

## FEDERALISM IN NEPAL: A THARU PERSPECTIVE

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### Introduction and Historical Context

The last half century has been a tumultuous time of political change for Nepal. Since 1951, Nepal has adopted five constitutions, all of which subsequently failed (Krämer). Nepalis have seen civil war ravage their country, communism promulgated from the village to the city, democracy take root, and monarchy abolished for good. In 1962, King Mahendra implemented infamous “Panchayat” party-less system, and outlawed all political parties in Nepal (Borre 1994). Fearful of absolute monarchy, Nepalis rose up against the Panchayat system in 1990 and demanded democracy. “Jana Andolan”, or “The People’s Movement” successfully culminated in a new constitution and the legalization of political parties. The following decade saw the rise of Maoism and civil war, and particularly brutal conflict in rural parts of Nepal. Over 13,000 Nepalis lost their lives to this conflict. In 2006, the people rose up again in Jana Andolan II, a 19-day movement which yielded the promise of a “New Nepal”. A new constitution was to be written incorporating the people’s demands for a “New Nepal”, including the May 2008 abolishment of the 240 year old monarchy (Hachhethu 2007).

Soon after Jana Andolan II, an Interim Constitution was drafted to serve as a bridge between the forthcoming Constitution and the elimination of the traditional monarchy. The Interim constitution of 2063<sup>1</sup> was written by a specially formulated “Interim Constitution Drafting Committee,” which was created in June of 2006. It was headed by a retired Supreme Court Justice and 7 prominent lawyers<sup>2</sup> (Interim Constitution 2007). The Interim Constitution of 2063 was passed into law on January 15, 2007. It called for the election of a 601-member Constituent Assembly, whose enormous assignment was to write a new constitution that reflected the demands of Jana Andolan II. They were given a two-year time limit (Interim Constitution 2007). The clock started ticking in May of 2008, when the Constituent Assembly was formally initiated into power<sup>3</sup>.

The Constituent Assembly spent the first year of the constitution writing process communicating with their various constituencies and trying to figure out exactly how the people of Nepal wanted to structure the “New Nepal” (Sharma 2009). What kind of democracy did they want? What specific stipulations did they want? How did they want their new government to function? Needless to say, this was a formidable task that garnered a plethora of answers. The positive aspect of this lengthy communication process was

the ostensible effort Constituent Assembly members made to include the average person in the writing of the Constitution (according to the demands of Jana Andolan II). A lengthy survey was distributed all over Nepal to help gauge public opinion.

Taken for face value, this was an excellent step towards a constitution writing process based on "inclusion". Upon further inspection, however, the survey was not as effective as it originally seemed. The survey was inordinately complex and asked questions in political jargon that was more geared to "students of a graduate course of Law or Political Science" than the average Nepali citizen (Sharma 2009). It required that respondents employ an intricate knowledge of the finer points of political theory, such as the functional differences between "proportional voting" and "preferential transferable voting" (Sharma 2009). Some have even suggested that the Constituent Assembly produced this survey just to "check it off a list" instead of making an unadulterated effort to communicate with their constituents (Anonymous interview 2009).

Now that the survey results have been collected (though not formally analyzed), the hard part begins: the literal writing of the new constitution. As the Italian philosopher Niccolò Machiavelli observed, "nothing is more difficult in state than making a constitution". There are so many things to be considered when writing a constitution, not least of which is voicing the desires of 23.5 million Nepali citizens (CIA World Fact Book). Considerations include how to delegate power between the different branches of government, what the specific duties of the President will be as opposed to the duties of the Prime Minister, what the Supreme Court is legally entitled to do, etc. Writing a constitution is a huge undertaking, but recently the most public debate has been about how to structure federalism in Nepal. People want to be well represented, and there are a variety of ideas about how to best fashion the new government to do this effectively.

### **What is Federalism?**

Federalism is a political framework that divides power between a central governing body and an assortment of smaller, more local governments. The purpose of federalism is to bring government closer to the people, and to help them have a more meaningful voice in their own governance. Federalism is technically defined in a variety of ways, and is expressed differently depending on the particular context in which it is implemented. Generally, however, Canadian scholar Ronald Watts defines federalism:

*"federalism provides a technique of constitutional organization that permits action by a shared government for certain common purposes, together with autonomous action by constituent units of government for purposes that relate to maintaining their*

*distinctiveness, with each level directly responsible to its own electorate" (Watts p. 4).*

There are 27 countries in the world whose governments are structured on federalist principles, and 40% of the world's population resides in these 27 countries. They account for almost half the territory in the world (Baral 2008). The United States, Canada, South Africa, and Switzerland are a few examples. Often, federalism is considered most appropriate for large countries with a lot of heterogeneity. Ideally it would allow each different group to mould the local government to their idiosyncratic needs, instead of having to abide by national laws that were not particularly applicable to their specific circumstances. To this end, deciding how to best apply federalism has always been tricky. A good example of successfully navigating this quagmire is the United States.

The United States constitution was written over 200 years ago, yet the debate about federalism was so poignant and controversial at the time that James Madison, John Jay and Alexander Hamilton wrote 85 essays trying to convince Americans that federalism was the best way to develop the fledgling government (The Federalist Papers 1781). There was a large ideological rift between "federalists" and "anti-federalists", who disagreed about the amount of power the central government should wield over the smaller, more local governments. Initially the anti-federalists, who favored a weak federal government and stronger state governments, prevailed and were able to structure the government according to their ideological desires.

In 1781, the United States implemented a highly decentralized federal system with their first constitution; the Articles of Confederation. States had an abundance of power, and they were so autonomous that they acted like little countries instead of smaller pieces of a larger country. The federal government was so weak that it could not levy taxes, settle interstate disputes (as there were no federal courts) or regulate international trade. The country almost fell apart. Accordingly, the Articles of Confederation were revised a mere 6 years later to create a stronger federal government (Avalon Project 2009). This yielded the current Constitution of the United States of America, which remains in effect to this very day.

