Power-Balance in Post Conflict Intrastate Negotiation

Effect of Symmetry and Asymmetry on Efficiency and Gains

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The Effect Of Symmetry and Asymmetry on Efficiency and Gains in the case of Nepal and Sierra Leone.
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Power balance in intrastate negotiations, effect of symmetry and asymmetry on efficiency and gains

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IV
Abstract

More than half of interstate wars are resolved by negotiations. On the other side, only 15% of intrastate wars are resolved by negotiations. In terms of power balance, it has been shown that perceived equals negotiate less efficient than perceived unequal’s in interstate conflicts. It has also been shown that the less empowered parties emerge with better than expected results in asymmetrical interstate negotiations. Are these findings reflected in intrastate peace negotiations? In attempt to shed light on this question I have investigated the post-conflict constitutional processes in a perceived symmetrical case, Nepal, and a perceived asymmetrical case, Sierra Leone. Constitutional processes are negotiations. Thus, the powersharing arrangements that follow constitutional processes are a result of negotiators interest and the actor’s leverage during the negotiations. As predicted, perceived symmetry negatively affected the efficiency of negotiation, while asymmetry facilitated the process. Interestingly, the resulting power-sharing agreements in Sierra Leone did not seem to follow the predicted pattern. However, in a wider perspective that includes consequences of the agreement that goes beyond the initial time frame of the agreement, the weaker part did emerge with better than expected outcome. In that perspective the theoretical suggestion is valid. Importantly, these observations rely on a careful assessment of initial power balance and a wider perspective of the outcome than what is usually provided in the negotiation literature. A failure to completely assess the initial structure and the actual long-term outcome may lead the researcher to the wrong conclusion.
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1.0 INTRODUCTION

1.1. RESEARCH QUESTION

The dynamics of the constitutional process is essential to the resolution of post conflict powersharing arrangements adopted in a state (Horowitz 2008). Donald Horowitz argues that under certain conditions\(^1\), constitutions are assumed to be a product of fear, constraints and interest. Ultimately, constitutional processes are negotiations (Horowitz 2008).

Addressing the adherent relevance of the constitutional process on the outcome of powersharing designs, Anne van den Heuvel (2009) confirms that constitutional process is a negotiation process. Thus, the powersharing arrangements are to a great extent a result of negotiators interest and each actor’s leverage during the negotiations. However, her analysis reveals an additional detail: In the cases of Iraq and Afghanistan, those parties empowered during the first interim period enjoyed posing a larger impact on the final powersharing design than their weaker counterparts (van den Heuvel 2009). This may entail a reduced significance of constitutional process in powersharing while enhancing the relevance of power relations between the parties (van den Heuvel 2009). Importantly, it may also imply that the stronger actor prevails in the case of constitutional processes.

Supposing that the powerful prevails, we are left with the following structural paradox: “Why and how is it that weaker states negotiate with strong ones, when they by all counts should loose, since common wisdom has it that the stronger side wins” (Zartman and Rubin 2000, 271). In their book Power and Negotiation (2000), Zartman and Rubin examine the structural paradox by analysing nine cases of international negotiation. Contrary to what would be expected, they find that perceived unequal’s negotiate more efficiently than perceived equals do. Furthermore, the less empowered emerges with

\(^1\) Following Horowitz considerations, post conflict constitutions are made in times of crises; the parties to the process often operate under severely limited timeframes, and with little or no prior knowledge of constitution making. In addition, a repetitive use of a constitutional model is rather uncommon, undermining the value of passed on “know-hows” (Gberie 2005, 96)
considerable gains and better than expected results. Thus, assuming constitutional processes are in fact negotiations, I will investigate how perceived power can affect constitutional processes. This revolves in the following question of inquiry:

_To what extent can Zartman and Rubin’s findings on perceived power distribution be applied to explain the constitutional process and outcome of Sierra Leone and Nepal?_

This thesis leans on the two cases of intrastate negotiation, the case of the Lomè agreement in Sierra Leone and the on-going constitutional process in Nepal. Both of which have already led to, and are expected to lead to a power-sharing arrangement in the future.

1.2 LITERATURE REVIEW

1.2.1 NEGOTIATION

Historically, the early literature on negotiation was dominated by an emphasis on a “win or lose” aspect, heavily influenced by the realist tradition in international relations and economic theory (Hopman 1996). Classic examples are the German philosopher Arthur Schopenhauer’s “The Art of Controversy” (Schopenhauer and Saunders 2004) and Thomas Schelling’s “Strategy of Conflict” (1960). Recent literature advocates a more liberal framework, including mutual beneficial outcomes and integrative bargaining (Hopman 1996, 24, e.g. Nash 1975, Sebenius 1984). A Post Cold War illustration of this is the work of Zartman (1995), which is focused on “resolving rather than combating internal conflict” (Zartman 1995, 332). Despite of this shift, it is the early literature which is considered to be the foundation on which most of the subsequent theories has emerged (Hopman 1996, 24).

Contemporary negotiation literature is highly multifaceted. Theorists and practitioners have developed and employed various different approaches, each of them reflecting particular aspects of the discipline from which they emerged. Thus, there seems to be no single dominant analytical approach (Zartman 1988). A political scientist scholar who point to this is Oran R. Young (1975). Young argue that due to different approaches, conceptualizations and aspects of emphasis, there can be no talk of “the theory of bargaining” (Young 1975, 5).
In The 50% Solution (Zartman 1976), Zartman echoes Young and identifies seven approaches within the field of negotiation theory. These seven are later reduced to five in the article “Common Elements in the Analysis of the Negotiation Process” (Zartman 1988). The main approaches, according to Zartman are: structural analysis, strategic analysis, process analysis, behavioral analysis and integrative analysis (Zartman 1988). Furthermore, he suggests that there is a common understanding of negotiation process and that scholars already use it (Zartman 1988). In addition, he argues that the different approaches only goes to show that there are different ways of talking about the same phenomenon. Zartman considers the approaches to be both overlapping and complimentary. In short, he claims the baseline for analyses is the same for all approaches, namely to find how negotiated outcomes may be explained (Zartman 1988).

In a structural analysis, power as an explanatory variable for a negotiated outcome is frequently examined. (e.g. Hopman 1996, Zartman and Rubin 2000, and Wriggins 1987, Bacharach and Lawler 1988 and Habeeb 1987 in Zartman 1988). According to Zartman and Rubin (2000), there are two main schools of thoughts. One argues that entering the negotiation, and the process of negotiation itself functions as an equalizer, producing roughly power symmetry between the actors involved. The opposing school claim that power matter, both in the process of negotiating and on the final outcome (e.g. Pfetsch and Landau 2000). Moreover, the latter group takes on two different directions: some researchers claim that power symmetry is the most advantageous condition for generating efficient negotiations and mutually beneficial outcomes (Zartman and Rubin 2000, 4-5, e.g. Rubin and Brown 1975, 199, Zartman 1995, 8, Pfetsch and Landau 2000, 40, Kritek 1994). Besides the effort of Zartman and Rubin (2000) the opposite claim, that asymmetry makes the best condition for negotiations, is rarely made. This without it being intuitively clear why (Zartman and Rubin 2000, 5). Also, analysis of asymmetry in negotiations can generally be characterized by instructions for the involved actors, especially for the weak (e.g. Habeeb 1988, Kritek 1994, Hopman 1996, Hopmann 1978).

Given the potential costs of civil conflicts, negotiation literature relating specifically to an intrastate level of analysis receives considerable attention. Regardless of the relative small number of civil wars being terminated by negotiation compared to that of
interstate wars (Downes 2004), literature on the utility of negotiated settlement as a mean in terminating civil wars is vast (e.g. Licklider 1995, Walter 1997, Hartzell, Hoddie, and Rothchild 2001, Sambanis 2000).

A important contribution, which combines a structural approach on an intrastate level of analysis, is the book Elusive Peace: Negotiating an End to Civil Wars (Zartman 1995). In this process-oriented negotiation analysis the authors examine internal conflicts and negotiation for peace along the lines of structure, dynamic and tactics. Their work immediately takes on a normative character by establishing, however not uncontested (e.g. Toft 2010), that negotiation is the most appropriate measure to end civil wars. The aim is thus to identify variables making negotiation and mediation favorable. It is initially suggested that despite it being the best option, few internal wars are settled by negotiation. According to the authors, an asymmetric power relation between the government and the opposition may explain this. This claim is further supported by the observation that parties tend to negotiate in a dynamic situation of equality, producing a mutual hurting stalemate (Zartman 1995). The analysis is conducted over a number of cases, including South Africa where the analysis of power relations is preformed in a constitutional process. However, it seems the case studies emphasize the conditions necessary for the parties to enter the negotiations (ripeness theory3), and is to my understanding, less concerned with the expected behaviours and outcome caused by asymmetric power dynamics.

1.2.2 POWER-SHARING
Assuming that majoritarian democracy is a stimulant for interethnic conflict, practitioners and academics have promoted power-sharing; a variety of institutional arrangements aiming to accommodate peace in deeply divided societies.

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2 11 cases in all: Sri Lanka, Spain, Sudan, Eritrea and Ethiopia, Lebanon, South Africa Angola, Mozambique, Afghanistan, Colombia and the Philippines.
3 Ripeness is a necessary but not sufficient condition for entering negotiation. It is a perceptional event, thus relying on the parties to regard the current situation as a mutual hurting stalemate in which neither of the parties can brake out, challenging them to seek a way out (Horowitz 2008).
The two main models described by the literature are consociationalism and centripetalism (Horowitz 2008). Associated with the consociational approach is the work of Arend Lijphart (1977). He finds that majoritarian democracy is preferable in low-pluralism societies, while in societies with an increasing pluralism based on ethnic, religious and ideological cleavages, consociational democracy is preferable for the purpose of creating stability (Lijphart 1977, 237-238). One of consociationalism’s most visible opponents Donald Horowitz represents the other main model known as centripetalism. Established as a critique of the consociational approach, Horowitz theorizes that the essential feature interethnic cooperation is imperative for electoral success, which he believes makes the centripetalist approach superior compared to the consociationalist model (Horowitz 2008, 1219, see also: Riley 2002).

Brian Barry, another critic of the consociational approach, suggests based on the case of Canada and Northern Ireland that matters are made worse by applying consociational arrangements (Barry 1975). He proposes a model simply consisting of moderate behavior across the conflicting parties and the continuation of majority rule (Barry 1975, 411). Given his suggestion it appears as Barry opposes powers-sharing altogether.

It appears that the current debate among theorists of power-sharing does not only concern itself with the available power-sharing configurations to accommodate conflict. The literature also indicates a discrepancy between the popularity power-sharing has gained as a tool for conflict management and, on the other hand, observations indicate a lack of effectiveness in promoting interethnic cooperation.

In their description of the two models centripetalism and consociationalism Philip Roeder and Donald Rothchild introduce the terms soft and hard guarantees. Furthermore, Roeder and Rothchild introduce some key issues, such as; limitations on competition, power-sharing arrangements provide for institutional weapons, reinforcement of ethnic cleavages, second-generation problem, governmental

4 Also referred to as opportunities and mandates (Zartman 2001)
5 The replacement of politicians is likely to reduce the commitment to the negotiated agreement (Rothchild and Roeder 2005, 31)
inefficiency, governmental rigidity and inadequate enforcement. All of which, potentially will pose a threat to the solidification of peace and democracy (Rothchild and Roeder 2005, 36-41). In addition, they point to conditions necessary for success, e.g. elite dominance, culture of accommodation, stable demography and economic prosperity and equality. These are properties which are highly unlikely to be present in societies characterized by ethnic conflict and civil war (Rothchild and Roeder 2005, 41-46).

Rothchild and Roeder reason that in the case of intense conflict immediate power-sharing appears as vital for conflict settlement. In times of crises the arrangements are compromises to which all parties can agree. Nevertheless they conclude, with only a few exceptions to the rule\(^6\), power-sharing agreements tend to be short-lived; the transition to a cooperative culture and democracy often fails and it may contribute to the recurrence of civil war (Rothchild and Roeder 2005, 50).

Brandon Kendhammer also points to the limitations of power-sharing arrangements. Assessing the case of Nigeria, Kendhammer suggests that the power-sharing arrangements serve to strengthen the ethnic cleavages, thereby reducing the outlook on developing a “state-nation” (Kendhammer 2014, 414). Furthermore, it is argued that the implementation of power-sharing agreements adds predictability, thus opening doors for political entrepreneurs. “Peace” will be the currency, expected to buy state-power for insurgents (Tull and Mehler 2005). The opposing view, that political power-sharing arrangements are superior, is represented by Mattes and Savun (2009).

While parts of the literature portrays a rather negative picture of the classical models of power-sharing and its abilities to create sustainable peace, two relatively new options are introduced as to mitigate for their associated weaknesses; power-dividing (Rothchild and Roeder 2005, 6), and complex power-sharing (Wolff 2007). Rothchild and Roeder argues that power-dividing, due to its property of multiple-majorities and extensive human rights bills, is more likely to produce viable peace and democracy under conditions associated with civil conflict. Moreover, the authors argue that power-sharing works in accordance with its purpose only when being a small part of a power-

\(^6\) E.g. South Africa
dividing framework (Rothchild and Roeder 2005, 65). In short, “Power Dividing Explains Powersharing Success” (Rothchild and Roeder 2005, 65). The notion of power-dividing is still fairly new, and has not yet received much scholarly attention and, to my knowledge, far less empirically testing. However, based on the efforts made by Valentin Gold (2011), there seems to be no support for the claim presented by Rothchild and Roeder. Gold contends that the effect of both models, power-dividing and powersharing vary, and are context specific (Gold 2011).

Stefan Wolff (2007) introduces a middle road; he emphasizes the need for a combination of institutional arrangements and advocates for what he refers to as complex power-sharing. Wolff defines complex power-sharing as a method of conflict management including some form of self-governance at its core, but whose overall institutional design comprises consociationalism, centripetalism and power-dividing. However, as pointed out by Wolff himself, there is still too little real world evidence to infer that complex power-sharing is a long-term stable solution (Wolff 2007, 390).

In sum, there is no consensus on which configuration of power-sharing institutions will most likely succeed. Neither is there any general consent that power-sharing will provide for a stable transition to durable democracies. However, there seem to be a tendency on agreeing that some kind of power-sharing arrangements is most likely to be employed to secure peace, however short-lived.

1.2.3 RESEARCH DESIGN
Based on a series of international negotiation case studies, Zartman and Rubin suggest, that asymmetrical power relation is the best condition for negotiations. Moreover, they argue that the weak do not only take on the strong, but also acquire considerable gains and better results than expected (Zartman and Rubin 2000). However, their propositions may be challenged by Anne van den Heuvel (2009), who suggests that the actor first empowered during the interim period of a constitutional process is more likely to pose a bigger impact on the power-sharing design than its weaker counterpart. This may, contrary to the propositions presented by Zartman and Rubin indicate that the weak do not succeed in intrastate negotiations to the same extent as they are shown to do in interstate negotiations. Based on this potential contradiction, this thesis will examine to what extent Zartman and Rubin’s notion on power in negotiation can explain the constitutional processes in Nepal and Sierra Leone.
To establish knowledge gaps with any certainty is a challenging task at the least, and possibly even more so in the context of writing a master thesis. However, to my knowledge, there are no prior studies that has raised or answered this specific question using the cases of Sierra Leone and Nepal. Furthermore, as already noted, the literature on power-sharing concerns itself primarily with the outcome, and has a tendency to neglect the process itself. Thus, I find it reasonable to employ a case study method.

1.2.4 THE CASE STUDY
Methodologists often frown upon the case study as a research design. It is frequently subjected to harsh criticism and is often characterized as having a “loosely framed and non-generalizable theories, biased case selection, informal and undisciplined research designs, weak empirical leverage, subjective conclusions, non-replicability, and causal determinism” (Gerring 2007, 6). This quote basically sums up the most apparent pitfalls in creating a valid and general inference, which is considered the main goal for most research.

There are, unquestionably, concerns and certain trade-offs regarding the use of case study design compared to a broader cross-case design. The primary concern is that case studies tend to suffer from poor external validity: the challenge of representativeness between a sample and a population (Gerring 2007, 43). In other words, conclusions derived from studying one, or a limited number of units intensively, may not be uncritically transferred to a broader population. However, establishing the accuracy of a causal relationship, referring to one or a few cases, is more straightforward compared to a large sample. Consequently, the internal validity increases (Gerring 2007, 43). Moreover, based on the inherent quality of being exploratory of nature, case studies are more often hypothesis generating than hypotheses testing (Gerring 2007, 39). Case studies provide for a comprehensive insight into the causal mechanisms leading to the outcome (Gerring 2007, 43), and they allow for an in-depth analysis, generating more information about less, compared to less information about more (Gerring 2007, 49). Thus, it is reasonable to argue, although a small N qualitative research intuitively would seem to be less conclusive compared to a cross level analysis, it is not given that case studies are completely useless, as the quote may imply.
Case studies often have combined aims, as goes for this thesis as well. On one hand, it is hypotheses testing when investigating the applicability of Zartman and Rubin’s propositions on an intrastate level, which would call for a *hypotheses testing case study* (Levy 2008, 6). On the other hand, the *hypotheses generating* aspects of this research should not be overlooked. Zartman and Rubin’s propositions will guide the empirical study of the constitutional processes, which can subsequently be used to further develop the propositions. An in-depth research design will aim to identify alternative explanations, thus contributing to the process of further theory construction (Levy 2008, 5-6)

It becomes evident that to establish a clear-cut case study typology employed in the context of any research is neither straightforward, nor may it be desirable. However, involving both a testing and generating purpose, a plausibility probe is probably the most appropriate characterization of the case study method employed in this master thesis. According to Jack Levy plausibility probes can be compared to pilot studies in experimental or survey research (2008, 6). It allows for the sharpening of hypotheses, evaluating the fitness of a case for testing a theory prior to initiating a high cost research effort, and it has a function in theory development (Levy 2008, 6-7). The plausibility probe is criticized for invoking an instance of avoiding responsibility. Nevertheless, Eckenstein has (Eckestien 1975 in Levy 2008, 7) argued that social science would profit from plausibility probes as an intermediary stage prior to engaging in a time and cost consuming empirical test.

Gerring defines case study as “the intensive study of a single case where the purpose of that study is – at least in part- to shed light on a larger class of cases” (Gerring 2007, 20). In sum, exclusively based on the weaknesses of using a case study design, the establishment of a general inference may prove impossible. However, I am convinced that the case study has a basal scientific value as long as the study is directed towards making an analytical generalization. As put by Kvale: “a thorough assessment of the extent to which the research results provide guidance on likely outcomes of similar situations” (Kvale 1997, 228).

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7 Translated by Kim Jacqueline Sliper from “En velovervejet bedømmelse af I hvilken grad resultaterne fra undersøgelse kan være vejledende for, hvad der kan skje i en annen situasjon” (Rothchild and Roeder 2005, 38)
1.2.4.1 CASE SELECTION

According to James Mahoney and Gary Goertz (2006, 239) qualitative researchers often select their cases based on their outcome. This may not come as a surprise, given that their aim is to explain these particular outcomes. However, the practice of selecting cases exclusively on the dependent variable has been severely criticized (e.g. Geddes 1990, King, Keohane, and Verba 1994). Although this criticism was countered with explanations of why selection of cases with no-variance on the dependent variable is appropriate (e.g. Dion 1998, Braumoeller and Goertz 2000), the inclusion of negative cases in qualitative research is widely considered to be a more valid design.

Measures are taken to boost the leverage of case study designs, Gerring (2007) claims that “the real world of social science reveals that few studies are innocently Y- or X- centered” (Gerring 2007, 72). Social science research is often motivated by a hunch - sensing some kind “fishy business” pertaining to a certain or a few cases. The choice of looking into the applicability of Zartman and Rubin’s proposals on constitutional processes is driven by such a hunch, kindled by the additional finding as presented by van den Heuvel. However, considering that this study resembles a plausibility probe, the case of Sierra Leone and Nepal are given by empirical facts, they both have undergone constitutional processes, and are chosen primarily based on their value on the independent variable: difference in power between the negotiating parties (asymmetrical/symmetrical). I believe that these cases will allow me to test the probable validity of Zartman and Rubin’s propositions regarding each of the two power relations.

The historical case chosen for this thesis is the case of Sierra Leone, and the making of the Lomé agreement in 1999. This case illustrates an asymmetrical negotiation process, consisting mainly of the government of Sierra Leone and the Revolutionary United Front. The second case is the constitutional process of Nepal. This case illustrates near equal negotiations between the Maoists and the coalition Nepali Congress-United Marxist Lenists (NC-UML) in the first and primarily second Constituent Assembly (CA I/II) of Nepal. Its main mandate was to promulgate a new constitution by 22nd of January 2015.

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8 Referred to as “positive cases” (Kvale 1997, 228)
2.0 THEORY

2.1 THEORY I: NEGOTIATION THEORY

2.1.1 THE STRUCTURAL APPROACH AND IT`S PARADOX
The structural approach to negotiation analysis has its intellectual roots in political theory and military strategy. More specific it is anchored in the school of classical realism and the writings of well-known figures such as Machiavelli, Mearsheimer and von Clausewitz. Central to classical realism is the idea that the strong will prevail. Power accommodates the relative capability of one actor to constrain or to exercise control over another actor (Alfredson and Cungu 2008, 9,10). Or as portrayed in the famous words of Thucydides “the strong do what they can and the weak suffer what they must” (Thucydides: and Crawley 1910). Equally, power is considered the single most conclusive variable for any outcome in a structural approach to negotiation theory (Alfredson and Cungu 2008, 9-10)

Structural analysts emphasize the means brought to the negotiation by the negotiation parties, which in turn is believed to secure the actors individual gains. Thus, the structural analysis is often characterized as a deterministic approach, viewing the negotiated outcomes a priori once the structural aspects are known. However, reality displays a wide range of outcomes, even in negotiations comprising the unquestionably strong against the weak (Alfredson and Cungu 2008, 9,10). This puzzle makes the backdrop of the structural paradox, “why, and how is it that weak states negotiate with strong ones when by all counts they should loose, since common wisdom has it that the stronger side wins?” (Zartman and Rubin 2000, 271)

As the structural paradox implies, popular wisdom holds that the most powerful party tend to do better in negotiations. In addition, the parties need to have an equal footing starting point in order for them both to do well. Different fields of study such as international politics, social psychology and game theory have set out investigate this. However, it seems they all provide for incompatible analytical approaches, including various considerations of the term “power”, thereby revealing gaps in the study of power and negotiation. By building on the insight already acquired, Zartman and Rubin aim to reduce these gaps and to improve the understanding of the term “power” in their study of power and negotiation (2000).
2.1.2 POWER AND NEGOTIATION: Testing laboratory results on real world data

Zartman and Rubin provide for an explicit evaluation of the extent to which relative power vis-à-vis one’s opponent influence the negotiating behavior, process and outcome in international negotiations. Including cases of asymmetry and symmetry, the study aims to inform the negotiation process itself, and in addition, to advance the understanding of ways to conduct it. Moreover, the book Power and Negotiation (2000) offer a close insight on how power is exercised before, during and finally, in the conclusive phase of negotiations. Their study is elegantly conducted by bridging two worlds of data: controlled laboratory experiments from the field of social psychology and real world events from the arena of international politics. A 1975 review (Rubin and Brown 1975) summarizing the findings of about thousand experimental studies of negotiations, including approximately sixty of them devoted to power-perception, provides for data on which seven propositions concerning perceived power and its implications are generated.

