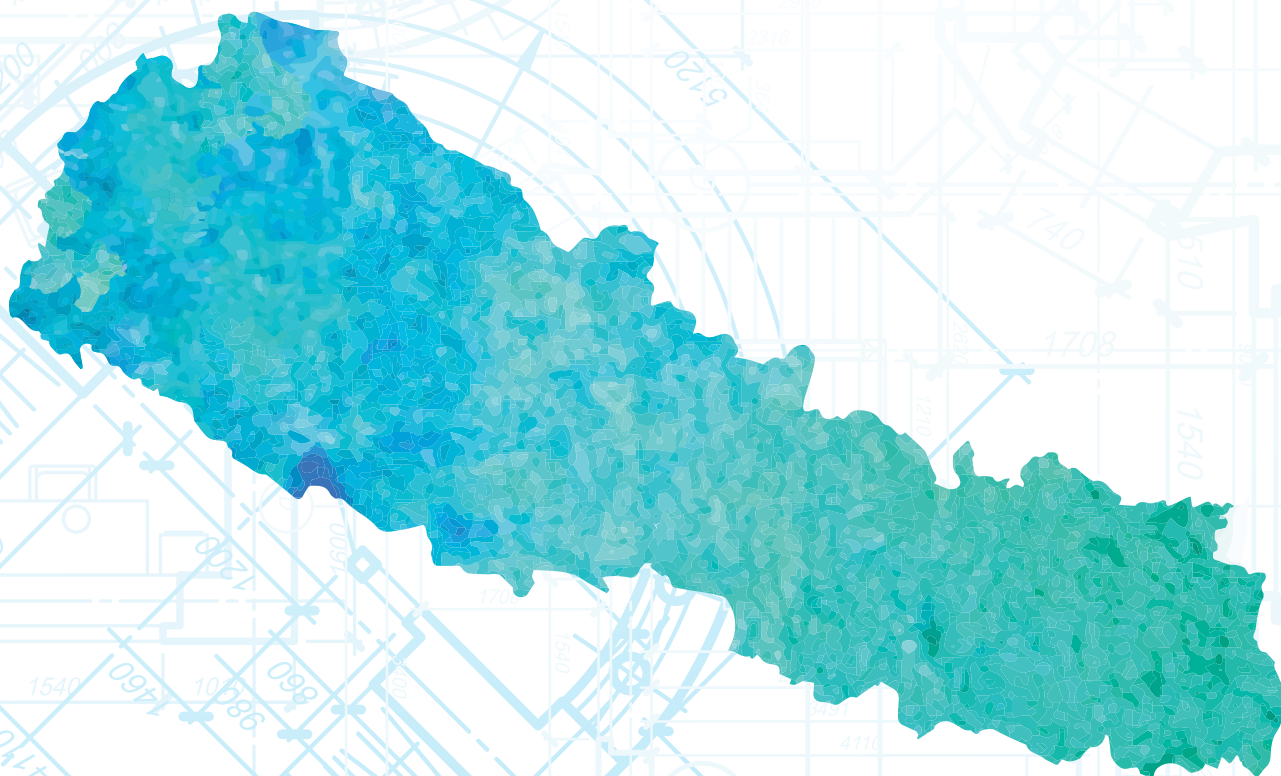


THE ROLE OF THE SOCIAL PARTNERS IN THE NEPAL PEACE PROCESS



International
Labour
Organization



THE ROLE OF THE SOCIAL PARTNERS IN THE NEPAL PEACE PROCESS

June 2019

Gary Rynhart & Ravindra Peiris

Bureau for Employers' Activities
International Labour Office

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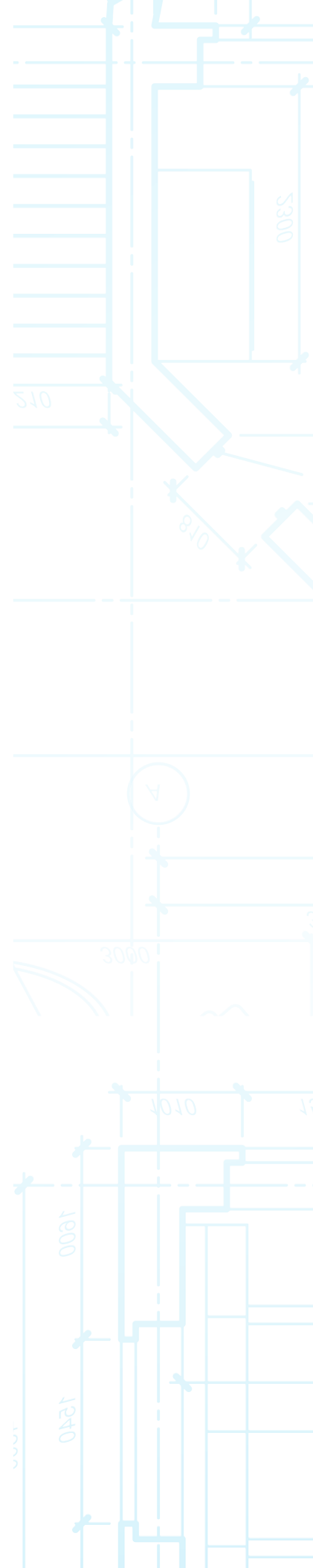
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Preface

Nepal suffered a bitter armed conflict from 1996 until the signing of the Comprehensive Peace Agreement in November 2006. The war was primarily class-based, with embedded discrimination, poverty and social and political exclusion among its root causes. Between 8,000 and 13,000 people (most of them civilians) were killed in the conflict and about 200,000 were displaced. It was a dark chapter in Nepal's history.

While the conflict formally ended in 2006, in reality many of the underlying causes took a further ten years to resolve themselves.

Social and workplace issues were at the core of the conflict and it was the workplace where much of the insurgency played out. Businesses were directly targeted. The period was characterized by volatile relations in workplaces, and strikes and disturbances, which were frequent and occasionally violent. It was a difficult time.

This case study describes the role of workers and employers organizations in the conflict. These actors played a critical role in the resolution of the actual issues underlying the strife – a largely under-reported story in the overall Nepal peace and resolution process. This report seeks to fill the gap.

The report documents how leaders from trade unions and businesses, through their representative organizations, came together to build a new vision for Nepal: one of partnership based firmly on equity, fairness and dialogue.

It outlines the important back channels between Maoists and business leaders and the important journey that trade unions and businesses travelled, showing the personal and professional risks that they took.

Importantly, we in the ILO are proud of the role we played in this process as a facilitator. We were able to play this role because of our tripartite structure and the strong institutional links we have with trade unions, employers' organizations and governments.

A new Constitution came into effect in Nepal in September 2015. It is widely viewed as secular and progressive with strong provisions on the rights of minorities and gender. Nepal has also introduced progressive labour law reforms that were developed through a process of dialogue between employers and trade unions.

Nepal has many economic and social challenges and poverty remains a major concern. However, the economy is growing, investment is increasing and key sectors like tourism are flourishing.

And the workplace, for so long volatile, is finally calm.

Deborah France-Massin
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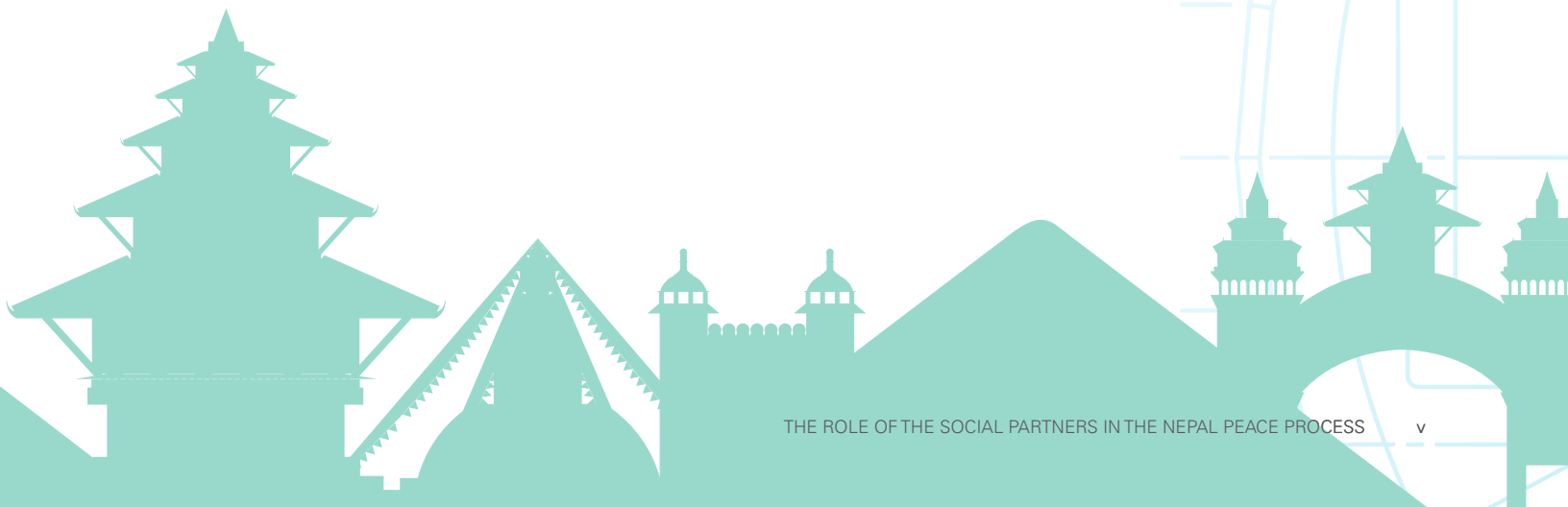
Richard Howard
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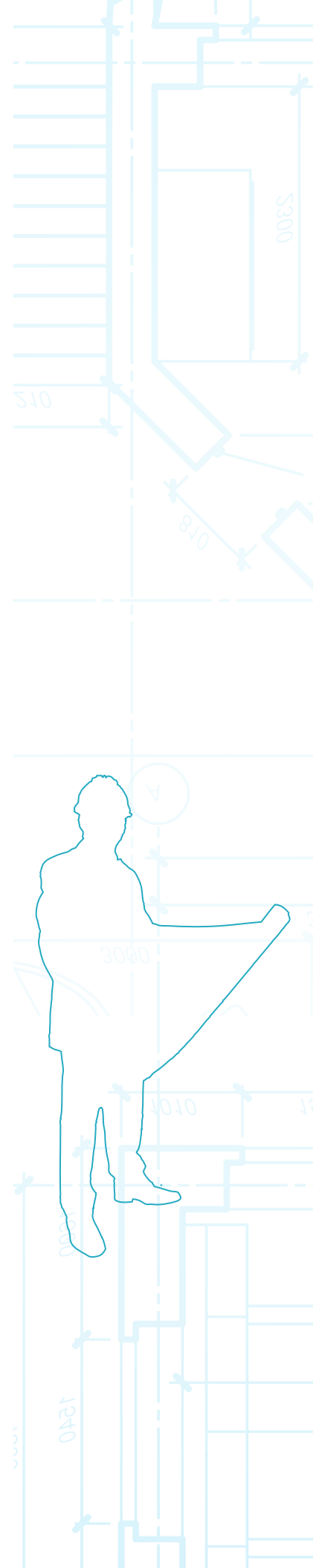
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We wish to acknowledge the contributions of numerous individuals and organizations in developing this working paper. Without their active engagement and expertise, a report of this nature would not have been possible. Their names are listed at the end of this publication.

To the individuals who participated in the field interviews we are enormously grateful. Collectively, we thank you for your insights.

We would like to express our deep appreciation to Prakash Sharma, our colleague from the ILO Country Office for Nepal who facilitated and participated in all of the interviews. His efforts were essential to this publication. Our gratitude also to Linda Vega Orozco who undertook secondary research, provided data analysis to enhance the fieldwork findings and conducted follow-up interviews. She was instrumental in putting this paper together.

We wish to thank our ILO colleagues who provided peer review and technical contributions, including Sanchir Tugschimeg, Saloman Rajbanshi and Richard Howard.