As in the United States, the biggest challenge in designing federalism to function in any particular country is to decide exactly how much power the central government should have, and how much autonomy to grant to smaller districts. It is critical to strike the correct balance, or the country will not be able to function, as young America under the Articles of Confederation.

### **Federalism: The Nepali Context**

The Interim Constitution was intended to serve as a temporary tool for governance during the two year intervening period until a new Constitution

could be written and ratified by the Constituent Assembly. As of April 2009, the Interim Constitution had been amended 6 times. Amendments range from changes to technical stipulations, such as the procedure for the resignation of the Prime Minister, to larger themes such as the classification of the state of Nepal from a “fully democratic State” to a “Federal Democratic Republican State” (Interim Constitution 2007). Ideally these amendments would simply have been expressed as provisions in the new Constitution, instead of materializing as amendments to a temporary document. This structural irregularity suggests that there is fear among Nepalis that the Interim Constitution may end up being the “new Constitution.” If this were to be the case, they have to make their voices heard now, instead of trusting the Constituent Assembly to defend their interests in the forthcoming document. History teaches us that this may be a legitimate concern- the last time Nepal had an interim constitution was in 1951, and it lasted for 8 years (UNDP Nepal).

A fundamental concern for Nepal is whether or not elected politicians can be trusted to do their jobs with the public's best interests in mind. In the past few decades, this has not been the case (Thapa 2005). Much of the public perceives elected officials to be self-interested, corrupt, and utterly dishonest. There is massive distrust of political bodies. Political squabbling and party tensions are seriously impeding the progress of the Constituent Assembly in designing a new constitution. The official task of the Constituent Assembly is to democratically fashion a new Constitution. Their unofficial task is to regain the trust of the people of Nepal. This is a big commission; restructuring a government is no easy feat. But the more important issue is fairly representing their constituents and doing it in a transparent manner. Constituent Assembly members have the potential to prove themselves worthy of their office; hopefully they will do so.

A further challenge the Constituent Assembly must face is “inclusion.” Functionally, this means they must design a federal democracy including all Nepalis; not just a privileged few (Federalism and State Restructuring in Nepal, UNDP). Adivasi janajatis (indigenous nationalities), Dalits, women, Madhesis, Muslims- everyone needs to be included, especially those who have traditionally been excluded. The 601-member Constituent Assembly is colossal, but it was intentionally created this way to represent a gathering of the entire country. It will take a great deal of patience and maturity on the part of the political parties to make progress while dealing with such a large political body. The process may be slow, but it is important that no group is systematically excluded in construction of the new constitution. In order to create a “New Nepal,” the new government must be designed by the people themselves.

What is the “New Nepal?” The Interim Constitution of 2007 calls for the formation of a “federal democratic republic” as a method of restructuring the

state (Interim Constitution of Nepal 2007). This is an exceptionally vague phrase, which offers only general guidance for an exigent undertaking. What does a “federal democratic republic” mean for a country like Nepal; a relatively small country that is besieged with development issues yet has an incredible capacity for growth? The point of “federalism” is to bring government closer to the people (UNDP Nepal 2008). In order to bring government closer to the people, there must be smaller governments that are more accessible to the average person. This involves breaking the country into smaller units, ideally that all have some common, unifying factor. Devising a system that partitions the country in this manner is incredibly complicated. Ideally, the “New Nepal” would successfully include all disadvantaged members of society as well as traditionally prosperous members of society. Together they would work in a spirit of cooperation to make progress towards democratic and socio-economic development.

#### **Categorical Discrimination in Nepali Law**

Nepal is an extraordinarily diverse country with people of different religions, different ethnicities, and different socioeconomic classes. Unfortunately, history has not been kind to all members of Nepali society. Certain members have been systematically discriminated against over the past 300 years, beginning with the “unification” of Nepal under King Prithivi Narayan Shah into one large territory (Whelpton 2005). The “New Nepal” would ideally eliminate this categorical discrimination, which has been present in many areas of Nepali society. It has been present in national law, and notably in the famous “varna caste system”, which was formalized into state law in the Muluki Ain in 1854 (Bennett 2005). The caste system was officially abolished in the constitution of 1990, but unfortunately continues to be a problem in everyday life. The caste system is not the only form of categorical discrimination in Nepal. The following are examples of legal discrimination in the Nepali context over the past century.

**Legal Discrimination Against Non-Hindus:** The Constitution of the Kingdom of Nepal of 1990 declared the country to be a “multiethnic, multilingual, democratic, independent, indivisible, sovereign, *Hindu* and Monarchical Kingdom” (GSEA 2006). This last stipulation about being a “Hindu kingdom” discriminated against the 20% of Nepali citizens who are not Hindu. The Country Code of 1963 declared the slaughter of cows to be punishable by 12 years in jail. This stipulation discriminated against members of Nepali society who do not believe that killing cows is a religious crime (GSEA 2006).

**Legal Discrimination Against Women:** In 2002, the Supreme Court of Nepal passed a specific law banning sexual harassment in the workplace.

However, as of October 2009, not a single person had even been accused of sexual harassment crimes, due to easy loopholes in the system that allow perpetrators to easily avoid conviction (Sidge 2009). The law does not even mention sexual harassment in a public setting. It is an unclear legal precedent that lends no muscle to enforcement. This discriminates against women, who are consistently the majority of victims of sexual harassment. The law leaves them no legal recourse against this kind of persecution.