The following seven propositions comprise both a summary of the experimental findings and provide for the hypotheses of which the nine case studies in the book Power and Negotiation (2000) were focused.

1. Perceptions of equal power among negotiators tend to result in more effective negotiations than unequal power

The experiments were conducted by manipulating the power equality; either by informing the players of status variations, or by introducing varied reward structures. Komorita and Barnes (Komorita and Barnes 1969 in Zartman and Rubin 2000) employed the latter, using the research paradigm of bilateral monopoly. They created four pairs; two of which were equal (HH/LL) and two of which were unequal (HL/LH). Komorita and Barnes found that “pairs with equal power reached agreement more often, required fewer trials to do so, and made large concession than those with unequal power” (Zartman and Rubin 2000, 15) In addition, they found that low equal power distribution pairs functioned more efficient overall, which echoes the findings of Deutch

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10 A single seller and a single buyer of a merchandise (Mahoney and Goertz 2006)
11 H: high power relative to its opponent L: low power relative to its opponent
and Krauss (Deutch and Krauss 1960, 1962 in Zartman and Rubin 2000) and Deutch and Lewicki (Deutch and Lewicki 1970 in Zartman and Rubin 2000). Furthermore, by studying the effect of coercive tactics in symmetrical versus asymmetrical power relations, it was found that damage tactics were more frequent in pairs of unequal power by both the H-power and L-power actor (Lawler et al. 1988 in Zartman and Rubin 2000). Twenty-two of the thirty experiments supported this hypothesis, three revealed the opposite results and the remaining five displayed no difference between equality and unequal power distribution (Zartman and Rubin 2000, 16). Zartman and Rubin explain the divergent cases by pointing to the difficulty of finding true equality in the real world, however they claim the presence of equality is significant, as is repeated in hypotheses three (Zartman and Rubin 2000, 16)

2. **Under Conditions of perceived power inequality among negotiators, the party with high power tends to behave exploitatively, whereas the less powerful party tends to behave submissively- unless certain special conditions prevail.**

Thirty-two experimental studies employed the prisoner’s dilemma, the Acme-Bolt trucking game, bilateral monopoly paradigm or some other type of experimental methods. As implied by the hypothesis, unequal distribution of power does affect the behavior of the negotiating parties differently: the more powerful actor tends to act manipulatively and exploitative, while as the powerless party more often reveal a submissive behavior. This is illustrated by Michener et al., who found that the more powerful party did not repay concessions, whereas the weaker party did (Michener et al. 1975 in Zartman and Rubin 2000, 16).

In addition, Kim and Smith and Murnigham`s research revealed that the less powerful actor will pursue remedy for their hardship only when the circumstances allow for either; the protection of their anonymity, insurance offered by an observing gallery, or the collaboration with similar status actors (Kim and Smith 1993 and Murnigham 1985 in Zartman and Rubin 2000, 16). E.g. joining forces in establishing a winning coalition is considered being weapons of the weak. Besides being a tactic manoeuver, this behavior may also display the relevance of ideology, which is often seen as an additional contributor in forming a coalition - displaying forceful, rather than a submissive
attitude. One can imagine the coalitions balance out the initial power balance and alter submission into defiance. Importantly, ideology more often comes into play when the coalition of the weak does not win, known to ignite an additional dimension of willingness to fight.

It may be the case that coalitions are created based on a prior insubmissive attitude, in which case it is not to consider as special condition to allow for an alternative behavior to that of submissiveness. It is however, in that case, a question of interpersonal orientations a concept of which will be given further attention below (Zartman and Rubin 2000, 16-17).

3. The smaller the perceived difference in negotiators’ power, the more effective their negotiations are likely to be
It follows from the support of hypothesis one and two that the more asymmetrical the negotiations are, the less effectively they will function. Of the nine studies employed, seven supported this claim. The studies varied the power gap between the negotiators, finding that the frequency of mutual cooperation decreased parallel to an increase in power advantage (Aranoff and Tedeschi 1968 in Zartman and Rubin 2000, 17). On the other hand, negotiations with nearly equal power distribution influence the negotiations negatively. It seemingly creates incentives of challenging each others position instead of accepting their asymmetry (Pruitt and Carnevale 1993, 131-132 in Zartman and Rubin 2000, 18)

4. The smaller the total amount of power in the system, the more effectively negotiators are likely to function
Eleven of seventeen studies show support for this proposition. By applying variants of the Acme- Bolt trucking game and the Prisoners Dilemma, it was found that if neither of the negotiators had instruments for threatening the opponent or signaling their intentions, both the joint outcome and individual gains were most profitable. In contrast, when both had tools for this purpose the outcome was the least favorable (Zartman and Rubin 2000, 18).
5. If the parties perceive themselves to be of equal power and the negotiators share a cooperative motivational orientation, the more effectively they are likely to function; if the parties perceive themselves to be of equal power and they share a competitive motivational orientation, the less effectively they are likely to function

There are only two studies aiming to investigate this proposition, thus given the limited sample it is fair to question the generalizability of the results. However, these two studies support to the hypotheses, which is highly relevant for the study of power in international negotiations. The hypothesis contains a modification to proposition 1: “Perceptions of equal power among negotiators tend to result in more effective negotiations than unequal power” by introducing an intervening variable of motivational orientation (MO).

According to this proposition the most favorable outcome and process can only be attained if the negotiators share both a perception of having equal power and a cooperative MO. The authors reason this is due to a mutual concern of their opponent well being as well as their own. Following their logic, the condition predicted to generate the least constructive circumstance for negotiation is symmetrical negotiations characterized by a competitive MO (Zartman and Rubin 2000, 18-19).

In the case of asymmetrical negotiations, attitudes of competitive MO is expected to increase each party’s commitment to realizing their individual competitive advantage. Under these conditions, the weaker actor will presumably act submissively, except in case that either combined, ideology or forming coalitions will allow for an alternative behavior. Sharing a cooperative MO in asymmetrical negotiations adds a layer of complexity: the task of overcoming the challenge of having unequal power (Zartman and Rubin 2000, 18,19).

6. When the parties perceive themselves to be equal in power and high in interpersonal orientation, they negotiate more effectively than if they perceive themselves to be unequal in power

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12 See proposition 2
7. When parties are perceived to be equal in power and high in interpersonal orientation, they negotiate more effectively if they share a cooperative MO, and less effectively if they share a competitive MO

These final propositions introduce the variable of Interpersonal Orientation (IO), a second intervening variable to proposition one. The studies of IO have sought to vary the degree of IO information available to the actors concerning e.g. history and likelihood of future relationship and knowledge regarding the opponents perceived resemblance or disparity to oneself. Although only a limited number of studies have aimed to explore this variable in particular, Zartman and Rubin (2000) consider the variable to be valid.

The level of IO is a measure of ones interest in social cues, such as verbal or non-verbal hints or facial expressions. Thus a high IO is expected to bolster the consequence of asymmetric and symmetric power distribution. Given then increased emphasis on power distribution, it is reasonable to assume that in a roughly equal power balance there is no a priori incentives for one actor to launch an attempt to dominate the opponent. The parties are expected to be primarily interested in a fair distribution of resources. Furthermore, the presence of a high IO might ease the process of coordination and allocation of gains. On the other hand, in asymmetrical power negotiations including high IO actors, it is predicted the tendency for the weak to submit is reduced by its emphasis on the importance of e.g. not loosing face before the opponent (Zartman and Rubin 2000, 19-20).

It is clear from the above propositions that perception of power is subject for more emphasis than actual resources. Thus, when investigating asymmetrical and symmetrical international negotiation, the above propositions combined with the three following situations were used to test effect of perception in both power relations. Furthermore, it will indicate how the parties exercise their power in the negotiation situation. First, given that the negotiators behave according to the perception of their own power, independent of their opponent’s, both high (H) and low-power (L) actors are expected to behave the same as their similar status peers, regardless of their opponent. However, it is expected that H- power actors and L-power actors act different from each other. Thus, H- power parties will take on the same behavior, regardless of
high-low (HL) or high-high (HH) negotiation pairing. L-power parties will display similar behavior when members of both LL and LH. Second, if the actors behave according to their opponent’s perceived power, independent of their own, the case of both HL and LL should generate the same behavior on behalf of the first party. Moreover, HH pairs should generate the same behavior as LH pairs. Third, if the relation between the negotiators caused the effect of perceived power on behavior, their conduct would be subject to influence both from their perception of their own power position and by the perception of their opponents power position, as well as the comparison between the two. Thus it is expected that both powerful and powerless actors would behave differently towards each other and their peers (Zartman and Rubin 2000, 20-21).

Most cases, in which these propositions were analyzed, are of asymmetrical character. This is due to the inherent characteristic of real world international negotiations. In three cases of negotiations where U.S negotiated with Canada, Indonesia and Egypt the negotiations are undisputable asymmetrical. The powerful U.S is referred to as the only superpower in the current international society, thus it really highlights the structural paradox. The remaining cases of asymmetrical negotiations, involving the European Community and two of its members France and Spain against the state of Andorra, India against Nepal negotiating water resources, the Arab-Israeli negotiations over peace and territory, all display negotiations in which the weaker party wins significant concessions and obtains surprisingly advantageous agreements for themselves (Zartman and Rubin 2000, 22).

However it is the final case, the multilateral negotiations involving the strong North against the weaker South at the UN conference on Environment and Development, which climax the structural paradox. Sjöstedt argue that both the outcome and process in large reflect the initial power asymmetry. Moreover, this is not one of the cases

13 Both first parties acting according to perceiving their opponent a L-power actor
14 Both first parties acting according to perceiving their opponent a H-power actor
15 Seven of nine cases in total are asymmetrical international negotiations
16 U.S- Canada free trade exchange (1985-1987)
17 U.S- Indonesia aid negotiations early 1950s
18 U.S- Egypt aid and reform discussion in the 1980s and early 1990s
where the weaker actor prove to be stronger than they appear to be (Sjöstedt 2000, 190-195). He concludes: “Hence, in the case of UNCED many of the specific and varied circumstances that give a nation power in the individual situation seem to vary with the crude realist power indicators” (Sjöstedt 2000, 195). Zartman and Rubin claim that despite that both tactics and context were useless in reducing the asymmetrical power balance, basic trade-offs were made, however, compared to the other six cases, this latter case is not well explained by the seven propositions presented (Zartman and Rubin 2000, 23).

In cases of symmetry, the aim was to see if the parties would seek to break out of their power position rather than to work within the perceived power structure. Perfect symmetry is not only difficult to establish through experimental studies, in the real world they rarely exists. Therefore, in the context of analyzing the effect of perceived symmetry on negotiator behavior, pairs that can hold each other in check qualifies. Two cases of symmetrical negotiations were studied. The high power pair consisted of the U.S- China negotiation over the Korean War and the weaker pair was made up of Mali and Burkina Faso, fighting the War of the Poor (Zartman and Rubin 2000, 23).

With respect to making inferences, it is clear that the two cases of symmetry against the seven cases of asymmetry will not provide for sufficient data to establish a typicality of any kind. However, Zartman and Rubin claim that the two cases are representative as to challenge or support the hypotheses (Zartman and Rubin 2000, 23).

2.1.3 THE CASE STUDIES FINDINGS: A new ground for hypothesis formulation
Contrary to proposition one, Zartman and Rubin (2000) find that the perceived equal power leads to less efficient negotiations than perceived asymmetry. It follows that proposition three, which is more or less an extension of proposition one is therefore also violated. The authors reason that in cases of power symmetry, other variables such as e.g. ideology make their entrance in the negotiations, which in turn is believed to contribute to negotiations sustainability.

In the case of China- U.S, a high power symmetrical negotiation, both parties are accustomed to exercising dominating behaviors. Although the two countries do not hold equal power, they are capable of holding each other in check, which qualifies as
symmetry in this context. It is thus reasonable to assume they are likely to be more concerned with their own status, rather than working for a mutually satisfying agreement. Low power symmetrical negotiations function more or less in a similar way; they are not capable of moving their opponent in an intended direction, thus they are primarily concerned with defending their position and not with reaching an agreement. In short, the property of symmetry is more likely to produce negotiation deadlock (Zartman and Rubin 2000, 272-274)

Regarding the question of potential effect of high versus low total power in a system, the case studies display that low power negotiations had no more success than high power negotiations as suggested based on the experimental studies (Zartman and Rubin 2000, 275)

Evidently, the results of the case studies contradict what is expected based on the laboratory experiments. There could be multiple reasons for this discrepancy, however the most intuitive is the apparent difference between what is expected to unfold in a more controlled environment, such as a laboratory, compared to events of the real world. As pointed out earlier, perfect symmetry is rare in the real world of international negotiations, while as in laboratory experiments power balance is at least manipulated to be symmetrical. A second important factor is the small versus large amount of data used in the laboratory experiments; reality offers far less events than laboratory experiments do (Zartman and Rubin 2000, 273). Third, when including the consideration of proposition five, six and seven to evaluations of power, it becomes evident that to measure power alone is inadequate. A competitive MO and high IO are two variables present in the majority of cases of international negotiation, however it may not necessarily be present in negotiations between individuals. Thus it is reasonable to assume that this may also, at least in part, be the reason for any difference displayed between the two levels of study (Zartman and Rubin 2000, 274).

In most of their selected cases, Zartman and Rubin’s research shows that the stronger negotiator makes an effort to dominate the exchange with their opponent. This effort is observed to materialize in a “take it or leave it” behavior on behalf of the relative more powerful actor. Depending on the response of the powerless, the powerful can
potentially add a supplementary dimension; “take it or suffer”, which further increases the pressure on the weaker parts security point. However, proposition two\(^{19}\) is just partly covered by this finding, as further analysis showed that the weaker part did not act submissively, as predicted by the laboratory experiments (Zartman and Rubin 2000, 275-277).

Zartman and Rubin reflect over a number of available strategies adopted by the weakling. The strategies employed are categorized as targets, context, process and third parties (Zartman and Rubin 2000, 278). Each of which includes a series of direct actions, such as appealing to common interests and relationships\(^{20}\), emphasizing the use of rules and principles\(^{21}\), performing impressive evaluations of right moments in order to make sure one acts at the appropriate times\(^{22}\), and finally borrowing power from third parties, e.g. joining one’s enemy enemies\(^{23}\) (Zartman and Rubin 2000, 278-280). Inherent to these strategies is the presence of interdependency between the negotiating parties. There is no use in appealing to common relationships, assuming the opponent do not have any interest in maintaining it.

Notably, the authors argue that exercising one, or a combination of the strategies mentioned above, increase the effective power of the relative powerless in the negotiations\(^{24}\), regardless of the initial asymmetry. One could therefore argue that this mechanism equalize or reduces the power gap during the negotiations. This balancing is what overcomes the structural dilemma, allowing asymmetrical negotiation to produce fair results (Zartman and Rubin 2000, 283).

In combination, the exploitative behavior of the powerful and the low power strategies goes to show that the parties were found to operate in accordance to the perceived

\(^{19}\) Under conditions of perceived power inequality among negotiators, the party with high power tends to behave expletively, whereas the less powerful party tends to behave submissively- unless certain special conditions prevail (Zartman and Rubin 2000, 19)

\(^{20}\) Category: targets

\(^{21}\) Category: contexts

\(^{22}\) Category: process

\(^{23}\) Category: third parties

\(^{24}\) E.g. Canada vs. USA and the use of appealing to common interests and relationship
power of their opponent. The weaker party does better than expected. However given the initial asymmetry, this is a case of expectations as well. An underdog taking on a front-runner may be easier satisfied, considering their starting point. This logic is likely to apply for the front-runner as well; it may experience a feeling of content having gained more than its opponent in relative terms (Zartman and Rubin 2000, 285).

Finally, the insight gained from the case studies of international negotiations provide for a few general concluding remarks, which will be shortly presented below.

First, the negotiating actors’ exercise of power does not reflect the initial resource asymmetry. Moreover, measuring the outcome objectively in correspondence with each party’s perceived power is surely inappropriate, given that any fruitful negotiation is a positive sum exercise. The term “positive sum” is created by the parties’ subjective impressions of having gained more than they had without a negotiated agreement. In short, they feel/ believe themselves to be better off than they would have been in the case of achieving a non-agreement (Zartman and Rubin 2000).

Second, decision of entering negotiations may just as well be based on the estimate of rather limited resources given that central decision makers believe they can reach their objectives by the employment of a faits accomplishe strategy. This estimate of resources and careful calculations is also found in theory of the initiation of war. In negotiation there are no such short-term offensive capabilities as in the context of a war. However, external involvement is commonly used as a source of power. E.g. mediation is the equivalent to a Trojan horse; assuming that the biased mediator provides for the party to which it is biased (Zartman and Rubin 2000).

Third, as implied in the findings, mainly two factors stand in the way of direct transfer between resource power and negotiation power. The possibility to borrow power form a third party cannot be taken into account in the initial consideration of the negotiators power-amount. Furthermore, the concerns of the powerful parties are expected to be more numerous and have broader perspectives compared to that of the weak. This conclusion leads to the general proposition that there are available tactic and strategies for both the perceived powerless and powerful aims to level the initial power
difference. The authors finally conclude: negotiation function as to balance out the playing field. Given the available tactics it may not come as a surprise that the weaker party are highly effective and thus provide for better than expected results for themselves (Zartman and Rubin 2000).

2.2 THEORY II

2.2.1 POWERSHARING
As implied in the introduction, I consider it fruitful to address the gains obtained by the parties in a post conflict constitutional process within a framework of power- sharing theory. Power- sharing postulates which configurations may be considered more beneficial for each of the conflicting parties: the majority and the minority. Thus I am convinced it is reasonable to measure obtained gains from a constitutional process in whether the outcome resembles consociationalism or centripetalism. In cases of severe ethnic conflicts and civil wars the prior is assumed to be the most profitable for the minority25 and the latter for the majority26.

The following is based on Horowitz’s (2008) categorical presentation of the two models. Furthermore Roeder and Rotchild (Rothchild and Roeder 2005) offers valuable insight in their book Sustainable Peace Power and Democracy After Civil Wars. It is mainly their contributions combined that will function as the backdrop for the analysis, both with regards to which configuration is applied, and how this specific model may, or may not be, profitable for the conflicting parties in Nepal and Sierra Leone.

2.2.2 CONSOCIATIONALISM
In cases of ethnic conflict, majority rule- even when including strong minority rights, will most likely be undesirable. It is considered unreasonable for both practical and theoretical concerns; first, minority rights will perish given that the mechanism of accountability will be close to nonexistent- meaning there is no real threat of minority share of power. Second, democratic theory rests on free elections based on choice, thus ascriptive majority rule is not generally accepted as majority rule. In the case of ethnic

25 Typically the opposition or rebels
26 Typically the state authorities/government
divided societies and majority rule elections are led by birth thus making the term election itself incorrect (Horowitz 2008, 1215). The consociational approach seeks to completely elude the unfairness of majority rule in ethnical divided societies-by offering a general guarantee of group inclusion. Horowitz states “The Consociational approach is essentially a regime of guarantees” (Horowitz 2008, 1216), of which underlying principles follows below.

The ideal form as presented here, stipulates that all groups will be represented in government, facilitated by the employment of a proportional electoral system. Furthermore, consociationalism includes proportional representation in civil service and financial allocations, mutual group vetoes on delicate issues concerning ethnicity, and in addition a relative high degree of cultural autonomy. Under these terms, opposition is necessarily located within government and competitive democracy is replaced by consensual democracy (Horowitz 2008).

This model poses certain requirements to the constitutional design, e.g. a parliamentary government vs. presidential arrangements. Furthermore, as a consequence of group inclusion, ethnic extremist are likely to be represented alongside with moderates (Horowitz 2008). The property of ethnicity will surely surpass ideology, which will have relative reduced relevance in the formation of e.g. government cabinets. Power-sharing in general is rightly accused for empowering ethnic elites, however I consider consociationalism to be more so than its competing model centripetalism, which will be apparent from the following description.

Roeder and Rotchild (2005) do not use the term consociationalism and centripetalism as typology of the two models. However, in their detailed description of power-sharing arrangements, they separate between power-sharing configurations including hard or soft guarantees27. From now on referred to as mandates and opportunities. On the account of the intentional categorization of the two models, mandates are more likely to fit into a framework/category of consociationalism and opportunities in the category of

27 Labeled mandates, e.g. ethnofederalism, and opportunities e.g. federalism without consideration of ethnicity within the federal state boundaries (Zartman and Rubin 2000, 16)
centripetalism based on Horowitz (2008) description, thus, it will be presented accordingly.

Roeder and Rotchild (2005) claim that there are mainly three rules incorporated in in power-sharing. The rules are, inclusive decision-making, partitioned decision-making and predetermined decisions. These rules are formulated serving as either mandates or opportunities, as mentioned - the prior corresponding to the consocationalist model.