Abbreviations

ANTUF	All Nepal Trade Union Federation
CNI	Confederation of Nepalese Industries
CPA	Comprehensive Peace Agreement
CPN-M	Communist Party of Nepal (Maoist)
DECONT	Democratic Confederation of Nepalese Trade Unions
FNCCI	Federation of Nepalese Chambers of Commerce and Industry
GDP	Gross Domestic Product
GEFONT	General Federation of Nepalese Trade Unions
HAN	Hotel Association of Nepal
ILO	International Labour Organization
JTUCC	Joint Trade Union Coordination Centre
NBI	National Business Initiative
NCC	Nepal Chamber of Commerce
NTUC	Nepal Trade Union Congress
OSH	Occupational Safety and Health
SPA	Seven Party Alliance
UML	Communist Party of Nepal



1. Background to the conflict

The Maoist insurgency was a decade-long armed conflict against the Government of Nepal. The rebellion was launched by the Communist Party of Nepal (Maoist) (CPN-M) on 13 February 1996 with the primary aim of overthrowing the Nepalese monarchy and establishing a “People’s Republic”.¹ Over 13,000 people were killed and 1,300 went missing during the conflict.² The insurgency was not a struggle for an independent state but one against a political system. The conflict was primarily class-based, and there is common agreement that uneven development and social and political exclusion were among its root causes. The conflict ended formally with the signing of the Comprehensive Peace Agreement (CPA) on 21 November 2006.

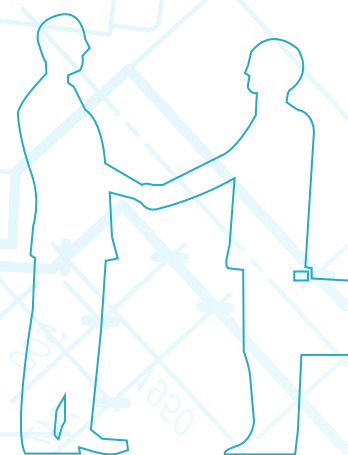
1.1. Political, economic and social context to the insurgency

The roots of the Nepalese conflict go back to the nineteenth century and the caste-based system that formed the basis for an exclusionary and divisive political entity. The seeds of disaccord and eventual conflict can be found here.

The Panchayat system was put in place in 1962 through a new Constitution and continued until it was finally dissolved in 1990 and multi-party democracy, albeit of a tepid kind, came into force.³ Efforts to change the system by a range of actors continued throughout this period. The system was seen as enabling caste-based discrimination even though this became illegal in 1962. The social stratification of the caste system remained. Indeed, it is still engrained in Nepali society today⁴.

In 1996, the year the conflict started, 42 per cent of the population was living under the national poverty line.⁵ That same year, Nepal ranked 125th among the 147 countries featured in the Human Development Index.⁶ Nepal ranked fairly well in terms of income inequality as measured by the Gini coefficient, in 55th place out of 110 countries for which data were available. Nevertheless, Nepal represented some of the world’s highest levels of “horizontal” inequality, meaning inequality between groups or regions rather than among individuals.⁷ Nepal was among the most ethnically diverse and socially stratified countries in the world, with 36 per cent of its population belonging to one of the more than 125 different castes and ethnic groups.

It is widely accepted that these socio-economic grievances and inequalities were key factors behind Nepal’s civil war. But underpinning these grievances and the ability to rectify them were demands for political re-calibration. Such inequities were sustained by a dynastic monarchy and a system of governance that centralized power.



¹ The Communist Party of Nepal (Maoist) is now known as the Communist Party of Nepal.

² UNOHCHR, 2012.

³ The 1962 Constitution established a four-tier Panchayat system. At the local level, there were 4,000 village assemblies (*gaun sabha*) electing nine members of the village panchayat, who in turn elected a mayor (*sabhapati*). Each village panchayat sent a member to sit on one of 75 district (*zilla*) panchayat, representing from 40 to 70 villages; one-third of the members of these assemblies were chosen by the town panchayat. Members of the district panchayat elected representatives to 14 zone assemblies (*anchal sabha*), functioning as electoral colleges for the National Panchayat, or Rastriya Panchayat, in Kathmandu. In addition, there were class organizations at village, district and zonal levels.

⁴ In 1961, King Mahendra established the Panchayat system whereby political parties were banned and the Government was run by councils of five ministers at village, district, zonal and national levels. The word *Panchayat* means assembly of five. Under the Panchayat system, ministers were directly nominated by the King.

⁵ World Bank, 2006.

⁶ UNDP, 1996.

⁷ Einsiedel and Salih, 2017.

The Maoists, along with their trade union allies, the All Nepal Trade Union Federation (ANTUF), emphasized from the start of the insurgency the importance of achieving political and constitutional change. The Maoists' main demand was to overthrow Nepal's monarchy and achieve political change. This is crucial to understanding how the peace process post 2006 unfolded and how the so-called Seven Party Alliance (SPA) that included the Maoists was able to successfully mobilize widespread public support behind its campaign.⁸

To emphasize the point, the CPN-M, which was formed in 1994 as the main platform for Maoist ideology in Nepal, maintained that feudalism and systemic political change *could only be achieved by violent means*.⁹ Secularism, another key objective of the Maoists, was an important extension of this platform for constitutional and political change. Nepal was a Hindu state and Hinduism as the state religion was connected deeply with the monarchy.¹⁰

Nepal's caste system was a major driver of inequity. Different castes and ethnic groups, including Brahman, Chhetri and Newar, traditionally dominated the economy due to their closeness to the political power base in Kathmandu. The excluded groups were the Dalits – or “untouchables” – as well as the Madhesi, Tamangs, Magars and Tharus.¹¹ As the insurgency intensified in 2001, the Maoists solidified their support base by targeting their messages specifically at ethnic groups and communities.¹²

In the late 1990s, landlessness was estimated to include 1 million out of 6 million agricultural labourers.¹³ Land reform was another critical objective of the Maoist insurgency. Indeed, the insurgency played out in the rural areas and land was at the forefront of the struggle.¹⁴ The “Haliya” system, in effect the bonded labour of agricultural workers, was a key catalyst in galvanizing agricultural workers to join the Maoist cause.

1.2. Background to the trade union movement

Prior to the creation of multi-party democracy in the early 1990s, competing political parties and trade unions were prohibited. While trade unions in Nepal first emerged in the 1940s, they were never considered a legitimate force by the state until the 1990s. By 1996, many union leaders and members had served time in prison throughout the 1980s (including many interviewed for this case study).

During the 30 years preceding the multi-party regime (1960-1990), trade unions were banned along with political parties. In this period workers allied with other groups such as students. The main preoccupation of unions and activists prior to 1990 was supporting the movement for democracy. Thus, politics and trade union activities became synonymous. Trade unionism was a parallel track to the establishment of political parties and multi-party democracy. As an example, former Prime Minister Girija Prasad Koirala, in office on four different occasions, began his political career as a trade union leader in 1947 in the jute mills of Biratnagar, Morang Province.

This political background, association and context are important to understanding the strategies of various trade unions up to the present.¹⁵ To this day, the large union centres in Nepal are connected to one political party or another. For example, the General Federation of Nepalese

⁸ Interview with Ganesh Regmi, Chairperson, and Dhan Banadur BK, Vice-President of ANTUF, in July 2018.

⁹ Upreti and Dhungana, 2006.

¹⁰ Interview with Ganesh Regmi, Chairperson, and Dhan Banadur BK, Vice-President of ANTUF, in July 2018.

¹¹ Thapa and Sijapati, 2003.

¹² Einsiedel, Malone and Pradan, 2012.

¹³ Bray, Leiv and S. Mansoob Murshed, 2003.

¹⁴ Interview with Ganesh Regmi, Chairperson, and Dhan Banadur BK, Vice-President of ANTUF, in July 2018

¹⁵ Interviews in July 2018 with Pushkar Acharya, President of the NTUC; Yogendra Kumar Kunwar, General Secretary of the NTUC; Kamal Kumar Bista, President of the NTUC; Rajesh Palikhe, Deputy General Secretary of the NTUC; Baldev Tamang, Centre Member of the NTUC; Ganesh K C, Deputy General Secretary of the NTUC; and Kilanath Dahal, Former Chair of the NTUC.

Trade Unions (GEFONT) maintains a close association with the Communist Party of Nepal (UML) and ANTUF with the Communist Party of Nepal (Maoist) while the Nepal Trade Union Congress (NTUC) has been closely connected to the Nepal Congress Party.

The trade union agenda was first and foremost about political reform. Without structural political reform and changes to what was perceived as the existing autocratic political system, there could not be, in the trade union perspective, any sustainable and equitable changes to the labour market.

According to Biswa Nathy Pyakurel, President of the Joint Trade Union Coordination Centre (JTUCC), “Immediate workplace issues were secondary. These could be tackled once political reform was achieved.” By focusing on political reform, constitutional and policy issues could be worked out. These, in turn, would lay the basis for the respect of core worker rights, such as collective bargaining and freedom of association, which were eventually enshrined in the 2015 Constitution.

1.3. Trade unions emerge from the dark

Prior to the 1990s and the formal emergence of trade unions, there was some organizing at factory level. The NTUC, for example, started operating in 1947 and the Nepal Independent Workers Union was established in 1979. In the early to mid-1980s, a small union presence was established in the tourism sector. But it was only in the late 1980s and early 1990s that independent and free trade unions started to emerge, driven by constitutional and legislative changes such as the Trade Union Act of 1992. In 1989, the first confederation of trade unions (GEFONT) was established,¹⁶ followed by the NTUC two years later and the Democratic Confederation of Nepalese Trade Unions (DECONT) in 1997. Several other union confederations emerged at this time.¹⁷

In terms of membership, trade unions were most active in the carpet, clothing and textile sectors – industries at the centre of an improved export performance. Trade union membership in these sectors expanded rapidly between 1989 and the mid-1990s. Trade unions also made gains in other rapidly expanding sectors of the economy, including manufacturing, trade, hospitality and construction.

Following the reestablishment of democracy, trade unions were revitalized but traditional rivalries continued to exist. Between 1991 and 2003 there was limited union cohesion. Trade unionism in Nepal was characterized by rivalry and rifts, some of which were bitter and acrimonious. That said, cohesion and unity was always the much-desired goal. At the 1996 GEFONT congress “one union one voice” was the stated objective.¹⁸

1.4. The private sector: Organizations, structures and approaches

The main employer and business membership organization working on social and labour issues was the Federation of Nepalese Chambers of Commerce and industry (FNCCI). This organization was established in 1965 and its current membership totals over 10,000, including 104 district level chambers, 99 sectorial business associations, 910 leading public and private companies and 20 binational chambers of commerce.

¹⁶ In 1989, trade unions from the hotel, trekking, transport and garment sectors were established around the GEFONT.

¹⁷ Some of these trade unions included the National Democratic Confederation of Trade Unions, Confederation of Nepalese Professionals, Nepal Revolutionary Workers Organization and Nepal Sadbhawana Trade Union, among others.

¹⁸ As of 2018, according to Ramesh Badal, Vice-President of GEFONT, this objective is very close to being realized.

The FNCCI took the lead as the main interface with trade unions and the Government on all workplace issues. The first tripartite Labour Advisory Committee was established in 1990 and the FNCCI represented employer interests on that body. The other main representative body for business was the Confederation of Nepalese Industries (CNI), which emerged in 2002 with a mandate to support larger companies. These two organizations shared a similar aim, membership and mission and worked reasonably well together (and still do despite some rivalry).

Organizations representing employers in different sectors were the principal members of the FNCCI and they allowed it to assume leadership on social and labour issues. On occasions when enterprises in certain sectors moved to central stage in the conflict, the sectorial business associations assumed a greater leadership role. This was the case, for example, in the hospitality sector where the Hotel Association of Nepal (HAN) played a direct role in peace promotion initiatives alongside the FNCCI.

During the 1980s and 1990s, the standard grievance of employers was the rigidity of labour laws, such as legislation governing the dismissal of workers. Workers had to be given a permanent position after a probationary period of 240 days. In addition, severance payments for retrenched workers were deemed too high. A major employer gripe was that once an employee became “permanent”, productivity levels dropped considerably. Even if permanent workers were not carrying out the work, dismissal was extremely difficult. Enterprises could only instigate layoffs with prior approval from the Government.