**Legal Discrimination against Ethnic Groups:** The Panchayat system that arose under King Mahendra discriminated against ethnic groups by stressing a unified culture in Nepal. Its slogan was “ek bhasha, ek bhesh, ek desh”, which means “one language, one style of dress, one country” in Nepali (Panday 2006). Not only did this system fail to recognize the variety of cultures, languages, and religions in Nepal, but it actually denied ethnic peoples their fundamental right to develop and promote their culture, language, religions and customs (Whelpton 2005; Panday 2006).

In order to fashion a durable constitution that will lead Nepal into an era of lasting peace and increased development, this kind of categorical discrimination must be eliminated on paper. More importantly, this kind of discrimination must be eliminated in practice (UNDP 2008).

### **Sub-National Divisions**

Many Nepalis believe that the best way to ensure the end of this categorical and legal discrimination is to divide Nepal into geographically “ethnic” units. Nepal is already comprised of 75 administrative districts, but there is mounting pressure to redesign these districts based on different criterion. Some favor a more “tribal” basis for sub-national divisions, such as traditional ethnic boundaries or enclaves of linguistic and cultural similarity (Mishra 2009). Others believe the best way to end discrimination is to spur development in all areas of the country by dividing the country into units based on geography and economy; “geo-economic” boundaries (UNDP 2008). Public debate rages regarding what type of sub-national divisions would be the best way to partition the country. There is trepidation that ethnic divisions will segregate Nepal into rigid ethnic enclaves instead of bringing it together into a cohesive and functional democratic nation. The contrary apprehension is that without ethnic autonomy, minorities will continue to suffer discrimination at the hands of dominant castes and ethnic groups. This could lead to more armed conflict, which is the last thing Nepalis want. Citizens of Nepal want their voices to be heard in a meaningful way; to be a part of democracy as it takes hold of their country. If federalism is to work, a successful democracy is the first step. As MP Singh of India pointed out, “no federal system has succeeded where democracy has not succeeded” (UNDP 2008).

### **Arguments for Ethnic Sub-National Divisions**

Supporters of ethnic sub-national divisions assert that partitioning Nepal based on traditional ethnic and cultural lines would be the best way to assure all citizens have a more equal voice in their own governance (Aalen and Hatlebakk 2008). Proponents of ethnic federalism come from many backgrounds, but some of the most vocal have been members of various adivasi janajati groups, or “indigenous peoples”. Indigenous peoples who support ethnic sub-national divisions affirm that it is the best way to deal with territorially based diversity and discrimination on the basis of ethnicity (Bermeo 2002; Limbu 2009). The proposed ethnic federalism would restructure the country into a number of sub-national units, ideally with 6 to 14 “states”. Each state would be almost completely autonomous, apart from three things that the federal administration would control: currency, international affairs, and national armed forces (Thebe 2009). According to Shankar Limbu, General Secretary for the Lawyer’s Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), “indigenous people are not agenda setters, and have become powerless in their own lands”. One objective of ethnic federalism is to address this problem by reinstating indigenous peoples as a majority group in their traditional homelands (Limbu 2009). Also I would imagine is the problem that Nepal’s ethnic groups cannot be easily divided up territorially.

In the last half century, there has been a marked consolidation of political power within three distinct groups: the Brahun caste, the Chhetri caste, and the Newar ethnic group. They comprise only 35% of the population, but in the last 50 years they have made up 80%-100% of national governing bodies (UNDP 2008). Concern that this caste/ethnic domination will continue has prompted smaller ethnic groups to push for self-governance by way of autonomous states. According to UN International Labor Organization Convention on Indigenous and Tribal Peoples #169 (ILO C. 169), which Nepal ratified into national law in September of 2007, indigenous people should be legally entitled to “meaningful self-governance” (Limbu 2009). Whether or not this translates into autonomous sub-national units remains to be determined.

Granting ethnic groups their own autonomous regions would be a way to redress historical grievances (Limbu 2009). Many indigenous groups in Nepal feel that their land was unfairly annexed during the “great unification” of King Prithivi Narayan Shah. According to international stipulations like the ILO C.169, adivasi janajati groups feel that they are entitled to self-rule and direct compensation in the form of their land being returned for functional purposes (Limbu 2009). They would like something similar to what Native American tribes have in the United States- relatively autonomous areas or “reservations”. This does not mean, however, that they

are pushing for full succession and want to form their own countries (though it is a major concern of skeptics).

**Arguments for Geo-Economic Sub-National Divisions:** Geo-economic sub-national divisions would be principally based on considerations of geography and economy (Federalism and State Restructuring in Nepal, UNDP). Geo-economic divisions would put ethnic concerns behind other more universal concerns. This would greatly reduce concerns regarding ethnic divisions, namely that they would undermine democracy and cause permanent fissures in Nepal, potentially leading to the overall failure of democracy (Aalen and Hatlebakk 2008). Federalism should unite Nepalis; not drive them apart. As Dartmouth College Professor BP Giri says, "ethnic federalism is based on the primacy of ethnic identity over other sorts of collective identities", which can reduce citizenship to mere biological inheritance (Giri 2009). Geo-economic sub-national partition, on the other hand, would seek to create divisions not on ethnic (social) distinctions, but on "objectives of regional development" (UNDP 2008). There may indeed be some overlap between ethnic enclaves and geo-economic development regions, but the guiding principle of the sub-national structure would be to stimulate development, not strengthen traditional cultural boundaries (Anonymous personal interview 2009).

Aside from discordant feelings, ethnic divisions could also produce divisive politics. "Federalism based on ethnicity encourages separatism and communal violence," says Nanda Gopal Ranjitkar (Nepali Times #449). One of the most common objections to ethnic sub-national divisions is that they may lay the foundations for ethnic separatism. If one state becomes too independent, it may succeed. If one state succeeds, it paves the way for other states to do the same (Giri 2009). Given Nepal's precarious position as a buffer state between China and India, the dissolution of the country could lead to a highly volatile situation for the entire region. Some ethnic minorities have even threatened violence if they are not granted of autonomy they demand. "If there is no Limbuwan," one Limbu activist asserts, "there will be no Nepal as well" (Tamang 2009). Though these extreme activists are certainly not in the majority, there has been increasing discussion of "ethnic liberation fronts," which carry the implicit threat of violence. In some cases, the threat has not been so implicit. On February 28, 2009 the Kathmandu Post quoted Tharu leader Laxman Chaudhari as saying that if the government does not respond to Tharu demands, they "will join hands with other groups and come up with armed protest."