First, regarding the principle of inclusive decision-making, the groups included are those that can potentially threaten the state stability if excluded (Rothchild and Roeder 2005, 31). However, to be included in grand coalitions is often considered an insufficient mean for the ethnic groups in a civil war; mandates for inclusive decision-making, and thus representation must ensure that their voices are heard in public policy making. Thus, Roeder and Rothchild (2005) introduce a specific criterion; the assignment of central government positions, such as ministries to minority leaders. A case in point is the Constitution (1960-68) in Cyprus where the presidency was appointed to the Greek population and the vice-presidency to the Turk population. The candidates were elected through separate elections for the two ethnic groups; the officials thereafter chose their ministers to constitute a Council of Ministers (Rothchild and Roeder 2005, 31).

However, a more frequent approach for inclusive decision-making is constitutional quota of seats in the National Assembly, Cabinet Government or national legislature. This is commonly done according to an ethnical formula. As in the case of Rwanda where the Hutsis claimed 60% and the Tutsis claimed 40% of the seats (Rothchild and Roeder 2005, 32). Or as also illustrated by the Ta’if agreement in Lebanon (Zahar, MJ, 2005 in Rothchild and Roeder 2005). Moreover, an effective criterion to decrease the level of mistrust is to include ethnic groups in the national security forces. Cyprus and Rwanda again serve as valid illustrations. In Rwanda the security forces are evenly divided between the two ethnic groups, and in Cyprus the House of Representatives is shared 30/70 % between the Turks and Greek population (Rothchild and Roeder 2005, 31-32).
The second rule that governs power-sharing institutions is referred to as **partitioned decision-making**. This rule refers to the practice of vertical power-sharing from central government to independent decision-making agencies, in which ethnic groups have increased or even absolute leverage. Mandated ethnic autonomy rests on these agencies to have exclusive, compared to concurrent jurisdiction in certain political domains—usually in those which are known to have a mass impact on ethnic polarization, such as religion and cultural affairs. Partitioned decision-making is commonly practiced through an ethno federalist or ethno corporatist system. However, based on cost efficiency evaluations, the latter is more likely to be adopted (Rothchild and Roeder 2005, 33-34).

In the case of ethno federalism, compliance is mandatory for every individual within the territory of the respective agency’s jurisdiction. Thus, individuals that belong to other ethnic groups than the empowered are likely to be marginalized despite them comprising the majority, as was the case with Soviet ethno federalism (Rothchild and Roeder 2005, 34, Roeder 1991, 204-206).

In the case of ethno corporatism the regulations will apply only to the members of distinct ethnic communities, which may lead to further polarization through the employment of different systems for different ethnicities, albeit operating side by side. Bosnia & Herzegovina is a case in point. Referred to as “two schools under one roof”, Catholic and Muslim children are physically separated in school, also being introduced to different curriculum. Other examples are the Ottoman Empire under the Estonian Cultural Autonomy law of 1925, Soviets ethno corporatism, which ensured legislation based on ethnicity within educational politics (Rothchild and Roeder 2005, 34), and the two Communal Chambers established by the 1960-1968 Cyprus Constitution. The Separate Communal Chambers, for the Greek and Turkish community28 dealt with legislative regulation regarding issues such as religion, culture, education and teaching and civil disputes concerning religious matters (StateUniversity.com 2015).

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28 The Armenian and Maronite populations were free to choose affiliation between the two communal chambers. Both groups chose the Greek Communal Chamber (Rothchild and Roeder 2005, 31).
Finally, power-sharing rests on the adoption of predetermined decisions. It is reasonable to assume that the acceptance of these decisions reflect the issue of mistrust in the subsequent politicians, and democracy. It follows that certain areas of politics and power capital is removed from central government jurisdiction, which ironically, is a limitation of democracy itself. The decisions may include various proportional resource allocations, such as educational funds or central positions within national security forces and bureaucracy. What determines the level of guarantee for these regulations is the choice of decision-making procedure employed to change it. In the case of a mandated predetermined decision any amendments may be prohibited, and if not, at the very least it requires extra ordinary procedures such as the establishment of a constitutional assembly (Rothchild and Roeder 2005, 35).

2.2.3 CENTRIPETALISM (also referred to as integrative approach)

The competing model diverges from the consociationalist approach on several areas. However, the main, and most important difference in this context is that it offers opportunities for ethnic inclusion, compared to mandates as provided by consociationalism.

In deeply divided societies, the centripetal approach seeks to increase the willingness to compromise across ethnic interests and accommodate ethnic polarization-objectives that are more likely to be achieved by moderates than extremist. In general, centripetalism provides support for political moderation, by pursuing a regime providing incentives for candidates to reach beyond their ethnic affiliation. This is commonly achieved through an appropriate election system e.g. alternative vote (AV)\(^{29}\), and will expectantly over time produce victors representing interethnic coalitions. In short, compared to consociationalism, the centripetal approach stipulates pre-election, rather than post-election compromise (Horowitz 2008, 1217-1218)

On the other hand, centripetalists similar to consociationalist prefer federalism, but based on a different rationale. First, centripetalists consider federalism as a tool to encourage political socialization to the practice of cooperation, bargaining and behaving

\(^{29}\) Also referred to as preferential voting with requirement of absolute majority of the first and lower ranked votes in legislative elections.
according to other group’s concerns—prior to the representatives engaging in nationwide politics. This training in sub-central politics is considered rewarding, assuming national level politics to be much more complex (Horowitz 2007, 160). Furthermore, as illustrated by Nigeria First Republic 1960-68, federalism may alter the electoral boundaries, which may affect the political parties and their strength on a national level (Horowitz 2007, 161). The ethnic groups of Hausa and Fulani comprised a majority in the Northern Region, thus gaining electoral power in Central Government, despite representing only 30% of the total population. However, when the regions were split into several entities, they’re electoral power was fairly reduced, causing them to seek cooperation with other ethnic groups (Horowitz 2008, 1218, 2007, 962). Third, federalism may weaken the effect of solidary ethnic groups in central government, given that they in relative homogeneous federal units will have more leverage, while also having to compete for power within the federal state (Horowitz 2008, 1218).

Compared to the mandates provided by consociationalism, opportunities for representation an inclusive decision making are ensured by the employment of electoral systems which is expected to increase the probability for ethnic groups to be elected for central decision-making organs. As shortly mentioned above, AV, election systems based on a proportional representation rather than single-member districts, introduction of a low electoral threshold and a parliamentary government are some available options (Lijphart 1995, 856 in Rothchild and Roeder 2005, 32). Furthermore, certain decision-making procedures may bolster the minorities leverage in central politics. Compared to a final veto, often present in a consociationalist composition, the centripetalist approach includes a requirement of qualified majority. Contingent on the ethnic configuration in government or legislatures, a qualified majority will most likely be dependent on support from ethnic minorities in order for laws to pass (Rothchild and Roeder 2005, 32-33).

Partitioned decision-making is as mentioned previously vertical power-sharing, often practiced as ethnofederalism or ethnocorporatism. The former is territorial assigned jurisdiction30, the latter is based on personality31. Federal boundaries drawn without

30 Territory as proxy for ethnisity
31 Ethnocorporatism.
consideration of ethnic configuration is likely to increase ethnic minorities opportunities for increased power in local administration, and as follows a greater degree of self-governance, thus considered a opportunity for ethnic autonomy. However, as described above, it is also the relative strength vis-à-vis the national government that determines whether the partitioned decision-making is a hard guarantee or an opportunity. In a centripetalist framework, ethnic agencies and their decision-making power is limited by the central government. As they are politically dominant, the agency run the risk of being overruled by the central government, reducing its de facto power (Rothchild and Roeder 2005, 33-34).

As for predetermined decisions, the same rationale applies as within a consociational framework. As shortly noted above, they are implemented with the purpose of limiting the subsequent politicians, and are often employed on areas of special concern for the conflicting ethnic groups. Thus predetermined decisions commonly apply for the redistribution of government resources and certain posts, to political domains such as education, military and bureaucracy. However, the procedures for revisions are scaled down and do not require extraordinary measures as with the consociational approach, legislative majority is sufficient (Rothchild and Roeder 2005, 34-35).

2.3 HYPOTHESES
Zartman and Rubin's findings are intriguing, and importantly they are considered robust. Thus, the main aim of this thesis is to check for their applicability on intrastate level negotiations compared to interstate negotiations. Given that negotiation theory is intended to explain the general principles of negotiations, it is initially assumed that their findings will also explain the cases chosen for this thesis. The following hypothesis emanates from the findings presented by Zartman and Rubin (2000).

Hypotheses:
Derived from the information above, the hypotheses are as follows:

I: The symmetrical power balance between the parties will contribute to a less efficient constitutional process in Nepal compared to asymmetrical constitutional process in Sierra Leone.
II: The process of negotiating is proposed to level out an initial asymmetrical power balance. Thus, I expect the weaker party in the constitutional process of Sierra Leone to emerge with better than expected results (in terms of institutional configuration within a powersharing framework).

3.0 NEPAL

3.1 A SHORT INTRODUCTION

Nepal is considered to be a small country landlocked between the two giants India and China. However, on account of its population size\textsuperscript{32}(Countrymeters 2015), Nepal is ranked 46\textsuperscript{th} of the worlds biggest populations\textsuperscript{33}(Worldometers 2015). Furthermore, with its 147,181 square kilometers, it is perhaps more reasonable to categorize it as a middle-sized country (Nils A. Butenschøn, Stiansen, and Vollan 2015, 12).

Concerning resources and wealth, Nepal’s population is victim of poor governing and progress. Despite its huge potential for sustainable development within the area of e.g. hydropower, Nepal has failed to utilize its resources, both internally and to large-scale exporting. A costly failure, as hydroelectricity could potentially comprise the spine of Nepalese economy (Pradyumna et al. 2015). On the other hand, timber business represents a valuable resource that is quite well managed. Nepal’s forests have, during the last years been re-nationalized, making a third of the forests state owned. Thus, Nepali timber exports provides for a significant source of Indian rupees in return (Pradyumna et al. 2015)

Despite recent technology implementations and globalization, most Nepalese depend on agriculture as their main source of labor and economy. However, production is low, and whatever surplus is produced is immobile due to weak infrastructures. Thus the production shortages in the mountains are not accommodated. Deforesting will potentially lead to an increase agricultural production; on the other side it introduces the less attractive consequence of increased erosion and landslides. In sum, it is

\textsuperscript{32} Data gathered from Countrymeters.info: 29 002 296 (StateUniversity.com 2015)
\textsuperscript{33} Nepal is 46 out of 200 entries. Data gathered from (Countrymeters 2015)
ultimately assumed to decrease the available land for cultivation (Pradyumna et al. 2015). A classical catch 22 situation, with no apparent solution at this point.

Industry and trade is found within the private sector and mostly rests on the processing of agricultural products, such as rice, sugar, sawmill and meat. It is comprised of small local operations, located in the central areas of Kathmandu Valley, Biratnagar and the Birganj-Hitura corridor. In addition, it includes the management and trade of non-agricultural merchandise such as brick and tiles and other constructing materials, cigarettes, and beer. In large, Nepal’s economic development relies on India, being Nepal’s foremost important trade partner (Pradyumna et al. 2015).

The tourist industry is growing. However, this growth is likely to generate geographical limited benefits, mainly in the Kathmandu Valley. Rigged with hotels, transportation means and food supplies, Kathmandu stands out as quite modern and well adapted to accommodate tourists compared to the rest of Nepal.

3.1.2 NEPAL’S DEMOGRAPHY AND GEOGRAPHY
In short, Nepal is divided into three different geographical zones, (figure 1) which can be seen as slopes running from east to west. The three regions are known as the Terai34, the Hills35 and the Mountains36. Each of the geographical zones is inhabited by a variety of different ethnic groups, some groups being more dominant than others in specific areas. However, the different castes/ethnic groups are scattered around. A simplistic scheme of the major and minor inhabitants and their social /religious features are given in Appendix A.

34 Terai: Aligned with the border of India in South, from east to west.
35 The Hills: The middle part slope of Nepal from east to west.
36 Mountains: Aligned with the Chinese border running from east to west.
Figure 1. Geographical zones in Nepal.
Image Source: Discovery Education (access date: 12th June 2015) (Discovery 2015).

3.1.3 POLITICAL HISTORY
A brief synopsis of the political History, mainly based on the literary contributions of Butenschøn, Stiansen and Vollan (2015), is provided in Appendix B.

3.1.4 THE PEOPLE’S WAR 1996-2006 (the Maoist Insurgency): an overview
A manifesto announced by the CPN (Maoists) on behalf of the UPF marked the beginning of the Nepalese People’s War. It contained 40 demands to the government, including making Nepal secular state, the cancelation of agreements with India and the establishment of a Constituent Assembly. The manifesto was presented as an ultimatum; had the demands not been accommodated within the 17th of February, the People’s War would be launched. Regardless of the initial deadline, the attacks started already the 13th when the insurgents hit government offices and police stations (Nils A. Butenschøn, Stiansen, and Vollan 2015).

The Maoist front figures were mainly from the Hill elite castes, however the UPF proved to embrace broad, and gained support from lower status segments of the Nepali society casts. In addition, the Maoist enjoyed support from radical groups in India and the UK. Their focus on reducing ethnic/caste discrimination most definitely worked to their advantage (Nils A. Butenschøn, Stiansen, and Vollan 2015). Butenschøn Stiansen and Vollan stated accordingly: “They played the ethnic card skillfully....” (Nils A. Butenschøn, Stiansen, and Vollan 2015, 17). Overall, it is estimated that 75% of Nepal’s districts were affected by the revolt, also often seen as an indicator of the broad support mentioned above (Nils A. Butenschøn, Stiansen, and Vollan 2015).
The People’s War lasted for a decade and approximately 13000 were killed during the conflict. Nepal politics and development were almost completely paralyzed by the political instability, and subsequently, by the rapid change of governments (Do and Iyer 2010). At the time of the royal takeover in 2002, the King of Nepal enjoyed the same powers as he did prior to the 1990 constitution. Consequently, the insistence of establishing a CA increased (Nils A. Butenschøn, Stiansen, and Vollan 2015, 20-21).

However, in 2004, Deuba now leading the splinter party of the NC (NC (democratic)), was reinstated as prime minister- until the King once again took over power in 2005 (Nils A. Butenschøn, Stiansen, and Vollan 2015, 20-21). Nepal was once again moving backwards quite rapidly- towards a classical authoritarian regime, much a like what King Mahendra sought to manage during the 60’s (Nils A. Butenschøn, Stiansen, and Vollan 2015, 21). According to Butenschøn, Stiansen and Vollan (2015) and Do and Iyer (2010) certain Maoist objectives can be extracted: the abolishment of monarchy and the establishment of a peoples republic, and to install a CA which would be charged with the making of a new constitution. In addition, religious and ethnic activist demanded that Nepal was declared a secular state (Gellner 2007, 83).

It was clear that these objectives were not accommodated by the monarchy, and due to the continuously deterioration of the civil liberties for Nepal’s population, the royal take-over in 2005 was heavily criticized by several states including India and the US (Do and Iyer 2010, 737). The Maoists, which at this point controlled most rural parts of Nepal, managed to hammer out a 12-point agreement with the Seven Party Alliance37 (Gellner 2007, 81, Nils A. Butenschøn, Stiansen, and Vollan 2015, 22). The agreement was negotiated in India and signed the 22nd of November 2005, with the support of the Indian Government. The parties agreed on the autocratic monarchy to be the main challenge for democratic development in Nepal, which would only be solved by restoring parliament by the force of a second People’s Movement. Furthermore they agreed to establish a constituent assembly, to commit to a multi-party system, to put the Peoples Liberation Army and the Nepal Army under UN supervision, and finally for the

37 Seven Party Alliance: alliance occupying approximately 90% of the seats in the old parliament (Worldometers 2015).
Maoists to return land to its rightful owners (Nils A. Butenschøn, Stiansen, and Vollan 2015). All in all, the agreement corresponded well with the initial demands.

Perhaps most important for future reconciliation, the participating parties recognized their responsibility in the conflict and joined forces in a common front against the current regime (Gellner 2007, 81).

As to contribute to a fruitful environment for the negotiations between the SPA and the Maoists, the latter applied a four months long truce. However, early 2006 the truce was called off and the Maoists attacks continued (Gellner 2007).

On April 6th 2006 the long-announced demonstrations against the monarchy began and People`s Movement II was launched. The movement continued to win support within the Nepali population and the demonstrations lasted for 19 days until the King finally agreed to reinstate the parliament he had dissolved in 2002. To fulfill the Prime Minister post, the most obvious choice was Girija Prasad Koirala, which according to Gellner (2007, 83), came across being far superior to his competitors. Koirala announced an immediate vote in favor of a constituent assembly as agreed upon in the 12-point agreement of 2005, and as a result the Maoists began to organize themselves participating in conventional politics, with the aim of eventually being part of an interim government. They also declared a three-month long ceasefire (Gellner 2007, 83).

The abolishment of the monarchy, and with it the degradation of Kings Gyanendra, was a fact. In addition to having reinstated the parliament and agreeing on the establishment of a constituent assembly, Nepal was declared a secular state. The Parliament declared it self-sovereign for its subjects, which included the King. Several measures were taken to reduce the Kings position to an insignificant level e.g. the removal of the term Royal form any official government institution, such as the army and ministries. Moreover, measures were taken to improve the conditions for woman and oppressed ethnic groups/castes, there amongst quotation both in parliament and civil service for former excluded groups (Gellner 2007, 83-84, Nils A. Butenschøn, Stiansen, and Vollan 2015, 23).
Considering the massive changes and developments towards the accommodations of decades old demands presented by the Maoists, the outlook for future politics and the rebuilding of Nepal were reasonably positive. However, any continued stability in Nepal was contingent on very important, nevertheless unanswered questions. These were questions regarding the e.g. the reintegration of Maoist militia and their weapon deposits, how to run free elections when the Maoists were still in control of coercive means to threaten the voters, and the details concerning how the UN was to conduct their inspections, as agreed on in the Twelve-Point agreement from 2005 (Gellner 2007, 84-85). Thus, Nepal continued to suffer a series of setbacks until the 22nd of November 2006, when the peace accord was finally signed by the government of Nepal and the Maoists (Nepal 2006).

3.2 CURRENT POLITICS:

3.2.1 THE COMPREHENSIVE PEACE AGREEMENT (21st of November 2006): Development and main implications

The Comprehensive Peace Accord reflected various prior agreements established through the course of negotiating. For instance, shortly after the parliament was reinstated in April 2006, a 25-point ceasefire code of conduct was signed. The agreement regulated the release of prisoners of war and granted international monitoring of the agreement. Furthermore, an 8-point agreement was reached in June, guaranteeing free and fair CA elections and a renewed prescription of UN led arms inspection and election monitoring. In November 2006 an extensive 6-point agreement was made to administer the mixed electoral system and regulate the interim period up until when the CA would take a dual role, acting as both parliament and CA. Moreover, the agreement included a formula for inclusion, which was later admitted in the interim constitution. It prescribed the parties to protect ethnic/cast diversity amongst the candidates (Nils A. Butenschøn, Stiansen, and Vollan 2015, 24-27).

The CA, which structure was introduced in the latter agreement, was decided to comprise of 425 members, of which 409 would be elected; 205 through a first past the post system (FPTP) form single-member constituencies, and 204 by List PR from Nepal.

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38 The interim period as referred to above, point to the period from the adoption of the interim constitution until the new constitution is promulgated (Gellner 2007, 81-83)
as one constituency. The remaining 16 were to be appointed by the interim council of Ministers from especially acclaimed persons (Nils A. Butenschøn, Stiansen, and Vollan 2015, 24).

As noted, the CPA in large reaffirmed the content of the prior agreements (Nepal 2006, 1). The main components were as follows:

- Ceasefire between the parties
- To carry out a progressive restructuring of the Nepali state, including measures such as to resolve ethnic, caste, regional and gender based challenges, and to reiterate full commitment to multi party democracy and democratic norm such as human rights and civil liberties
- To adopt an interim constitution and based on it form an interim legislature-parliament
- To ensure free and fear- less constituent assembly elections, within the end of the month Jestha 2064 BS\textsuperscript{39} (mid June 2007)
- To restructure the army under UN monitoring, including integration of Maoist combatants into the Nepal Army (Nepal 2006, 1-13).

The elections for the CA were initially postponed for five months from June until November 2007, mainly due to disagreements concerning the electoral system. The idea of a mixed member proportional system was left for a parallel system. Once instated, the CA had a two-year deadline for drafting and new constitution\textsuperscript{40} (Nils A. Butenschøn, Stiansen, and Vollan 2015, 26). Especially emphasized components in the interim constitution were inclusion and representation, reflecting the multiethnic/caste and cultural character of Nepal. Perhaps not a surprise, given that these demands were key ingredients for the Maoist recruitment base, despite them initially being of high cast themselves.

\textsuperscript{39} Jestha is equivalent to mid May- mid June. The Nepali Calendar is 56,7 years ahead of the Gregorian one, thus in 2007. = Within mid June 2007.

\textsuperscript{40} Requiring 2/3 majority of the CA or 2/3 of minimum 2/3 voting CA members present (Nepal 2006)
During the peace process, some of the discriminated groups\textsuperscript{41} became more eloquent (2006/2007) regarding the notion of federalism and inclusion in particular. Others reintroduced violence as a political mean to increase their leverage. Initiated by the Madhesi interest for the Terai region, constitutional amendment No. 1 increased the number of constituencies from 205 to 240, and by that increased the number of constituencies located within the Terai, all of which were to be elected by a List PR. Furthermore, they required a single Madhes state, and second, that they were excluded from the prerequisite of including Hill candidates on their lists for election. By resorting to violent opposition their demands were somehow met, although only by indication. A 8-point agreement was made, stating that “the Madhesi people’s call for an autonomous Madhes” (Nils A. Butenschøn, Stiansen, and Vollan 2015, 27), and moreover the quota rules for election candidates were made easier to dodge (Nils A. Butenschøn, Stiansen, and Vollan 2015, 26-27). It is not clear whether the following was in direct correlation to the Madhesi opposition or as a more general consequence of increasing identity consciousness, however, in addition the 13\textsuperscript{th} of July in 2008 a federal state structure was inserted by the Fifth Amendment to article 138, part 17. (Nepal 2007).