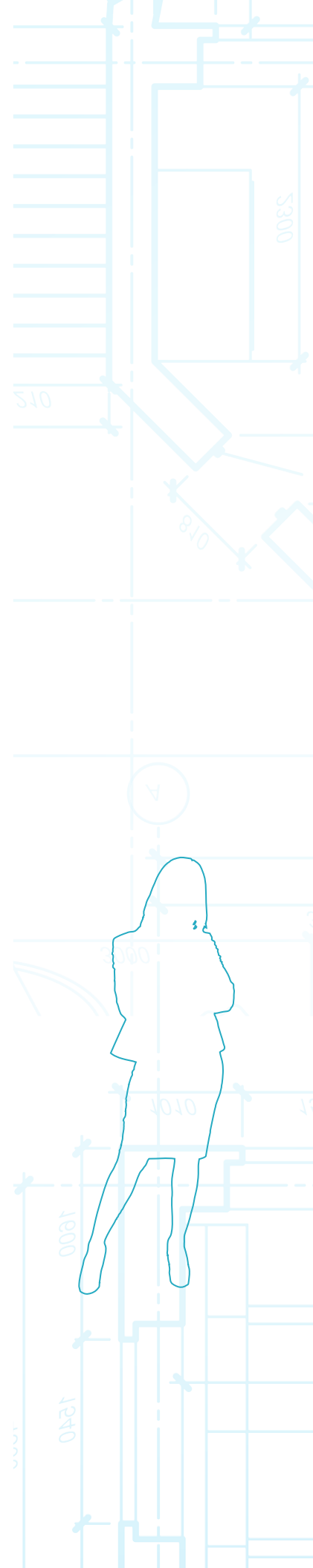
However, labour law evasion appeared to be widespread even among many of the largest and best-known enterprises in the country. According to most observers, labour laws were poorly enforced. Enterprises felt they had a large degree of flexibility in terms of hiring and firing in real terms. One leading industrialist pointed out that many companies did not even have a human resources department during this period.

Once the insurgency began, the spill-over to the private sector became a progressive reality. The workplace, given the socio-economic context, was not an unexpected battleground. A number of large businesses would have been perceived to be closely linked or certainly in sympathy with royal interests.

In terms of the wider support the Maoists received for this strategy (targeting business), the traditional negative Nepali view of the private sector figured large. According to one observer, this was because there were few self-made millionaires in Nepal and no tradition of entrepreneurial innovation and experimentation. There were also few role models of self-made innovators becoming highly successful. Most people viewed wealthy businesspeople as having attained their wealth either through inheritance or by being close to power. This elicited suspicion and even dislike.¹⁹

All of these factors ensured that the private sector and the workplace would be key battlegrounds throughout the insurgency.

¹⁹ Interview with ILO national planning adviser in July 2018.



1.5. Initial reform lays the foundation for conflict

The early 1990s were periods of strong economic growth and liberalization more generally. Business started to open up, increasing opportunities, and major investors came in. Attaining a passport to travel, previously a difficult proposition, became much easier.

Allied to this was initial political reform in the early 1990s, perhaps influenced by dramatic global geopolitical events (i.e. the end of the Cold War). The Panchayat system was finally brought to an end in 1990 through pressure from the first pro-democracy “People’s Movement I”, which encompassed a series of demonstrations between February and April 1990. Multi-party democracy was put in place. Reform also came to the monarchy through the 1990 Constitution that redefined the king’s role and established Nepal as a constitutional monarchy.

Political instability continued, however. Various incumbents maintained their privileged status and within the organs and apparatus of the state, minority representation actually declined.²⁰ Many areas of the country experienced little social or economic progress.²¹

The ground was thus fertile for a rise-up of the Maoists, led by Pushpa Kamal Dahal, a Brahmin former high school teacher better known by his nom-de-guerre, Prachanda.

²⁰ Lawoti, 2012.

²¹ The 1990 Constitution acknowledged for the first time Nepal’s multi-ethnic and multilingual character, however it continued to define the country as a “Hindu kingdom” and affirmed the status of Nepali as the national language, underpinning the continued cultural exclusion of ethnic groups.



महाराष्ट्र राज्य
राज्य लोक सेवा आयोग
राज्य लोक सेवा आयोग
राज्य लोक सेवा आयोग

2. The war: 1996-2006

The insurgency in Nepal lasted ten years, concluding with the signing of the CPA on 21 November 2006, although low level violence continued beyond that point. The conflict can be categorized into three phases, although, of course, they were never pre-planned as such.

2.1. Phase one (1996-2001)

Phase one began with the CPN-M's declaration of war on 13 February 1996 and ended with the breakdown of peace talks on 23 November 2001. The basic Maoist political philosophy was laid out in a 40-point list of demands that contained an array of social, economic, political and cultural reforms. Mobilizing a support base around these key areas of reform was not difficult as the core demands tapped into underlying grievances that had been festering for decades, including horizontal inequality. In addition, the concentration of political and economic activity in Kathmandu had opened a political vacuum in the rural districts, which was then filled by the CPN-M.²² The actual trigger point for the insurgency was the Government's rejection of the 40-point list of demands.²³

This phase was characterized by low intensity fighting and CPN-M mobilization of rural districts. Initially the conflict was viewed through a civil disturbance lens – with the police uniquely deployed to counter the violence. This changed in 2001, when the army was brought in. The first phase culminated in attempted peace negotiations in 2001, which rapidly broke down due to tactical considerations on the part of the protagonists.

2.2. Phase two (2001-2003)

Phase two was the period between the declaration of a State of Emergency on 26 November 2001 and the breakdown of peace talks on 19 August 2003 (with a noticeable escalation of violence following the 2001 royal massacre and the accession of King Gyanendra to the throne).²⁴ The new king's dismissal of the Prime Minister on 1 February 2005 drove political parties closer together. In 2005, the SPA and CPN-M formed a coalition and the civil war became more political in nature, evolving from rural settings to include urban areas and covering a wider range of non-military activities such as demonstrations and rallies.²⁵ This phase culminated in another attempted peace process in 2003. While more structured than the first attempt, it was also weakened by tactical manoeuvring by the parties involved.

²² Hutt, 2004.

²³ The CPN-M submitted a 40-point list of demands to the Government of Nepal on 4 February 1996 and threatened to start an armed struggle if these demands were not met by 17 February. However, the "People's War" was declared four days before the deadline. According to the CPN-M, the objective of the armed struggle in Nepal was to establish a "new people's democracy" through a guerrilla war to overthrow the multi-party democratic system in place in the early 1990s (NIPS, 2013).

²⁴ On 1 June 2001, ten members of the royal family were killed during a dinner at the residence of the Nepalese monarchy, including King Birendra and Queen Aishwarya. Upon his father's death, Prince Dipendra was declared the King of Nepal while in a coma. He died in hospital three days later. Birendra's brother, Gyanendra, became the new King of Nepal.

²⁵ Bächler, 2008.



2.3. Phase three (2003-2006)

Phase three was marked by a genuine negotiation process that ended with the CPA. The peace agreement heralded the beginning of a highly fragile political process towards a new Constitution and permanent peace. The Government and Maoists broadly agreed on the following roadmap: (i) troops returning to barracks; (ii) an interim Constitution; (iii) an interim Parliament; (iv) constituent assembly elections to be held in April 2008; and (v) an eventual new permanent government under a new Constitution.²⁶

The first major steps towards permanent peace occurred in April 2006 after mass public demonstrations known as “People’s Movement II”. Consequently, in January 2007, an interim Constitution was instigated, replacing the 1990 Constitution and an interim legislature was created. These changes paved the way for the Maoists to formally enter government. In elections held in April 2008, the CPN-M emerged as the single largest party and its leader, Prachanda, became Nepal’s next Prime Minister.

2.4. The workplace becomes a key battleground

Given the socio-economic triggers to the conflict and the ideological baggage of the Maoists, it was no surprise that the private sector and the workplace emerged as front-line players in the conflict. The emergence of independent trade unions in the 1990s had greatly altered the dynamic of workplace relations. Industrial relations strife immediately increased after the first national union confederation (GEFONT) was established in 1989 and democracy was restored in 1990.²⁷ Disputes, strikes and general workplace pressures and disaccord increased in a febrile environment.

The years 2001 and 2002 represented the peak of trade union growth, with industrial unrest and conflict continuing until 2006. From that point onwards there was a clear decline in enterprise level trade union registration.²⁸ The protracted period of industrial unrest and conflict can be attributed to three main factors.

The first element was the weakness of institutional infrastructure. A Labour Court was established in January 1997 but was plagued by a lack of resources. Several other institutions for social dialogue were set up in Nepal but similarly failed to function in a systematic or efficient manner.²⁹

Second was the attitude of some of the employers as well as that of the workers. There was no culture of genuine trust-based dialogue in Nepal and few models of workable agreements between workers and employers reached through consensus to look to for inspiration. Furthermore, the internal infrastructure to manage workplaces issues, such as a human resources department, was absent in many companies.

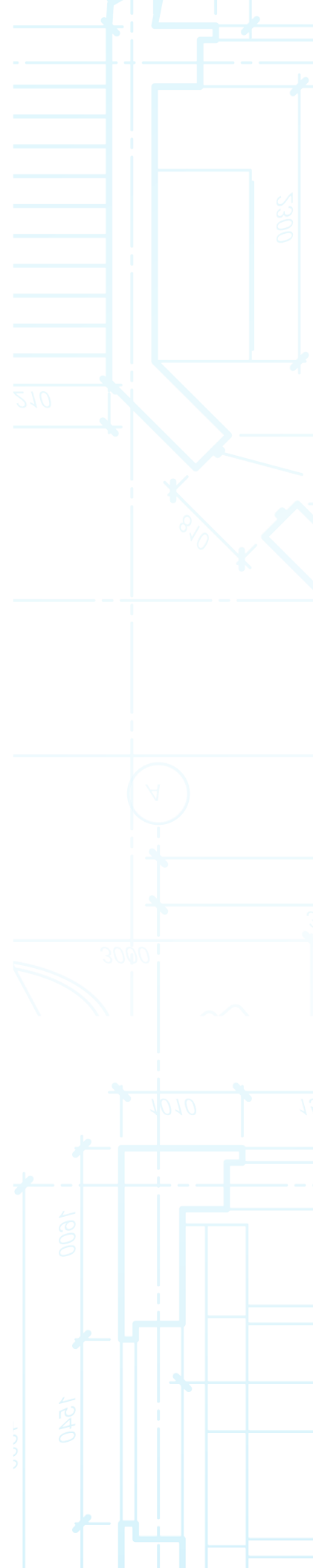
Finally, trade unions lacked cohesion and unity. Inter-union rivalry was pervasive, with different unions embracing different ideologies. Only at the end of 2002 did the three largest trade union federations (the NTUC, GEFONT and DECONT) reach a general agreement that identified seven labour market issues for discussion and the negotiation of reforms.

²⁶ Additionally, a United Nations political mission was agreed by the Security Council in January 2007 to provide technical support to this peace process.

²⁷ Useful indicators of this trend were the number of complaints lodged by trade unions with the Labour Offices, the number of cases brought before the Labour Court, and the number of workdays lost due to strikes.

²⁸ ILO, 2004.

²⁹ The main bodies included the Central Labour Advisory Body for reviewing labour policy, labour legislation, training policy and measures to promote industrial peace. Other tripartite institutions included the Minimum Wage Fixing Committee, the Wage and Compensation Fixing Committee for determining remuneration of journalists, the National Welfare Fund Managing Committee, the Foreign Employment Advisory Committee, the Tripartite Arbitration Committee, and the Tripartite Committee for the Prevention and Settlement of Disputes.



2.5. Business in the firing line

From the start of the conflict and for its duration, the Maoists directly targeted the private sector.³⁰ It was mostly national businesses who were subject to extortion and violence. Most non-Nepali-owned companies were not specifically targeted and continued operations throughout the war.³¹ This was a deliberate strategy by the Maoists to increase political pressure by economically hurting local business owners.

Companies were singled out in many ways. Violent attacks against enterprises were common and bombs and other explosive devices were put in factories. Many businesses were the focus of direct attacks, bombing and targeted killings of managers and owners.³²

Extortion was probably the most prominent instrument utilized by the Maoists.³³ It could unfold in numerous ways. Shekhar Golchha, Vice-President of the FNCCI, described a common practice: Insurgents would come to a business and read out some propaganda item outlining a new vision about political change for the country. They would then present a figure for payment. In terms of *how much* individual enterprises could/should pay, the insurgents often had inside information from the company's workers themselves regarding its financial health. They also had other ways to get hold of this information, but overall, they knew with a high degree of accuracy how much each enterprise could afford to pay. As one business owner remarked, "not paying was not really an option".

These payments were considered "donations" and not protection money of any kind. Therefore, enterprises would continue to face threats and problems in the form of direct attacks and intimidation. Enterprises also experienced the phenomenon of *fake insurgents* who would attempt extortion but who were not affiliated to the Maoists and were common criminals.