Additionally, Laxman Tharu claims that the Tharuhat Joint Struggle Committee is recruiting between 30,000 and 40,000 youths to form a liberation army (Himalayan Post 2009). This kind of militarization of Nepal could very well lead to another bloody conflict, similar to the Maoist

insurgency in the 1990s. Geo-economic divisions would not stimulate inter-ethnic tensions, though certain vocal ethnic groups may not accept geo-economic federalism at all and protest with violence.

Autonomous ethnic districts could potentially lead to inter-ethnic tensions, or even separatism. This has happened in other countries, like Yugoslavia and the USSR, where federalism has completely failed. In both countries this leads to bloody civil conflict and the dissolution of the country as a whole (Habtu 2003). Regardless of how socially undesirable inter-ethnic tensions would be, they could also lead to economic disaster. Nepal is landlocked, and most of its imported goods come from India. Should there be significant, prolonged ethnic tensions in the Terai, the gateway to India, the rest of Nepal could end up completely cut off from necessary resources (fuel, foodstuffs, etc.). This puts Nepal in a dangerous position. Having any single ethnic group in complete control of the "gateway to India" would be incredibly risky. If this group were to become aggressive, perhaps even armed, a permanent "bundha" could strangle Nepal. Furthermore, any one ethnic state that became acutely aggressive could threaten the fragile stability of the new Nepali government.

Economic disparities are a root cause of inequality across Nepal. Geo-economic sub-national divisions would help ease this inequality by creating states which were better equipped to aide in their regions' development. Dr. Harka Gurung suggested that district autonomy was only possible through "consolidation of the economic base with a wider tax authority and revenue sharing of income from local resource base" (UNDP 2008). If Nepal were to decide on ethnic divisions, they would have to indulge every ethnic group that wanted its own autonomous region. Given that there were estimated 103 distinct ethnic groups, Nepal would end up with a large number of small states. And the smaller the state, the more limited their access to resources. Many small states would not have adequate funds to tackle any large development issues. This exhibits the allure of the larger development region, which would be able to generate enough income to effectively deal with these problems (Giri 2009). Ethnic divisions may solve social issues, such as promoting the use of local languages and preserving local culture, but it would be a less effective tool for solving development issues. According to this perspective, geo-economic divisions are a more effective way to ensure that Nepal continues to develop in a stable and unified condition, and that development would eventually solve social issues (Anonymous personal interview April 2009).

Natural resources are a large source of revenue for Nepal, particularly hydropower. Nepal ranks second highest in the world for maximum hydropower potential, principally owing to its ideal location at the base of the Himalayas (Sarmiento 2009). An argument against a large number of small ethnic states in the "New Nepal" is that they will "hinder optimal exploitation

of water resources" (Shrestha 2009). This is another important economic point to be considered in the partition of sub-national units in Nepal. Sub-national units will ultimately need to support themselves and need a source of sustainable revenue to keep their local governments functioning. This revenue is important for development projects, particularly the kind cultural development that indigenous people require, i.e. mother tongue language instruction in state schools, and hydropower is something that Nepal has in abundance. If one hydropower plant lies in a small ethnic region in the far east, for example, surrounding regions will not be able to benefit from the plant. If they were all part of a larger state, the benefits would be more widely distributed. Additionally, outlying sub-national units that require power and will be forced to buy it from that particular state. This increases potential for growing inter-state conflict, especially if one state becomes disproportionately wealthy due to inclusion of lucrative natural resources within their borders. However, according to ILO C. 169, Article 15, Section 1; "the rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources" (ILO C. 169). This is legal justification for local involvement in the management of natural resources, though not complete control. However, if a specific hydropower plant falls in the boundaries of an autonomous region, there is nothing stopping the local population from taking complete control of the resource and exploiting it in their best interests, not necessarily Nepal's best interest.

Tourism is a robust industry in Nepal, and a huge source of revenue for the country as a whole. Each province has its own attractions, but there are some regions that see a lot more tourist traffic than others. Consequently, these provinces are endowed with more pecuniary resources. Not only do tourists spend money supporting local businesses, but they pay taxes on food and other items that maintain governmental functions. If Nepal were divided into small ethnic regions, some small provinces which do not see a lot of tourist traffic would be missing out on the money that foreigners bring to Nepal. This is a similar predicament presented by the natural resources argument: tourist money would be redistributed more evenly in geo-economic regions than in a large number of smaller ethnic regions.

Fairly partitioning Nepal based on ethnicity would be nearly impossible, as there are a huge number of ethnic groups and they are not all completely cloistered in specific geographic regions. It may even be ineffectual; there is no guarantee that ethnic divisions would successfully reduce discrimination as they are intended. Perhaps the dominant ethnic group in a region would experience some measure of belated equality, but there will surely be other minorities living in each province that would not experience such equality. As Tribuvan University Professor Nanda Gopal Ranjitkar observes, "it is

virtually impossible to create provinces including all 103 ethnicities. Even if we include the 59 major ethnicities, Dalits and other minority ethnicities will suffer..." Ethnic dissection could also lead to autonomy movements from other groups of people, such as Muslims or Buddhists. What guarantee is there that they will not ask for separate provinces, too? (Ranjitkar 2009).