A small sidestep from the chronology is required in context of the above, providing for a brief overview of federalism in Nepal. The conflict in Nepal has various feasible explanations, amongst them the structural conditions, such as regional poverty and group inequality/discrimination. Thus, the call for federalism is not a new aspect to Nepali politics. Rooted in several decades of ethnic and social cleavages\textsuperscript{42} (table 2), the need for increased self-determination and representations was precarious- and federalism was introduced already during the 1950s. (Madsen and Nilsson 2014, 30-36)

Returning to the uprising in 2006/07, the call for inclusion caused for the Maoists to resign from government in September 2007. They demanded both a fully proportional election system in addition to Nepal being declared a Republic before the election. Both their demands were met, Nepal was declared a federal republic, excluding the King form all state functions. Second, the election system were once again transformed, now

\textsuperscript{41} Janajati, Madhesis, Dalits and woman.

\textsuperscript{42} Can be tracked back to the 1854 caste system (Nils A. Butenschøn, Stiansen, and Vollan 2015, 26)
including a majority of list proportional voting (Nils A. Butenschøn, Stiansen, and Vollan 2015, 27). The Maoist re-joined government the 30th of December. Finally, Nepal had reached agreements paving ways for the first CA election.

3.2.2. CONSTITUENT ASSEMBLY I (10th of April 2008 – 28th of May 2012)

Leading up to the election, reports of election related/political violence increased significantly. In between November 2007 and 9th of April 2008, 259 incidents were registered, mostly including cases of physical violence, threats and physiological terror and group fights. Of the reported cases approximately 4% was murders, and the political party most frequent being associated to these violent episodes was the CPN (M), both as the victim and perpetrator (Landinfo 2010). Furthermore, the election was criticized, however mainly based on its flawed election procedures, such as a lack of identity checks, leading to multiple voting and proxy voting, (The, Carter, and Center 2008, 44)

Nevertheless, the first CA was elected the 10th of April 2008, and according to a report from The Carter Center observing the election, it was not as expected characterized by the previous pre-election violence and threats, regardless of Nepal’s rather weak military capacity and conflict history (The, Carter, and Center 2008). It was in fact reported as “remarkably peaceful” (The, Carter, and Center 2008, 41).

The CA was highly representative of the Nepalese ethnic, cast, class and cultural diversity. This was assumable caused by a lack of thresholds and the quota rules, despite the latter alterations initiated by the Madhes. Altogether the CA consisted of 26(!) parties: the Maoist comprised a clear majority party with their 30%, the second runner up was the NC winning 21.7% and not too far behind was the UML with their 20.9% (Nils A. Butenschøn, Stiansen, and Vollan 2015, 27).

On the same day of the CA I commencement (28th of May 2008), the CA officially abolished the 240-year-old monarchy. Of the 601 members, 572 were present at the Birendra International Convention Centre, and only four members voted against the transition. Nepal was thus declared a secular democratic federal republic, in accordance
to the interim constitution, Article 138\(^{43}\), and implemented according to Article 159\(^{44}\). The King was given 15 days to leave his palace, which was to be nationalized and turned into a museum ((PTI) 2008), and on the 21st of July 2008, Ram Baran Yadav (NC) was elected Nepal’s first President (Karan 2015).

Approximately a month post the first CA inauguration, on the 25\(^{th}\) of June 2008, the parties had signed the “Agreement between Political Parties to Amend the Constitution and to Further the Peace Process” – responsible for reducing the votes required to form a government, from two third majority to a simple majority in Legislature-Parliament. Consequently Prachanda, the CPN (Maoist) chairman formed government\(^{45}\) in August 2008. However, his government lasted just less than a year as Prachanda resigned already in 4\(^{th}\) of May 2009. His resignation was caused by a dispute with the president concerning Prachanda’s authority to remove the Army Chief. President Yadav ultimately blocked the initiative. Three weeks later, Madhav, Nepal leader of the UML formed a new government, this time with the NC included and the Maoist excluded (Nils A. Butenschøn, Stiansen, and Vollan 2015, 28).

A reoccurring issue was the army integration, an especially important element in any peace process. According to a report by Landinfo (2010) based on their security assessment, of specific concern was the practice of impunity. Crimes were committed by both the legal authorities and the Maoists during the conflict, however, by 2010 there had not been a single criminal case (Landinfo 2010). Process to reintegrate Maoist cadres was too slow, as the parties could not agree on a common approach. Furthermore, the process of constitution making seemed to be too slow, and the two-year deadline for the CA, was approaching fast. Although the various committees in the CA produced concepts papers\(^{46}\), the process never enhanced and it was decided to

\(^{43}\) Article 138: “there shall be made progressive restructuring of the State with inclusive, democratic federal system of governance” (Madsen and Nilsson 2014)

\(^{44}\) Article 159 “… The properties of then King Birendra, Queen Aishwarya and their families shall be brought under control of the Government and held in a trust to be used for the interest of the nation” (Nepal 2007).

\(^{45}\) Government 2008: Coalition between the CPN (M), CPN-UML and the Madhes based MJF-N (Nepal 2007).

\(^{46}\) In 2010 the Restructuring Committee submitted a concept paper including a 14-province model based on a single identity principle and political privileges for certain
expand the deadline for another year until 28th of May 2011 (Nils A. Butenschøn, Stiansen, and Vollan 2015). The expansion had mainly two implications, first, it was agreed to reestablish a consensus government, and therefore new negotiations were initiated aiming to result in a broad coalition government. In addition, UCPN (M) as the majority party in the CA pressured for the right to choose PM, thus PM Nepal resigned 30th of June 2010 (Karan 2015). The consensus approach failed, and after several attempts they went for a majority PM. Unfortunately, neither this procedure was very fruitful. In the period between 21st of July and 4th of November, 16 elections were held without any results. Once again the voting rules were altered, now including a ban on neutral voting. Finally in February 2011 a government was established by the UML chairman Khanal. Contrary to the government led by Madhav Nepal, the NC stayed out of government (Nils A. Butenschøn, Stiansen, and Vollan 2015, 28).

During the period May 2010- May 2011, there were mainly four issues still unresolved by the CA: the federal structure, form of government, electoral system and as mentioned above, the army integration. A few of these issues were somewhat agreed upon, such as the form of government. However, getting close to the postponed and second deadline 28th of May 2011, the CA needed more time. On the morning 29th of May more time was granted as the Parliament-Legislature declared several issues to be solved in the coming three months (within August 2011). Amongst others should the Nepal army be made more inclusive, courtesy of prior agreements with the Madhes, PM Khanal (UML) would resign in order to establish a new consensus government, and importantly, the first drafts of a constitution should be completed (Nils A. Butenschøn, Stiansen, and Vollan 2015, 29-30)

Khanal resigned in August 2011 in accordance with the framework presented by the Parliament –Legislature, and after several attempts at a broad coalition, Dr. Bhattarai (UCPN Maoists) 47 formed government. During Bhattarai`s period the army restructuring was completed. However, the promulgation of a new constitution was still not in sight. The CA had again expanded their time of operation, nevertheless the new groups. However there are more than hundred religious groups/casts and ethnicities, and all of them needed to be accommodated (Landinfo 2010)

47 UCPN (Maoists): the former CPN (Maoist) until 2009, when they changed their name due to their merge with the Communist Party of Nepal-Unity Centre (Masal)
Deadline, 29th of November was not met, and their final expansion for six months went on until the 28th of May 2012. At this point the supreme court disallowed any further extension of the mandate (Nils A. Butenschøn, Stiansen, and Vollan 2015, 29-30)

During the last CA-expanded period, the chairmen of the political parties reached agreements on electoral system, and the number of members in the Parliament. However, federal configuration, considered the most controversial matter together with representation/inclusion, was not agreed on. Thus the parties failed to meet the final deadline. The first CA was consequently dissolved on 28th of May, and PM Bhattarai declared new CA elections to be conducted the 22nd of November 2012 (Nils A. Butenschøn, Stiansen, and Vollan 2015).

3.2.2 CONSTITUENT ASSEMBLY II (19th of November 2013- 9th of July 2015)
The declaration of new CA elections caused the debate regarding the PM-post, electoral system and CA configuration to rekindle. Consequently, the initial plan of having election November 2012 was delayed.

First, the opposition (Maoists) called for a new consensus government and furthermore a new Head of Government for the coming election period. The disagreement caused protracted political stalemate, which cloistered the remaining months of 2012. At this point most parties seemed to agree on holding a new CA election spring of 2013 (Nils A. Butenschøn, Stiansen, and Vollan 2015, 29).

When reaching spring however, more specifically March 2013, debates regarding the CA size and timeframe of its operation re-flourished. A smaller CA was suggested—which was in accordance with the opinion of the main political parties. The number of FPTP elected seats were kept at 240, however list PR elected seats were reduced from 335 to 240 and the number of delegates from highly acclaimed segments of society were also reduced from 26 to 11. In sum the second CA would be reduced from 601 to 491 seats.

48 Mixed system: 55% (FPTP) and 45% (LIST PR) (Nils A. Butenschøn, Stiansen, and Vollan 2015, 28-32).
49 311, 171 elected by FPTP and 140 by List PR (Nils A. Butenschøn, Stiansen, and Vollan 2015, 28)
The reduction of CA II’s size did not go well with the Janajatis, who feared the relatively small CA would be less inclusive. Consequently, the initial size was reintroduced in September 2013 (Nils A. Butenschøn, Stiansen, and Vollan 2015, 29-30). It was agreed that the new CA would operate for four years, of which one year would be disposed to finishing the constitution, and the three remaining years the CA would continue as Parliament (Nils A. Butenschøn, Stiansen, and Vollan 2015, 30).

Furthermore, also in March 2013, The four major political parties UCPN (M), NC, CPN-UML and Joint Madhesi Front, March 2013 agreed to establish an electoral government (IECM) to oversee the upcoming election, of which PM Bhattarai and the UCPN (M) suggested the Chief of Justice, Khil Raj Regmi to lead (NDTV 2013). Nepal had been without a parliament since the dissolution of the CA I in May 2012, and the IECM, including Regmi as PM, was seen as a compromise between the parties, which could not agree on a political candidate for the position. The compromise was widely interpreted as an initiative to end political stagnation, as formulated by Ram Chandra Paudel (NC leader): “The country is headed to elections. The uneasy period is over” (Reuters 2013). However, not all parties approved; the CPN-M and around 18 fringe parties submitted a reservation memo against the agreement to the President (NDTV 2013). Moreover, according to Reuters (2013), prominent lawyers pointed out the obvious pitfall of ignoring the principle of power separation between the executive and judiciary body. Nevertheless, Regmi was sworn in as Head of Government the 14th of March (NDTV 2013).

In addition, the 19th of June 2012, shortly after the dissolution of the first CA, the Prachanda-led UCPN (Maoist) had experienced a vertical split. The separation followed from a long internal debate concerning which political strategy the party should adopt. As a consequence a new Maoist party called CPN-Maoists (dash instead

50 Their mandate is also functioning as a Parliament the first year.
51 Intrin Electoral Council of Ministers
52 Following marathon negotiations the top leaders signed an 11-point consensus agreement, including not only the establishment of an IECM, but also agreements regarding citizenship, voter’s list, truth and reconciliation committees and the reintegration of former Maoist combatants into the Nepal army (Nils A. Butenschøn, Stiansen, and Vollan 2015, 28)
53 UCPN (M) formerly known as CPN (M) until the changed name in 2009
of parentheses), led by Mohan Baidya\textsuperscript{54} (commonly known as Kiran) emerged. The CPN-M was more radical than the UCPN (M), and emphasized the need for a non-conventional political approach, including insurgency and revolution to claim power (Smolerek 2014). Moreover, they accused the UCPN (M) for “ideological deviation” by fiddling with electoral politics (Basnet 2013). The UCPN (M), former “primus motor” in the People’s war, was increasingly leaning towards a more reconcilable approach, emphasizing peace and constitution (Smolerek 2014).

The implications of the split and establishment of the IECM were the, predominantly CPN-Maoist led 33- party alliance, threats to disrupt the election by launching national protest. The protest campaign would culminate to an all Nepal \textit{bandh}\textsuperscript{55} from the 11\textsuperscript{th} to the 20\textsuperscript{th} of November 2013, covering the time of the election (UN Resident Coordinators’Office 2013). The 33-party alliance argued that a new election was not likely to solve the political stalemate, and furthermore, that current politics allowed for external interference leading to Nepal’s reduced sovereignty\textsuperscript{56} (Smolerek 2014). Moreover, the CPN-M introduced two preconditions for their participation in the elections; first, roundtable discussions including all stakeholders, and second, based on their claim that the IECM was established by external powers to fulfill their “vested interests”\textsuperscript{57}, they demanded the dissolution of the current Interim Electoral Council of Ministers (IECM), and the removal of Khil Raj Regmi as Chief Justice (Basnet 2013).

In connection to the 33-party alliance stance on the uselessness of a new election, Basnet (2013) speculates whether these preconditions were actually demands only to buy time. It might have been CPN-M’s initial idea that the roundtable discussions would solve the remaining issues before leading to new elections, which was unacceptable for the other major political parties. Moreover, dissolving the IECM would assumable lead Nepal to further political crises, as there was at this point no ground for establishing a new consensus government (Basnet 2013).

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{54} Former Vice- Chairman of the UCPN (M) (NDTV 2013)
\item \textsuperscript{55} Bandh: a general strike, often used by politics in Asia.
\item \textsuperscript{56} Nepal’s has entered “unequal treaties” with India, primarily preferable to the latter. In addition Indian government regularly intervenes in Nepali affairs (Smolerek 2014). Frequent interference from India has increased the anti-Indian sentiments.
\item \textsuperscript{57} Assuming neighboring countries (china and India primarily) as well as the international community’s interest in Nepal’s political stability.
\end{itemize}
\end{footnotesize}
In addition, party-insiders reveal another important aspect: the necessity of separating themselves from the UCPN (M) after the 2012 split. In the case they would just boycott the election, a potential consequence would be power loss in national politics, however by destructing the election altogether, they expected to remain status quo position (Basnet 2013).

In context of a potential violent outbreak initiated by the 33-party alliance and other identity- based groups, the UN urged all political parties to abide by the law and act respectful and peaceful towards the democratic rights of other Residents (UN Resident Coordinators’ Office 2013). However, prior to the planned election, Bandhs were implemented and the CPN-M continued their anti-poll activities. They warned that they had initially planned for peaceful protest programs, however should the government disrupt their protests they would resist strongly (UN Resident Coordinators Office 2013). In addition to committing various crimes such as assaults and destruction of public property, it was reported that CPN-M organized several nation-wide protests and requested donations from government officials as to increase their leverage (UN Resident Coordinators’ Office 2013).

Despite roundtable discussions and considerable efforts to accommodate their demands, the CA failed to include the CPN-M led 33-party alliance in the constitution-making process during September 2013 (Vollan 2015). The alliance ultimately boycotted the second CA election as implied, resulting if not directly- at least indirectly, the collective Maoist’s loosing their majority in CA II.

Importantly, despite a massive military response to intimidate those who called for a boycott election registering was reduced by 5.4 million, and turnout was reduced by around two million voters. According to Smolerek (2014) it was reported correctly by media with figures showing higher turnout than in 2008, but that was due to a smaller number of registered voters, and did not reflect the actual turnout.

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58 Amongst others; Upendra Yadav-led Madhesi Janadhikar Forum, Nepal (MJF-N), Ashok Rai- led Socialist Party (FSP) and J.P Gupta-led Terai-Madhes National Campaign (UN Resident Coordinators Office 2013)
The election for CA II was held the 19th of November 2013, leading to the following CA configuration: the NC became the clear winner and thus comprised the majority party with 196 seats. Second winner up was the UML with 176 seats. The Maoist (UCPN) gained only 80 seats in total, approximately half compared to 2008 elections, and the Madhes parties in sum won 52 seats. Both Dalits and female representatives were both numerical reduced, loosing approximately 2,1 per cent and 3,3 per cent compared to the 2008 election (Nils A. Butenschøen, Stiansen, and Vollan 2015, 30-31).

The CA II met for the first time 22nd of January 2014 (Vollan 2015), however from the time of the elections in November up until February 10th no party won majority in CA the, leaving Nepal without government for four months. The two majority parties, NC and CPN-UML, finally reached an agreement, and Sushil Koirala (NC) was elected Prime Minister with the backing of UML (India 2014).

During the three following meetings in March/April 2014, the Rules of Procedure (RoP)59 (Karki 2014) was adopted. Moreover, it was decided to adopt the agreements concluded by CA I, and to establish five new committees60 (Shakya 2014). The chairpersons of the main committees, responsible for drafting of the constitution, were not sworn in until April and their work started early May 2014. According to the CA’s initial self-imposed schedule, a draft of the new constitution should be presented for public evaluation by mid- October 2014, and the new constitution should be promulgated by the 22nd of January 2015 (Vollan 2015).

59 Rules for operation of the Constituent Assembly; maintaining the order of the sitting; defining the Committees, their function and activities, and regulating the CA and other matters relating to its Committees (Basnet 2013)

60 1) Constitutional Record Study and Determination Committee (CRSDC) lead by Bishnu Poudel (CPN UML), 2) The Constitutional- Political Dialogue and Consensus Committee (PDCC) lead by Dr. Baburam Bhattarai (UCPN (M), the 3) the Constitutional Drafting Committee lead by Krishna Prasad Situla (NC), 4) Capacity Enchantment Committee, headed by Laxmi Chaudry (Madhesi Peopl’s Rights Forum M) and the 5) The Committee on Citizen Relations and Public Opinion Collection lead by Pramila Rana UCPN (Karki 2014, 1).
In context of the RoP, what at first seem like another relatively naive timeline, actually give the impression of being doable, as it allowed to fast-track the adoption of uncontested agreements from CA I. The task of identifying the thematic reports for CA I was assigned to The Constitutional Record Study and Determination Committee (CRSDC). The CRSDC was to prepare new reports based on agreements reached in the previous CA, separating consensus issues from issues still disputed. The prior would be forwarded to the Constitution Drafting Committee and the latter to the Constitutional-Political Dialogue and Consensus Committee (PDCC) for further debate (Shakya 2014). While the CRSDC fulfilled their mandate within May 2014 (Vollan 2015), the PDCC clearly had a much more complex mandate. The PDCC would seek to resolve remaining disputed issues by building consensus including all involved parties, both inside and outside the CA. However, if consensus was not reached, the committee had the opportunity to suggest a full CA vote to conclude on the matter at hand. Furthermore, the PDCC would submit proposals on issues that arise consecutively, upon which the CA II would rule by majority vote (Shakya 2014).

As mentioned above, CA II aimed to have a draft ready for public scrutiny by mid October 2014 (Vollan 2015). The Committee on Citizen Relations and Public Opinion Collection would be responsible for both the distribution of the draft by publishing it in the Nepal Gazette, in addition to sorting out and managing the input consequently generated. Furthermore, they would make a report to the CA II including suggestions for revisions based on the feedback they received. The process of evaluating public opinions and finalizing reports to the CA II was estimated to be complete within a timeframe of two months (until mid- December 2014). The CA II would discuss the suggested revisions and refer them to the PDCC for consolidation. The draft would then be forwarded to the CA II in order to conduct a final two-thirds majority vote on each article of the draft. As for the timeframe for the final voting process, it was planned to take a month altogether (Shakya 2014). A summary of the initial schedule can be found in Appendix C.
The schedule slipped\textsuperscript{61}. As mentioned shortly above, during an approximately two months long process, the CA spent most of their resources attempting to include the 33-party alliance (Vollan 2015). Unfortunately, the CA’s efforts were not only in vein, however it was also on the cost of the CA II committee’s efficiency. By the time the Dashain festival\textsuperscript{62} started in September, the process was already delayed. Not until November 2\textsuperscript{nd} 2014 the UML and NC ruling coalition introduced a proposal regarding the controversial issues, such as the federal structure and names of provinces, electoral system and representation and parliamentary system. The suggestions included first seven provinces attaining geographical names, and not identity based as required by the Maoists. Second, a bi-cameral parliament with a Lower House comprising 165 members elected by FPTP, and a 75-member Upper House elected by List PR including equal number of seats for each province. And third, a constitutional Bench\textsuperscript{63}, not a independent supreme court (Vollan 2015).

After a discussion in the PDCC, it was clear that their (ruling coalition’s) proposal would not be agreed on. The UML and NC then asked for it to be decided by a vote in the CA, a request strongly opposed by the opposition, whom for obvious reasons\textsuperscript{64} wanted it to be further deliberated in the PDCC aiming at reaching a consensus decision. It is Vollan’s (2015), impression that the while the Maoists emphasize inclusion and proportionality, UML finds few provinces based on economic viability most attractive, and the NC underline the importance of having a parliamentary system (Vollan 2015).

In short, the ruling coalition (NC and UML) stand by a federal configuration consisting of 7 provinces based on primarily economical viability, the continued practice of an independent Supreme Court as the final authority on constitutional disputes, a mixed electoral system for the upper house, proportional election combined with a 65/35 split

\textsuperscript{61} The following will rest mainly on personal e-mail correspondence between Kåre Vollan and myself. In addition, a number of newspaper articles will provide for an overview of the remaining process until mid-July.

\textsuperscript{62} Dashain Festival: The most anticipated festival in Nepal. A two-week celebration symbolizing the victory of good over evil.

\textsuperscript{63} Supreme Court is not independent of legislature, fails to meet the separation of powers doctrine

\textsuperscript{64} Being a minority in the CA, a CA voting is not preferable to the Maoists, furthermore it would undermine the CPA and commitment to consensus decision-making procedures.
of FTPTP and a proportional elected Lower House. In addition, the coalition favors a ceremonial presidency. The UCPN (M) and their allied\textsuperscript{65} preferred ethno-federalist structure including 10 provinces, a separate constitutional court as the ultimate authority on constitutional issues, and a mixed member proportional electoral system. Furthermore, the UCPN (M) calls for direct elected president and a parliament elected PM. Regarding how the executive power is allocated between the two is not yet decided upon, as they expect to come to an agreement (Vurens van Es 2015).