The Maoists also tried to recruit workers in companies to join their cause (including violence) and used their presence in trade unions as a proxy for this approach. They also forced workers to participate in demonstrations. This had the effect of taking workers away from workplaces – again damaging operations and production processes.

Enterprises frequently found themselves in the middle of government operations to trap insurgents. For example, delivery trucks would stop at insurgent roadblocks and the army would use the trucks as cover to attack the insurgents. Another example was that of a company which made pressure cookers (which can be a quick and effective way to make a bomb). In this case, the Government wanted to know to whom, where and when this company sold these pressure cookers so they could track and capture the bomb makers.³⁴

Throughout the insurgency conducting business was very difficult. Moving goods around Nepal was slow, in particular with curfews in place. Road blocks choked off critical supply lines. The east side of the country – the industrial corridor – was worst hit. All this had a huge impact on individual enterprises and many went out of business due to the pressures, which got progressively worse.

³⁰ Interview with Shekhar Golchha, Vice-President of the FNCCI, in July 2018.

³¹ Interview with Hansa Ram Pandey, Deputy Director General of the FNCCI, in July 2018.

³² However, overall, the losses to the business community were relatively low. The number of business owners and/or managers murdered were in the hundreds not the thousands. Shekhar Golchha, Vice-President of the FNCCI, personally lost three managers.

³³ Exact figures are hard to come by. According to one estimate In 2000, the CPN-M allegedly made between US\$71 million and US\$143 million, with a large component of this coming from the business community (Mahat, 2005).

³⁴ Interview with Shekhar Golchha, Vice-President of the FNCCI, in July 2018.

Box 1: Impact of the conflict on business

A 2008 International Alert survey conducted in the Parsa and Morang districts revealed that 93 per cent of 600 surveyed business people suffered negative impacts due to the conflict. Of those affected, 72 per cent said their business had been disrupted; 40 per cent said they had lost customers; 24 per cent reported transport disruptions; 23 per cent experienced difficulties in accessing supplies; 19 per cent suffered dire damage to or loss of property, 16 per cent said they had lost investments; and 18 per cent reported that their business was targeted by strikes. According to this survey, 19 per cent of large businesses and 11 per cent of small businesses were impacted by extortion.

Source: Alexander, Gündüz and Subedi, 2009.

2.6. Collective business action

The response by business collectively – meaning through its representative organizations – was multi-tiered. At localized levels, the networks of chambers of commerce in the provinces were critically important in supporting enterprises (as the war unfurled largely in the countryside rather than in Kathmandu). Individual chamber leaders played a significant role. There are good examples of small chambers that played successful facilitation and/or representation roles with the Maoists on behalf of local enterprises. In the Sunsari and Parsa districts, for example, the chambers of commerce collaborated with the police to set up a stand for Control Room Vehicles. In Kailali district, the chamber of commerce was involved in mediation during confrontations between landless settlers and police at the district level. At national level, the FNCCI was active in lobbying to eradicate the practice of truck syndicates (a source of much criminality).³⁵ One reason these local chambers were successful was that the actors involved (i.e. businesses and Maoist leaders) actually knew each other. Indeed, throughout the insurgency, these personal connections were used as channels that could be activated if a particular issue arose.³⁶

At national level the chambers, in particular the FNCCI, were increasingly visible and active. As the insurgency became progressively more crippling on enterprises and the wider economy, their leadership was convinced of the need to play a more direct role in trying to end the violence.

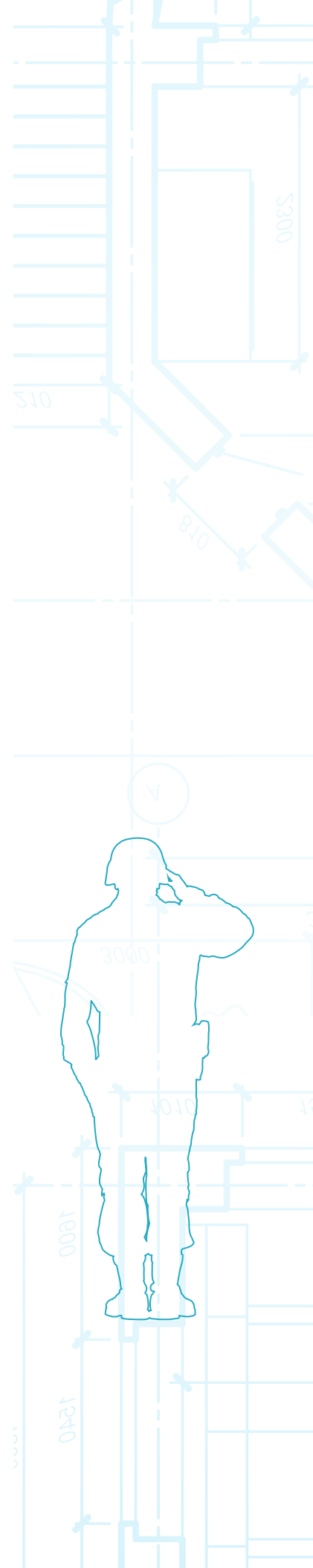
The private sector – as a collective – felt it had no choice but to become more directly engaged in trying to achieve peace. Because of the violence and extortion, it became ever harder for small businesses to cope and stay commercially viable.

As stated by Hansa Ram Pandey, Deputy Director General of the FNCCI: “There was no other choice but to get involved directly in the process. Enough was enough. We had to act.”³⁷ The FNCCI adopted a more vocal approach, eventually taking the lead and organizing peace rallies in 2002 and 2003.

³⁵ Crozier, Gündüz and Subedi, 2010.

³⁶ During an interview in July 2018, Megh Nath Neupane, Director General of the CNI, shared his experience of setting up meetings with Maoist leaders using solar-powered satellite telephones, as the Maoists were based in rural areas with limited connectivity. Using these channels took considerable effort as these phones could only be used during the day in sunlight.

³⁷ Interview with Hansa Ram Pandey, Deputy Director General of the FNCCI, in July 2018.



Box 2: Nepal's National Business Initiative for Peace

In 2005, the FNCCI, the Nepal Chamber of Commerce (NCC) and the HAN established the National Business Initiative for Peace (NBI), a private sector-led initiative to promote dialogue between the Maoists, enterprises and the Government in the face of conflict.

The NBI worked to raise awareness that dialogue was the only way to achieve sustainable peace based on the idea that the success of business was directly tied to the success of society and vice versa; and that conflict directly hampered job creation, thereby harming the development of Nepal as a whole. In addition, the NBI positioned the private sector as a neutral actor without political affiliations that delivered goods and services to the whole community, including the Maoists.

Following the CPA, the NBI expanded its activities to include the promotion of corporate social responsibility and ethical business practices through an NBI-developed business code of conduct that considers consumers' and workers' rights, competitive market practices, taxation and environmental protection. The NBI continues to promote peacebuilding activities with community outreach and overall improvement of labour relations in Nepal.

2.7. Establishing back channels for dialogue

The FNCCI took a strategic view to promoting a dialogue-based approach to ending the conflict. This was an agreed and deliberate strategy.

In August 2004, the Maoists threatened to force the closure of 47 factories in an attempt to destabilize the industrial sector and issued a list of political demands. The FNCCI brought in a group of respected human rights activists to help mediate negotiations between the business community, the Maoists and the Government. After more than a month of negotiations, the Maoists agreed to let the 47 factories continue operating and the FNCCI agreed to start a conversation with trade unions regarding workers' welfare.³⁸ The involvement of respected human rights activists sent a clear message to the Maoists: a wider societal effort was galvanizing to end the violence.

Consequently, a process of discreet informal dialogue was initiated between the employers' organization and the Maoists, facilitated by the human rights activists who held credibility with all sides. This resulted in the FNCCI offering to negotiate and mediate between the Government and the Maoists, a pathway that was found acceptable.

Initially, the dialogue was difficult, occurring in a tense and untrusting environment in a context where the Maoists were viewed as terrorists and risked immediate imprisonment. A neutral venue was used and safe passage was guaranteed. The initial conversations were used to build confidence and trust and to show the good faith of all parties involved.

For the Maoists, this dialogue provided a direct means of conveying messages to the Government at senior levels. Likewise, it allowed the business side to communicate the importance of sustaining a commercial sector that would provide jobs *and also maintain revenue streams to the Maoists*. By destroying businesses, the FNCCI posited, the Maoists would be cutting off a key source of revenue.

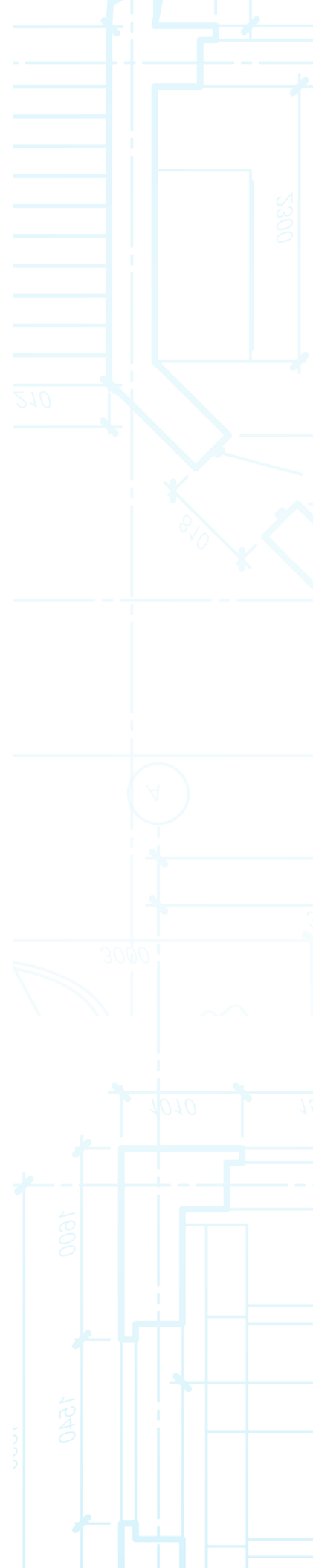
³⁸ Dhakal and Subedi, 2006.

“Our main message was, if you destroy the businesses they will not be able to pay you and they will shut down, leaving workers out of work who will not support you. We lose, you lose.”

Hansa Ram Pandey, Deputy Director General of the FNCCI

A huge enabler to this dialogue process were the personal relationships between business and Maoists leaders, which laid the ground for the more structured dialogue that followed later.³⁹ The fact that these relationships were maintained during the war was a critically important factor to the overall peace resolution as it allowed important back channels to be established where key messages could be conveyed and confidence built.

³⁹ For example, Prachanda and the former President of the FNCCI were former classmates





TRIMURTY
SECURITY



3. The peace: 2006-2010

The signing of the “12-Point Understanding” that was mediated by the Government of India was a watershed moment, signalling an end to the conflict.⁴⁰ In this environment, a more vocal civil society took root, demanding a permanent resolution. The April 2006 popular uprising known as the “People’s Movement II” forced King Gyanendra to reinstate the elected parliament that he had dismissed in 2002 and renounce all executive power. This was followed by a Ceasefire Code of Conduct that culminated with the signing of the CPA and the Agreement on Monitoring of the Management of Arms in November 2006.

The signing of any peace agreement is no guarantee of a conflict or related activities coming to an end. Underlying conflict issues can linger on or lie dormant, to be kindled by an incident or series of events later on. Indeed, in the aftermath of conflict resolution new grievances and tensions can arise. This proved to be the case in Nepal.

“The key component in any peace process is jobs. Unemployment is a huge threat to peace anywhere.”

