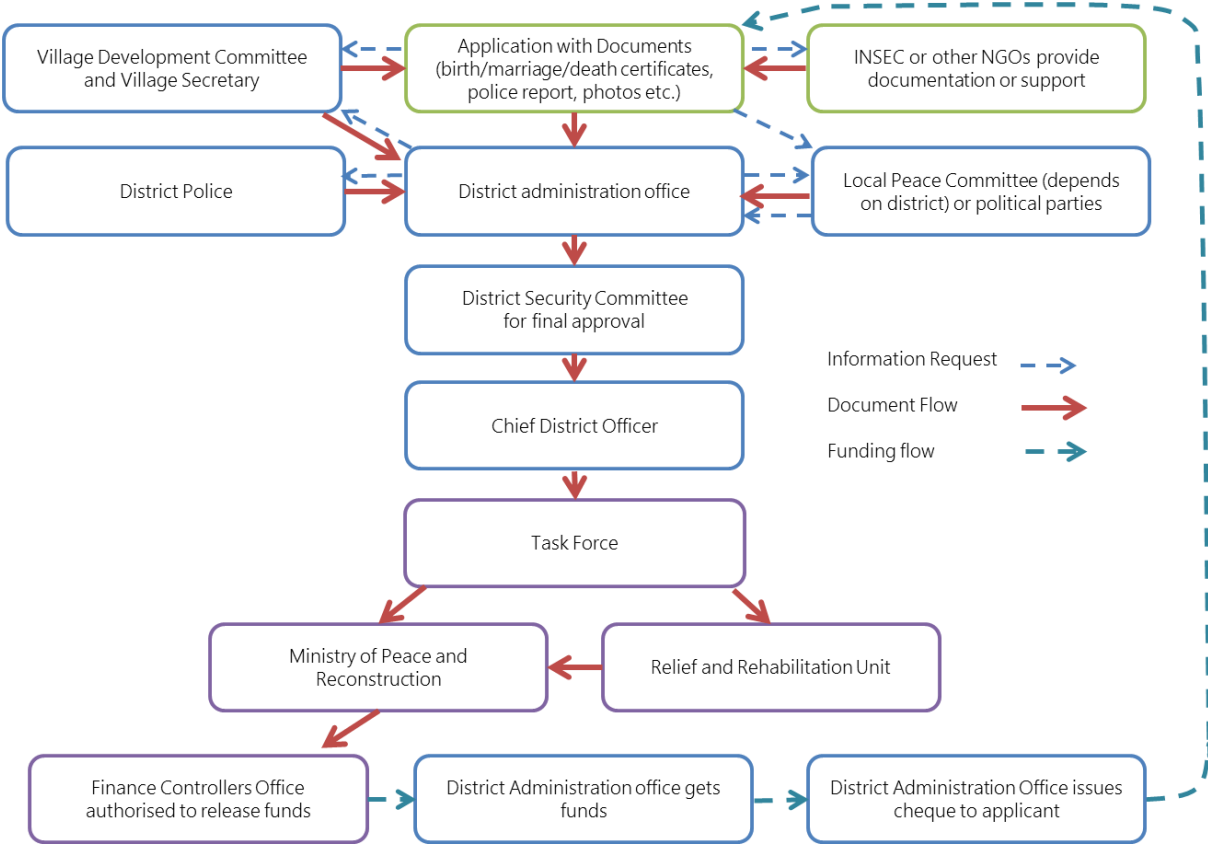
In the CPA both sides expressed “*their commitment that impartial investigation shall be carried out and lawful action would be taken against individuals responsible for obstructions in the exercise of the rights contained in the agreement and guarantee not to encourage impunity*” (Government of Nepal and UPCN-M, 2006 Article 7.1.3). While this part of Article 7.1.3 has not been implemented, the second part of the

⁵⁶ Under rehabilitation support program the project provides Employment/Self-Employment Services (ESES) services and psychosocial counseling services to conflict-affected persons and their families. Under the cash benefits program the EPSP provides cash support to the widows and the families of those killed during the conflict. The capacity development component includes support to the MOPR, PMT, Local Peace Committees and other institutions and groups associated with the peace process. <http://www.epsp.gov.np/>

article, in which the parties guaranteed “the right to relief of the families of victims of conflict, torture and disappearance” has been implemented to some considerable extent by the MoPR. During the fieldwork, the evaluation team heard many complaints about corruption in the compensation process and in the Local Peace Committees. Yet, the International Organisation for Migration (IOM), which has conducted the only published review of the compensation programme (December 2010), while acknowledging problems, was largely positive.

The “right to relief” has been delivered as relief and rehabilitation packages, principally in the form of cash transfers as part of the Interim Relief and Rehabilitation Programme managed by the MoPR. The reports that the team got about the operation of this varied greatly from district to district. The application process is quite complicated and interviewees reported that applicants could need up to 20 visits to local government offices to secure their entitlement. Figure 13 illustrates the complexity of the process.

Figure 13: The process for getting compensation for a conflict related death



Source: Analysis based on IOM documentation and interviews.

The process is complex not only because of the bureaucratic requirements but also because of other factors:

- There have been several rounds of payments, with payments for different cases available at different times.
- Policies are being interpreted differently in different districts.
- The documentary requirements are very high. For example many Nepali’s have no formal marriage certificate.
- The reliance on formal public data from the NHRC or police, which is far less complete than the data from INSEC.

- The variable commitment of district officials to the process. Interviewees reported that while some were supportive, others were obstructive.
- The level of funding being inadequate to meet the compensation levels for some types of compensation. This was particularly the case for education grants, which were inadequate for the number of eligible claimants.
- The involvement of the Local Peace Committees, which are themselves of very variable quality and which are dominated by the political parties.
- Differences in the treatment of security force members killed and of others killed⁵⁷.

These factors have interacted with each other to provide a very complex picture. For example, the bureaucratic requirements mean that claimants with strong links to the political parties are better able to make claims as the party is aware of the documentation requirements and can help them to get them. While district officials can ignore an individual claimant, especially if they are low caste or status, they cannot do the same when a local politician or NGO is helping the claimant to press their case.

In Janakpur, the team was told by an NGO that they had documented 129 conflict-related deaths in Janakpur, plus one disappearance blamed on the Maoists and seven blamed on the security forces. However, the district has paid compensation for a death to 185 families. The different NGOs involved in human rights works have different totals, but none has a number approaching 185, so clearly some of those assisted were not conflict victims. Chief Development Officers in other places told of attempts by some of the parties to get party workers who had been killed in accidents⁵⁸ included in the list for compensation. Worse, in the Janakpur case, several of the genuine cases are not included in the group that got compensation.

The Government records 17,883 persons as having being killed (including disappearances) during the conflict. However, only 14,019 families have claimed assistance, leaving 22% as non-claimants. This has led to the government initiating a study to determine why so many have not claimed (Asari, 2012). However, INSEC, which has the most comprehensive database, records only 13,236 confirmed deaths, and the ICRC reports that over 1,350 of those reported missing during the conflict are still unaccounted for (UNOHCHR, 2012b, p. 26), giving a total of over 14,586 rather than that Government's 17,883. The INSEC and ICRC data are regarded as being the most reliable estimates. Clearly there are major problems with the Government's data.

During the fieldwork, the team received many complaints about corruption in the compensation process and in the Local Peace Committees. Given the endemic nature of corruption in Nepal⁵⁹, it would be surprising if the compensation process were exempt. Each time that the claimant needs another document, another opportunity for corruption arises. However, the team also met survivors who had received the compensation and were very happy to get it. The only published review of the compensation programme, by IOM in December 2010, while acknowledging problems, was largely positive.