The cleavages left the main four issues, federalism, forms of governance, election system and judiciary unresolved, despite numerous attempts in both the PDCC and by negotiation between the top leaders, representing the NC, UML; Maoists and Madhes (Vollan 2015).

By the end of December 2014 a taskforce consisting of second rank leaders from the four major political forces, NC, CPN-UML, UCPN (M) and the United Democratic Madhesi Front (UDMF) was established. Their mandate was to resolve the disputed issues, and within two days submit a report with suggestions for compromise. The top leaders would continue negotiations while the taskforce started their bargaining. Despite experience showing little or no progress on the disputed areas, the initiative reflected some actors impression of having conducted rather fruitful negotiations in the CA (Koirala 2014). On the other hand, vice –Chairman of the CPN-UML Mr. Bhim Rawal, stated “a constitution by January 22 is not possible” (Karki 2014). Even if a voting process were to be initiated, the deadline would not be met to his opinion. Nonetheless, according to Rawal, the CA had no other alternative than to start the 2/3 majority process, pointing out that if the opposition parties found the constitution excluding of their demands, they could seek amendments through a 2/3 majority (Karki 2014).

The taskforce operated for three days before it dissolved, failing to enhance any progress. The disputed issues were again forwarded to the top leaders, which did not seem to help out this time around either. As the deadline was approaching, the UCPN

\textsuperscript{65} UCPN-led 30 party opposition comprised by 19 parties in CA II and 11 outside parties, including amongst others: Federal Socialist Party Nepal (FSPN), Madhes Janadhikar Forum- Nepal (MJF-N), Tarai Madhesh Lohantrik Party (TMLP), Sadbhawana Party, Tarai Madhesh Sadbhawana party
(M)- led 30 party alliance called for public demonstration as a protest against the failure of the CA to promulgate a new constitution within 22nd of January 2015 (Vollan 2015). With the aim of exerting pressure on the ruling coalition for reaching consensus decisions, all UCPN (M) central committee -and advisory committee members were instructed to go to their districts to coordinate a protest program until the last week of January (Republica 2014b). On 31st of December 2014, the Kiran-led CPN- M alliance declared they had coordinated their protest with the UCPN (M) protest programs. According to myRepublica newspaper, the CPN-M claimed they would burn the constitution if it was promulgated by the CA within the deadline the 22nd of January (Republica 2014a). However, the parties did seem make some progress during the beginning of January 2015, when the parties agreed on a mixed electoral system, including a 65% FPTP and 35% List PR vote (Vollan 2015).

Unfortunately, any optimism based on recent progress proved to be in vein. The promulgation of a new constitution was not yet in sight when the 22nd of January 2015 approached, upon which the majority parties suggested a hearing. The UML-NC ruling coalition recommended making a questionnaire regarding the remaining issues, and despite intense opposition66, a panel for the formulation of such a questionnaire was formed on January 25th (Vollan 2015). The ruling coalition, at this point, emphasized that the efforts to forge consensus would be continued simultaneously as a voting process, and moreover, they invited the UCPN (M) led alliance to stay in the CA. On the other side, only a week before, they had refused to talk to the opposition until they stopped all CA obstruction and allowed for the committee to prepare for voting in the CA on the disputed issues (Post 2015a).

The UCPN (M) responded by refusing continued talks with the government, ruling coalitions and CA chair, until the CA environment was again conducive to consensus decisions. They argued that the initiatives by the ruling coalition of promulgating a constitution by majority vote were, amongst others, undermining the 12-point

66 The Maoists and their allies resorted to violence in the CA meeting, opposing the establishment of a questionnaire-panel. In addition they called for public and party protests (Shakya 2014)
agreement\textsuperscript{67} and the CPA (Post 2015c). Consequently, negotiation broke down, and the Maoist and their allies again resorted to various protests (Vollan 2015).

Nevertheless, the following month both informal and formal dialogues proceeded upon invites from the ruling coalition, and chairman of the CA, Subas Nembang, guaranteed to dissolve the Questionnaire Committee- however only given that agreements over the disputed areas were reached (Kathmandu Post 2015). On the 27\textsuperscript{nd} of January PM Koirala started talks with the opposition (Maoist and Madhes) (Post 2015f).

During an informal meeting at Koirala’s place, Dahal (UCPN (M) Chairman), urged the PM to on behalf of the NC, to create a climate fruitful for consensus agreements. Furthermore, Dahal expressed that the opposition found it problematic to continue talks unless the ruling coalition withdrew their initiative on a Questionnaire Committee (Post 2015a). During February the UCPN (M) –led alliance engaged in several protest programs, blaming the ruling coalitions to corner them based on numerical strength. Conveniently enough, during that same period, the Kiran-led CPN –M begun initiating a reunion, claiming that for the UCPN (M) to stay in the CA would be giving into regressive forces. UCPN (M) however, did not uncritically accept the invite, arguing that their political approaches were not compatible. The CPN-M wanted to exclude the Maoist collectively, including UCPN (M) from the CA, while as the UCPN (M) promoted a consensus solution within the CA. CPN-M then invited to forge an alliance only to intensify their leverage and protests (Dahal 2015). According to several Post Reports and articles (amongst others: Post 2015d, Samiti 2015), despite not agreeing on central issues such as ideological stand and the term “revolution” talks of a merger between Maoists continued the following months.

In the end, the questionnaire was nevertheless submitted to the CA for a vote. However, given the underlying faith in resuming dialogue with the opposition, postponements were implemented continuously to see if consensus could be reached. On February 12\textsuperscript{th} 2015, only six day after Nembang stated that: “if the parties fail to reach any understanding by April 6 mid-day, the Assembly will proceed as per its regulations and

\textsuperscript{67} Agreement between the SPA and the Maoist (2005) ref. above in text
established practices”\textsuperscript{68} (Post 2015b), the CA process was postponed indefinitely, and the questionnaire of 232 questions, was ultimately not put for a vote (Vollan 2015, Post 2015g).

As mentioned above, despite numerous failures, any progress made may have fuelled the idea of making a consensus-based constitution, thus keeping the negotiations going at some level. However, the remaining issue of future federal structure, including the five regions, three in the far east of Terai (Jhapa, Morang and Sunsari) and two in the Far west of Terai (Kanchanpur and Kailali) were intractable. The NC- UML coalition wanted to include them in the Hill region, while as the Maoist and Madhes stood firm on incorporating them in the Terai region (Vollan 2015). Regardless of supposedly reduced support amongst the population (Post 2015a) and critics (Asthā Rai 2015) the two coalitions refuse to back down, and despite negotiations continuing during February and March, no agreements were reached (Vollan 2015).

On April the 15\textsuperscript{th} the UCPN (M) announced their willingness to make concessions regarding the federal structure, more specifically the number of provinces. However such an accommodating approach would be contingent of the ruling coalition agreeing to a new electoral system. Although the parties had initially agreed on a mixed electoral system, they still disputed the split between FPTP and PR (proportional representation) votes. In order for the UCPN (M) to adopt a flexible attitude regarding the number of provinces, they required mixed electoral system with a 55\% FPTP and 45 \% PR. Furthermore, Dahal implied that they had resigned their stand for a ten-province federal model, and leave the parliament to finalize the names, OR they could, perhaps surprisingly, go along with a six-province model, given that the names were finalized at once (Post 2015d). Moreover, Dahal stated: “The dispute over five districts is between the ruling parties and Madhes–based parties. We have less concern here” (Post 2015d).

The 19\textsuperscript{th} of April, the ruling coalition again agreed on going forward with the CA II voting process on contentious issues, if the parties had not reached an agreement by the following Thursday (23\textsuperscript{rd} of April 2015). Since the voting process was postponed the

\footnotetext{68}{Meaning a majority process on the questions prepared by the questionnaire committee}
12th of February, there had been little or no progress. In combination with the decision on voting, the NC chief whip Chinkaji Shrestha stressed the need to produce a new CA schedule, however, PM Koirala had reservations against declaring a new deadline for the promulgation of a constitution prior to having developed a common understanding of the federal configuration of Nepal. Furthermore, he found it beneficial to continue talks with the opposition while the CA underwent the voting. He enjoyed some support as party leaders continued to emphasize that they would opt for a consensus solution if possible. Being so close to agreements on the issue of federalism, the UCPN (M) again threatened to boycott the CA meetings if a voting process was started. In addition the Maoists implied they would be willing to adopt a more flexible attitude, based on the belief that the difficulties of ethnic and social cleavages would continue if consensus were not reached. This flexibility can also be interpreted as a lack of faith in the future constitution’s durability, should it be adopted without consensus. Furthermore, they suggested that the initiative of continuing the voting process was connected to the ruling coalitions arrogance, comprising two-thirds in the CA II (Post 2015e).

So it seems some progress was made during the spring, as the three main parties (UCPN (M), NC and CPN-UML) stated on April 20th that they had narrowed down their differences, and would kick start the drafting process of a new constitution. Consensus regarding the federal issues was however not reached.

3.2.3 APRIL 25th: Devastating earthquake hits Nepal
Saturday the 25th of April 2015, the world was informed of the tragic news of a 7.8 magnitude earthquake hitting Nepal. Approximately eight thousand people were killed and thousands more were left injured and homeless. To make matters worse, around 120 after-quakes jolted the region, of which several were of relatively high impact69. The Earthquake mainly hit Kathmandu and its surrounding areas; amongst the worst affected areas was Sindhupalchok, where more than two thousand lost their lives and the capitol itself, where over thousand people were killed. The earthquake triggered several landslides, including the avalanche hitting a Mount Everest basecamp killing 17, and injuring 61 (Beaumont 2015).

69 After the earthquake followed several after quakes of various magnitudes, including a quakes of similar magnitude as the main one (Acharya 2015)
In the midst of all the chaos, the international community reacted quickly and offered substantial help. Amongst others they provided for, money, relief material, equipment, expertise and rescue teams within just a few days (Jazeera and Agencies 2015).

Naturally, all constitutional processes were held off as the Nepalese government and authorities focused on providing immediate aid to their citizens. However, disagreements of how to provide for the necessary aid characterized the following days. During the beginning of May the Kathmandu Post reports that the parties argued over the size of grants for the people who’s residents were smashed by the quake, the Maoists favoring at least 500 000 compared to the 300 000 suggested by the ruling parties (Sharma 2005). Moreover, the opposition wanted to be part of the rebuilding plan introduced by the government, as to hinder a ruling party monopoly and keep it from going solo in performing the vital tasks of rebuilding. The Maoist also emphasized the distribution of relief material and the need for a high level authority to coordinate the actions of the government (Report 2015a).

Despite that all other constitutional processes were halted, the establishment of a national government was debated. This followed from the realization that a coordinated political effort would be crucial in overcoming the consequences of the quake, and present in the background -the idea of a consensus government to be fruitful for the promulgation of a new constitution. All the three major parties visited quake-hit locations together, aiming to signalize they were now overcoming their differences in times of crises (Report 2015c)

The latter behavior can also be seen as a continuation of measures taken shortly prior to the disaster. Just five days before, on the 20th of April, the parties’ expressed they had now narrowed down their differences and were ready to kick start the drafting of the new constitution. However, regardless of the reduced number of disputes between the three, issues on federalism remained elusive. The initiative had followed from agreements made already prior to the 22nd of January deadline, as the ruling coalition and the UCPN (M) planned to prepare a draft on the issues they agreed upon, and then

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70 By including the opposing parties in the government
continue to discuss the federal structure. Upon reintroducing this model for reaching agreements on the debated issues, the Maoists implied that the chances for an agreement to be reached were relatively high, as the parties were close to consensus (Report 2015d)

At this point, the judiciary had been agreed on, the electoral system was in large agreed on, however not including the FPTP/PR shares. Moreover, regarding federalism the parties had made a preliminary agreement on establishing six provinces, however the agreement did not include province names and borders. If no agreements were reached after the Drafting Committee completed its tasks, the party specific position on the matter would be included in an annex. Given that the parties still stood their ground, the ultimate measure would be to form a commission to sort out the federal issues. A similar procedure was thought to deal with the finalizing of the electoral system: The PDCC would present its report to the CA which then would forward it to the drafting committee to complete the work of making a draft of a new constitution (Report 2015d).

3.2.4 SUBSEQUENT EVENTS
After a protracted deadlock, the parties made further process in early June. On the 2nd of June, it was reported that the parties came to an agreement on a 60/40-poll model favoring FPTP. The deal was contingent on the Maoists to reach an understanding on federalist configuration, which was at this point again considered to be either six or eight provinces (Report 2015b).

On June 4th the four major parties locked in on a six-province model, however the procedure of naming the provinces was left unresolved. The parties differed on whether to mandate the provincial assemblies to give names to their respective

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71 To set up an constitutional court for five to ten years which will deal with the potential disputes between the central and federal governments (Moen 2015)
72 The Maoists demanded 50/50% share between the FPTP and PR (Bhatterai 2015), compared to the 30/70 & in favor of the FPTP (Report 2015d)
73 Led by Bhatterai UCPN (M) (Bhatterai 2015)
74 Led by Sitaula (NC)(Report 2015d)
75 NC, UML, UCPN (M) and the Madhese based parties
provinces, or if the CA II would name them in the constitution. The NC was at this point still in favor of even fewer provinces, however the ruling coalition agreed that the number of provinces would be economically viable and thus agreed with the Maoist on the issue. The Maoists were highly concerned about the names, having agreed before the meeting not to compromise on the ethnic aspect of the federal structure. The Maoists stated that “Names of provinces should be finalized right now and the ethnic cluster should remain intact if we are to go for six provinces” (Report 2015a).

Despite the Maoist being firmly set on deciding names, only a week later, on June 9th, a 16-point agreement was signed by the PM, Koirala, CPN-UML chairman Oli, UCPN (M) chairman Dahal and MJF-L chairman, Bijaya Kumar Gachhadar. In short, the agreement in large covered the remaining contentious issues, however it left out the delineation of the provinces, their names and the regulations for inclusion in elected organs (Vollan 2015).

According to the agreement, the six-province idea discussed only a few days prior, was scratched. Nepal would now be separated into eight provinces (a semi-Maoist demand), based on both economic viability and identity. Furthermore, the government would establish a six-month Federal Commission, which would finalize the provincial borders, for it then to be ratified by a qualified majority in the Legislature-Parliament (Vollan 2015). As for the names, Provincial assemblies would decide by a two third member majority (Post 2015j)

Furthermore, the Maoists demanded a 10 percent quotation for the marginalized groups in Parliament through the election system, however, the NC and UML disagreed (Post 2015j). Thus the procedures to secure inclusive elected bodies were left with the drafting of the constitution (Vollan 2015).

With regards to form of government, it was agreed on a parliamentary system, including a central bicameral parliament and unicameral federal parliaments. The Maoists,

76 Upper House: 45 members. Lower House 275 members (of which 110 will be elected through PR voting and the 165 through FPTP votes) (Report 2015d)
opting for a presidential system agreed under note of dissent. Moreover, a mixed electoral system was adopted (60 FPTP/40 PR) and the number of FPTP constituencies was reduced from 240 to 165. Although the agreement did not introduce a timetable for the promulgation of a new constitution, UML chairman KP Oli indicated the promulgation would happen mid-July. Following the 16-point agreement the PDCC would provide for a consensus report, in which would be forwarded from the CA to the Drafting committee for its preparation of the first statute draft. After the adoption of a new constitution, the four major parties planned to form a national unity government (Post 2015j, also in Kamat and Acharya 2015).

In the matter of federalism, leaving out the key issues such as names and demarcation proved to have consequences for alliance politics. This was indicated already at the first meeting of the 30-party alliance the day after the deal was signed. Dahal, who initiated the meeting, expressed his urge for the Madhese-based parties to support the promulgation of the new constitution, in a similar way as the Maoists had done: by submitting dissents regarding their concerns. An approach which reflected Dahal’s realization that eight years had passed without any considerable success in promulgating a new constitution (Post 2015i). However, several fringe parties objected the deal, leaders of the Madhese-based parties formed a parallel conference to inform that any agreement made by the four political parties, NC, CPN-UML, UCPN (M) and MJF-Loktantrik would not be approved by them (Post 2015h). The seventeen opposing parties attended a meeting called by the Thakur-led Tarai Madhes Democratic party (TMDP), where it was concluded that the 16-point agreement was regressive. Thus they agreed on forming a common front, excluding UCPN (M) and MJF-L, and to continue their efforts to bring about identity-based federalism (Singh 2015).

In sum, discontent was expressed on both sides. The left felt they lost leverage in future negotiations given a promulgation of a new constitution, and moreover that the federal debate was lost entirely. The Right was, as shortly mentioned above, also split in their opinion on the eight province model, expressing an eight province model to be a Maoist suggestion, and a model which Nepal could not sustain (Post 2015k).
In addition to the criticism and alterations in alliance politics, the deal suffered a major blow only ten days later, when the Supreme Court issued an order to stop the process of implementing the 16-point agreement (Post 2015i). The reason behind the ruling is found in the constitutional articles 177, 8278, 13879 and its third clause80, which states that the CA, before its dissolution, must decide the delineation, number and names of provinces. Needless to say, the ruling restored leverage to the regional based parties such as the Madhese, which had opposed the deal to begin with. Despite the Supreme Court ruling, Kathmandu Post reported that the CA claimed to be unhindered, as they kept going with their work on drafting the new constitution. Nembang confirmed that the constitution would be promulgated within the stipulated time, and as soon as possible (Post 2015h).

Delegating the drawing of the province borders to a federal commission was not in accordance to the interim constitution, which as read from the articles mentioned above, states that the borders were to be a part of the constitution when promulgated. Nevertheless, the Constitutional Drafting Committee under chairman Krishna Prasad Situla (NC) published their first draft of the Constitution the 30th of June. It included elections procedures and a 1/3-woman quota in the federal Parliament, and a quota system for the inclusion of all groups, including those with the history of being over-represented. Inevitably, this strategy for inclusion had the negative effect of further excluding marginalized groups (Vollan 2015).

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77 “This Constitution is the fundamental law of Nepal. All laws inconsistent with this constitution shall to the extent of such inconsistency, be void” (Kamat and Acharya 2015).
78 Dissolution of the Constituent Assembly: “On the day of the commencement of the Constitution promulgated by the Constituent Assembly, the task given to the Constituent Assembly shall come to an end”. (Nepal 2007)
79 “The boundaries, number, names and structures, as well as full details of autonomous provinces and the Centre and allocation of means, resources and power shall be determined by the CA, while maintaining the sovereignty, unity and integrity of Nepal.” (Nepal 2007)
80 “Final decision of restructuring of the State shall be as determined by the Constitutional Assembly” (Nepal 2007)
The 15th of July the CA II decided to launch a public consultation process which altogether generated 33 061 responses. A committee responsible for managing the suggestions would then produce a report and forward it to the PDCC, which would discuss and revise the report prior to passing it on to the Drafting Committee. The Drafting Committee would then finalize a draft and present it to the CA (Vollan 2015).

The feedback process was by many reported a “political sham”. On July the 21st, an article in the Kathmandu Post reported on the atmosphere from the Lotus Party venue in Koteshwor, revealing a few of the concerns regarding the process: Difficult language, short timeframe, and the majority presence of party cadres at the venues where the feedback sessions were located (Ojha 2015).

A teacher and lawyer by profession, Mitra Sapkota had only received the draft the same day as the meeting, questioned the timeframe, as he obviously would not be capable of reading the draft cover to cover and then offer a sound feedback only few hours later. Furthermore he pointed to the language, stating it was “hard to understand by common people”. The reporter gives the impression of detecting a rather cynical attitude towards the feedback process in general; many had showed up to share their opinions, however many chose to be passive onlookers (Ojha 2015).

Despite the CA finally taking measures according to its purpose, it seems as they still have a way to go concerning meeting their people’s needs.  

3.3 ANALYSES: Nepal (CA 1 and CA 2 - 15th of July)
The main purpose of this analysis is to investigate whether the power balance in the case of Nepal’s constitutional process can rightly be accused of causing delays and deadlock, as suggested by Zartman and Rubin. Focus will be on: the validity of (theory) transferability/theory extrapolation, the terms power and power balance, perceptions, 

81 Due to a maternity leave I have had a break from working on my thesis, which I started over a year ago. The ongoing process soon became past as Nepal did adopt a new constitution 20th September 2015. However, the constitution have been massively criticized for excluding marginalized such as the Dalits Madhesi and woman, protests have continued taking lives and amendments made by negotiation is now recommended (Nepal 2007)
and the possible implications of the 2015 earthquake on the orchestration of negotiations towards a new constitution.

It is not straightforward extrapolate theory from interstate to an intrastate level of negotiation. Literature concerning negotiation in civil conflicts is divided on the matter. Zartman belongs to the branch of scholars that oppose the notion of theory transferability. In his book Elusive Peace: Negotiating an end to civil wars (Zartman 1995) Zartman describes civil wars as particularly hard to resolve due to their objectives and their inherent asymmetrical power balance. It is a matter of life and death on behalf of the combatants, given that what is at stake is control of governing powers. The expectation of civil wars being more intense than interstate wars, may easily lead to the assumption of the conflict being irreconcilable by negotiation (Licklider 1995).

On that note, although all wars involves violence, Miall (in Licklider 1995) show that only 15% of interstate wars involve extreme violence, while 68% of intrastate and intrastate/ international wars do. Moreover, Pillars (in Licklider 1995) show that about 60% of interstate wars were resolved by negotiation, contrary to around 30% intrastate wars. Finally, by excluding colonial wars and other “special cases”, Stedman (in Licklider 1995) found that the frequency of intrastate wars settled by negotiation is further reduced to about 15% . Thus, according to these data, civil wars may be both, of a clear cut asymmetrical character, and therefore more difficult to settle by negotiation. Hence, one cannot examine intrastate conflict negotiation using the same premises as when studying interstate negotiation.

However, these data also reveal that certain civil wars are in fact resolved by negotiation. Zartman`s description of civil wars compared to interstate wars, seems to focus on extreme intrastate conflict. Situations where opposition is 100 % committed to their interests, but is only regarded a minor disturbance by a government that is far more concerned with other issues (Zartman 1995). This may be true in many cases; however, Nepal and Sierra Leone are both cases where negotiation has played a significant role in conflict resolution. Thus, I assume that findings generated by studying
interstate and individual negations should be applicable to an intrastate level of analysis.