Bharat Acharya, Vice-Chairperson of the Employers’ Council of the FNCCI

3.1. New front line: Workplace relations

Given that the CPA and the interim Constitution recognized and articulated the importance of workers’ rights, labour standards and stable industrial relations, the “operational environment” for employers fundamentally changed. Major workplace issues and wider social justice issues were reflected in the overall settlement, as highlighted in the CPA:

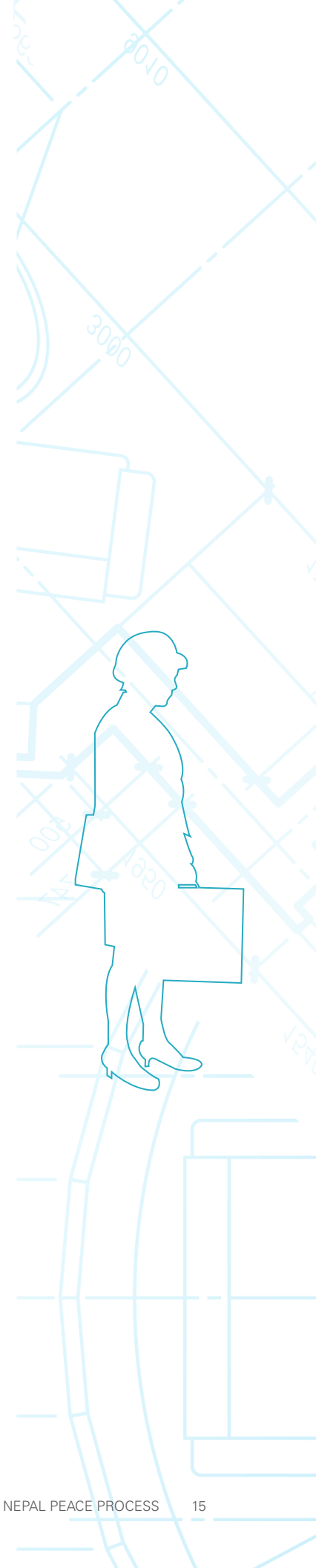
Both sides believe in the fact that industrial production should continue, the right to collective bargaining and social security in the industrial establishment should be respected and the establishment and workers should be encouraged to seek peaceful settlement of any disputes between them without disturbing the industrial climate of the country and respect the standards of work as determined by the International Labour Organization (ILO).

Clause 7.5.6 in the CPA of Nepal

In the workplace, the situation became much more confrontational. Indeed, the post-insurgency period has been described by many private sector leaders being the toughest time for business.⁴¹ The industrial relations climate became an extension of wider political battles, linked to the re-emergence of the Maoist trade union ANTUF in 2007.

⁴⁰ The “12-Point Understanding” was an initial agreement signed by the Maoists and the Government to work towards democracy, peace and prosperity.

⁴¹ Interview with Shekhar Golchha, Vice-President of the FNCCI, in July 2018.



ANTUF was originally formed in 1990 under the name All Nepal Trade Union and was associated with the Maoist insurgents. It was active briefly in 2001 and 2003 when peace negotiations were held and it attempted to organize workers and promote protests in the hotel, garment and carpet industries in the Kathmandu valley.⁴² However, for most of its existence it was mainly a subterfuge organization and little was known about its activities.

From April 2006, the situation changed when the Maoists joined the Government. ANTUF gained public prominence as a radical union alternative and was by all accounts very harsh and violent. ANTUF leaders were highly critical of other trade unions, claiming they had “sold out” the workers and were part of a political system that oppressed the poor.⁴³ Having almost no experience of labour relations realities, this credo shaped their radical agenda, which included protests and demonstrations to raise their visibility. This, in turn, sparked competition with and between the GEFONT, NTUC and DECONT (the three main national trade union federations).

Strikes became more sporadic in nature, leading to a highly unpredictable environment. Multiple and often competing unions were a common feature of many workplaces. Inter-union competition had a negative spill-over effect at the workplace and strikes became the first, not the last option for trade unions according to some business leaders.

In many cases, politically affiliated unions were more concerned with recruiting as many members as possible rather than resolving workplace grievances, often seeking to outflank each other in a bidding war for prospective members. In 2009, for example, about 500 factories in the Sunsari-Morang Industrial Corridor were forced to shut down due to supply constraints resulting from transport strikes and blockades by labourers protesting the lack of implementation of the new minimum wage.⁴⁴

Violent clashes between workers affiliated with competing unions became more frequent.⁴⁵ Even at the leadership level, violence and kidnapping occurred. Such rivalry pushed other unions like the GEFONT and NTUC to become more militant in their actions and demands. Similarly, employers responded to this changed environment in a more forthright manner. Factory closures – often for lengthy periods – were common.

Traditionally there had been union fragmentation with limited unity of any kind. Now, there was serious rivalry between unions and leaders, with enterprises having multiple and competing unions. It was not unusual for a factory to have seven or eight unions. The animosity during this period created a toxic industrial relationship climate where disputes and strikes were often driven by inter-union rivalries.

In some respects, it appeared that the conflict was moving from the political sphere to the workplace. In an ILO survey from 2006, enterprises reported strikes and related activities associated with their campaign to recruit members as well as rivalry and competition with other unions.⁴⁶

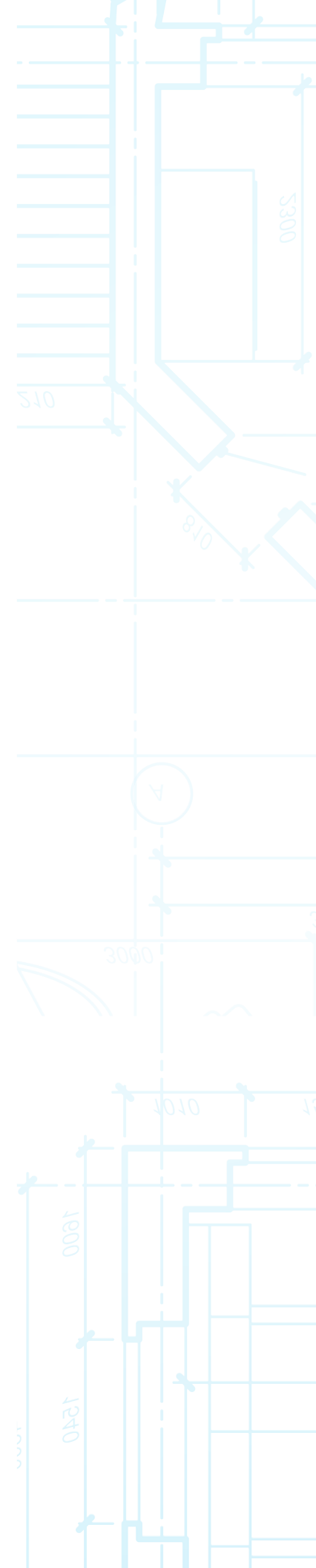
⁴² “Industrial Relations in Nepal”, Narayan Manandhar (2007)

⁴³ During the insurgency the NTUC and GEFONT were allied with the Government.

⁴⁴ Alexander, Gündüz and Subedi, 2009.

⁴⁵ International Trade Union Confederation, 2010.

⁴⁶ Kyloh, 2008.



“The labour laws are very unclear and the biggest problem is that there are no limits or restrictions on strikes. Anyone can call a strike at any time...”

ILO interview with a manager of a clothing factory, Morang District, November 2006⁴⁷

At the enterprise level, dealing with multiple unions was a major challenge for employers. It was common for one union to present a set of demands that were then negotiated, to be followed soon after by another set of demands from a rival union (in some cases accompanied by the initial negotiating union). The FNCCI subsequently developed a code of conduct whereby enterprises agreed to negotiate only every two years with an authorized union. The FNCCI substantially increased its legal capacity to provide services to companies in these situations, which proved to be an effective means of tackling the union competition and rivalry.⁴⁸

3.2. Peace arrives but instability reigns

Despite the arrival of formal peace, the operating environment for business remained extremely difficult.

A range of factors such as insecurity, criminality, forced donations, strikes, shutdowns, labour unrest, lack of access to raw materials and weak infrastructure had a highly depressive impact on the private sector. Small enterprises increasingly felt the effects of rising crime, theft and damage to their premises. Most lacked any sort of insurance and many went out of business. In a context of weak confidence in public security services and an increased sense of lawlessness, employers turned to private security companies, particularly at the district level. This was another “cost of doing business” to add to the expanding list. Business owners and managers also remained a key target for kidnappers and extortionists, still forced to make political “donations” to the major political parties, in particular the CPN-M.

Additionally, there were more criminal gangs. Such gangs were reported to be colluding with underground groups and sometimes even major political parties, to gather monetary support, for example, and to use force in bidding for construction tenders. Ex-combatants also provided a fertile recruiting ground for these groups. In the post-conflict environment, while businesses no longer faced a major threat of blackmail from the Maoists, they now found themselves facing extortion from armed groups and criminal gangs, particularly in the Terai region.⁴⁹

Electricity was also a key issue for business, and the shortages and expense of buying stand-alone generators added to an already heavy burden.

Around this time there were widespread demonstrations, known as “bandhs”, as well as road blocks and wider blockades of markets, enterprises, schools and universities. These actions were usually accompanied by demands that all non-essential services remain closed for the duration of the blockade. It was expected that these bandhs would be widely adhered to. Those that refused risked threats of violence or actual violence.

⁴⁷ Alexander, Gündüz and Subedi, 2009.

⁴⁸ During this period, there was an increase in the number of employers contracting out activities and replacing regular employment positions with casual workers, and where possible, foreign workers. While a practical response from an employer perspective, this did little to ease tensions.

⁴⁹ Alexander, Gündüz and Subedi, 2009.

According to one report, there were 104 bandhs between the April 2006 uprising and November 2007.⁵⁰ An estimated 700 bandhs were called during 2009, the vast majority of them occurring in the Terai region. The FNCCI estimated that a day's bandh cost the industrial sector 680 million Nepalese rupees (around US\$9 million). The bandhs had a major impact on transport networks and the delivery of goods and services across Nepal.

“In the course of one year, I think I had to close down my shop for about four months as sometimes bandhs were extended for 15 days. I had to bear a big loss.”

Business owner from Morang District⁵¹

3.3. Population displacement, infrastructure and land ownership

A major consequence of the conflict was a huge number of displaced people. Because this was a “rural revolution”, people fled to urban centres for safety. According to official data, the population of the Kathmandu Valley increased from 1.6 million to 2.6 million people between 2001 and 2011, a jump of 62.5 per cent.⁵² However, current unofficial estimates put the population in 2011 at 5 million. Displacement led to massive pressure on housing and infrastructure. With most of its revenues going to finance the war, the Government was unable to respond to the demands on public infrastructure and services.

The Maoists systematically targeted physical infrastructure, including bridges, telecommunications, airports, police posts, village development committee offices and other government buildings across rural Nepal. Most affected were the Mid-Western and Far-Western mountainous regions. As of 2003, physical infrastructure worth at least US\$250 million was destroyed due to the insurgency,⁵³ a period of almost zero investment in roads and bridges. Nepal today still bears the legacy of crumbled infrastructure, a substantial setback to the country's development.

Moreover, in certain regions land ownership became a significant issue, particularly in Dang, Kailali, Morang and Sunsari districts. Ethnicity also triggered land ownership disputes, often stoked by Maoist groups. Real estate agents, seen as making large profits overnight, were reported to be a major target for extortion.

3.4. Weak economic progress results in weak “peace dividend”

A major issue in the wake of the CPA was the absence of a concrete strategic economic development plan that could be realistically operationalized. Constitutional and political transformation trumped all else. Ensuring the political achievements of the insurgency was the most important driver of Maoist ideology from the start.⁵⁴ Economics and jobs were secondary considerations, as illustrated in the 12-Point Understanding:

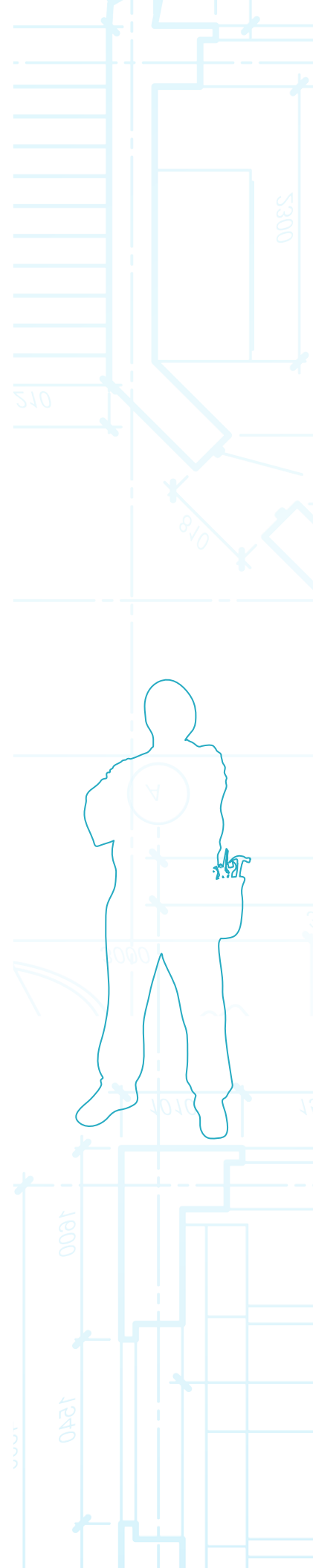
⁵⁰ Ibid.