Since the CPA, a number of informal mechanisms have been initiated at the community level by national NGO's such as HRPC, Reconciliation Committees and Dialogue Forum working on the jointly funded RDIF programme (DFID, AusAID, Swiss and Denmark). In some instances, these informal mechanisms have supported both reconciliation and promote community-level cases to higher levels of authority. They have been advantageous because they are able to work

⁵⁷ The widows of security force personnel get a pension of NPR 25,000. The families of unmarried sons got a lump-sum payment. In the case of one family, this was NPR 750,000.

⁵⁸ The examples given were road accidents and fatal falls when drunk.

⁵⁹ The Security and Justice in Nepal survey found that corruption was the second most common frequently occurring illegal or negative activity (Cochran-Budhathoki et al., 2011, p. 46). Nepal was the most corrupt of 16 Asian countries examined in a study that linked low levels of Foreign Direct Investment with high levels of corruption (Alemu, 2012, p. 399). Nepal was ranked 154th in the 2011 Corruptions Perceptions Index, but improved its ranking to 139th in 2012 (Transparency International, 2011, 2012).

more effectively in communities by adopting elements of indigenous and culturally acceptable redress systems. However, there is a continued need for vigilance to ensure that informal systems do not create parallel justice mechanisms and thus undermine the on-going state building process.

In addition to the cash payments, families of the disappeared may also benefit from a set of activities implemented by the local authorities and the LPCs. These include skills training and such varied activities as sports matches and essay competitions for the children of victims. LPC members and survivors were critical that the training, in areas such as candle making, TV repair, solar system repair, and house wiring, were not accompanied by grants to establish candle-making or other productive cooperatives. In the field the team met a number of survivors who complained that the grants were too small. However, the initial grant of NPR 100,000 (USD 1,150) is more than two and a half times (using the 1 July 2010 exchange rate), i.e. the Gross National Income per capita for 2010 (World Bank, 2012). It is equivalent to half the average annual household income for 2010/2011 (CBS, 2011b). When the second grant of NPR 200,000 (USD 2,300) is added, this is equivalent to one and a half times the average annual household income for 2010/2011 (CBS, 2011b).

Conclusions

Local Peace Committees (LPCs) have served as redress systems and have performed to varying degrees of satisfaction according to families of the disappeared. For LPC officials, the key concern is that questions of political affiliation are influencing the process and they also report a lack of resources to reach more remote areas. Meanwhile the justice system is costly in terms of financial and time resources. As a result few families embark on the formal legal process to get redress and if they do, they often require the support of NGO's.

In many instances, information about disappeared family members was linked more to compensation mechanisms or the need to perform burial rites rather than a need for 'truth and reconciliation'.

The development partner assistance for compensation for the disappeared has been mostly channelled through the NPTF which has enabled a good degree of national ownership over the process. While many families have received compensation, this process has been marred by political affiliations, lack of geographic outreach and allegations of corruption. Development assistance to NGO's to support families to access compensation has been quite effective, particularly in the case of the work conducted by INSEC. However, financial compensation is only one part of the resolution of injustices. Where development partners have not been successful has been in getting justice for the conflict affected, rather than just money. This is a broader problem with the whole peace process, reflected in the failure to establish a TRC. The real issue is not the TRC, but the continuing impunity of those committed serious human rights abuses.

Recommendations

The establishment of the LPC's were an important step forward in expediting the compensation process for families of the disappeared (or killed). However, in geographically challenging countries such as Nepal, it is advised that sufficient resources are provided to reach families living in remote and hard to access areas.

In some districts, the LPCs have been constrained by political in-fighting and there are also allegations that access to compensation packages has been biased towards families with the right political connections. There is a need to look at mechanisms that can mitigate the high level of politicisation of national compensation mechanisms.

Disputes over compensation and even providing information about some cases the disappeared has been hampered by multiple sources of conflicting data and statistics. There is a need for a paradigmatic data source that is used by all stakeholders in the process.

It is very hard to initiate a genuine truth and reconciliation process, let alone a commission, when some of the perpetrators of the abuses are holding high political office. Development partners will need to temper their expectations in this regard and work with national stakeholders through iterative dialogue and using sound evidence such as the recent publication of the Nepal Conflict Study which could be a useful tool in combating impunity (UNOHCHR, 2012b).

There is a continued need for vigilance by the development partners to ensure that funded projects at the community level to address injustice do not create parallel justice mechanisms and thus undermine the on-going state building process and heighten fragility.

G.7 Setting up of a Truth and Reconciliation Commission

Article 5.2.5 of the CPA states that: “*Both sides agree to set up with mutual consent a High-level Truth and Reconciliation Commission in order to probe into those involved in serious violation of human rights and crime against humanity in course of the armed conflict for creating an atmosphere for reconciliation in the society*”.

The idea that the guilty should be called to account predates the CPA, and the idea that the guilt should be called to account is a long standing one, starting with the Maoists 40-point demand (Bhattarai, 1996, Articles 16 and 17). The 12-point agreement that effectively began the peace process emphasised the need for investigation and taking action over the guilty: “*Regarding the inappropriate conducts that took place among the parties in the past, a common commitment has been expressed to investigate the incidents raised objection and asked for the investigation by any party and take action over the guilty one if found and make informed publicly*”(UCPN-M and Seven Party Alliance, 2005).

Given that this was a long-standing demand and that all parties had agreed to it, it was not at all ambitious to expect that that a TRC would be established.

Reaffirmation of the need for a TRC

Throughout the Peace Process the parties have repeatedly made commitments to establish a Truth and Reconciliation Commission (TRC). The 23-point agreement of 23 December 2007 undertook that the government would form, within one month, a Truth and Reconciliation Commission (*Seven Party Alliance, 2007, Article 6(b)*). The same agreement made the first reference to a Commission for the Disappeared, also to be set up within a month⁶⁰. The seven-point agreement of November 2011 again provides that both the TRC and the Commission for the Disappeared would be formed within a month of that agreement (UCPN-M et al., 2011a, Article 4a).

In neither case was either of the commissions established within the month. The question of the investigation of abuses and the punishment of the guilty is complicated by the fact that senior political and military figures who are accused of abuses are still in place and have even been promoted in some cases. This would explain why there has been little progress with holding those guilty of abuses to account even though there has been good progress on the payment of compensation. Interviewees typically gave this as the reason why there has not been progress on the issue.

Two bills were developed, one for a TRC and a Commission of Inquiry on the Disappeared (COID). There was extensive public consultation and development partners contributed to the process and assisted the development of the draft bills. While the bills were not perfect they did

⁶⁰ The CPA makes no mention of a commission for the disappeared, but only that both sides provide the names and address of those who ‘disappeared’ or were killed within 60 days (Government of Nepal and UPCN-M, 2006, article 5.2.3)

exclude serious crime from the possibility of amnesty. The three big parties decided to merge the two bills in December 2011. However, the legislative committee did not agree with the political decision. Two member resigned and the bill stalled until the suspension of the CA (Pant and Lama, 2013).

In August 2012 the cabinet submitted a revised ordinance to the President in which the TRC and COID were again combined into a single entity. The new ordinance “*carries all bad provision of the Bills and leaves out all the good provisions*” (Pant and Lama, 2013). However, no further progress was made with the bills presumably due to the political impasse that ended with the eleven-point agreement in March 2013.

Increasing external pressure

The lack of progress on the TRC has led to increasing international pressure on the Government. In October 2012, the UNOHCHR added to the pressure with the publication of UNOHCHR’s Nepal Conflict Report (UNOHCHR, 2012b). This report had been held back by OHCHR since 2010, presumably because of concerns about government objections. The report was promptly rejected by the government (Republica, 2012a), which had earlier met with European development partners and the Resident Coordinator in an effort to stall publication.