One may think of the power aspect of negotiation in a way that includes the notion of winning and losing. An idea which basically means that which actor is more powerful can only be “predicted” after the negotiation process (Zartman and Rubin 2000, 12-13). Within this framework, it is challenging to analyze if a given behavior is directly related to power status, and furthermore if the combination of power statuses contributes to negotiation modes such as deadlock, a characteristic present pre and during negotiation. Furthermore, as negotiation is often portrayed as a win-win situation, where both actors are better off than they initially were, a conclusionary definition of power is inadequate (Zartman and Rubin 2000, 13).

In short, negotiation is a social encounter, meaning that a conceptualizing of power, short of including perceptions, will limit the basis for analysis. According to Zartman and Rubin, perception mediates reality. However, reality does not lose its relevance. A party who operates as though it possesses more tangible resources than it actually does risk to be tripped by reality. In line with Zartman And Rubin’s (2000) rationale for including perceptions in their analysis, I will too include perceptions as an element to my analysis. To my understanding, in the case of Nepal perceived power is more or less in play throughout the constitutional process.

Given that theory extrapolation is appropriate, and furthermore, that power in context of negotiation is operationalized for the purpose of this analysis, I will continue with the power balance that characterized the constitutional process in Nepal.

**3.3.1 POWER BALANCE: Near symmetry**

As Zartman and Rubin (2000, 200-201) indicate, finding symmetry is ultimately more about excluding asymmetry. Thus, to conclude with the categorization of a balance as equal, will potentially be subjected to criticism, and rightly so. Still, to my opinion, the presence of a near symmetrical power balance in the case of Nepal is given by the following observations.
The early signs of symmetry in the constitutional process of Nepal have mainly been developed through the course of adopting agreements. Already during the end of 2005, the Maoists and the Seven Party Alliance first revealed their intentions of fairness and further continuation on more *equal terms* by signing the 12-point agreement (Meerts 2005). The content of the agreement prescribes a framework for a future democratic regime, to commit to a multiparty system, free elections, and to reallocate land that had been occupied during the conflict.

More specifically, point number three in the 12-point agreement address the demand for a peaceful continuation and include a self-imposed military restraint on both parties. By outsourcing army supervision to the UN or any other eligible candidate, they limit their military power. Moreover, both parties recognized their previous wrongdoings, and sought to resolve future issues though dialogue (Meerts 2005).

A year later when the CPA was adopted, the issue of self-restraint and equality was further emphasized, as the army was set to be reconstructed under UN monitoring. According to the CPA, the Nepali army would “store the arms in equal numbers to that of the Maoists” (Nepal 2006, point 4.6 page 6) equalizing the parties military resources.

Furthermore, the interim constitution contains indications of symmetry, or at least what can be interpreted as equalizing consequences following the agreements. First, the interim constitution, not unlike the CPA, emphasizes the inclusion of marginalized groups. What may initially be understood as an advantage for the Maoists based on the combination of not being in position in CA 2, and representing the oppressed, may also be seen a variable of general unification. Committing to a common goal and sharing an interest, may on one hand induce further disagreements regarding the “how”. On the other hand, it may be unifying and induce cooperation based on “what” the parties are aiming to do. It is reasonable to believe that perception of cooperation enhances self-restraint. Thus, by limiting the power aspect in the negotiation, one can imagine the parties to act more equal.

In relation to the aspects of marginalized groups, the conflict of Nepal may often appear as a bipolar conflict based on leftist/rightist ideology. However, if not already
sufficiently emphasized, one cannot neglect the highly relevant layer of ethnicity and group identity to the conflict and following negotiations.

There are several examples of events, which all functioned separately and combined as catalyst to increase expectations of group autonomy and self-governance. As previously mentioned, ethnic consciousness contributed to set the agenda during 2007/08 when the Madhes called for a restructuring of electoral constituencies, their own Madhes state and to be excepted from the quota rules. Moreover, the Federal Republican National Front entered and the government entered an agreement 2\textsuperscript{nd} of March 2008 protecting the rights of indigenous peoples and excluded groups such as Dalits and woman (Nepal 2008), the signing of the ILO convention on indigenous rights in 2007 ignited the Janajatis hope for group equality, and the CA election procedures were initially adopted based on principles of inclusion and representation. The continued and increased ethnic and group based identity awareness is likely to have caused the support for applying a federal structure when restructuring Nepal, making ethno-federalism an attractive option.

Concerning federal configuration, the ruling parties threatened to go for a vote in the CA instead of establishing a consensus agreement in the PDCC. This act however was never executed, signaling that all parties keep their obligations towards the CPA and the elements of promised inclusion and ethnic accommodation. Important in the context of this analysis is that it shows the parties unwavering commitments to consensus and inclusion, and thus it bolters my arguments of it being a symmetrical negotiation despite numerical differences.

Returning to the Interim constitution, its content witness of further commitment to consensus. Both President and Prime minister must be elected by consensus (Nepal 2007, 24, 29) Furthermore, part 7 in the interim constitution provides the framework for the CA, including the procedure for passing constitutional bills. It prescribes consensus decision by vote of minimum two-thirds attendants on preamble and then each article. In cases where the parties fail to reach such consensus, parliamentary party leaders of the political parties represented in the CA shall hold mutual consultations no more than 15 days after the initial vote. The consultations operate
within a timeframe of seven days before the bill is once again put to vote. If consensus is still not reached, the bill can be passed by attaining a two-third majority voted by a two-third assembly (Nepal 2007, 43-44).

Although the interim constitution does in fact open for majority vote, which I imagine would be challenge due to a highly fragmented assembly (Both CA 1 and 2 were highly fragmented and inclusive) a consensus approach seems to be strongly favored.

With regards to actual leverage through numerical representation in the constituent assemblies it is reasonable to assume that the power balance should have changed from favoring the Maoist to the NC when the former lost majority in CA 2. Nevertheless, with regards to federalism, no viable agreements were made. This leads me to think that in reality it made no difference whether it was the NC or Maoist that were in position. Furthermore, as both the election to CA 1 and 2 were heavily criticized for flawed election procedures and low voter turnout it is possible to argue that CA1 and 2 were not legitimate. Thus, reducing whichever political leverage the actor in position may have gained. The NGO Freedom house states that Nepal is not an electoral democracy based on the election in 2008 (House 2012).

In addition, the Maoists were allied with the Madhese in the federal configuration issue. However, it was not until the Maoist separated them from the Madhese in April 2015 that they agreed to a federal structure proposed by the NC. An observation which indicates that the Maoist did not loose momentum by being in opposition in CA 2 and posed an close to equal opponent before that.

Also, given that US vs. China negotiations illustrate a HH negotiation (Zartman and Rubin 2000). I consider the case of Nepal to be a case of LL near symmetry. As noted above, the result of inefficiency is expected to be the same, however the mechanism in

82 CA 1: Maoist majority
CA 2: NC majority
83 Smolerek points to a low voter turnout compared to the 2008 election due to fewer registered voters (Chitrakar 04.04.16). Freedomhouse: “Nepal is not an electoral democracy sjekk freedomhouse siden og ref.
84 The Maoists resigned their stance on a ten province model and could opt for six.
play is different. While as HH is characterized by holding each other in check, LL are recognized by not being able to move the opponent in a direction preferably to themselves. Thus, they defend their position rather than reaching an agreement. The split in CPN (M) leading to the establishment of CPN-M (led by Kiran) and their behavior towards the election for CA 2 may illustrate this. What at first seemed to be an attempt to move their opponents in a direction corresponding to their own interests, may in retrospect allow for speculation if this was in reality moves to secure their current position. Destructing the election altogether was expected to contribute to sustain status quo, contrary to boycotting the election, which would probably just leave them with significant loss of power in national politics.

3.3.2 HOW SYMMETRY MAY HAVE AFFECTED THE NEGOTIATION: Inclusion/Consensus-
> Symmetry => reduced efficiency
There are several isolated examples of which illustrate the effect of the near symmetrical power balance. First, during CA 1 four years of operation (April 2008-May 2012) there were four Prime Ministers (Prachanda (CPN (M)), Nepal (CPN-UML), Khanal (CPN-UML) and Bhattarai (UCPN)). The rapid shift was mainly caused by the demands of making consensus decisions regarding government and PM, first and foremost promoted by the Maoists (CPN (M)/UCPN (same party different name). In general terms, it is likely that a rapid shift of government will have negative implications for political productivity and continuity, I see no reason why the same rationale should not be applicable to CA 1.

Second, at the time of CA 1 first expansion, another example is found by looking at the events between June 2010 and February 2011. It was decided to elect a new PM by consensus. The consensus approach failed, thus, the CA continued by applying majority vote. The latter approached proved to be equally difficult. Within four months 16 (!) elections were held without any results. This may go to show that formation of a widespread common understanding amongst the parties was challenging. However, the number of elections and length of time it took to establish a government may also go to show that consensus\(^{85}\) caused stagnation.

\(^{85}\) Therby near symmetry
In the process of holding new elections for CA 2, a new consensus government and head of government was required by the opposition (Maoists). In short this resulted in the establishment of IECM including Chief of Justice Regmi holding the PM position. The alternative of compromise, despite its rather dodgy character with respect to the separation of power doctrine, can be interpreted as an act aiming to increase efficiency. On the other hand, at that time Nepal had already been without a parliament for a year.

Moreover, shortly after CA 2 was formed, and Koirala (NC) elected PM, RoP was adopted within a timeframe of only two months. Nevertheless, as described above the schedule slipped, mainly due to reallocation of resources. In order to include all involved parties, separate and simultaneous negotiations have been necessary. The initiative and following process on the Questionnaire Committee in January 2015 again function as an illustration. Despite numerical inferiority, contingent of their return to the negotiation table, the UCPN (M) would rather have the Questionnaire process cancelled. The UCPN came through and the questionnaire was never put for a vote\textsuperscript{86}

The at all time parallel negotiation processes aiming to keep all parties at the negation table, perhaps especially illustrated by the efforts of Koirala during the fist half of 2015, reveal a willingness to promulgate a new constitution. Thus, with regards to the MO \textsuperscript{87} I find it appropriate to categorize the parties as having a cooperative MO during the first part of 2015. Regardless of demonstrations and uprisings, both the Maoists and NC /NC –UML ruling coalition seem to favor consensus which for all practical purposes means that both parties are left somewhat well off. However, both MO and IO\textsuperscript{88} are challenging variables to measure. At first it seems correct to say the parties in Nepal shared a low level of IO, given that none of the mentioned implications, such as an eased process of coordination and allocation of gains were present. A retrospective view on this matter is subject to many uncertainties. Thus, this thesis will not emphasize the level of IO in following analysis and conclusions.

\textsuperscript{86} During the same period the UCPN (M) was approached by the revolutionary splinterparty CPN –M, which I expect could have quite conveniently increased the UCPN leverage in this matter, although a reunion did not materialize.

\textsuperscript{87} Motivational Orientation: cooperative or competitive (Smolerek 2014)

\textsuperscript{88} Interpersonal orientation: high or low (Measure of interest in social cues, facial expressions and verbal/non verbal hints (Zartman and Rubin 2000).
A cooperative MO may have played a role towards the end of April, and the UCPN NC and CPN-UML had allegedly narrowed down their differences and expressed their willingness to start the drafting process. As a possible backdrop for this, conventional politics can be claimed to have lost much of its leverage/impact during the course of negotiations. As much as nine years after the 6-point agreement was adopted, aiming to regulate the interim period (including the CA), the UCPN (M) again threatened to boycott the CA to stop a voting process. Assuming the involved actors realized both their declining legitimacy and furthermore, feared for the potential durability of the constitution, should it not be adopted by consensus. However, regardless of the increased MO, federal issue was not included, leading me to believe the process would have continued in a similar mode as up until 20th April, had it not been for the earthquake.

3.3.3 ANALYSIS OF EVENTS IN THE AFTERMATH OF THE EARTHQUAKE
On one hand, it seemed reasonable to question whether the earthquake would contribute to increased polarized politics, and thus further delays for the promulgation of the new constitution. Maoists and the ruling coalitions initially started argue over grant size for the homeless due to the quake and the former saw a chance as to stop what would be ruling party monopoly in the rebuilding, obviously leaving the Maoists less visible. Furthermore, Reuters reported of demonstrations outside parliament and roadblocks made by angry Nepalese in need for immediate accommodation of the current food insecurity. Leaders of several CA-parties expressed their discontent with the government response, demanding all government and non-government organs to participate in rescue operations, relief work and rehabilitation (Report 2015b).

However, the parties managed to adopt agreements concerning both share of FPTP and PR shares, and number of provinces. Those and previous agreements accumulated in the signing of the 16-point agreement on the 9th of June 2015 and the following adoption of the new constitution on September 20th 2015. The parties seemed to have increased political will towards promulgating the new constitution. It may be argued that the earthquake put all of the aspects of the economic situation, political instability and corruption on the agenda, causing the CA to rush towards the promulgation of a
new constitution. The aspect of wanting to please its international lenders must be also be questioned; could it be to please the lenders that a constitution was rushed through?

4.0 SIERRA LEONE

4.1 A SHORT INTRODUCTION
Liberated from British colonial rule in 1961, the Republic of Sierra Leone is a small country within the British Commonwealth of Nations. With a population of six million, Sierra Leone is on the Atlantic coast of West Africa, in the Mano–river sub-region between Liberia and Guinea. It has an area of 71,740 sq.Km, and also includes several Islands, such as the Banana, Turtle, and Sherbro Island (Gayle 2007).

Despite challenges with the illegal mining and the colonial government efforts to control mineral extraction, natural resources have been beneficial for the economy as Sierra Leone went from deficit to surplus. However, post-independence decades of poor governing and conflict, lack of development, and sustainable resource utilization has limited growth, and made Sierra Leone one of the poorest countries in the world (Harris 2013). Although Sierra Leone has progressed since the end of the civil war in 2002, poverty is still widespread, and according to United Nations Development Program; 60% of the population lives below national poverty line (UNDP).

The mining sector makes up only 12 %, while agricultural accounts for about half of the country’s gross domestic product (GDP) ((SSL) and International 2014).

4.2 SIERRA LEONE’S DEMOGRAPHY AND GEOGRAPHY
Sierra Leone has an administrative center in the capital Freetown. The country consists of four administrative regions (Figure 2) subdivided into 14 districts and 149 Chiefdoms. A young population combined with the weak economy pose a particular challenge for the government, which is currently unable to provide for a productive future. Furthermore, there

89 The mining sector made up less than 6% in 2001/2, however it has increased due to the discovering and mining of iron ore in the Northern region (Commonwealth 2016)
90 Freetown Peninsula: Three parallel ranges of highlands extended to 30 km South of Freetown, Hills and mountains rise from 200 to 1000 meters above the low-lying Costal area, The interior lowlands makes up circa half of the country and the Interior plateau makes up the other, south part of the country ((SSL) and International 2014).
91 According to the ISS/ICF survey about 42% is under the age of 15 ((SSL) and International 2014)
are about 15 ethnic groups in Sierra Leone, with the main tribes including Mende, Temne, Limba and Creole (Figure 2) ((SSL) and International 2014).

![Map of Sierra Leone with ethnic groups]

Figure 2. Geographic zone (left) and ethnic distribution (right) in Sierra Leone.

(1) Image Source: ((SSL) and International 2014) (access date: 20th of June 2016)
(2) Image Source: (Larbi 2012) (access date 20th of June 2016)

4.3 POLITICAL HISTORY: an overview from 1787-1999
A brief synopsis of the political History of Sierra Leone is provided in Appendix D.

4.3 “DIAMONDS, DIAMONDS, DIAMONDS!” Sierra Leonean ambassador to the UN in 2000 (Harris 2013, 90). The Sierra Leonean civil war 1991-2002 contextualized Between 1991 and 2001 Sierra Leone experienced a brutal civil war between the rebel group Revolutionary United Front (RUF) and the Government. The number of deaths is estimated to be between 30,000 and 75,000, and additional thousands suffered severe atrocities such as rape and sexual slavery, forced enlistment and the use of child soldiers, starvation, and torture (Binningsbø and Dupuy 2009). In January 2002 President Kabbah declared the war for ended with the famous phrase: "di war don don." An important intermediate step on the path to peace was the signing of the Lomè Peace Accord in 1999, an agreement that guaranteed a powersharing between the conflicting parties. Although the Lomè Peace Accord lasted just short of a year, the agreement is valid in the perspective of negotiation theory. This thesis will focus on the process leading to and analyze the outcome of the power-sharing agreement.
According to Sierra Leone expert David Harris, there is no consensus understanding of the conflict. On one hand, it has been a popular notion that the civil war was primarily a product of international interest and politics, specifically those of Charles Taylor and Muammar Quadaffi, concurring with the end of the Cold War. From this perspective, the war is believed to be an extension of the Liberian conflict and Taylors conception of a greater Liberia consisting of the Mano Basin area\(^2\) (Harris 2013). At the time there was an increasing disharmony between Sierra Leone President Momoh and head of the National Patriotic Front of Liberia (NPFL), Charles Taylor. The disharmony developed during the first Liberian civil war when Momoh rejected Taylor’s request for a military base in Sierra Leone to launch his war in Liberia. Later, when the Economic Community of West African States Monitoring Group (ECOMOG) intervened in the conflict and captured the Liberian President Doe, Taylor felt robbed of his victory. Taylor responded by threatening to destroy the international airport in Freetown because it was a base for the ECOMOG during the Liberian intervention Momoh and that made it a legitimate target (Gberie 2005).

Several additional aspects of the Sierra Leone conflict may support the influence of international mediators. The downgrading of international aid in conjunction to old economic and new political conditionality’s in Africa. Furthermore, RUF originated in the Libyan desert, where Sierra Leoneans together with Liberians and Ghanaians went for insurgency training. NPFL soldiers and mercenaries accompanied the RUF from Burkina Faso. Moreover, Quadaffi is known to have funded West Africans, which was expected to push for anti-imperial rebellion, and the RUF is claimed to have received financial support from Libya (Harris 2013).

On the other hand, poverty, corruption, poor infrastructure and weak governmental institutions characterize Sierra Leone. Although external factors most definitely have functioned as catalysts, an isolated pursue of this argument will disregard internal causes, such as ethno regionalism, a downgrading of the formal state (Harris 2013).

The discovery of diamonds in the 30’s, could potentially enrich Sierra Leone substantially. However, the diamonds proved to be more of a curse than a fortune. The

\(^{92}\) Liberia, Sierra Leone, and Guinea
Sierra Leone Selection Trust (SLST), founded in 1934, was given the exclusive mineral mining rights for 99 years. Illegal mining almost overran SLST during the diamond rush of the 50’s. The inhabitants of the Protectorate mostly considered the illegal mining good and reasonable. The pre-diamond absence of governmental involvement in the mining area allowed the protectorate to think of the diamonds as owned by the natives. This argument made participation in illegal mining accepted, however at the cost of agriculture. Sierra Leone went from exporting to importing rice. Moreover, with the loss of government control over the illegal mining activity, the government resorted to bribes as a mean to regain control. In return for their loyalty, local chiefs could get away with anything, including murder (Gberie 2005). According to Gberie: greed was in the driver seat, which under the rule of President Siaka Stevens caused the country to deteriorate even further. Siaka Stevens was a previous minister for the Sierra Leone People Party and founder of the party All People Congress (APC) that won the election in 1967 and declared Sierra Leone to be a one-party state.

The situation did not improve during Joseph Momoh’s, Stevens handpicked successor, presidency. When he came to power in 1985, he suggested new policies to restore Sierra Leone’s economy. However, Momoh proved just as corrupt as Stevens, and while the former invited the Lebanese to the feast, the latter invited the Israeli. According to Gberie, the Lebanese came to Sierra Leone as economic refugees during the 19th century. Momoh inherited a cabinet from Stevens where he decided to replace the Lebanese with the Israeli. "it was like replacing one predator with another" (Gberie 2005, 35). The country’s resources continued to benefit foreigners while the Sierra Leoneans suffered (Gberie 2005, 35).

4.3.1 Civil War, Phase I: 1991-1996

On March the 23rd 1991, led by Foday Sankoh the then relatively modest sized RUF, invaded the eastern Kailahun district from Liberia supported by the Liberian Charles Taylor-led National Patriotic Front Liberia (NPFL).

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93 The following description will rely mainly on Gberie (2005) and Harris (2013) which both provides well-structured and insightful literature on the conflict and aftermath.
Taylor estimated that the limited international intervention and the contribution of a dissatisfied population would indirectly assist the RUF to reach Freetown. Also, as a result of Stevens and Momoh`s neglect of the state apparatus and Sierra Leone Army (SLA), Sierra Leone was in no shape to resist an attack (Harris 2013).

There were speculations that the assault was NPFL`s revenge for being cheated while doing some under the table business with the Sierra Leonean border guards. However, Foday Sankoh announced that the attack was the beginning of his Peoples struggle against Momohs corrupt regime. Moreover, he announced that his group, the Revolutionary Peoples Front of Sierra Leone (RUF/SL) would lead the struggle (Gberie 2005, 59).

Momoh responded immediately to RUF`s initial attack and recaptured the town of Koidu killing sixteen rebel soldiers. Furthermore, he detained three Liberian rebel commanders. The commander`s nationality was used to blame Charles Taylor for the intervention, and in the eyes of the population thus legitimately ignoring Sankoh and the existence of a Sierra Leonean rebel group (Gberie 2005). However, the RUF, posing a serious threat to the 3 000 men that made up the Sierra Leone Army, had soon captured most of the Kailahun and went from there to open a second front in the Pujehun district, again from Liberia. They continued to make considerable headway in 1991, and by the end of the year, they controlled diamond-rich areas in the eastern and southern regions of Sierra Leone (Binningsbø and Dupuy 2009).

RUF did not seem to have any difficulties in defeating Momoh`s troops. However, it is not clear whether the SLA engaged in de facto military counter operations against the RUF. Indeed, there are indications of the opposite; the two actors seem to have cooperated in widespread looting. The term "sobel" is used to describe the fluid character of the conflict and key players: Soldier by day and
rebel by night. Standard practice was to draw back and let the opponent attack and steal. The RUF and SLA soldiers then shared the spoils. According to Harris, civilians thought of Momoh and Sankoh as two peas in the same pot (Harris 2013, 88-89).