By granting ethnic autonomous regions, the government would be opening the door to larger autonomy movements could lead to the dissolution of the entire nation of Nepal. Geo-economic federal states would avoid ethnic divisions, at least taxonomically, and operate on a more nationalistic plane that emphasized being "Nepali" over individual ethnicities, religions or castes. In this sense, geo-economic sub-national units would make the country significantly more cohesive than ethnic sub-national units. It is important to remember the words of US President Barack Obama who said that "what binds us together is greater than what drives us apart" (Obama 2006). This is particularly good advice for the burgeoning "New Nepal".

#### **Compromise as a Method for Progress**

The word "compromise" is frequently used in Nepali politics. The manner in which compromise is utilized regarding federalism will determine the future of the "New Nepal". Compromise will be an essential part of deciding how to divide up Nepal. Geo-economic and ethnic sub-national divisions do not have to be mutually exclusive; they merely focus on different factors. It is possible to adapt geo-economic divisions in geographically appropriate ways that coincide with ethnic and cultural boundaries. It would not be a priority, but perhaps a consequence of geographic considerations. However, ethnic divisions carry with them an element of identity and pride that geo-economic divisions simply cannot address. Herein lays the magnitude of compromise: each side will have to give up some of its original requirements for the greater benefit of the country if Nepal is to move forward in a cohesive manner.

#### **The Tharu: An Indigenous Perspective**

The Tharu are an indigenous population living in the southern region of Nepal, the Terai<sup>4</sup>. They are arguably one of the original groups of people to arrive in Nepal, and with an estimated population of 1.5 million, they make up approximately 6.75% of the entire population (Bhattachan 2008). They speak their own language; Tharu. Their unique immunity to malaria isolated them as some of the only residents of the Terai until the early 1900s, when the British came and wiped out malaria with pharmaceutical drugs (N. Ahdikari 2009). The Tharu lived more or less independently until the 1950s when malaria was eliminated. The lack of malaria made it safe for other Nepalis to move to the Terai. At this point, Pahadis, or Hill Castes, started moving down into the Terai in large numbers. Pahadis began buying Tharu

land, and soon enough the Tharu lost control of their traditional holdings. Eventually they became “kamaiyas,” or “bonded laborers” in what was originally their home land (UNDP 2008). Though this practice was outlawed in 1962, 1990, 2000, and 2002, respectively, the practice still exists in small pockets. Where it has been eliminated, extreme poverty still continues to plague the Tharu (UNDP 2008). Current estimates conclude that 48% of Tharu live under the poverty line and that 54% are illiterate. These numbers confirm that the Tharu have higher poverty statistics and higher illiteracy rates than national Nepali numbers (GSEA 2006).

The Tharu are in a situation that closely resembles many minority ethnic groups across Nepal. They are struggling to balance the inspiring “inclusion” rhetoric coming out of the Constituent Assembly with the more complicated practicalities of defining themselves within the burgeoning government. Recently there has been a backlash due to the Tharu classification as a “Madheshi” group instead of an “adivasi janajati” group by the central government (Moran 2009). This classification is not only insulting, as Tharu are ethnically dissimilar from the Madheshi, (who more recent immigrants from India), but it denies them benefits that are afforded to other adivasi janajati in Nepal. For example, the International Labor Organization (ILO) Convention on Indigenous and Tribal Peoples (#169), one of few international conventions actually ratified by the Nepali government, requires that all indigenous people “be taught to read and write in their own indigenous language” (ILO c. 169). Extrapolating this provision would mean that the Nepali government would have to provide Tharu language instruction to all Tharu children. This is a particularly expensive endeavor at a time when government funding is scarce, but nonetheless it is a legal guarantee. The Tharu feel cheated and insulted, and have consequently endeavored to make their frustrations known.

### **Tharu Resistance to the “Old Nepal”**

Nepalis are all too familiar with the term “bundha”, which means “strike” in Nepali. Strikes were popularized by the Maoists as a method of gaining attention from the government during the civil unrest in the 1990s (Moran 2009). Now that the Maoists are in power, other groups are using bundhas to make their voices heard. The Tharu have made noteworthy use of the bundha in recent months, particularly following the central governments’ February 3 categorization of the Tharu as “Maheshi”. Their first major bundha of 2009 began in the earlier part of March, in direct response to this nomenclature. It was organized by the Tharuhat Joint Struggle Committee, which takes on the political responsibilities of the Tharu people. The bundha brought life to a halt all across the Terai, and prevented critical Indian imports from reaching other parts of Nepal. A notable deficit across the country was petrol. The bundha even reached Kathmandu: fuel lines were significantly longer than

usual and required military intercession to keep them organized. Fuel prices skyrocketed due to decreased supply, and limits were imposed on the amount of petrol each customer was allowed to purchase. The bundha lasted until March 14, 2009, when the Tharu Joint Struggle Committee reached accord with the government in the form of a "six-point agreement". This six-point agreement spelled out the Tharu's demands, and the main stipulation required the government to change classification terminology in legal documents from "Madhesh" to "Terai-Madhesh" (NepalNews.com). An amendment was to be introduced to the Interim Constitution to reflect this change (Asia News 2009). The government agreed to implement the six-point agreement immediately.

As many are acutely aware, Nepali government has the proclivity to move slowly. Too slowly, it would seem, to satisfy the Tharuhat Joint Struggle Committee. After waiting a month for the six-point agreement to be implemented, the Tharu became restless. They decided to stage second large bundha. It began on April 22, 2009 and was to continue "indefinitely" at the time of writing (May 6, 2009) (Dahit 2009). In addition to their earlier demands, the Tharuhat Joint Struggle Committee included a new stipulation: the government was to designate a federally recognized autonomous region called "Tharuhat"<sup>5</sup> (Dahit 2009). In addition to all the inconveniences of the first bundha, the second bundha brought minor incidences of violence all across the Terai. Vehicles were vandalized, including private cars, minibuses, and international aid agency vehicles. Government offices were also padlocked shut (Kathmandu Post 2009).