This rejection is interesting in that the report does not make any allegations, but simply provided details of incidents with a discussion of International Human Rights law. Most of the detailed information has been available for years in Nepali on the INSEC website. UNOHCHR denied that the report has been released to pressure Nepal on the amnesty issue, and noted that while the report does not oppose amnesty, but the perpetrators of serious crimes need to be punished in accordance with international laws.

In November 2012, the UN Human Rights Committee (UN Human Rights Committee, 2012) increased the pressure on the Government when it ruled that Nepal could not rely on the proposed commission to argue that the widow of a disappeared man had not exhausted all legal recourse in Nepal. Further, the committee ruled that the proposed commissions would not be judicial in nature, and would not therefore be counted as an “effective remedy”⁶¹. This means that even if cases are disposed of locally by the TRC, those accused of abuses could still be called to account at other venues.

Further pressure came with the arrest of Colonel Lama in the UK on 3 January 2013 on a torture charge under the universal jurisdiction provisions of the UN Convention against Torture (UN General Assembly, 1984). The Nepali media reported that the government had summoned the UK Ambassador to the Foreign Office to complain. The main political parties criticised the arrest with the strongest commendation coming from the UCPN-M which termed it a violation of Nepal’s sovereignty. The Nepali Congress deeply condemned the arrest, and the UML branded the arrest as “inappropriate” (Republica, 2013a)⁶².

The arrest was welcomed by some justice advocates as the natural consequence of the failure to deliver on the TRC (TRIAL, 2013). However there is a risk that it could bring about an inadequate quick fix. The RCHCO notes that; “*In a worst case scenario, the response to such pressure may be to rush through transitional justice legislation for political expediency without adhering to international standards and without satisfying the need for genuine truth seeking and reconciliation...*” (RCHCO, 2013, p. 8).

⁶¹ Article 2.3(a) of the International Covenant on Civil and Political Rights requires each state part to the convention to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an **effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity” (United Nations, 1966, Article 2.3a)

⁶² Of the three parties, the UML is the one least likely to be affected by trials of cadres for human rights abuses.

The TRC and Disappeared Ordinance becomes law

The Eleven Point Agreement of 13 March 2013 by the big four parties provides for the immediate formulation of laws for the “*commission on truth and reconciliation, and forced disappearance*” (UCPN-M et al., 2013, Article 9.2). The following day, the President signed the Truth, Justice, and Disappeared Persons ordinance.

The ordinance met with an immediate wave of criticism from human rights organisations (ICJ, 2013; Pant and Lama, 2013). The main criticism is that the law allows for the TRC to recommend an amnesty for a perpetrator if it considers it reasonable, without any definition of reasonable, and serious crimes are not excluded from amnesty. The final decision on an amnesty will be taken by the Government. This is only one of many flaws with the ordinance

On 1 April 2013 the Supreme Court put an interim stay on the implementation of the TRC ordinance, saying that some of its provisions contradicted the provisions of Interim Constitution. The Court gave the Government 15 days to The Court made on order about the COID ordinance. The Interim Constitution provides that one of the responsibilities of state is “*to constitute a high-level Truth and Reconciliation Commission to investigate the facts about those persons involved in serious violations of human rights and crimes against humanity committed during the course of conflict, and to create an atmosphere of reconciliation in the society.*” (Cottrell et al., 2009 Article 33 s). The Interim Constitution makes no reference to the disappeared, or to a commission for them.

On 1 April also the NHRC issued a statement strongly critical of the ordinance and suggested nine amendments to the ordinance. The NHRC noted that despite many requests it was given no opportunity to view the ordinance before it was signed. The NHRC was very critical of the discretion given to the Attorney General to file cases against perpetrators as well as lack of limits on amnesty. The NHRC Chair said “*NHRC would never accept the act of granting amnesty to the perpetrators of serious crimes*” (INSEC, 2013).

Development partner support

Swiss programming in Nepal prioritises transitional justice. The right to truth is considered as fundamental in the reconciliation process but that this right is currently being denied to the Nepali people.⁶³ The Swiss have also contributed to the TJ basket fund and the Human Security Division is considering applying documentation and reconciliation efforts that are being used in Sri Lanka. The embassy is also supporting TRIAL (Swiss Association Against Impunity) and intends to recruit a human rights advisor to be responsible dealing with the past.

Denmark, meanwhile, has stepped up its commitment to transitional justice and initiated a basket fund initiative in 2012.

Box 1: *Transitional Justice Basket Fund*

In early 2012 a transitional justice opportunity emerged. Legislation for the truth and reconciliation and the disappearance commissions had been drafted but were pending adoption. Development partners now had a chance to engage with and perhaps influence government and high level state actors, but they needed to be better coordinated. In any country transitional justice is a contentious issue between international partners and the government, partly because of discussions over amnesties or vendettas towards former allies and enemies.

The Danish embassy therefore suggested establishing a basket fund to serve as a financial and political risk-sharing arrangement. The Danish HUGOU Office was designated as the administrator, and the UK Embassy, Norway, Switzerland and Denmark became funders whereas International Commission of Jurists (ICJ) and the International Center for Transitional

⁶³ Interview with development partner in May 2012.

Justice (ICTJ) the implementing partners.

Other coordination forums existed already, including an impunity development partner group with many of the same stakeholders. The TJ basket fund, however, helped secured the link between the policy process within Nepal and international mechanisms such as the Human Rights Council. The fund also encouraged ICTJ and ICJ to develop bi-annual joint work plans, thereby reducing overlap. They now coordinate more regularly and engage more strategically with all national and international TJ actors in Nepal.

As yet, the basket fund has caused the international partners to be more outspoken advocates, encouraging GoN compliance with international human rights standards and humanitarian law. Such decisions are generally taken in the Impunity development partner group. However, as many development partners have been accused by GoN of supporting human rights efforts that generate conflict and circumvents efforts of the GoN to promote peace, the fact that the funding to TJ (advocacy) programmes is channelled through a basket fund, makes it more difficult for GoN to identify one development partner as the 'black sheep'. This also means that development partners in the basket fund are more open to ongoing adjustments in the projects based on analysis of changed circumstances and voices of victims, and explores all options for having positive effect on effective TJ processes in Nepal irrespective of their lack of support from top politicians.

Clearly, legislation that is not in compliance with international norms isolates Nepal, and is, in the long-run, unsustainable.

Conclusions

Despite the best efforts of development partners, Nepal does not have an adequate law on the TRC and Disappeared. It looks very unlikely that the victims of abuses during the conflict will get justice in Nepal.

In the light of the Lama affair, it may be worth considering if more aggressive action by development partners, in applying the universal jurisdiction of the convention against torture, or in pushing for referrals to the ICC would not have been a more efficient approach than just focusing on legislation in Nepal. Such an approach could only work as a staged approach.

Recommendations

The development partners should develop a common position around the TRC law and examine what levers they could apply to the Government and to the Parties to ensure a better outcome. Part of this consideration should include whether more development partners should apply universal jurisdiction and whether cases should be referred to the ICC. It is outside the scope of the evaluation to judge whether this approach would be helpful, but it should be examined as an option.

G.8 Respect for human rights

The CPA contains a strong commitment to human rights. Section 7 of the CPA addresses compliance with Human Rights, Fundamental Rights and Humanitarian Law. Other sections also refer to human rights, such as the references to monitoring in Section 8, to the TRC and disappeared in Section 5, to economic, social, and other rights in Section 3. All the sections relating to human rights account for more than one third of the text of the CPA.