During the first year of the war, Sierra Leone experienced tremendous suffering. Major destruction of towns in the southern and eastern provinces severely affected the food supply. Also, the brutal nature of the conflict caused massive demoralization, as Ibrahim Ben Kargbo pointed out: that if anyone saw Sierra Leone worth fighting for, the RUF would not have penetrated the country so fast ("Sierra Leone should come first" by Kargbo in Gberie 2005, 72).

Towards the end of 1991, the situation changed. Guinea, which had a defense pact with Sierra Leone, came to bolster the government’s defense, and Momoh increased the military personnel with 100%. Consequently, the SLA went on an offensive. On the other hand, their lack of professionalism was obvious (Gberie 2005).

October 1991 The United Liberation Movement of Liberia (ULIMO) interfered in the conflict. ULIMO consisted of the remainders of Doe’s disintegrated army and were extremely motivated fighters seeking revenge against Taylor. ULIMO launched attacks on RUF’s front in the Pujehun district and managed to push RUF back into Liberia within two months. Unconcerned with anything but to bring the war to Taylor, ULIMO entered Liberia at the beginning of 1992 and joined the stalemated situation there (Gberie 2005).

After the introduction of ULIMO, military victory did not represent an option for either party in Sierra Leone. The stalemate allowed for conventional politics on the agenda, and Momoh was forced to agree to a multiparty constitution after a referendum demanding to scrap the one party system. There was, however,
limited faith in the new multiparty constitution and several newspapers warned against premature expectations of improvement. As long as the war was ongoing, it necessarily had to be the priority. Momoh on his side swore his efforts to contain the rebels and claimed he had spent over 250 millions Leones monthly on the army. However, the money allegedly did not go further than to the senior officers (Gberie 2005).

By April 1991 the SLA was in despair, they experienced a lack of rudimental gear such as communication equipment, and soldiers had not been paid in three months, both of which contributed to the coup on the 29th of April 1992. As a result, Momoh fled to Guinea and the Solomon Musa led group of soldiers that executed the coup (from now on also referred to as the junta), announced that the National Provisional Ruling Council (NPRC) and the former Paymaster Captain Valentine Strasser would replace Momoh and the APC regime (Gberie 2005).

Despite Strasser’s brief popularity, the RUF grew from being considered common bandits to a pivotal political actor. During the first weeks of NPRC rule, there were some indications of a settlement. RUF’s showed willingness to agree on a ceasefire and out spoke measures for peace and reconstruction. According to Gberie, two spokesmen from the RUF announced on BBC their desire to cooperate with the junta. A one-week ceasefire was implemented (Gberie 2005, 74). The new situation seemed like an improvement. However, Gberie describes the transition from Momoh to Strasser as de facto going from bad to worse.

"in fact, the long-suffering Sierra Leonean state, hopelessly weakened by the corrupt and inept APC, would now be thoroughly downgraded and finally battered beyond recognition” (Gberie 2005, 71).
It turned out that Strasser considered RUF to be nothing but Taylor’s bandits sent to wreck Sierra Leone. Thus instead of accommodating RUF initiatives, the NPRC invested in sophisticated weaponry in exchange for diamonds and only amnesty in return for RUF’s total surrender. Strasser had clearly misread the situation, and as a consequence, the junta suffered major setbacks in the subsequent fights. RUF continued to move forward, and by October 1992 they had captured Sierra Leone’s diamond center with a population of 200,000 people. More concerned with mining, the Junta’s soldiers fled instead of fighting the RUF (Gberie 2005).

The NPRC regime soon proved to use the same means of terror as their predecessors to exert control. Children made orphans by the hands of RUF were enlisted in NPRS voluntary force. After external pressure from the international community and NGO’s the NPRC agreed to dismiss the children. Upon the defeat of Koidu, the NPRC launched the military operation "Genesis," which ensured the recapturing of several districts including the Kono district and Koidu (Gberie 2005).

Similar to RUF, the NPCR did not differ between civilians and non-civilians. Many were killed or tortured accused of supporting the APC regime or being current rebel supporters. In short, as a result of Genesis, RUF was again pushed back to their main seat, the Kailahun district in the far east of Sierra Leone. However as Gberie point to, towns were shifting hands at the speed of light; RUF recaptured Koidu in 1993 (Gberie 2005).

The initial support for a regime change declined rapidly, especially so after the incident of the junta killing 29 people including a pregnant woman in prison accused of planning a coup in December 1992. The event caused internal and external outrage; Britain and Germany, which had been funding the junta in a

94 Over 1000 boys under 15, and some of them no more than seven years old.
bilateral agreement, withdrew their support. Nevertheless, by the end of 1993 NPRC had made a massive strike and regained control over Kailahun, Koidu and Pendembu, all three strategic positions for the RUF. The RUF admitted to having been defeated and fled to the woods (Gberie 2005). However, the victory was temporary. Barely a month later in the beginning of 1994, the RUF returned, mainly empowered by the lack of resistance from NPRC and the junta.

Against the backdrop of a conflict with a rather fluid character, mainly caused by the phenomena "sobel", which may also have been an important element for the conflict continuation, two more voluntary groups became pertinent. In short, the first group, the Tamaboros had relatively little impact on the war. However, the second group called Kamajoisia battalion enjoyed slightly more leverage during the Executive Outcome initiative, and at least from when the Sierra Leone People’s Party (SLPP) resumed power in 1996. The Kamajoisia battalion was formed in 1992 by the Eastern Region Defense Committee (EREDCOM) and led by Dr. Alpha Lavalie. Dr. Lavalie was a longtime political activist and a previous prominent figure in the SLPP. Together with Dr. Albert Joe Demby, they managed to mobilize substantial support in the eastern region where Dr. Demby was situated (Gberie 2005). Lavalie was killed in a confrontation with the NPRC army. However, the support continued to increase, and Demby was later installed as vice president in the selected government in 1996 (Gberie 2005).

Continued indiscriminate terror attacks spread throughout Sierra Leone. The NPRC were as equally feared as the rebels and besides, widely known for their tactic to cover their tracks by killing everyone in their way. At the same time the RUF increased their aim by gaining international political recognition. Thus they effectively escalated their hostage taking, with a particular emphasis on foreigners. However, rather than mobilizing support for NPRC, it led to decreased international support of the NPRC as they seemed unable to exert government control (Gberie 2005). It is reasonable to argue that this predicament for the
NPRC provided the same implications for the RUF, as it would have had they been successful in the first place; for the first time the NPRC was encouraged to negotiate with the rebels.

After numerous attempts at dialogue and cease-fires had failed, the Organization of African Union sought better-structured initiatives and high-level diplomacy. The NPRC replied by establishing the National Security Council (NSC) November 1995. The NCS issued a statement calling for the RUF to accept a cease-fire, and Strasser had reached out to the UN Secretary-General. Several unsuccessful attempts were made. In 94/95 the situation was so out of control that it was no longer a matter of "national defense" but one of "security," which led Strasser to bring in the Executive Outcome (EO) (Gberie 2005).

EO comprised of highly trained personnel, who had previously been actively participating in South African counter-insurgency units. Their mandate was to destroy enemies of the state, to restore security and to assist in restoring a market and economy attractive for outside investment. Due to a lack of capital, Strasser initiated cooperation with Buckingham, the founder of the British company Heritage Oil and Gas, which covered the $15 million price tag (expense) for EO operations in return for mining concessions. From May 1995, EO started training a selection of units from the army and incorporated Kamajosias in Sierra Leone. Well-equipped and with considerable manpower, the EO together with the Kamajosias reduced the rebel activity substantially within the end of 1995. With the situation somewhat under control, the NPCR junta moved forward and planned an election. Strasser was thrown out of the equation by his deputy Julius Maada Bio in January 1996, after an inept effort to make himself a civilian candidate for the National Unity Party, An NPRC sponsored political party (Gberie 2005).
In March 1996 Ahmed Tajean Kabbah (Sierra Leone Peoples Party/SLPP) was elected new President. The election was relatively un-dramatic. There were also ongoing peace talks between RUF and Maada Bio’s junta which culminated into the Abidjan peace accord between Foday Sankoh and President Kabbah (Gberie 2005). However, EO’s presence proved decisive to the peace. When they withdrew, leaving the security in the hands of the army, they paved the way for another coup (Gberie 2005).

In May 1997 army soldiers opened the Pademba Road prison, releasing over 600 convicts. The military armed many of the convicts and together they attacked the State House, forced Kabbah to flee to Guinea and instated one of the convicts, Major Johnny Paul Koroma, as head of the Armed Forces Ruling Council. Koroma then invited the RUF to Freetown and gave Sankoh vice chairman of the ARFC. Sankoh, however, was kept under house arrest in Nigeria, thus excluding his participation (Gberie 2005).

The latter coup, according to Gberie, was the final proof that this had gone from a war between the government and the RUF, to what she refers to as "criminal gangsterism" (Gberie 2005, 96). In other words, organized crime, with the end goal of being in the best position to enrich oneself.

The two groups, ARFC and the RUF now known as the "People’s Army," declared the war to be over. Koroma himself claimed to have brought about peace the only way possible, by joining the enemy. The RUF quickly emerged as the force behind the AFRC, and immediately claimed full power. Indiscriminate and completely random rape, terror, looting, and killing dominated the time that followed. Resulting in an absolute mayhem, which obviously had consequences for the neighboring countries, Guinea, Liberia, and Gambia. During the first quarter after the coup these countries took in over 400 000 refugees (Gberie 2005).
The majority of the population condemned the coup. However, the reactions of
the population gave the impression of a split ethnic and political party dimension
to the conflict. During the mobilization of the anti-AFRC grass root movement,
the Movement for Restoration of Democracy (MRD), The United National Peoples
Party (UNPP), APC and the Peoples Progressive Party, all supported by the
Northern Provinces showed increased support for the AFRC. It turned out that
opportunists regardless of ethnicity and political party affiliation backed the
AFRC.

The MRD had materialized most as a consequence of civil disobedience.
Nevertheless, the movement absorbed all RUF opponents’ groups, including the
Kamajors and the northern-based Kapras. The latter two joined forces and
established the stronger Kabbah lead CDF force to oppose the AFRC. Hinga
Norman, a prominent figure among the people, became the CDF coordinator.

The AFRC responded immediately to the opposition, and series of attacks on
civilian structures followed. AFRC detained political opponents, tortured and
killed prosecuted journalists, and leveled whole towns to the ground. Although
the Sierra Leonean conflict had recognized some attention, primarily from
neighboring countries, one incident specifically attracted international attention.
On 18th of August The National Union of Sierra Leone, a nationwide student
movement, was attacked while holding peaceful demonstrations against the
AFRC. The protesters were hunted down with guns and machetes.

The Economic Community of West African States Monitoring Group (ECOMOG), a
West African multilateral armed force established by the Economic Community
of West African States (ECOWAS), stopped the AFRC. However, the Nigerian
troops had already an isolated obligation to intervene under the Status of Forces
Agreement. Their mandate was to protect the elected government and reinstate
Kabbah and oversee the Abidjan Peace Accord (Gberie 2005).
Not surprisingly, the massive attack functioned as a catalyst to generate more opposition against the AFRC. In July 1997 the foreign ministers of Nigeria, Ghana, Cot Divoire, and Guinea had agreed to pursue any method to restore the legitimate government of Sierra Leone. However, the arrangement failed to include a method for achieving this goal. Ghana and Cot Divoire favored negotiations including sanctions, and the West African states applied an embargo on petroleum products and weapons to Sierra Leone. The sanctions became global as it spread to include ECOWAS and UN. Nigeria, already present in Sierra Leone under SOFA, was responsible for the enforcement, a responsibility in which they took very seriously.

The Nigerian troops were accused of preventing ships from unloading not only merchandise included in the embargo, but also e.g. rice which was not. It fueled the impression that Nigeria was at war with Sierra Leone. ARFC took advantage of the situation and portrayed Nigeria as the "bad guy."

The AFRC situation peaked with the Maybala incident. Seemingly covered by a Nigerian fly-past over Freetown, the junta fired projectiles responsible for killing 35 civilians. Despite the AFRC junta announcing to hold power until 2001, international diplomatic and military pressure increased and finally forced them into signing the Conakry Peace Agreement in October 1997. The Peace plan included for the AFRC to step down and handover power in 1998.

Simultaneously Kabbah worked hard to restore his legitimacy as Sierra Leone's legitimate leader. His efforts were said to be the main driving force behind the UN resolution that supported the immediate reinstatement of Kabbah. Also, furthermore, for backing the ECOWAS initiated sanctions.
The Conakry Plan, mediated by ECOWAS, which was initially accepted by all parties, failed at implementation. After a few meetings between ECOMOG and AFRC, the latter demanded Sanko's immediate release and the removal of Nigerian troops from ECOMOG to continue with the peace process. ECOMOG representative Victor Malu replied that because AFRC was illegitimate in the first place, their attempt to interfere with the ECOMOG constellation was irrelevant.

On the 12th of February 1998 Operation Sandstorm ensured the Capitol take over, and by April 9. Nigerian and CDF Troops secured control of Sierra Leone. The following month’s members of the Junta, both soldiers and civilians including Sanko, were trialed and sentenced.

To revenge the ousting of the SLA sobels/AFRC/RUF and to free Sankoh, Sam Bockarie (aka mosquito, leader of RUF during Sankoh's detention at Pademba Road Prison) declared operation "No Living Thing" in 1998. Too confident in their superiority, the Kabbah government initially rejected the threat. However, once launched, the operation lived up to its name.

By mid-December, RUF captured the important diamond center and military base for the ECOMOG, Koidu town. The rebel army increased their leverage substantially, as they now controlled over 50% of ECOMOG weapons. Next up was Makeni, a strategic town which had been under ECOMOG’s control since the ousting of the AFRC. Waterloo and Benguema followed, both approximate to Freetown and important locations for the ECOMOG and the Nigerians. In the midst of complete chaos, ECOMOG was losing ground, and on the 6th of January 1999 the rebel forces entered Freetown. In four hours, at 7 am the rebels controlled the State House. Kabbah stated he was still in control; however, the truth was that he barely managed to escape.
Gberie reports the events to follow over the next two weeks to be so gruesome that it goes beyond description. At first there seemed to be a chain of command within the rebel group, however after Kabbah claimed to be in control, the RUF went savage. They armed and drugged thousands of teenage RUF soldiers. Gberie writes; "There was a millenarian quality to the terror: random, ecstatic and finally comprehensive. It was also perversely inventive" (Gberie 2005, 127).

Three weeks after their resurgence, the Nigerians in cooperation with the CDF managed to force the rebels out of Freetown. From the resurgence to the recapture, the number of causalities on the Nigerian peacekeeping force was closer to 700 soldiers. This number is speculated to be higher than any other peacekeeping force has experienced.

The brutal weeks in Freetown had revealed the vulnerability of the elected Kabbah government once again (Gberie 2005). Arguably, the attack of Freetown changed the political landscape completely. As a result, Western governments, and especially the United States increased their engagement, however their approach was two sided.

4.3.3 FROM MAYHEM TO TEXTBOOK PEACEMAKING: negotiating the Lomè Accord of 7th of July 1999.
The following description will rest mainly on Ismael Rashid’s contribution published in the Accord series in Conciliation Resources, Issue 9. Also, Dupuy and Binningsbø’s contribution, that in addition to providing a different perspective also substantiate Rashid’s description.

Before the negotiations, the third party actors became a game changer for Sierra Leone, and the Kabbah government especially. On the one hand, ECOWAS, UK, and the US did not want to see rebels topple an elected government. Furthermore, the western countries wished to divert attention away from the disproportionate aid they provided
during the Kosovo conflict, at the expense of African conflicts. Thus, they continued to support and strengthen the ECOMOG forces (Rashid 2000).

On the other hand, they sought to pursue a more diplomatic solution, as both the human and economic costs were immense. UK, UN, and US had financed the Kabbah government, both while in exile and during their restoration. However, at this point, the need for funds seemed endless as the situation only worsened, and the future outlook for a decisive victory looked grim. UN Secretary Kofi Annan supported a negotiated settlement and set for his special representative Francis Okelo to initiate new peace talks between the parties (Rashid 2000).

Regionally there was also a tendency of a new approach. For Nigeria alone, the costs of the conflict had been estimated to be 1 million USD a day. In addition, the continuously increasing refugee challenge for the neighboring countries may have fueled the West African state's hesitate to continued military engagement in Sierra Leone (Rashid 2000). Furthermore, Nigerian presidential candidates guaranteed military drawback should they be elected (Rashid 2000, Binningsbø and Dupuy 2009). Even James Taylor encouraged dialogue, as part of his effort to position himself as a peacemaker (Rashid 2000).

At this point, a negotiated settlement appeared to represent an end to the conflict. Moreover, as the rebels were pushed back by ECOMOG, pressure on the Kabbah government fortified even more. Although Kabbah had no state army, they had the support of the CDF, and they were Sierra Leone’s legitimate and constitutional authority. The latter implies that the government had a broader range of concerns than the RUF/AFRC coalition. To keep the ECOMOG forces in Sierra Leone for as long as possible, they had to step up to their responsibilities and ensure regional security, protection of human rights, and continued foreign support to rebuild the country (Rashid 2000, Binningsbø and Dupuy 2009).

The AFRC/RUF coalition had a similar headache. On one side, they had increased their leverage by attacking Freetown, and cause a severe blow to the Kabbah government. On the other hand, they were pushed back by the ECOMOG and they too had lost a
considerable number of fighters. Besides, although they may have managed to increase fear within the population and thus tightened their grip, their atrocities were condemned worldwide, which made it harder to raise support for future action. International pressure was also applied to their facilitators to stop them from further contributing to the rebels (Rashid 2000).

While there was continued fighting on the ground, Kabbah and Sankho entered dialogue January 1999. For the next three months, throughout March they met regularly. The meetings paved the way for preparing future negotiations. Importantly, Sankoh acknowledged Kabbah as legitimate and released some of the RUF abducted children. Moreover, a cooperation emerged as they both gave support for Okelo to establish contact with the broader RUF movement making negotiations and peace talks a preferred option for all (Rashid 2000).

There was still no formal ceasefire in March, however, the talks continued, and the parties managed to meet on common ground in Togo. The Togolese president was Chair in ECOWAS, which Kabbah considered to be their strongest ally (Rashid 2000). Sankoh was released to attend the meeting under the premises that he was to return to Sierra Leone and continue his trial.

Within a week UNOMSIL flew in ten RUF and 4 AFRC representatives to join Sankoh in Lomé. As part of a security measure, Ibrahimah Bah, as one of the three RUF top leaders, participated, while Koroma, the third RUF top leader, was intentionally excluded not to challenge Sankoh’s authority. The RUF preparatory meeting lasted three weeks and included heavy lobbying for support from West Africa, US, and Europe. Based on the internal consultations a 59-page proposal emerged: ”The RUF Perspective and Vision.” The document contained the RUF’s demands, which were in general quite similar to the ones presented prior to the Abidjan Agreement.

In short, they wanted; a blanket amnesty for all AFRC/RUF fighters, the release of all prisoners, and a four-year power-sharing arrangement before the next elections. Furthermore, the RUF/AFRC required approved control over some areas of Sierra Leone, participation in the Sierra Leone Army, the disengagement of ECOMOG and any
foreign forces in Sierra Leone, and to establish an independent peacekeeping force. However, to even enter the negotiation table, they demanded Sankoh be immediately released (Rashid 2000, Binningsbø and Dupuy 2009).

The National Commission for Democracy and Human Rights arranged a similar conference for Kabbah and his government. It included parliamentarians, political parties, and civil society represented by paramount chiefs, women's and student's groups, and trade unions. They too took a similar stand to what they did during the Abidjan negotiations and initially rejected any accommodating approach to the rebel's demands (Rashid 2000).

However, the negotiations developed and despite the lack of governmental control over the economic and urban areas in the north and east, the parties adopted a cease-fire in May. The cease-fire bolstered the peace process and provided a much-needed break as it helped facilitate aid to the population. More importantly, it allowed for the substantial constitutional negotiations to begin (Rashid 2000).

Within a week both Kabbah and the RUF/AFRC had amassed their negotiations team. Solomon Berewa, the minister of justice and attorney general, represented the government. Berewa was considered highly qualified for the job; he had in-depth knowledge about constitutional processes, which was pivotal considering that the question of powersharing was the most decisive point on the agenda. In addition, he was deemed to be a skilled negotiator, possessing properties critical for negotiation success: he was true to his mandate without sacrificing his thoughtful approach. Also included in Kabbah's team was the deputy foreign minister Sahr Matturi, Sierra Leone's representative to the UN, Sylvester Rowe, the national security advisor Sheka Mansaray, and senior officer Colonel Tom Carew (Rashid 2000).

The RUF/AFRC choice of representatives was unusual, but not surprising. A former abductee, Solomon Y.B Rogers that had become one of Sankoh's most loyal companions, and was now trusted chairman of the RUF War Council. Furthermore, their team included Pallo Bangura, the AFRC foreign minister, Golley RUF's legal advisor, Sahr Kaibanja a former minister of education for the AFRC, Brigadier Mike Lamin, Colonel
Idrissa Hamid, and finally another abductee, major Agnes Finoh, the only woman in the negotiations (Rashid 2000).

The mediation committee was led by Togo’s Foreign Minister Koffigoh, and included representatives of different international stakeholders such as Okelo for the UN, Adwoa Coleman from the OAU, the Executive Secretary of ECOWAS Lansana Kouyate, and ECOWAS diplomats. Also, the mediation apparatus comprised representatives from civil society such as the Inter-Religious Council, and diplomats from UK and the US (Rashid 2000).

The parties adopted commodious and loose-structured negotiations instead of obliging to a specific model. The idea was that the parties should themselves be responsible for reaching an agreement. Thus the following process was in large characterized by direct negotiations between the involved parties. When they encountered a dilemma, Eyadema and the other West African presidents would participate to mediate. The loose structure allowed for both open and closed meetings at the parties convenience (Rashid 2000).