As with many sensitive political agreements, implementation can be problematic and time consuming. Though bundhas inconvenience the entire country, not just the government, some believe they are the only effective method of gaining the desired political attention. They believe that staging bundhas and wreaking havoc all over the country is worth the trouble it causes to the average Nepali. The Tharu are fighting for recognition of their unique identity at a policy level, particular rights as indigenous peoples, and proportional representation in all levels of government (Dahit 2009). The constant bundhas are in pursuit of an ethnic autonomous region called "Tharuhat," which would satisfy their particular requirements.

#### **Legal Justification for Tharuhat: An Ethnic Sub-National Unit**

The Tharu stance on sub-national divisions is that autonomous, ethnic states would be the best way to partition Nepal (Dahit 2009). According to a variety of international precedents that Nepal has previously ratified (or supported), the Tharu may already have the right to ethnic autonomy. If they can legally prove that they are native inhabitants of the Terai, they meet the criteria of "Indigenous Peoples", who qualify for special provisions for autonomy under international law (ILO C. 169). The ILO Convention 169 on Indigenous and

Tribal Peoples applies to "tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community". The convention also specifies that "self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply' (ILO c. 169). The Tharu certainly identify themselves as a tribal group, and since Nepal ratified ILO C. 169 in September of 2007, they are legally obligated to enforce its provisions (Li 2007). Article 7, Section 1 of ILO Convention 169 reads as follows:

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

A careful reading of this stipulation may actually lend legal justification to ethnic autonomy for indigenous or tribal peoples such as the Tharu. Having an autonomous sub-national unit of their own would indeed enable Tharu people to "exercise control... over their own economic, social, and cultural development." Herein lays the biggest problem with ethnic autonomy: it may not actually be the best thing for Nepal as a whole, but regardless of this fact there are legal precedents which support ethnic autonomy. If the government of Nepal ignores these precedents, which *it* ratified and signed into law, it will only perpetuate the stereotype that it is untrustworthy and that laws only apply when it conveniences powerful politicians.

#### **Analysis: Progress Towards the "New Nepal"**

Over the past 60 years, Nepal has endured a long period of national strife. In the coming few years, it faces yet another period of transition which will seriously test its resiliency as a nation. Meaningful dialogue between conflicting groups will be a key component of making progress towards a peaceful, stable future. This applies to disparate political parties, rival ethnic factions, and proponents of different kinds of federalism. The Nepali people have proved they want a more consequential role in the process of creating a "New Nepal", and that they have a bona fide desire for change. The Constituent Assembly has proved that the right ideas are present- their moving rhetoric in the past year has been remarkably inspiring. Nepal knows what kind of government it wants- an inclusive, nondiscriminatory federalist democracy. Now the challenge will be amalgamation of these values into a comprehensive, resilient constitution that will stand firm during the tumultuous years to come. To this end, it is important to bear in mind that the

Constitution is just a guide; not a self-executing plan (Federalism and State Restructuring in Nepal, 2009). Its purpose is to lay out the framework for how laws are to be made; not make the laws themselves. It would serve the Constituent Assembly well to remember this and not to become fixated on the smaller matters that have been impeding its progress over the past 14 months.

#### **Limitations and Recommendations for Further Study**

Limitations of this project are simple, but vast. Time was short and contacts were hard to find, but the most glaring issue with this paper is its lack of interviews with Tharu people themselves. Ideally, there would have been a variety of opinions coming from affected people, not just political leaders and the Kathmandu elite. If the political situation had been more stable in the Terai, visiting the proposed "Tharuhat" would have been a more conceivable option.

Recommendations for further research would include a follow up study that goes into more depth on the issue of federalism in Nepal, particularly through the eyes of the Tharu. It is my great hope that I can return in the near future to conclude my research properly. It would also be extremely beneficial to compose a detailed comparison of Nepal against other similar countries which have successfully implemented both kinds of federalism: ethnic and geo-economic. Admittedly Nepal is a unique country with original needs, but it would be helpful to examine how other countries dealt with this same issue. Additionally, a more extensive analysis of how Nepal's history has produced this kind of politics would be very helpful for placing this period of turmoil in a historical framework.

#### **Conclusion**

Drawing any conclusions about the constitution writing process at this juncture in Nepali politics would be difficult. The constitution is not yet written; federal divisions have not yet been established, and just this morning the Prime Minister stepped down in protest over a decision taken by the President about the constitutionality of sacking the army chief. Nepali politics are capricious, and its players are fickle. Nepal is at a crossroads in its history. The government and its people have two choices: come together and form a cohesive nation, or continue to be hindered by petty political squabbling that will prevent the entire country from moving forward. The peace process looks to be long and arduous, but the binding hope that keeps Nepal together is for lasting peace and ultimately, prosperity. Hopefully the turmoil in between is just part of the journey.

### Notes

1. The year 2007 is actually 2063 according to the Nepali calendar, so the Interim Constitution of 2007 and the Interim Constitution of 2063 are the same thing.
2. Five of the 7 prominent lawyers were male Brahmins, so the committee expanded to include a few women and members of other political parties.
3. The Constituent Assembly elections were originally scheduled for June 20, 2007 but were pushed back twice to November 2007, and then actually took place on April 10, 2008.
4. See Appendix 1 for demographic map of Tharu in Nepal
5. Sometimes referred to as the “Tharuwat” region, but for purposes of clarity and consistency it will be called “Tharuhat” in this paper. <sup>1</sup>  
Sometimes referred to as the “Tharuwat” region, but for purposes of clarity and consistency it will be called “Tharuhat” in this paper.