The CPA included commitments to the right to life, political and civil rights, social and economic rights, and includes a specific mention of women's rights and of the right to personal liberty. The CPA, commits all signatories *"to create an atmosphere where the Nepali people can enjoy their civil, political,*

economic, social and cultural rights and ... to ensuring that such rights are not violated under any circumstances in the future." (Section 7.1.2). OHCHR and the National Human Rights Commission (NHRC) were separately mandated by the CPA to monitor the implementation of the human rights provisions within the Agreement. The CPA required all parties to collaborate with OHCHR in providing information and implementing recommendations.

CPA ambition

Though the CPA has a strong commitment to human rights, it did not have very high ambitions on human rights. It only committed the parties to observe the Government of Nepal's existing obligations⁶⁴ under international law to respect, promote and ensure human rights of all persons within Nepal without discrimination.

Even the mandating of UNOHCHR and NHRC for monitoring reflected the existing legal position, where the Royal Government had invited UNOHCHR to monitor human rights across Nepal and support the work of the NHRC.

Focal development partner objectives

Human rights is a strong focus for all three focal development partners. **Denmark's** draft strategy on *Democratisation and Human Rights – for the benefit of the people*, emphasises that Denmark seeks to deepen democracy and realise human rights as an aim in its own right and as a means to promote development, peace and security.

Human rights are an important part of **Finland's** programme and Finland has chaired the EU Working Group on Human Rights Defenders, which indirectly supports the peace process. The OHCHR in Nepal has had an extremely important role in addressing issues concerning: discrimination and economic, social and cultural rights; the strengthening of human rights institutions and civil society; and accountability, impunity and the rule of law.

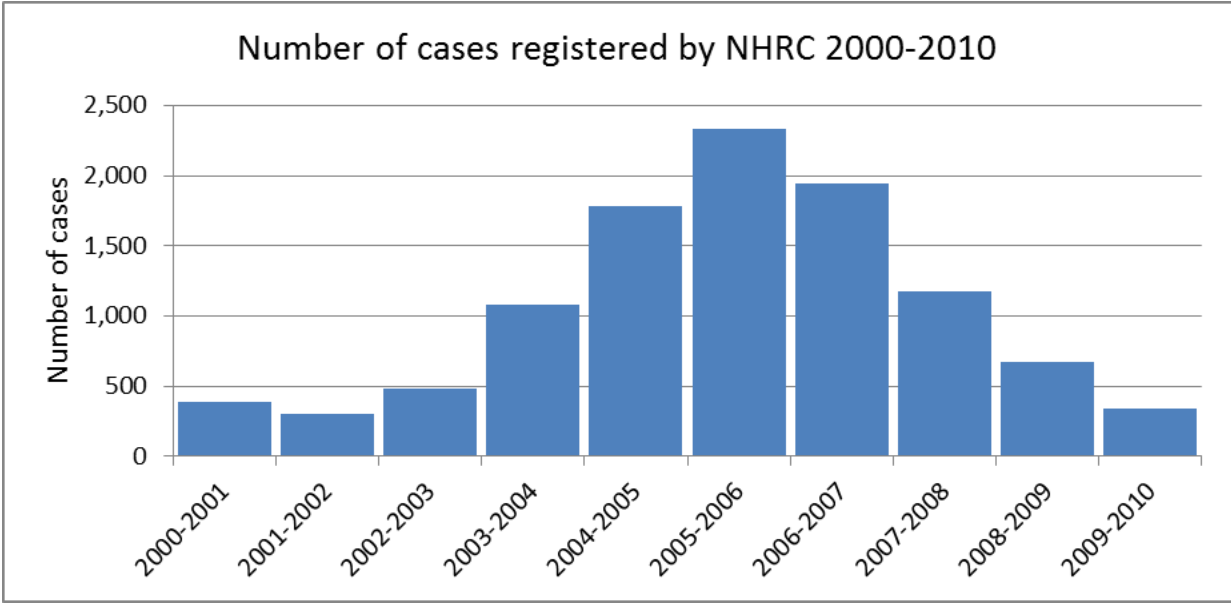
Over the last several years, the **Swiss** programme has adopted a comprehensive Conflict Sensitive Programme Management (CSPM) consisting of four complementary sets of instruments, Security management, Coordination with other donor agencies, Awareness building and support at operational level, and close monitoring of the political and human rights situation. The overall goal of the Swiss Cooperation Strategy is to contribute to the transformation of Nepal into an inclusive and democratic federal State, which fosters human security and the rule of law, and to promote social, economic and political opportunities that enable women and men alike to make their own choices and sustainably improve their well-being.

Developments in human rights

Since the signing of the CPA in 2006, the number of human rights violations has decreased steadily. This is reported by NGOs working on human rights issues. While many factors have played a role in this, including the cessation of the Maoist conflict (for reduction in human rights violations), and the consciousness after the conflict regarding social issues, work by CSOs and representative organisations (supported by development partners) have made immense contributions. NHRC data on human rights complaints also document this trend.

⁶⁴ Nepal is a signatory to 40 different human rights instruments and eight humanitarian instruments Human Rights Treaty Monitoring Coordination Committee (HRTMCC).

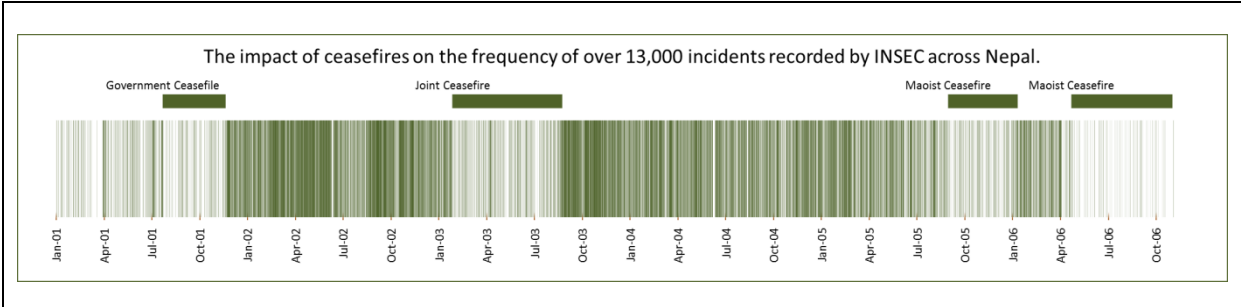
Figure 14: Abuse cases registered by the NHRC 2000-10



Source: Summary Report, NHRC Recommendations upon Complaints in a Decade, 2010, NHRC. As of January 2013, these are the latest figures available to the evaluation team.

The complaints recorded by NHRC include extra-judicial killing, torture, enforced disappearance of human persons, illegal detention, displacement, and violation of various economic and social rights. While this is a positive trend, Amnesty International notes that impunity is a longstanding problem in Nepal. The lack of political will to account for past and present actions of the politically well-connected is compounded by other obstacles to justice, especially for those who lack financial resources or social influence (Amnesty International, 2013).

Figure 15: The impact of ceasefires on rights abuses reported to INSEC



Source: nepalconflictreport.obchr.org

As with each of the preceding ceasefires, the ceasefire at the start of the peace process saw the number of violent incidents fall markedly.

Discussions with community level women and men, NGOs/CSOs and other stakeholders working in the area of human rights indicated that with the start of the peace process, the threats related with armed violence reduced.

But in the Terai, with the armed groups still active, there were higher number of incidents. *“We have not reached a post-conflict stage in the Terai”, “Madhesi and Maoists conflicts are different and need to be approached, addressed differently”, “There were two conflicts – the Maoist one has stopped, but the Madhesi*

conflict is on-going” were comments heard during the evaluation fieldwork in the Terai. Despite the improvements elsewhere, violence persisted in the Terai where non-government armed groups continued to be active. In the Terai, the *“legacy of conflict-era violations and prolonged impunity has allowed a culture of violent lawlessness to take root”* (Amnesty International, 2013, p. 5).