⁵¹ Alexander, Gündüz and Subedi, 2009.

⁵² City Population, 2019.

⁵³ Ra and Singh, 2005.

⁵⁴ Wennmann, 2009.



(...) We have a clear opinion that the peace, progress and prosperity in the country is not possible until full democracy is established by bringing the absolute monarchy to an end. (...)

From point 1 of the 12-Point Understanding (19 November 2005).

In the post-agreement period, public expectations of the peace dividend, particularly in terms of jobs and economic opportunities, were unrealistically high. But the failure by the Government to deliver in terms of policy frameworks to create jobs, growth and social benefits fuelled increasing frustration, particularly among young people. While some economic growth did occur, few investors appeared and the economy struggled. Remittances were key in maintaining the economy to some extent.

Furthermore, when the Maoists assumed power in 2006, they retained their antagonistic views of business, which served to exacerbate political divisions in a politically challenging and unprecedented environment.⁵⁵

Industrial production has suffered a lot due to (the) continued unfavourable situation.... Serious disturbances like frequent strikes, lock-outs, donation menace, load shedding, cartelling by truckers, raw material supply disturbances, recurring cases of misunderstanding between management and labour, lack of industrial security, etc., were at work to disturb industrial production. As a result, the emerged situation remains unfriendly to private sector investment promotion. So much so that the investors in the field are discouraged and pessimistic. Capital flight threat is looming large.

Government of Nepal, Ministry of Finance, Economic Survey, 2006/07, pp. 13-14.

3.5. Business radicalizes

In a 2006 survey, a majority of managers reported political uncertainty as the main problem facing business and, consequently, the main barrier to investment.⁵⁶ In December 2009, for example, Varun Beverages Nepal Limited, a major supplier to PepsiCo, retracted its intention to build a state-of-the-art bottling plant in the Terai region, an investment worth 1 billion Nepalese rupees (about US\$1.3 million), citing criminality and security as the main reasons.⁵⁷

The importance of job growth to sustain peace and the role of the private sector in job creation was the narrative emphasized by business leaders – one of their overarching messages – to the new Government.⁵⁸ Because the principal preoccupation of peacemakers tends to be stopping the violence and preparing the ground for some form of power sharing arrangement, economic

⁵⁵ Ibid.

⁵⁶ The ILO conducted this survey with 50 enterprises (mostly members of the FNCCI), all in the formal sector and some of the largest in the country. They included enterprises engaged in heavy industry such as steel production, construction, textiles, clothing, food and beverages, financial services, retail, and trade and tourism.

⁵⁷ Crozier, Gündüz and Subedi, 2010.

⁵⁸ Interview in July 2018 with Megh Nath Neupane, former Director General of the FNCCI (1990-2011) and current Director General of the CNI.

policy can be overlooked.⁵⁹ Nevertheless, given that economic and social factors were at the heart of the conflict in Nepal and clearly articulated in the CPN-M's 1996 40-point list of demands, it is surprising that more attention was not paid to these areas.⁶⁰

The private sector, reeling from difficulties on the ground (attacks, extortion, road blockages and demonstrations), collectively felt it had no choice but to become more politically engaged. By then, even some large companies, employing between 2,000 and 3,000 employees, had gone out of business.

Enterprises finally told the Government that they simply could not operate in the increasingly hostile conditions. "Here, you run the business, we can no longer do it" was a refrain often heard from business owners, directed at the Maoist Government.

What enterprises did was to radicalize and demonstrate a collective strength, showing the Government that the private sector was a *force to be reckoned with*.

Now it was business – and not, as originally, trade unions, student youth groups and other disaffected groups – who began to stage bandhs. Huge rallies demanding change were organized by employers, mobilizing the private sector. The FNCCI, CNI and NCC, for example, launched what the local media described as a "strike" on 19 March 2007, which called on the Government to create a more favourable business climate and stop the extortion and abduction of business people.⁶¹ Moreover, the FNCCI also organized a large peace rally in Kathmandu, which drew thousands of people from the business community, including sectorial business associations, as well as civil society.⁶² In a multiplicity of ways, employers demonstrated to the Government that they were serious.⁶³

This was a new and radical approach by business, which initially elicited a negative reaction from the Maoists. It was only during the 2008-2009 budget discussions that economic issues became priority items on the agenda (following parliamentary elections in April 2008).⁶⁴ The "Common Minimum Programme" agreed to by the governing parties in August 2008 for the first time explicitly outlined working with the private sector.

According to Hansa Ram Pandey (FNCCI), the peace rally was key to changing the attitude of the Maoists and was one of the FNCCI's most important contributions to the peace process.⁶⁵ Following the rally, the Maoists stated that they would adopt a less hostile approach vis-à-vis businesses because their fight was political and not targeted against the private sector. Gradually, the mind-set of the Government and the Maoists shifted, the realization dawning that the private sector was needed to create jobs.⁶⁶

⁵⁹ A comparative analysis of different provisions in 27 peace agreements shows that most peace agreements focus on security and political power (Suhrke, Wimpelmann and Dawes, 2007).

⁶⁰ Deraniyagala, 2005.

⁶¹ Kyo, 2008.

⁶² Interview with Hansa Ram Pandey, Deputy Director General of the FNCCI, in December 2018.

⁶³ Shekhar Golchha, Sr Vice-President of the FNCCI, personally slept outside the Prime Minister's office with many others in one such demonstration. On another occasion, precipitated by a crisis threatening the immediate future of up to 60 companies, the FNCCI's leadership told the Prime Minister that if the specific conditions to ensure the sustainability of the companies were not met, they would all close immediately, resulting in significant job losses.

⁶⁴ Wennmann, 2009.

⁶⁵ Interview in December 2018 with Hansa Ram Pandey, Deputy Director General of the FNCCI.

⁶⁶ There were also institutional mechanisms to raise these concerns. The Constitution provided for 26 seats in the Constituent Assembly for "individuals who made significant contributions to Nepali society". These individuals would be nominated through inter-party consensus by the Cabinet. Through this mechanism business representatives were nominated to the Constituent Assembly.

4. The resolution process: 2010-2018

After nearly two decades of mistrust, antagonistic relations and competing rivalries, social partners arrived at a point where collective responsibility would lay the basis for sound policy outcomes and a more equitable labour market.

“The last 20 years have been a journey to bring unions together, to enable employers to take a different pathway, in order to lay the ground for a fair and equitable labour market in Nepal”

Ramesh Badal, Vice-President of GEFONT

4.1. Pathways to trade union unity

The first attempts at trade union unity occurred after the signing of the CPA. The catalyst was the coup carried out by Nepal’s King Gyanendra in 2005, which sparked renewed political activity and closer inter-union working relationships, although interactions with ANTUF remained difficult.

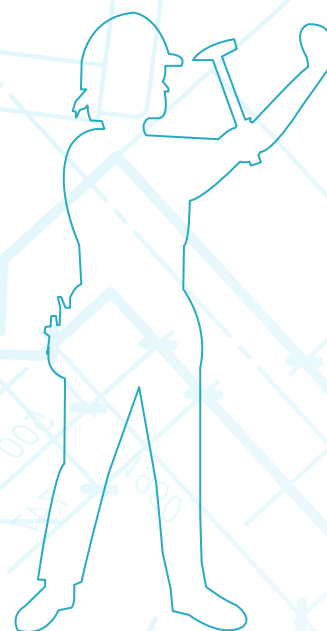
A major trade union conference held in 2006 proved a key milestone in initiating a process towards greater union cohesion. A general union agenda was agreed, although it was based more on principles than on concrete actions. At the end of 2006, the four main trade unions (GEFONT, NTUC, DECONT and ANTUF) signed an agreement to promote greater harmony. As recalled by Khilanath Dahal, former Chair of the NTUC: “We agreed to work with each other and establish peace in the trade union movement. We agreed to collaborate and focus on the real issues affecting workers.”⁶⁷ The actual realities of the period somewhat belie this.⁶⁸ Nevertheless, although inter-union rivalry and animosity continued, a process to encourage greater cohesion had begun.

A big step forward was the establishment of the JTUCC in 2007 as a result of actions by the GEFONT, NTUC, DECONT and the Confederation of Nepalese Professionals.⁶⁹ The JTUCC was conceived of as a neutral platform where all trade unions, regardless of their political affiliation, could work together to identify workers’ issues and agree on ways to negotiate with the Government and employers. The founding unions had different political allegiances so uniting under the JTUCC was a critically important step in union cohesion.

⁶⁷ Interview with Khilanath Dahal, former Chair of the NTUC, in December 2018.

⁶⁸ Trade Unions’ Declaration: “Commitments for Peace Building in Nepal”, December 2006. The agreement was signed by the Presidents of the ANTUF, DECONT, GEFONT and NTUC.

⁶⁹ In 2008, the DECONT merged with the NTUC shortly after the establishment of the JTUCC.



Box 3: Trade unions reach consensus despite political differences

Since its establishment in 2007, the JTUCC has sought to amplify the voice of trade unions in order to secure worker's rights in Nepal. Thanks to this common platform, unions of different political ideologies have built trust and learned to work in a more coordinated manner to achieve change. This is illustrated by Chirag Man Singh Kunwar, the JTUCC's General Secretary:

"We developed a culture that whatever ideology you have or party you align to does not matter. When you come to JTUCC, you keep aside those ideologies and confrontations."

As of 2019, the JTUCC is composed of nine trade unions, including the three largest unions in terms of membership, namely, the GEFONT, NTUC and ANTUF. Before bipartite and tripartite negotiations, the JTUCC's committee meets to reach consensus on particular labour issues to be discussed with the Government and/or employers. Moreover, every three years the JTUCC organizes a trade union conference to jointly plan its future agenda.

As the Maoists bedded into government, a process of understanding the responsibilities of power took hold, albeit slowly. At this time, there were indications of downward pressure from Maoist government representatives for ANTUF to take a less aggressive stance.⁷⁰ Critically, the NTUC and GEFONT worked to bring ANTUF into more formalized structures and processes and introduce it to the workings of the labour market. This happened slowly. They also began to involve ANTUF in their activities – an evolutionary and educational process for the main Maoist trade union. This was understandable as the Maoists had disliked the formal unions, seeing them as part of the establishment they were fighting. One union leader described ANTUF as viewing the GEFONT and NTUC as “almost as bad as the employers”.

The GEFONT and NTUC have said that one of their greatest contributions to the peace process was mainstreaming and bringing ANTUF into the fold.⁷¹ These efforts were often personally driven. Their approach might be characterized as playing a “long game” rather than engaging ANTUF in a short-term fight with short term-gains. The GEFONT and NTUC collaborated closely in these endeavours, supported by the ILO.

ANTUF attended the 2007 International Labour Conference, and, supported by the NTUF and GEFONT, initiated a dialogue with the International Trade Union Confederation. It was a crucial step in bringing ANTUF into formalized union settings, achieved through an informal process facilitated by the ILO to bring cohesion to the union movement in Nepal. This was a defining moment in trade union unity and the maturing of labour relations in Nepal, strongly endorsed by the Maoist leader and former Prime Minister, Prachanda.

⁷⁰ ILO Interviews in October 2006 and March 2007 with Dev Prasad Gurung, Head of Policy and Central Committee Member of the CPN-M and former Minister for Local Development, Kathmandu.

⁷¹ Interviews in July 2018 with Pushkar Acharya, President of the NTUC; Yogendra Kumar Kunwar, General Secretary of the NTUC; Kamal Kumar Bista, President of the NTUC; Rajesh Palikhe, Deputy General Secretary of the NTUC; Baldev Tamang, Centre Member of the NTUC; Ganesh K C, Deputy General Secretary of the NTUC; and Kilanath Dahal, former Chair of the NTUC.

“I think, looking back retrospectively, our greatest contribution as a union to the peace process was in bringing the Maoist union into the mainstream. This laid the foundation for the peaceful and effective workplace relations and social dialogue we have today.”

Pushkar Acharya, President of the NTUC

4.2. Employers take a new direction

For the private sector, the realization that a new approach was needed was a wake-up call. An arduous road had been travelled and a more strategic approach to labour relations based on dialogue, agreement and consensus was ultimately chosen. This shift is well summarized by Shekhar Golchha, FNCCI’s Senior Vice-President:

There were plenty of good excuses for business to not negotiate the hard things like social security, minimum wages, etc. The business community can point to earthquakes, the chronic electricity shortages, among others, as current difficulties for business. But we ultimately felt we needed to bite the bullet and negotiate and institute the policy frameworks that could lead to stability in the labour market over the longer term.