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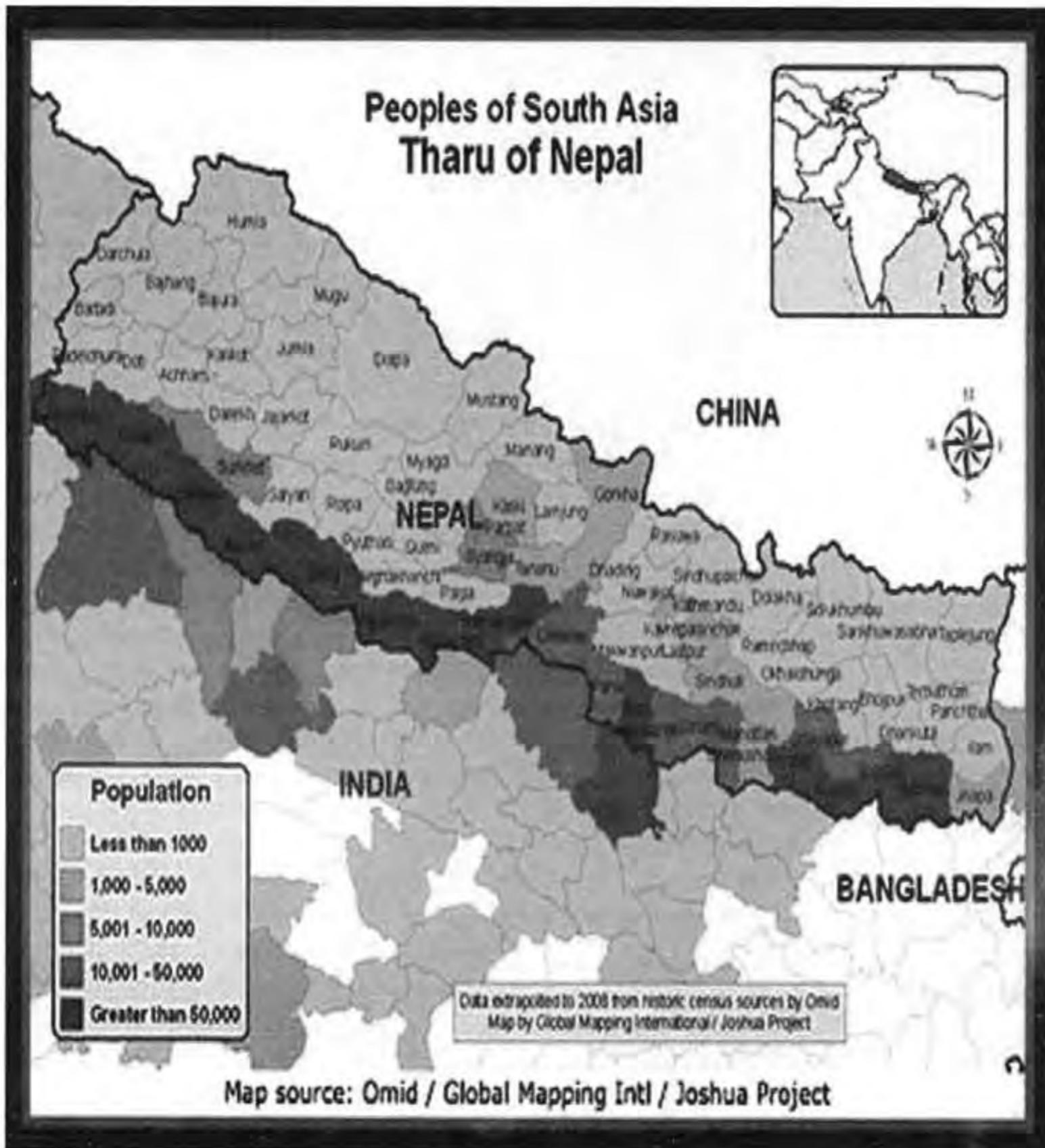
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**Appendix 1: Demographic Map Detailing the Spread of Tharu Indigenous People across Nepal**



Source: <http://www.mikeldunham.blogs.com/.a/6a00d8341df99053ef011168feff32970c-500pi>

**Appendix II:  
Political Timeline of Nepal Beginning with "Unification" in 1768**

**A chronology of key events**

- 1768** - Gurkha ruler Prithvi Narayan Shah conquers Kathmandu and lays foundations for unified kingdom.
- 1792** - Nepalese expansion halted by defeat at hands of Chinese in Tibet.
- 1814-16**-Anglo-Nepalese War; culminates in treaty which establishes Nepal's current boundaries.
- 1846** - Nepal falls under sway of hereditary chief ministers known as Ranas, who dominate the monarchy and cut off country from outside world.
- 1923** - Treaty with Britain affirms Nepal's sovereignty.

**Absolute monarchy**

- 1950** - Anti-Rana forces based in India form alliance with monarch.
- 1951** - End of Rana rule. Sovereignty of crown restored and anti-Rana rebels in Nepalese Congress Party form government.
- 1953** 29 May - New Zealander Edmund Hillary and Nepal's Sherpa Tenzing Norgay become the first climbers to reach the summit of Mount Everest.
- 1955** - Nepal joins the United Nations.
- 1955** - King Tribhuvan dies, King Mahendra ascends throne.
- 1959** - Multi-party constitution adopted.
- 1960** - King Mahendra seizes control and suspends parliament, constitution and party politics after Nepali Congress Party (NCP) wins elections with B. P. Koirala as premier.
- 1962** - New constitution provides for non-party system of councils known as "panchayat" under which king exercises sole power. First elections to Rastriya Panchayat held in 1963.
- 1972** - King Mahendra dies, succeeded by Birendra.

**Multi-party politics**

*1960: King Mahendra visits London*

- 1980** - Constitutional referendum follows agitation for reform. Small majority favors keeping existing Panchayat system, King agrees to allow direct elections to national assembly - but on a non-party basis.
- 1985** - NCP begins civil disobedience campaign for restoration of multi-party system.
- 1986** - New elections boycotted by NCP.
- 1989** - Trade and transit dispute with India leads to border blockade by Delhi resulting in worsening economic situation.