Extra-judicial killings have been a particular problem in the Terai. OHCHR documented 39 incidents which resulted in the death of 57 persons between January 2008 and June 2010 in the Terai. In all cases there were credible allegations of the unlawful use of force by security forces (UNOHCHR, 2010).

In other areas such aspects were also highlighted, e.g. during field visits it was shared by people that violence is still an on-going fact of life in the remote villages (of Gorkha) with Maoist extortion again on the increase; civil society organizations are unable to respond to the emergence of violent factionalism within political parties which impacts lives of common people too. The split in the UCPN-M to form the CPN-M has also led to violence at times between the parties.

Structural violence

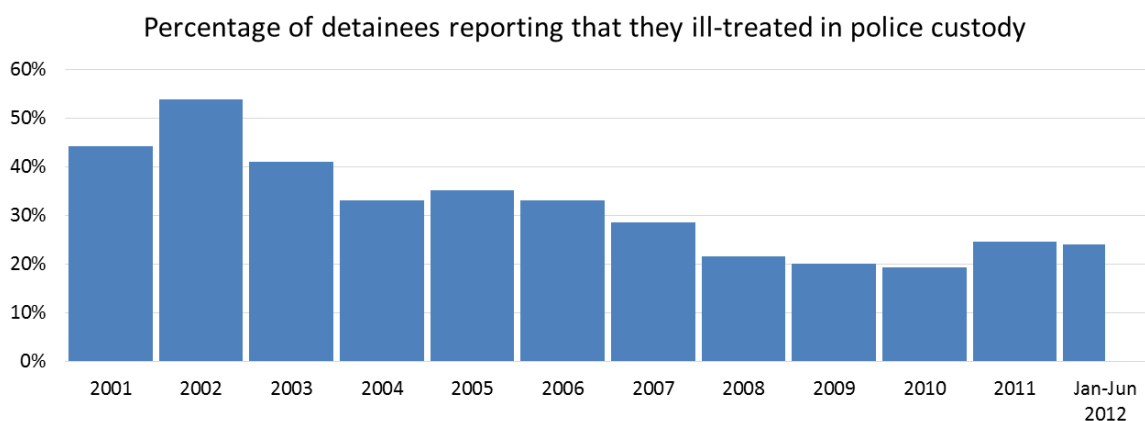
The structural violence experienced by women, poor, the excluded (e.g. Dalits, disadvantaged groups of Adibasi Janajati) still exists in varying degrees in Nepal. There are many violations of women and children's rights, domestic violence, rape and impunity is still a problem, with women finding it difficult to get cases registered. However, in areas where projects have worked effectively and as women and the excluded have been more organized into groups, their confidence and solidarity strengthened, exclusion and discrimination, has reduced. Dalits informed the evaluation team that caste-based discrimination has reduced, single women expressed that their social restrictions have lessened.

Torture

Despite the CPA, torture has continued in Nepal by state and non-state actors. Existing legislation, particularly the Interim Constitution and the Torture Compensation Act, failed to properly criminalise acts of torture, despite advocacy by human rights organisations and other actors. The ill-treatment of detainees is common in police stations, with the ill-treatment (normally to get detainees to sign confessions or provide information) in many cases amounting to torture.

The level of abuse declined up to 2010, but 2011 and 2012 have shown an increase over 2008-10 (Figure 16). Abuses are not only committed by the police. Advocacy Forum has also documented 67 cases of torture, one case of rape, and 96 cases of abduction committed by the Maoists since the People's Movement of April 2006.

Figure 16: Ill-treatment of detainees in police custody



Source: (Advocacy Forum, 2012).

Efforts to address human rights

There have been a number of steps intended to improve human rights. A number of key instruments have been established including the National Human Rights Action Plan, UNSCR 1612 mandated Action Plan (which remains responsible for monitoring the Nepal national action plan on the release and reintegration of discharged verified minors and on children affected by conflict) and the National Action Plan on UNSCR 1325 and 1820 which have supported the protection of the rights of women and the excluded.⁶⁵ Community radio⁶⁶ has been effective at making people aware of their rights.

Human rights were monitored continuously by OHCHR, during its presence in Nepal. Annual reports from 2005 to 2011 were submitted by OHCHR to Commission on Human Rights, the Human Rights Council and the UN General Assembly. More than 20 investigation reports were submitted by OHCHR in its period in Nepal e.g. Human Rights in Nepal One Year After The Comprehensive Peace Agreement in 2007, Constituent Assembly Elections of 10 April 2008: Summary of Human Rights Monitoring, 2008, Investigating Allegations of Extra-Judicial Killings in the Terai OHCHR-Nepal Summary of Concerns (July 2010) in 2010.⁶⁷ OHCHR's monitoring work was appreciated in the interviews by different stakeholders "There was a much faster response to HR issues when OHCHR was monitoring" and their absence has been experienced "It would be good to have OHCHR here now – even just to have the physical presence throughout the country – even just monitoring the bands".⁶⁸

Impunity

Amnesty International (AI)'s reports have consistently presented Nepal's situation on impunity issues. AI's 2011 report stated that "Nepal made little progress in ending impunity, accounting for past violations or ensuring respect for human rights. Officials actively obstructed accountability mechanisms, and commitments made by political leaders as part of the peace process were not fulfilled in practice. Torture and other ill-treatment in police custody remained widespread. Ethnic, religious and gender discrimination went largely unchallenged. Violence against women and girls persisted".

⁶⁵ United Nations Peace-Building Strategy for Nepal 2011-12. (2011). Kathmandu.

⁶⁶ Danish support to media has been consistent and strong.

⁶⁷ <http://nepal.ohchr.org/en/Reports.html>

⁶⁸ Evidence Tool, Field meeting notes, May 2012, Kathmandu.

In 2011, police refused to file complaints or investigate cases of military personnel accused of offences involving human rights violations, despite court-ordered arrests e.g. the Nepal Army refused to hand over Major Niranjana Basnet, charged with the torture and murder of 15-year-old Maina Sunuwar in 2004, despite a court order. In mid-July, an internal inquiry by the Nepal Army declared Niranjana Basnet “innocent” of the charges.

AI reports that in 2012 also impunity remained strong in Nepal e.g. Agni Sapkota, accused of involvement in the 2005 abduction and murder of teacher Arjun Lama, was appointed as Minister of Information and Communication. Nepal’s cabinet recommended an amnesty for Maoist CA member Balkrishna Dhungel, who had been convicted of murder and sentenced to life imprisonment in January. The Supreme Court annulled an order blocking the promotion of a senior police officer accused of involvement in the 2003 “Dhanusha 5” case in which five young men were allegedly killed by security forces. Exhumations of the remains of the five victims were completed in February. The family of the men killed shared with the evaluation team that their only wish was to see justice being done.

Amnesty International 2013 also reported that successive governments’ decisions to withdraw criminal cases against individuals with political affiliations, promote alleged perpetrators of human rights violations to senior leadership positions and propose amnesties which could cover serious crimes, send a clear message to all potential perpetrators that there will be no consequences for their crimes. Sexual and domestic violence has yet to be tackled effectively by the justice sector anywhere in Nepal; impunity for violence against women is widespread.⁶⁹

The continuing failure to take action in different cases reflects the systemic weakness of the police, in part due to lack of resources and training, but in large measure due to lack of institutional independence and accountability. There is little incentive to investigate and prosecute perpetrators of human rights abuses.⁷⁰

Monitoring by UNOHCHR and NHRC

The National Human Rights Commission (NHRC) was established in 2000 and was later raised to a constitutional body by the 2007 Interim Constitution. The Royal Government’s 26 March 2004 declaration on respect for human rights led first to the signing of a Memorandum of Understanding with the UNOHCHR “*for technical assistance to strengthen the National Human Rights Commission for carrying out its mandate, including for monitoring and investigation*” (Nepal MOFA, 2004). This later led to the invitation from the Government to UNOHCHR to open an office in Nepal and the signing of an agreement to do so on 10 April 2005 (UNOHCHR and Government of the Kingdom of Nepal, 2005). This agreement gave UNOHCHR a very mandate in Nepal with access to all prisons and detainees.