At an operational level, company attitudes to workers gradually shifted through increased inclusivity, improving the gender balance and embracing a more open company culture, among others things.⁷² Human resources departments were set up and industrial relations professionals were recruited. Employers who had long complained of inter-union rivalry and competition welcomed a more cohesive and unified union movement. A new maturity in workplace relationships and policies emerged.

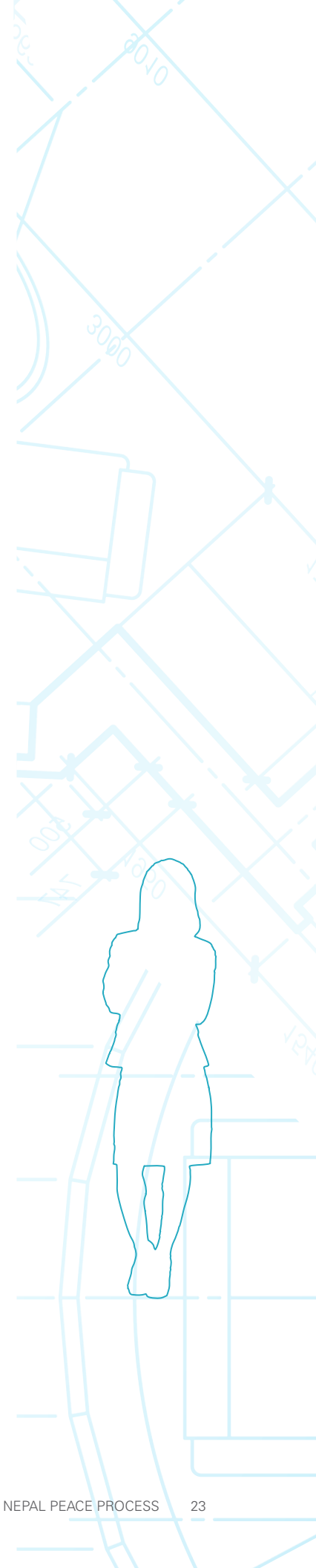
Some observers contend that the influence of the business community in the peace process was realized at a very late stage in the conflict.⁷³ One of the key recommendations from a recent case study on the Nepal peace process was for greater support to the private sector in promoting peace and facilitating dialogue and negotiation.⁷⁴ While the NBI was established in 2005 to support this role, views on its effectiveness are mixed. The overall conclusion of that case study was that the private sector could have been used in a more strategic and central way in efforts to end the conflict.

Could the private sector and its representative organizations have done more for the peace process and created a constituency for peace? This was a key question posed by business leaders during interviews for this case study. With hindsight, the answer is probably no. The reality is that the private sector and the employers’ organizations representing it were themselves on a learning curve.

⁷² An anecdote perhaps sums this up well. In the Nepali language there are four ways to address a person based on hierarchy and seniority. One company representative interviewed for this case study reported they now only permit one way for colleagues to address each other as part of a change in the company’s human resources policy.

⁷³ Dhakal and Subedi, 2006.

⁷⁴ Upreti and Sapkota, 2017.



4.3. Effective bipartism and tripartism emerge

Bipartite action – or rather collaboration between employers and unions – existed during the conflict period. In 2002, for example, the NTUC, GEFONT, DECONT and FNCCI reached a general consensus on key labour market issues that would form the basis of future discussions and negotiations. Progress in real terms was limited, although in 2003 employers agreed to an increase in the minimum wage, a significant development.

More often, bipartite collaboration between employers and unions occurred discreetly. For example, during the political rallies held by the FNCCI, the GEFONT did not formally participate but it was supportive of these efforts. Its members and some leaders felt that if they *formally* participated it could have done more harm than good, inciting a negative reaction from the Maoists.⁷⁵

Overall, it would be fair to characterize bipartism and tripartism as being present but not the effective force they could have been. To improve dialogue, it was decided to look at issues where common ground existed, such as Occupational Safety and Health (OSH).⁷⁶

OSH was a non-controversial subject with limited diverging views within trade unions, making it a good starting point for serious dialogue with business. Negotiations on OSH were successful and a Memorandum of Understanding between employers' organizations and trade unions was signed.

As both bipartite and tripartite dialogue developed, the mainstream unions struggled to maintain cohesion with ANTUF, which had no experience of labour relations or its associated machinery. During the negotiations on the Labour Act (signed in 2017 after a decade of negotiations), it was not unusual for the GEFONT or NTUC to side with employers on a particular issue or approach against ANTUF, which would often adhere to extreme views.

As was the case between business leaders and their Maoist counterparts, informal relations between the GEFONT and NTUC with ANTUF were utilized as an effective back channel to try and resolve difficult issues. This was extremely important in seeking to ease tensions and decrease violence both at the workplace and against other union leaders.

4.4. New environment for industrial relations

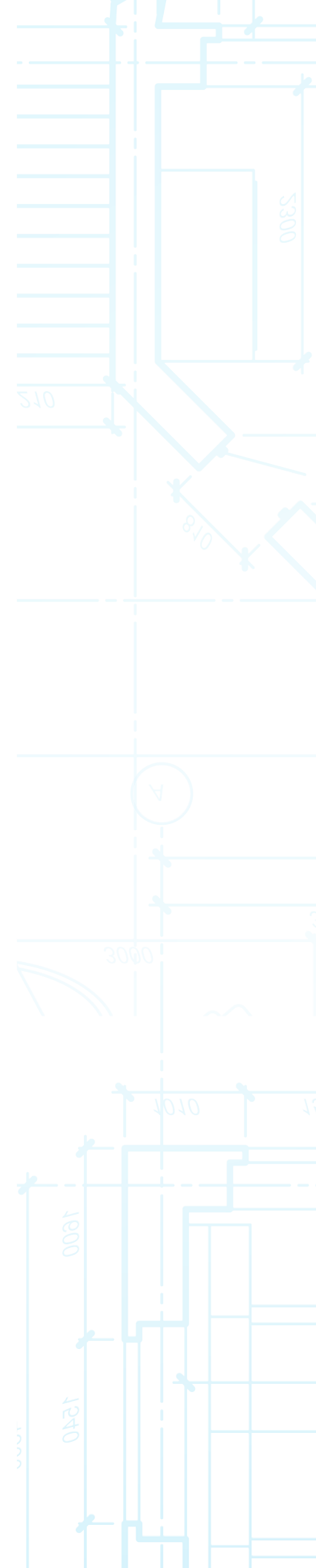
A relatively accurate observation of the industrial relations environment in Nepal historically is that longer term strategic thinking has traditionally been absent. Quick fixes and quick wins were the order of the day. This is no longer the case. Both social partners are taking a more strategic and long-term view of workplace relations – a highly positive development.

In 2017 two major pieces of legislation, the Labour Act and the contribution-based Social Security Act, came into being.⁷⁷ The resolution through consensus of what were effectively the core socio-economic issues at the heart of the conflict is an achievement whose scale is hard to exaggerate. According to a majority of the trade union leaders interviewed for this case study, weak application of labour laws, including the lack of respect for basic rights at factory level and contracts for workers, were key triggers for the insurgency. The legislation caps 20 years of struggle and violence.

⁷⁵ Interview with Ramesh Badal, Vice-President of the GEFONT, in July 2018.

⁷⁶ The same applied to efforts to strengthen union unity, particularly with the ANTUF, whereby issues that were the least ideologically driven were chosen.

⁷⁷ This entails a 20 per cent contribution from employers and an 11 per cent contribution from workers.



From the employer side, the new labour law resolved some of the significant issues they had complained about in the past, notably around permanent contracts and dismissal. Both employers and unions are now largely in agreement on the strategic objectives of the labour law, such as developing legislation that can *actually be applied* rather than legislation that risks or facilitates widespread evasion.

Box 4: A win-win situation for employers and workers

In 2017, following years of tripartite efforts, the Government of Nepal enacted a new labour law that addressed workplace issues and is seen as a win-win result for both workers and employers.

The Labour Act 2017 (Article 127) provides for the following: 1) In the case of an illegal strike, no wages at all are paid for the duration of the strike. 2) In the case of an illegal lock-out, full wages are paid for the duration of the lock-out. 3) In the case of a legal strike or lock-out, half wages are paid for the duration of the strike or lock-out. Moreover, the Act incorporates new social protection measures, including gratuity, accident and sickness benefits and a pension fund. The Act also includes provisions that improve workers' rights in terms of OSH and unfair dismissal.

The legislation provides employers with greater flexibility in terms of hiring, allowing them to use seven modes of recruitment according to their needs, namely, regular, work-based, time-bound, casual, part-time, intern and trainee. Employers can terminate contracts if workers' performance reviews are unsatisfactory three or more times.

Source: ILO, 2019a.

For trade unions, the legislation provides better rights for workers. For employers, the law is not seen as being overly restrictive, while limiting the scope for avoidance and thereby creating a level playing field for all.⁷⁸ Tripartite relationships today are characterized as good and the number of strikes is very low, a dramatically changed picture from even five years ago.

During interviews for this case study, both employers and union leaders emphasized the importance of the recent collective agreement on social security. Workers will now receive a “social security number” that will formalize the system and be a critical entry point for accessing a host of benefits. With only around 5 per cent of workers receiving social security this has the scope to be a game-changing reform. Many workers, for example, still prefer to work on piece rates as daily labourers because they can earn more this way than through formal job arrangements, where there have been few guarantees they will actually receive any benefits.⁷⁹

Minimum wage agreements also reflect a more mature industrial relations approach. The latest minimum wage accord was agreed by consensus in July 2018 at a relatively high rate, increasing by 38 per cent to 13,450 Nepalese rupees per month (about US\$121 at that time). For employers, the agreement promises big dividends, including increased stability and predictability in the labour market, hugely valued by the private sector. There is also a strategic element at play, with “give and take” compromises facilitating a discussion on productivity, which is relatively low in Nepal by regional standards. It should be noted that not all business sectors were happy with the minimum wage agreement, in particular the exporting sectors.

⁷⁸ Interview with Bharat Acharya, Vice- Chairman of the Employers Council of FNCCI, in July 2018.

⁷⁹ The other significant legislative change is that salaries have to be paid by cheque, which will also help formalize the process.

Over the past five years trust has been built slowly but incrementally. Industrial relations have become much more friendly and efficient – a remarkable achievement by all the actors involved.

4.5. Role of the ILO

The ILO, through its office in Kathmandu, maintained a sustained engagement in trying to resolve the insurgency and disaccord that were a defining feature of labour relations in Nepal. Importantly, also, it remained a facility for social partners to utilize, with different levels of intensity as required at different periods in the conflict.

“Our approach at that time was threefold. First, to maintain continual dialogue with all our constituents (the Government, workers and employers); second, to provide a safe space for dialogue as and when it was needed; third to trust our systems and approaches for conflict resolution and dialogue and make these available to our constituents.”

Leyla Tegmo-Reddy, ILO Country Director (2000-05)

Between 2002 and 2008, the ILO consistently provided the space for inter-union dialogue and bipartite dialogue between employers and trade unions.⁸⁰ A number of participants from both the unions and employers recalled the highly charged atmosphere of these initial dialogues, where there was often a real threat of violence. Providing a safe and neutral venue in a controlled environment for what were inevitably tense discussions was extremely important for developing the effective labour relations that exist today in Nepal.

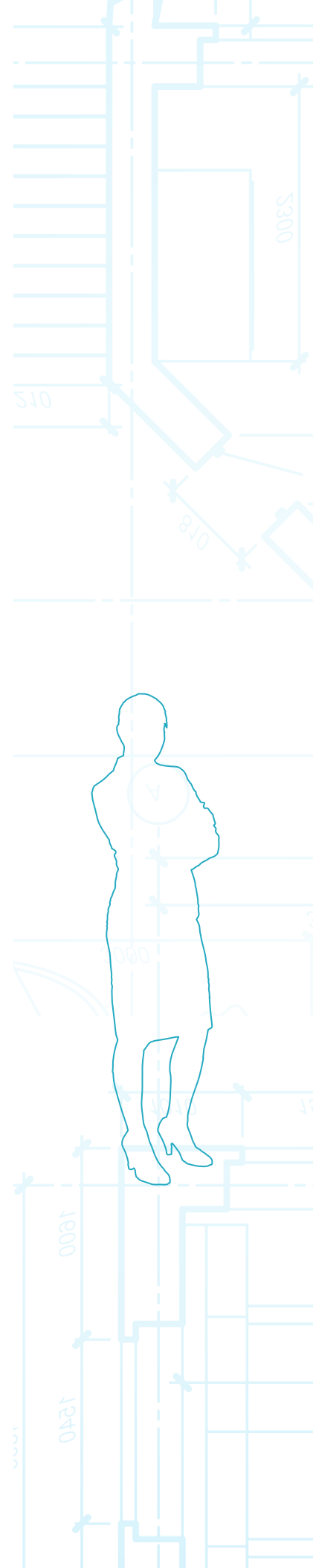
The ILO was able to play this role because it had attained a level of credibility within the country as a balanced actor not championing any particular agenda. Additionally, it had brought about inclusive workplace relations based on Decent Work for All principles.