- 1990 - Pro-democracy agitation co-ordinated by NCP and leftist groups. Street protests suppressed by security forces resulting in deaths and mass arrests. King Birendra eventually bows to pressure and agrees to new democratic constitution.
- 1991 - Nepali Congress Party wins first democratic elections. Girija Prasad Koirala becomes prime minister.

#### **Political instability**

- 1994 - Koirala's government defeated in no-confidence motion. New elections lead to formation of Communist government.
- 1995 - Communist government dissolved.
- 1995 - Radical leftist group, the Nepal Communist Party (Maoist), begins insurrection in rural areas aimed at abolishing monarch and establishing people's republic, sparking a conflict that would drag on for over a decade.
- 1997 - Prime Minister Sher Bahadur Deuba loses no-confidence vote, ushering in period of increased political instability, with frequent changes of prime minister.
- 2000 - GP Koirala returns as prime minister, heading the ninth government in 10 years.

#### **Palace killings**

- 2001 1 June - King Birendra, Queen Aishwarya and other close relatives killed in shooting spree by drunken Crown Prince Dipendra, who then shoots himself.
- 2001 4 June - Prince Gyanendra crowned King of Nepal after Dipendra dies of his injuries.
- 2001 July - Maoist rebels step up campaign of violence. Prime Minister GP Koirala quits over the violence; succeeded by Sher Bahadur Deuba.
- 2001 November - Maoists end four-month old truce with government, declare peace talks with government failed. Launch coordinated attacks on army and police posts.

#### **Emergency**

- 2001 November - State of emergency declared after more than 100 people are killed in four days of violence. King Gyanendra orders army to crush the Maoist rebels. Many hundreds are killed in rebel and government operations in the following months.
- 2002 May - Parliament dissolved, fresh elections called amid political confrontation over extending the state of emergency. Sher Bahadur Deuba heads interim government, renews emergency.
- 2002 October - King Gyanendra dismisses Deuba and indefinitely puts off elections set for November. Lokendra Bahadur Chand appointed as PM.

**2003** January - Rebels, government declare ceasefire.

**2003** May-June - Lokendra Bahadur Chand resigns as PM; king appoints his own nominee Surya Bahadur Thapa as new premier.

#### **End of truce**

**2003** August - Rebels pull out of peace talks with government and end seven-month truce. The following months see resurgence of violence and frequent clashes between students/activists and police.

**2004** April - Nepal joins the World Trade Organisation (WTO).

**2004** May - Royalist Prime Minister Surya Bahadur Thapa resigns following weeks of street protests by opposition groups.

**2004** June - King Gyanendra reappoints Sher Bahadur Deuba as prime minister with the task of holding elections.

#### **Direct power**

**2005** 1 February - King Gyanendra dismisses Prime Minister Deuba and his government, declares a state of emergency and assumes direct power, citing the need to defeat Maoist rebels.

**2005** 30 April - King lifts the state of emergency amid international pressure.

**2005** November - Maoist rebels and main opposition parties agree on a program intended to restore democracy.

**2006** April - King Gyanendra agrees to reinstate parliament following weeks of violent strikes and protests against direct royal rule. GP Koirala is appointed as prime minister. Maoist rebels call a three-month ceasefire.

**2006** May - Parliament votes unanimously to curtail the king's political powers. The government and Maoist rebels begin peace talks, the first in nearly three years.

**2006** 16 June - Rebel leader Prachanda and PM Koirala hold talks - the first such meeting between the two sides - and agree that the Maoists should be brought into an interim government.

**2006** November - The government and Maoists sign a peace accord, declaring a formal end to a 10-year rebel insurgency. The rebels are to join a transitional government and their weapons will be placed under UN supervision.

**2007** January - Maoist leaders enter parliament under the terms of a temporary constitution. Violent ethnic protests erupt in the south-east; demonstrators demand autonomy for the region.

#### **Maoists join government**

**2007** April - Former Maoist rebels join interim government, a move that takes them into the political mainstream.

**2007** May - Elections for a constituent assembly pushed back to November.

A US offer to resettle thousands of Bhutanese refugees in Nepal has raised hopes but has also sparked tension in the camps, says Human Rights Watch.

**2007** September - Three bombs hit Kathmandu in the first attack in the capital since the end of the Maoist insurgency.

Maoists quit interim government to press demand for monarchy to be scrapped. This forces the postponement of November's constituent assembly elections.

**2007** October - UN Secretary-General Ban Ki-moon urges Nepal's parties to sink their differences to save the peace process.

### **End of monarchy**

**2007** December - Parliament approves abolition of monarchy as part of peace deal with Maoists, who agree to re-join government.

**2008** January - A series of bomb blasts kill and injure dozens in the southern Terai plains. Groups there have been demanding regional autonomy.

**2008** April - Former Maoist rebels win the largest bloc of seats in elections to the new constituent assembly, but fail to achieve an outright majority.

**2008** May - Nepal becomes a republic.

**2008** June - Maoist ministers resign from the cabinet in a row over who should be the next head of state.

**2008** July - Two months after the departure of King Gyanendra, Ram Baran Yadav becomes Nepal's first president.

**2008** August - Maoist leader Prachanda forms coalition government, with Nepali Congress going into opposition.

**2009** May - Prime Minister Prachanda resigns, saying in a televised address that he is stepping down in response to an "unconstitutional and undemocratic" move by President Yadav to stop the elected Maoist government from sacking the army chief.

Story from BBC NEWS: [http://news.bbc.co.uk/go/pr/fr/-/2/hi/south\\_asia/country\\_profiles/1166516.stm](http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/country_profiles/1166516.stm)