With the CPA the monitoring role of these organisations grew in importance. In addition to its legally assigned role, the parties to the CPA requested NHRC to monitor human rights listed in the peace agreement. The parties similarly asked OHCHR to continue human rights monitoring. The roles of both UNOHCHR and NHRC changed as the number of human rights abuses fell after the end of the Maoist conflict. The NHRC retained an important role in the identification of persons who should be compensated for what they suffered during the conflict, whereas UNOHCHR’s role changed towards a focus on transitional justice, and on the end to impunity. The organisation has continued that work even after its effective expulsion from Nepal, and the most recent Nepal Conflict Report (UNOHCHR, 2012) provides a powerful tool for the affected to claim justice, should the political climate ever change sufficiently to allow this.

⁶⁹ Amnesty International. The Search for Justice, UK, 2013.

⁷⁰ Advocacy Forum and Human Rights Watch, Adding Insult to Injury, Continued Impunity for Wartime Abuses in Nepal, 2011, Kathmandu

UNOHCHR's mandate was increasingly seen by some as an anachronism after the CPA as it has originally been intended to constrain abuses by the Monarchical Government. Much of the government, the NHRC, and the political parties, with the exception of the Maoists, were opposed to the extension of the OHCHR mandate in 2010 (ACHR, 2010).

European Development partners lobbied for extension of the mandate, particularly Switzerland (Giri, 2010). However, while the core development partners were steadfast, this was not the case for all western development partners (ACHR, 2010, pp. 3-4). UNOHCHR's agreement to give up its monitoring role and to refer all new cases to the NHRC had alienated some NGOs and development partners (Chakma, 2010). The lobbying was to no avail and the mandate was extended for six months, with all offices outside Kathmandu to be closed (ACHR, 2011). The UNOHCHR office in Nepal ceased all new substantive work on 8 December 2011 and finally closed on 31 March 2012.

UNOHCHR had made itself unpopular with the government with, for example, the report on extra-judicial killing in the Terai (UNOHCHR, 2010) and the criticism on 10 November 2011 of the Government's recent decisions "*to appoint, promote or pardon public officials implicated in serious crimes and human rights abuses in Nepal.*" UNOHCHR went on to state that; "*such decisions, taken in relation to both senior politicians and officials of Nepal's security forces, undermine efforts to address impunity in the country, and taint recent positive progress on the peace process.*"⁷¹

Role of Human Rights Monitors

The role played by human rights monitors during the conflict was very different from that before and after the peace agreement. As with previous ceasefires in Nepal, the peace agreement led to a reduction in the number of security incidents (Figure 14Figure 15). The quietest period in the decade began with the Maoist ceasefire of April 27th 2006, following the King's agreement to reinstate Parliament.

The reduction in security incidents changed the role somewhat for the human rights agencies that had been most involved. During the period of the conflict the agency of record for abuses was not UNOHCHR or NHRC, but the NGO INSEC. INSEC recorded 15,016 incidents overall against 1,664 for NHRC, and 329 for OHCHR.⁷² There are some differences in the numbers of persons affected by incidents, but there is good agreement between the INSEC and ICRC figure for the number of disappearances. Disappearances were of special concern to ICRC because of their mandate for the protection of detained persons. Overall the INSEC data provides the most complete picture (Figure 15).

INSEC was a long term Danida partner, and originally functioned as a coalition of smaller CBOs. INSEC policy was to report all incidents to NHRC. However, interviewees reported that it was sometimes difficult to get NHRC to register cases and that when UNOHCHR was present, it was possible to get them to put pressure on NHRC to register cases.

The evaluations of UNOHCHR were critical of the lack of leadership (UNOHCHR left the office without a representative for a prolonged period) and of the failure to base policy on the reports from the field (Mahony et al., 2010). But the different projects on transitional justice, reparations, child monitoring funded by UNPFN/PBF yielded good results.⁷³

⁷¹ <http://nepal.ohchr.org/en/index.html>

⁷² OHCHR only arrived in 2005 with just over a year before the CPA, so it had limited time to record conflict-era abuses.

⁷³ Project documents, meeting notes.

Recording abuses

The recording of abuses is important for families, as records are needed to bring perpetrators to justice. Records are also needed on a more mundane level to enable families of the killed and disappeared to access compensation if they can prove that their family members were killed or disappeared.

INSEC, a long term Danida partner, reported that, although it was their policy to register all cases with NHRC, it was not always easy to get NHRC to register cases. This is why the number of cases recorded by INSEC is so much higher than recorded by the NHRC. This is an issue for survivors as the Government regards registration of a case with NHRC as proof that an incident occurred. This has proved a problem for some families trying to access compensation. INSEC's data files, which include newspaper cutting of the time, are often used by families to support such applications.

However, in general, survivors whose cases had not been registered by NHRC were critical of that organisation, and described the level of documentation demanded as being a bureaucratic nightmare, especially for the disappeared.

INSEC's database has also been the principle source for Nepal Conflict database (UNOHCHR, 2012a). The database is in support of the Nepal Conflict Report which OHCHR published with the intention that: *“by contributing to the documentation and compilation of serious violations of human rights and international humanitarian law committed in Nepal during the conflict, the Report aims to assist the People of Nepal to realize a transitional justice strategy, to combat the prevailing impunity and to enable the conflict's many victims to obtain justice.”* (UNOHCHR, 2012b, p. 28)

Support for the capacity building of the NHRC was an element of the programmes of several core development partners, as well as being indirectly supported by them through OHCHR and through UNDP. However, several interviewees commented that the capacity of NHRC is even less now than it was at the start of the conflict and external commentators have made the same observation. This may be due in part to the human rights monitoring having a lower profile than during the peak of the conflict, and therefore less attractive to committed staff, or due to the loss of experienced staff given the structural problems of the commission.

Certainly the NHRC suffers from several structural problems, including its effective co-optation as a constitutional body that threatens its independence from government – a critical issue for national human rights organs as set out in the Paris Principles. Despite commitments given by the government on resourcing, the NHRC has been starved of resources, and the status of staff is uncertain. A recent review concluded that the NHRC had grown stronger in the last two years but still faces very significant problems in achieving its mandate.

Development partner support

The **Swiss** embassy views respect for human rights as a fundamental part of the peace-building process and the protection and protection of human rights is a strategic objective of the embassy in Nepal. However, it is recognised that there is a danger in pushing too hard on a Government that is simply not ready to substantively address past human rights abuses. The Swiss believe that their value added in this area is to align closely with other like-minded development partners to gain the maximum traction. An example of this coordination is the Joint Development partner Strategy on Impunity.

Human rights is a central plank in **Denmark's** assistance as the long-running HRGGP shows. Denmark has been a long supporter of the community radio sector in Nepal, a very important channel for letting people know about their rights. The HRGGP has given Denmark a very strong profile in human rights. Marginalised groups have become far more aware of their rights and have started voicing them in a variety of forums.