The ILO consistently supported the need for a broad package of reforms that would balance the concerns of both employers and trade unions and thus be politically viable. In 2002, for example, the ILO made the following proposal for the Poverty Reduction Strategy Paper and Tenth Plan for Nepal:

Given the complexity and diverse nature of the industrial relations problems existing in Nepal (...) it may be desirable to consider an integrated package of reform measures. An integrated approach to reform may also provide scope to secure concessions from all the parties involved and achieve consensus. For example, one of the first priorities should be to reconcile employer concerns about the restrictive nature of current labour laws and trade union concerns with the failure to implement the laws and the provisions of collective agreements. The possibility for a compromise deal between unions, employers and the Government over these issues should be explored.⁸¹

⁸⁰ See paper by R. Saloman: *Social Dialogue in Nepal*, International Labour Organization, April 2007. This paper describes the series of dialogues facilitated by the ILO between 2002 and 2005 involving the FNCCI, NTUC, GEFONT and DECONT on these issues.

⁸¹ ILO, 2002.



In particular, the ILO was able to provide critical assistance to the major trade unions (the NTUC and GEFONT) in their efforts to bring the Maoist trade union into the mainstream. The ILO facilitated these efforts, which were initiated at the 2007 International Labour Conference in Geneva, and consequently supported the process with a technical package of support.⁸²

Equally important is the value attributed to the ILO's actions by its employer constituents. The FNCCI and CNI leadership are highly complementary about the strong role that the ILO played in supporting dialogue-based approaches and increased cohesion on union benches. In their view, it was a decisive role.

A strong legacy of the ILO's work is the high esteem in which the organization is still held in Nepal by employers and trade unions alike, thanks to the technical support they received.

On behalf of the people and the Government of Nepal, I would like to thank ILO and you for your support to our struggle for the restoration of democracy and human rights in Nepal. The historic "People's Movement II" in 2006 has eventually established sovereignty of the people! Now we need to consolidate the gains of the democratic movement.

Letter from G.P Koirala, Prime Minister of Nepal, to Juan Somavia, Director General of the ILO (May 2006)

⁸² In June 2007, ANTUF sent an observer to the annual International Labour Conference in Geneva. This was a key turning point in bringing the Maoists into the mainstream.



POLICE
NATIONALE

POLICE
NATIONALE

5. Conclusion

The Constitution that took effect in Nepal in 2015 was the culmination of a decade of difficult negotiations. For the trade union leaders interviewed for this case study, the core principles, values and rights it enshrines represent the biggest achievement. The peace process ultimately introduced political and legal stability alongside elements of more inclusive political decision-making.

Due to the fact that 60 per cent of the Constituent Assembly's seats were elected under the proportional system, with quotas for marginalized groups, disadvantaged groups have been adequately represented in the legislature.⁸³ Voices previously outside of political discourse are now involved. This is a highly positive feature. While much progress remains to be made, gender indicators are improving, in particular in political representation.

Decentralized government through the new federal government can be viewed both positively and negatively.⁸⁴ However, looking at the political situation through a historical lens, there is now an almost unprecedented level of stability. The ten-year constitutional process is complete. The current Government, elected in 2017, has a five-year mandate. The new political stability feeds across the wider polity, which is a critical point. One business leader remarked: "In the past the business community was used to weak governments, because they changed so much (...), now we have a stable five-year government. It is a different scenario. We have not seen this in the recent past. It is new."

Business taxation policy, macroeconomic policy and bureaucratic red tape are increasing concerns for the private sector. In particular, with the new federal structure, there is uncertainty around double taxation at the different levels of government. Nevertheless, for businesses, the mood is positive. The Government has a jobs agenda and is under pressure to deliver on it. The Government also has a good understanding of the role, needs and contributions of the private sector. According to business leaders, the Government is now much more practical and willing to engage with the business community.

Nepal remains one of the poorest countries in the world, with per capita Gross Domestic Product (GDP) of US\$1,003 (in 2018) and remittances representing almost 28 per cent of the country's GDP (in 2017).⁸⁵ According to the 2018 Human Development Report, Nepal ranked 149th out of 189 countries.⁸⁶ Over 70 per cent of the workforce is involved in the informal economy.⁸⁷ Despite these conditions, the economy is strengthening, growing at 7.4 per cent in 2017, and foreign direct investment has more than doubled since 2010.⁸⁸

⁸³ The 2015 Constitution reduced the percentage of seats allocated through proportional representation to 40 per cent.

⁸⁴ In interviews conducted in July 2018, the NTUC attached a great deal of importance to decentralization (federalism) because this would increase access to public services at local level. This structure could be difficult for businesses, however, as there are 736 levels of government that are developing their own taxation system.

⁸⁵ Ceic Data, 2019; World Bank, 2019.

⁸⁶ UNDP, 2018.

⁸⁷ ILO, 2019b.

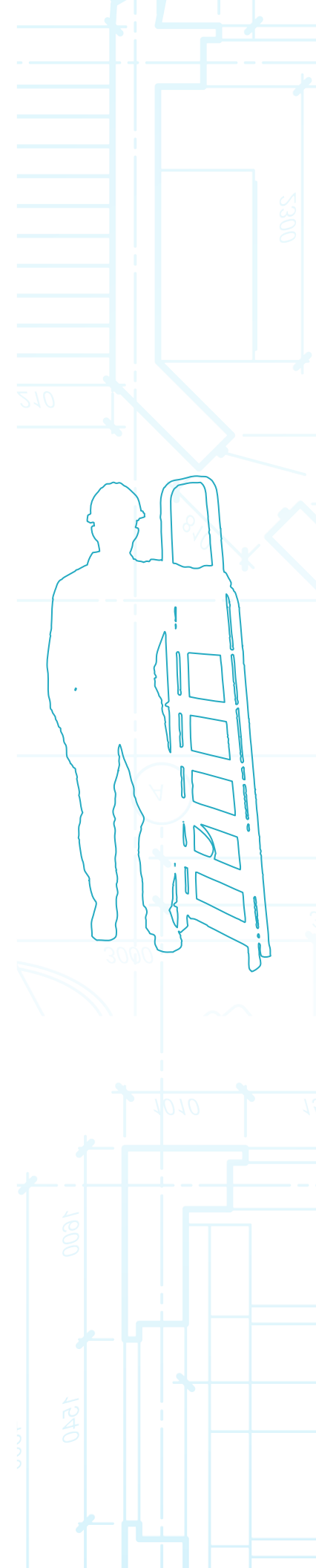
⁸⁸ World Bank, 2019; ADB, 2019.

The labour market and workplace issues, so long volatile, are now stable.⁸⁹ Trade unions are more unified and their relations with employers and the Government are good.⁹⁰ This is a further pull for potential investors.

A wider consequence of peace achieved by social partners is the potential impact of this approach on other interest groups. If the industrial relations system can become functional and start to deliver equitable and balanced outcomes, this might then influence other groups to resolve their grievances through dialogue.

The current challenge for social partners is how social dialogue processes flow in the new governance structures at provincial, municipal and district levels. While social dialogue is strong at the central level, it is less so at those other levels.⁹¹

These challenges aside, the striking finding that emerged in the interviews conducted for this case study with both employers and union leaders is the similarity of their views. Despite the tragedy of the insurgency and the massive loss of life, many positive outcomes have emerged. Clearly, many lessons have been learned from the workplace turmoil over the past two decades. Those lessons are now a useful resource for the new generation of decisions-makers.



⁸⁹ For example, the Arbitration Court has had only a handful of cases in the past five years, which is a good indicator of stability.

⁹⁰ As of 2019, the three main unions are the NTUC, GEFONT and ANTUF. The latter two are in the process of merging. Trade unions in Nepal remain politicized and highly influential. ANTUF remains allied with the political party in power.

⁹¹ Interview with Narayan Bhattarai, ILO's National Project Coordinator, in July 2018.

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Annex I. List of interviewees

The following stakeholders were interviewed in Kathmandu, Nepal, in July and December 2018.

All Nepal Trade Union Federation (ANTUF)

1. Mr Ganesh Regmi, Chairperson
2. Mr Dhan Banadur BK, Vice-President

Confederation of Nepalese Industries (CNI)

3. Mr Megh Nath Neupane, Director General

Federation of Nepalese Chambers of Commerce and Industry (FNCCI)

4. Mr Shekhar Golcha, Senior Vice-President, FNCCI
5. Mr Chandra Prasad Dhakal, Chairman, Employers' Council and Vice-President FNCCI
6. Mr Bharat Raj Acharya, Vice-Chairman, Employers' Council, FNCCI
7. Mr Hansa Ram Pandey, Deputy Director General, FNCCI

Garment Association of Nepal (GAN)

8. Mr Bhupal Basnet, Vice-President
9. Mr Rajesh Lamichhane, CEO

General Federation of Nepalese Trade Unions (GEFONT)

10. Mr Umesh Upadhayay, Former Secretary General
11. Mr Ramesh Badal, Vice-President

International Labour Organization (ILO)

12. Richard Howard, Country Director
13. Prakash Sharma, National Project Coordinator
14. Mr Narayan Bhattarai, National Project Coordinator
15. Salomon Rajbanshi, Senior Programme Officer

Joint Trade Union Coordination Centre (JTUCC)

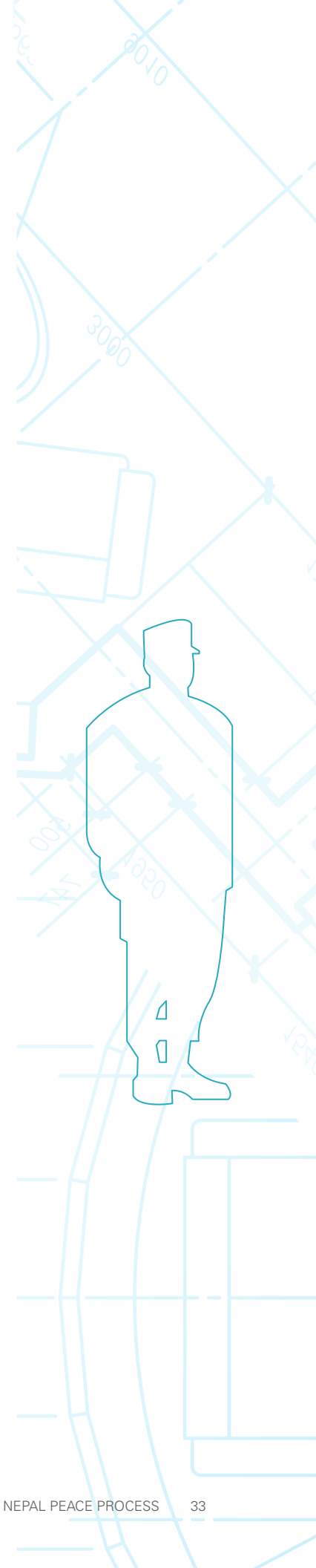
16. Mr Bishwa Nath Pyakurel, President
17. Mr Chirag Man Singh Kunwar, General Secretary
18. Ms Deepa Dawadi, Executive Director

National Business Initiative (NBI)

19. Mr Kush Kumar Joshi, Vice-President
20. Mr Monish Bajracharya, Programme Manager

Nepal Trade Union Congress (NTUC)

21. Mr Pushkar Acharya, President
22. Mr Yogendra Kumar Kunwar, General Secretary
23. Mr Kamal Kumar Bista, Lalitpur District President
24. Mr Rajesh Palikhe, Deputy General Secretary
25. Mr Baldev Tamang, Centre Member
26. Mr Ganesh K C, Deputy General Secretary
27. Mr Kilanath Dahal, Former President





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