All three focal development partners have supported both UNOHCHR and NHRC. NHRC was generally supported through UNDP capacity-building projects. The roles of both UNOHCHR and

NHRC were reduced somewhat by the reducing level of human rights abuses following the conflict. The NHRC retained a critical role in the identification of persons who should be compensated for what they suffered during the conflict, but many persons were critical of how well it had carried out this role.

Monitoring by both UNOHCHR and NHRC was supported by all three core development partners. For example Switzerland granted CHF 1,000,000 to UNOHCHR for monitoring in 2010. UNOHCHR also benefited from funding on the rights of child soldiers through the UNDP (albeit for less than one million dollars).

The core development partners also provided political support for UNOHCHR (Giri, 2010), but this was not sufficient to sway the government to allow the UNOHCHR to continue. However, development partner political support facilitated UNOHCHR's publishing of the Nepal Conflict Report in the face of opposition from the Nepalese government⁷⁴ (Republica, 2012b).

Conclusions

The human rights situation improved after the signing of the CPA but the commitments made in that historic document were not adhered to by the Government and political parties. This limited the effectiveness of the development partners as a reduction in human rights violations was dependent on an effective justice system and a responsive state.

There are still serious issues in Nepal around continuing rights abuses, albeit at a far lower level than during the open conflict. Continuing impunity for abuses is another issue that needs attention. Impunity is compounded by weak institutions including the police and justice system.

Development partner efforts to support women and different social groups provided them capacities to better defend their rights. Despite that violence against women and caste/ethnicity based discrimination is still high, as they have deep cultural roots that will take time to change.

Monitoring by OHCHR and NHRC, two key institutions which were mandated by the CPA to monitor the human rights situation in Nepal, achieved a mixed result. Both did good work in pursuing human rights violations and reporting them. They worked as a watch-dog and brought to the attention of the government instances of criminal injustice, impunity, torture and other acts of human rights violations. Due to structural issues and the lack of political will of the government, these institutions could not work as effectively as required.

Recommendations

For the focal development partners, it is important to continue supporting the human rights agenda and not be swayed by the political class's unwillingness to address either historical or ongoing abuses.

Different forms of human rights violations require different strategies. For addressing violence against women and the excluded, work with men and the advantaged groups is essential along with strengthening the voice of women and the excluded. Additionally the development partners must support the implementation of the positive policy provisions for women and for excluded groups like Dalits that Government of Nepal has passed.

For reducing instances of torture, extra-judicial killings, kidnappings and other such incidents, work on improving the security situation is essential. Work with the police and strengthening their capacities to defend human rights would be important.

For addressing discrimination, again work with the advantaged is necessary but along with that, it is important to build the voice of the excluded.

⁷⁴ The report had been put on hold since 2010 (Republica, 2012b).

Development partners need to continue strengthening the NHRC, advocating for its conversion into an autonomous body with powers to really monitor the HR situation and ensure the Government responds to its directions. They must also invest in enhancing its capacity to work on the rights of women, Dalits, Adivasi Janajatis, Muslims or Madhesis as part of human rights. The development partners must ensure that the civil society organisations, academic institutions and the media funded by them is inclusive themselves and raises issues and concerns of all social groups.

G.9 The UNMIN Mission

The CPA states that the UN shall “verify and monitor” that “the Maoists' Army combatants remain within the following Cantonments” and that “the UN shall monitor the process of placing the [Maoists' Army] weapons under the single lock.”⁷⁵ This is reiterated as the sides “agree for the monitoring of the management of arms and the armies by the United Nations Mission in Nepal.”⁷⁶ The sides also agreed that the “United Nations supervise the election to the Constituent Assembly.”⁷⁷

The tasks set out for the UN were ambitious but offered a large reward if carried out successfully. The arms and army monitoring would reduce the risk of violent clashes, and the CA elections would enable an elected body to initiate constitution drafting.

A few months after CPA signature, on 23 January 2007, the UN Security Council adopted Resolution 1740 (UNSC, 2007), which established a United Nations Mission in Nepal (UNMIN). The Mission was under the control of the Special Representative of the Secretary General and it was narrowly mandated to:

- monitor the management of arms and armed personnel of both sides in line with the CPA;
- assist the parties to meet their commitments for managing arms and armies under the CPA via a Joint Monitoring Coordinating Committee⁷⁸;
- assist in the monitoring of the ceasefire arrangements;
- provide technical support for the election; and
- provide a small team of electoral monitors.

UNMIN was a UN political mission paid for from the budget of the UN's Department of Political Affairs (DPA). During the period of the evaluation, development partner support for the DPA was not eligible for including in ODA statistics. This changed in June 2012 when the OECD/DAC added the DPA to the list of ODA-eligible organisations. In future some part of the cost of such a mission might be eligible for reporting as ODA⁷⁹. However, UNMIN funding was not then eligible to be counted as ODA and the evaluation will only look at the interlinkages between UNMIN and the ODA elements of support to the peace process.

The Department of Political Affairs is funded both through the regular UN budget and through voluntary contributions by development partners. Switzerland and Finland also made earmarked voluntary contributions for DPA activities in Nepal.

⁷⁵ CPA 4.1 and 4.2.

⁷⁶ CPA 9.2.

⁷⁷ CPA 9.3.

⁷⁸ The Joint Monitoring Coordinating Committee was chaired by UNMIN and has representatives of the Nepalese army and People's Liberation Army. It was the mechanism for coordinating all decisions on the process of monitoring arms and armies.

⁷⁹ The OECD/DAC published the list of ODA eligible organisations as Annex 2 to the DAC Statistical Reporting Directives (DCD/DAC (2010)40/REV1). URL: <http://www.oecd.org/dataoecd/28/62/38429349.pdf>.

The focal development partners funding on the security side included support for the construction and operation of cantonments by all three core development partners and delivered through the NPTF and the UNFPN, for clearance of mines and the explosive remnants of war, e.g. DKK 10 million (USD 1.8 million) from Danida⁸⁰, for the verification of minors and late recruits through the NPTF and the UNFPN, as well as direct support, e.g. DKK 5 million (USD 0.9 million) from Danida.

Core development partners' engagement with the elements of the mandate relating to the constitution and elections was much closer and direct than for the security mandate, in that there were many development partner-supported projects around the elections. Several Heads of Mission (including the focal development partners) together with UNMIN conducted a regular dialogue with the major political parties on all UNMIN issues.

Resolution 1740 was only the first of eight UN Security Council resolutions dealing with UNMIN. The UNMIN mandate was extended a further 7 times until it expired on 15 January 2011.

⁸⁰ UNPFN Mine Action Project

Table 5 UN Security Council Resolutions on UNMIN

SC Res. No.	Date	Effect
1740	23 January 2007	Established UNMIN with a 12 month mandate (UNSC, 2007).
1796	23 January 2008	Extended the UNMIN mandate for an additional six months following the request of the GoN. It called on the parties to maintain the momentum of the peace process (UNSC, 2008a).
1825	23 July 2008	Extended the UNMIN mandate for a further six months. The Security Council concurred with the Secretary-General's view that the current monitoring arrangements should not be necessary for a substantial further period and expected them to see them concluded within the period of this mandate (UNSC, 2008b).
1864	23 January 2009	Extended the UNMIN mandate for a further six months. This and subsequent resolutions remind the parties that the current monitoring arrangements cannot be continued indefinitely and call on the government to reduce UNMIN's monitoring requirements (UNSC, 2009a).
1879	23 July 2009	Extended the UNMIN mandate by another six months. It again highlights that UNMIN was meant to be a temporary solution (UNSC, 2009b). Extended the UNMIN mandate by another six months. It again highlights that UNMIN was meant to be a temporary solution (UNSC, 2009b).
1909	21 January 2010	Extended the UNMIN Mandate by 16 weeks until 15 May 2010 (UNSC, 2010a).
1921	12 May 2010	Extended the UNMIN mandate by 4 month to 15 September 2010. The resolution underlined that UNMIN was a temporary measure rather than a long-term solution. It stated that UNMIN should immediately begin to make the necessary arrangements for withdrawal, including handing over any residual monitoring responsibilities by 15 September 2010 (UNSC, 2010b).
1939	15 September 2010	Extended the UNMIN mandate for the last time to 15 January 2011 (UNSC, 2010c).

The extensions of UNMIN were not popular either in Nepal, where there was strong rhetoric accusing UNMIN of undermining Nepalese sovereignty, or in New York, where resolutions repeatedly expressed the concern that the mission had gone on for far longer than was reasonable due to the inability of the parties to reach agreement.

Criticism of UNMIN started early on, and even before the first year was out, the UN Special Representative called on people in Nepal “to either tell UNMIN to leave if they don't find the mission's role in the peace process fruitful, or engage in constructive criticism of the mission's performance.”⁸¹ A December 2009 report from the Asian Centre for Human Rights stated that: “Hardliners in the ruling parties denounce support for parts of the CPA they disagree with, as evidence of 'pro-Maoist' bias. This is underlined by

⁸¹ Report by Nepal Human Rights News on 14 December 2007, posted to ReliefWeb.

what appears to be coordinated political attacks on the United Nations Mission in Nepal” (ACHR, 2009) (ACHR, 2009) (ACHR, 2009) (ACHR, 2009) (ACHR, 2009) (ACHR, 2009) (ACHR, 2009) (ACHR, 2009) (ACHR, 2009) (ACHR, 2009) (ACHR, 2009).

There was a general perception that the Nepali Congress party was very critical of UNMIN. This even led to questions by journalists to the SRSG to ask if he thought that Congress was biased against UNMIN⁸². Prior to the final extension of UNMIN, the Kathmandu Post reported that the Army had asked the Government not to extend the UNMIN mandate (Dahal, 2010). During interviews, those who framed the role of UNMIN within the context of Nepali sovereignty were the most critical of UNMIN. In particular, interviewees who were strongly critical of the whole Maoists campaign criticised UNMIN for legitimising the Maoists.

While the Western development partners were supportive of UNMIN, India in particular was perceived by interviewees as being opposed to the mission, of regarding it suspiciously (ICG, 2011b, p. 5), and the Indian representative at the UN accused UNMIN of “*consistently trying to expand the definition of what Nepal sought in terms of support*” (Adhikari, 2008). However, the Indian Mission did not accept that this perception correctly represented their position.

At the same time, UNMIN was seen from the New York side as being prolonged far beyond the intended span by the failure of the parties to implement the agreement. This led to increasingly strong (but diplomatic) statements about the need for the parties to implement the agreement and about the unsustainability of UNMIN’s presence.

While the UN Secretary General published annual reports on UNMIN, the mission has not been subject to a formal evaluation. The 2009 audit of UNMIN noted that although internal controls in administration have been significantly strengthened since the previous audit in 2007, strategic planning of substantive programmes in UNMIN requires attention (OIOS, 2009). This audit noted that the number of UNMIN arms monitors had fallen below the required threshold of 51 on two occasions.

UNMIN performance

To assess **effectiveness**, the UNMIN mandate can be divided into two elements; security and elections. The core development partner programmes were involved in both of these aspects, but especially with the second. While the monitoring of arms and armies was not engaged as such with the core development partner programmes, it was a vital part of the overall peace process. Without the intermediation of UNMIN, it is questionable as to whether the two sides trusted each other enough to successfully remain in the cantonments and barracks, and follow the CPA commitment on the military side through to completion. Even with UNMIN intermediation there were accusations in the media of breaches of the ceasefire by the Maoists. This contrasted with UN statements which referred to (generally minor) breaches by both sides.

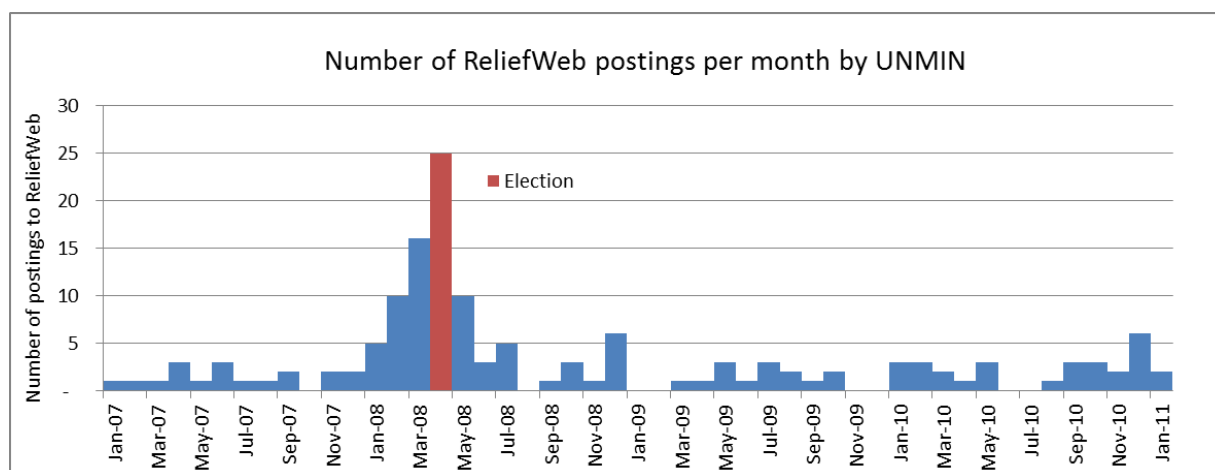
An obvious comparison is with elements of the peace process which are effectively not inter-mediated, such as the constitutional process. In the constitutional process, it is the parties that have directly dealt with each other, and while various bodies have provided their good offices, there has been little intermediation, as the parties would regard that as an assault on sovereignty. The progress with the UNMIN inter-mediated demobilisation process is striking.

Judging by notices on the topic UNMIN saw a spike of activity around the election (Figure 17).⁸³

⁸² SRSG's press conference, 16 Oct 2008.

⁸³ ReliefWeb postings are not a perfect indicator for UNMIN activity levels but is – inter alia – a useful proxy to illustrate a clear trend about increased activity around the 2008 CA elections.

Figure 17: ReliefWeb postings by UNMIN were mostly focused around the April 2008 Elections



Source: Analysis of ReliefWeb postings.

While UNMIN had only a small team of observers, it did play a role, together with UNDP (partly funded by UNPFN), in providing technical advice to the national Election Commission. UNMIN and UNDP also assisted with the coordination of electoral observer missions (Bartulac-Blanc, 2008 p5).

Conclusions and recommendations

The two elements of the UNMIN mandate – the security side and the political side (limited to support for the CA elections) – were implemented in very different ways and with very different outcomes. The intermediation of UNMIN allowed the two sides to trust each other to successfully remain in the cantonments and barracks, and follow the CPA commitment on the security side through to completion. Other elements of the peace process such as the constitutional process were not inter-mediated, except where various bodies provided good offices. The progress on the constitutional process in comparison with the effective UNMIN inter-mediated demobilisation process is striking. There can be little doubt that UNMIN contributed to sustaining the peace.

While the peace process is not complete, the evaluation views it unlikely that violence will reach a level that would warrant a new UN mission with a security mandate. There are thus no recommendations on this point for Nepal.

For other conflict affected states the evaluation notes that third-party security guarantees, coupled with strong political engagement at the highest level, can serve to alleviate mutual security concerns and provide a conduit for ongoing dialogue that lowers information distortion.