Moreover, the negotiations were organized into three main topics: humanitarian, military, and political. Each with their own designated (associated) committees. The parties rather quickly reached agreements concerning the military and humanitarian issues. It was decided to use the Abidjan and Conakry agreements as backdrops, which both accommodated some of RUF demands such as full amnesty for the RUF. Moreover, they agreed on humanitarian operations, socio-economic issues, human rights, disarmament, demobilization and the establishment of a new army. The recent atrocities were seemingly ignored for the sake of reaching agreements. By the 8th of June the humanitarian and military committees concluded their work (Rashid 2000).

However, on the issues of powersharing, the RUF demand for Sankoh’s unconditional release, and the continued role of ECOMO was still contentious. The RUF rejected any further negotiations without the pardon of Sankoh. While on the other side, a presidential pardon of Sankoh was contingent on the RUF/AFRC signing a peace agreement. Upon intervention by Eyadema, the RUF finally complied, however, Sankoh
himself held that a condemned man could not negotiate freely, and thus he refused to participate in the meetings unless Kabbah was present himself. This created a time consuming and more complex structure of command, as all decisions agreed upon by the committees subsequently had to be approved by Sankoh (Rashid 2000).

The issues of powersharing, a transitional government, and an immediate removal of ECOMOG almost caused a complete breakdown in the negotiations. These issues had been introduced before during the Abidjan negotiation, and were not new to any of the parties (Binningsbø and Dupuy 2009). According to Rashid the RUF claimed that the constitutional legitimacy and popularity of Kabbah's government had kept them from overrunning Freetown, and kept power even when they generated the opportunity to do so. The government enjoyed considerable regional support, which also led to the continued presence of ECOMOG, to RUFs opinion their main military obstacle. This causality was applicable even when joining forces with the AFRC (Rashid 2000, 32). To their reasoning, any major concession they managed to bring about regarding either ECOMOG or on the issue of constitutional design would weaken the government position considerably (Rashid 2000).

As a consequence, the RUF soon adopted a rather aggressive negotiation tactic. Their demand in many ways echoed their previous requirements for the Abidjan Agreement. However, this time, it was non-negotiable on their part. The RUF required a transitional government that would remain in power for four years, including a list of government positions assigned to the RUF, expansion of the cabinet to twenty members, eleven minister positions including the vice presidency, the secretary of defense, and the finance post. They wanted four deputy ministerial positions, six diplomat posts including the ambassador to the US, deputy high commissioner to the UK, high commissioner to Nigeria and the Ambassador to Liberia. Furthermore, they required the recognition of RUF/AFRC control over certain areas, increased regional autonomy, eleven central positions within parasternal companies, including head of the Bank of Sierra Leone and Port Authority. Finally, they wanted the resident minister post for the north, the mayor position in Freetown and chair of the post war reconstruction commission (Rashid 2000, Binningsbø and Dupuy 2009).
In short, the government made few and small concessions relative to RUF demand. They seemingly perceived their negotiation space as rather limited, as some hardliners within government and civil society threatened to revolt if they gave away too much power. Therefore, intending to give the rebels next to no form of government/state control, they initially refused to accommodate the RUF demands altogether. The government delegation argued that it was not possible for them to establish a transitional authority outside of government, using the power vested in them by the 1991 Constitution as a backdrop (rationale). For the same reasons, they also rejected the power-sharing concept and RUFs demand for a transitional government. Nevertheless, the RUF was offered two ministerial posts, two deputy posts, and a 16-person cabinet. Moreover, the draft accord included proposals for several committees, in which the RUF was offered a few chairs (Rashid 2000).

The RUF replied by stepping up their game. They fought persistently and in between 23 of June and 5 of July they deployed tactics such as stopping the negotiations, reintroducing old issues, public outbursts, and threatening to pull out. Their effort proved fruitful. After a couple of weeks, the parties managed to make a compromise, also regarding a power-sharing configuration. The RUF accepted the four ministers posts and three deputy posts they were offered, and the Nigerians agreed to pause their deployment to Sierra Leone (Rashid 2000).

The success was short, only two days after, Sankoh announced on a BBC broadcast that he rejected the agreements, stating that the RUF had not fought for so long for so little "we are still demanding a transitional government. The RUF leadership will never back down" (Rashid 2000, 32). He continued to elaborate that they were firm on their initial demands, and that they wanted a real transitional government, and not just and entry into a "corrupt SLPP" (Rashid 2000, 32).

The negotiations were in many ways back to square one. RUF again resorted to harsh negotiation tactics, and Eyadema summoned the Nigerian president Obasanjo to exhort their influence for the negotiations to continue. Obasanjo was newly elected and with his own agenda. He wished to pull troops out of Sierra Leone and focus on domestic affairs, however, not at the cost of losing position as a regional hegemon. The two
Presidents hammered out an agreement for the final draft of the accord. They decided that Sankoh would be designated head of Commission for the Management of Strategic Resources, National Reconstruction and Development. Moreover, ECOMOG would continue to include Nigerian troops, however with a changed mandate to do peacekeeping until a UN peacekeeping force would take over (Rashid 2000).

A short week after the President’s meeting, Eyadema was presented with the biggest challenge so far, at this point the process could de facto collapse, as Rogers on behalf of the RUF stood his ground - once again the RUF displayed enormous persistence and reintroduced their initial demands. They would not budge (Rashid 2000).

Eyadema upgraded the regional diplomacy and mobilized Taylor, Obasanjo, and Compaore to exhort increased pressure on the two parties to find a solution. During the 5th and 6th of July Taylor and Compaore met separately to find a common approach. Subsequently, Eyadema and Obasanjo came together to formulate the position. Moreover, they agreed on assigning four minister and deputy minister posts to the RUF/AFRC, and making Sankoh head of the Resources Commission. ECOMOG would continue their peacekeeping operations but would demobilize towards the replacement by a UN force (Rashid 2000).

Based on a change of focus from transitional government to transitional peace, Sankoh was convinced to take the deal as presented by the Eyadema, Taylor, Obasanjo, and Compaore. Kabbah was then persuaded to accommodate Sankoh’s demand for vice presidency. The idea was to elevate Sankoh just a tad above common ministerial positions, informally speaking; making him feel more important than the other government representatives (Rashid 2000).

The Lomé Accord was signed on 7th of July 1999.

The Lomé Accord contained several powersharing provisions. In short, four deputy and minister posts assigned RUF, in an 18-member cabinet Sankoh were made the head of Commission for the Management of Strategic Resources, National Reconstruction and Development. Furthermore, the agreement included a post-conflict program to be
implemented by Commission for Consolidation of Peace (CCP). CCP were to consist of two civil society members, jointly named by the RUF/AFRC and the government and the inclusion of the new SLA, where those ex-combatants who wished to join the state army could do so, provided they be eligible. The RUF requirement of approved control of certain areas was not addressed directly. However, Sankoh’s newly assigned post as head of CMRRD made him de facto in control over diamond-rich areas in the east and north of Sierra Leone (Binningsbø and Dupuy 2009). Moreover, the agreement ensured Sankoh absolute and free pardon, and blank amnesty for all war crimes and human rights violations committed by all combatants and collaborators since the conflict started in 1991 (Francis 2000).

However, one key element of the agreement dictates the objective analysis of gains acquired by the involved parties; the power-sharing arrangement was to last for four years until next election scheduled in the constitution.

4.4 ANALYSIS: Sierra Leone (January 1999-July 1999)
The main purpose of this analysis is to investigate if the power balance in the Lomè negotiations facilitated the relatively effective negotiation process. Moreover, on the theoretical backdrop that negotiation will level out the difference and provide that the weaker part to emerge with better than expected results, this analysis will primarily focus on gains in a power-sharing perspective, relative to their initial power status.

The analysis of the Lomè agreement was initially intended to resemble the structure applied in the case of Nepal. However, at a closer look, the Lomè agreement has a puzzling feature that requires some deviations from the intended structure. The relative gains acquired by each part fluctuate with two separate end points of the agreement. First, the immediate gains as a result of the agreement, and second, the gains seen in the perspective of the agreement’s four years validity. In short, the second perspective addresses the most likely outcome when the power-sharing agreement has expired. To accommodate this, the analysis is based on two different end points. Further explanation will follow below.
4.4.1 POWER BALANCE: Asymmetry

Zartman and Rubin provide the background for this evaluation. Similar to the case of symmetrical power balance, categorizing asymmetry is not a precise science. However, it is possible to apply the inverse rationale to that used to find near symmetry (absence of symmetry = asymmetry). In their book, Zartman and Rubin point to two typical cases where one party possesses more resources than their opponent and is perceived and perceives themselves as the stronger party.

Classifying asymmetry in Zartman and Rubin’s cases, the US vs. Canada, Indonesia or Egypt, is rather obvious. The US, with its established role as the world hegemon, is categorized as the stronger party, and thus as an asymmetrical negotiation is an obvious choice. This is not the case for Sierra Leone where the power balance has a tendency to shift slightly dependent on the resource one chooses to include. To overcome this challenge, a careful assessment of resource distribution and their relative contribution to the power-balance is needed.

As a starting point, Zartman provides a rational that simply categorize the government as the stronger party in a civil conflict, based on the property of being in position (Zartman 1995). Employed in the case of Sierra Leone, this rationale assumes that the government in Sierra Leone was in fact the stronger party in the conflict and the following negotiations. Furthermore, fortifying this assumption, Binningsbø and Dupuy describe a situation where Kabbah and his government use the Lomè Accord to eliminate the RUF and ultimately "win" the conflict and settlement. In this description, Kabbah’s success was mainly due to an expiration date on the power-sharing provisions, an aspect which will be further elaborated.

However, there is no consensus understanding that portrays Kabbah and his government as the stronger party. Thus, in an attempt to offer a correct categorization, I reached out to Dr. David Harris, a Sierra Leone expert and author of the book "Sierra Leone: A Political History." Dr. Harris was asked how he would categorize the two opponents? His short response was: "that is a good question" (personal correspondence).
The obvious question would then be; could this be because the parties are de facto near symmetrical? Several indications may point in that direction, but an inquiry to answer that question is unfortunately beyond the scope of this thesis. Thus, the following analysis will rest on the insight provided by amongst others Binningsbø and Dupuy (2009), David J. Francis (2000), Zartman (1995) and Walling (Walling 2008). All imply that the relationship is asymmetrical, but not on the direction. Importantly, perceived power is relevant, although an actor may be tripped by reality, this is not necessarily true in all cases. Furthermore, the negotiation mode and behavior might not be affected by the objective reality through the course of the negotiation. In short, negotiations are sometimes as much a game of perceptions as it is a process based on the objective reality.

Needless to say, the applicability of the theoretical framework for this thesis, and subsequently to which extent the thesis hypothesis is true, relies profoundly on whether Kabbah and his government or RUF are categorized as the stronger party. To surmount this challenge, both alternatives will be analyzed. However, an emphasis will be on the, to my mind, most convincing distribution. Again, based on arguments and descriptions presented in the selected literary contributions mentioned above.

4.4.2 POWER BALANCE PART 1: 
*RUF/AFRC against Kabbah (Government) 1-0*
Based on the previously presented arguments, I expect the differences in strength between the two parties to be minute. However, in "Elusive Peace, Negotiating and end to Civil War"(Zartman 1995), Zartman hold that internal conflicts are clearly asymmetrical. Moreover, he makes a sub-claim: governments are strong, and the rebels are weak. To my mind, the case of Nepal goes to show this inference is questionable. According to Zartman, the government possesses military superiority, and has a range of other resources such as allies, sovereignty and last but not least the power of legitimacy. The rebels are fighting a dual struggle, for both the end goal but also continuously for the means to reach it, a fight that requires all of the above-mentioned resources. Additionally, Zartman suggests that even if the rebels acquire such benefits the tables will not turn as the rebels will only come closer to being equal but never
stronger (Zartman 1995). At first glance, it makes a persuasive argument; the situation as described above does probably apply for most internal conflicts at the initial stages.

However, in the case of Sierra Leone, several factors favors that the RUF, and later AFRC /RUF could reasonably be portrayed as the stronger party, at least upon initiating the Lomè negotiations if not during the whole conflict.

Despite neither party being able to reach decisive military victory, and perhaps even because of this, the RUF apparently had the upper hand throughout the conflict. Already at the beginning of the dispute the world witnessed events that could predict the development of the later observed behavioral patterns of the RUF. The RUF started out as a modest sized rebel group, but soon enough displayed their unquestionable strength by claiming land and state property. Even at this initial stage, their massive strikes, despite their small size, appeared to be too much for the SLA to handle. When defeated in isolated confrontations, which caused them to go underground, the RUF resurfaced, apparently stronger for every each time (Gberie 2005).

One explanation for this is the phenomena "sobel." Members of the army that supported the rebels strengthened the RUF at the cost of SLA. Thus making the initial impression that the RUF was only "disturbance" as perceived by e.g. APC and Strasser, erroneous. However, that they, in fact, had the potential to perform as the stronger actor all along. Not only in actions but also with regards to appropriating their resources to the fullest. According to David J. Francis (2000) the RUF has not only survived, but been aided significantly by the continuously deteriorating state apparatus.

Furthermore, the international community failed to intervene. One the one hand RUF had massive regional support, both by ECOWAS members Liberia and Burkina Faso, and Libya. One reason to this support is believed to be financial interests in diamonds. One can argue that the potential threat of international intervention would optimally function as an added leverage to the government, however, considering that NATO already had their hands full with Kosovo, the threat was not considered realistic.
This aspect does not solely rest on NATO’s participation in the Kosovo genocide. In her book, "A dirty war in west Africa, the RUF and the destruction of Sierra Leone," Gberie argues lack of international intervention may be ascribed to racism and lack of strategic importance to the US or Europe. Several non-related examples support this rationale: Rwanda, Somalia, and Liberia to mention some.

Gberie writes "the end of the Cold War amplified all those factors (ref racism and strategic relevance): Africa, once a strategic battleground lost this status as far as the West was concerned" (Gberie 2005, 159).

One can only assume that the rebels knew this. Experience from Liberia indicated that that international intervention was unlikely. That knowledge may have reinforced their perception of themselves as unstoppable and thus rightly the actor who can "name the price." Additionally, their chosen tactic of brutality and aggression may have been used intentionally to appear stronger than they were.

Kabbah and his government were in no way prepared to handle an intervention. David J. Francis state: "The weak state allowed the SLA to become freelance force known as "sobels" ruthlessly exploiting the criminalized war economy" (Francis 2000, 359). The prior presidents had systematically reduced the functionality of the state, including the state army- the army. Under these conditions, the soldier’s loyalty was challenged, and the SLA started to act as an independent group operating out of own interests. At one point, they exploited the RUF intervention and overthrew the APC government, instead of protecting it.

Considering the lack of international intervention and increased pressure for a negotiated settlement, one can reasonably assume that Kabbah was left with little choice. His headache primarily revolved around the balance of reaching an agreement and that of meeting the minimum standards of responsibility assigned to a legitimate state authority. Also, there was an expectation and expressed call for hard justice. As Gberie (2005) describes it, international presence would decrease if he could not step up and take his responsibilities as legitimate head of government. Thus, he reluctantly entered the negotiation table. He later stated:
"I knew from my past dealings with Sankoh, that it won't work. Sankoh is the most treacherous and evil man I have had to deal with in my over 40 years of public service. His words simply cannot be trusted. But we had no choice. Here were these world powers telling us "look, now is your chance. If you don't cooperate, we will never be there for you"" (Gberie 2005, 157).

He perceived himself as forced into a corner, hoping for the UN to intervene, which they would not do unless a peace agreement were signed. In my opinion, this short overview goes to show that the RUF, contrary to my initial assumption, was the stronger actor entering the negotiations.

With that in mind, can it be argued that this asymmetry increased negotiation efficiency? Also, what about the gains related to power status? Did Kabbah and his government emerge with better than expected results?

4.4.3 HOW ASYMMETRY MAY HAVE AFFECTED THE NEGOTIATION:

Asymmetry => efficiency

The theoretical proposal introduced by Zartman and Rubin indicate that asymmetry is the best condition for an effective and productive negotiation. This finding can reasonably be associated with the liberalist literature, which argue that power imbalances are beneficial for interstate cooperation. The interstate actors are aware of their role and seek to maximize their gains within that sphere (Zartman and Rubin 2000, 274-275).

Given there were only two values to the variable power balance asymmetry and symmetry that affected the negotiation efficiency, one may argue that the absence of symmetry (= asymmetry) made the Lomé negotiations more efficient than the negotiations in Nepal. However, this reasoning does not really explain how asymmetry makes the negotiation more efficient. To my understanding, the explanation must be in the power status associated behavior.

The actor perceived by itself and its opponent to be the stronger is likely to adopt a "take it or leave it" attitude (Zartman and Rubin 2000, 275). Given that the incentive for
entering negotiation must necessarily be a positive sum outcome for all actors, Kabbah, being the weaker actor was left with little choice "but to take it". Importantly, the fighting on the ground continued while the negotiations was ongoing, which further increased the pressure on Kabbah and his government to accommodate their responsibilities as the legitimate authority. In other words, Kabbah had enough incentive to accept the agreement, because the alternative of no agreement was worse.

A second strategy often applied by the stronger party is "take it or suffer". This approach is often adopted if the weaker party shows reluctance to the "take it or leave it" tactic. In Kabbah’s case, one can assume he could not suffer for much longer, given the poor state of Sierra Leone.

4.4.4 LOMÈ AND POWERSHARING GAINS

The Lomè Agreement was, in general, a huge blow and a scandal to the Sierra Leonean population. The overall impunity, and specifically the full pardon and freedom of Foday Sankoh, was conceived a major recession for Human Rights. Based on a quick overview the RUF /AFRC did quite good. Contrary to the signal effect in the case of Milosevic, the Lomè Agreement signaled that atrocities and war crimes could go unpunished as long as they went under international community radar of interest.

With regards to inclusion, The Lomè and its provisions for powersharing seems to be in agreement with the concosiationalist model. In other words the agreement can be interpreted to be most beneficial for the RUF. The RUF was not only offered opportunities to influence national politics but guarantees that future public policy would be dependent on them. By assigning government positions, vice-presidency (ref. Cyprus), chair of the CMRRD, which gave control over the diamond rich areas, and the restructuring of the SLA (1999), the agreement provides what is referred to as mandates of inclusive decision-making (Rothchild and Roeder 2005). Moreover, although not considered ethnofederalism/corporatism, the assignment of Sankoh as chair of the CMRRD, can probably be interpreted in light of their requested regional autonomy, which is also according to Horowitz one of conciationalism main components. The agreement also included predetermined decisions, such as the expiration date for the Lomè.
Thus, to my understanding, the stronger party during the initial stages (RUF) of the negotiation also gained more than their opponent, which started out by rejecting a power-sharing agreement. While Kabbah and his government, only obtained gains reflecting their relative strength. Thus, the weaker part did not do better than expected. This reasoning implies that van den Heuvels findings: that the actor first empowered is more likely to influence the power-sharing arrangement beneficial to themselves, contrary to Zartman and Rubin who suggest that the weaker party may emerge with often quite good results and better than expected, are more applicable in the case of Sierra Leone.

However, the tentative suggestion above is contingent on that the premises for the analysis are restricted to evaluate gains acquired within the duration of the agreement.

As mentioned, Binningsbø and Dupuy (Binningsbø and Dupuy 2009) argue the Kabbah and his government used the Lomè agreement to end the war by marginalizing the RUF. The RUF was kept a minority by binding the agreement to the Constitution, maintaining the government in position, and only offering cabinet seats to the RUF. Also, as already indicated, the powersharing provisions were to last to last two years until the next election. Thus, even if the power-sharing provisions initially rewarded the RUF, it was only for a short period. Normally one would expect the predetermined decisions to benefit the party that is not in position/minority, however; in this case, it was the opposite.

It took less than a year for the power-sharing arrangement to breakdown. Despite international effort for securing the peace, the agreement collapsed totally when the RUF kidnapped 500 UNAMSIL peacekeepers. Sankoh and several central RUF members were arrested and stripped of their government positions. In 2001 a final peace agreement was signed, and Kabbah declared "di war don don" in 2002. The government held new elections, where SLPP won 83 of 112 legislative seats. The RUF did not win a single seat (Binningsbø and Dupuy 2009).
Therefore, if the analysis takes into account the time after the election, when the power-sharing provisions would cease, Kabbah got more than expected given his initial weak status. This notion implies that Zartman and Rubin's proposal is highly relevant.

However, the validity of this argument relies on the whether RUF understood the limitation caused by timeframe, or at least that Kabbah acted intentionally with this time-restriction in mind. Given a case where the latter is correct, this will further sustain the proposal that the weaker party does not act submissively, but resort to tactic for the weak. In that case, Kabbah and his government used their negotiation skills to emerge with better than expected results.

Taking into account the assumed intentions of the parties is risky, and requires far better insight than I have developed during this project. However, I consider Horowitz's mechanism of "visibility" in negotiations relevant. In short, this means that the parties have a fairly good overview of what is beneficial to them. Based on this, it is reasonable to at least consider the chance that Kabbah estimated the RUF to be out in the cold again after the next election.

On the other hand, even if it was Kabbah's intention that the new election would ultimately remove RUF; he could not foresee the breakdown of the agreement and the new intervention from the international community. Moreover, if this was an intentional win by Kabbah or not depends on whether the RUF was marginalized in the election due to the agreement or the breakdown of the agreement. If they failed to mobilize support for their political party, or if they lost due to the collapse of the agreement and the consequences that had for their politics when they were removed from government positions and arrested.

Finally, in the opposite case, if the Kabbah government was the stronger party, an equal argument can be applied. Given they were stronger in the initial stages of the negotiations, they intended to marginalize the RUF, and they won the election and forced RUF from their positions, then van den Heuvel is applicable. On the other hand, only taking the time frame of the agreement into consideration, Kabbah and the government made unexpected significant concessions given their strength relative to
the RUF, and RUF did better than expected. The latter makes Zartman and Rubin applicable.

5.0 Concluding Remarks
In this thesis I have studied the constitutional processes in Nepal and Sierra Leone in an attempt to answer the following research question:

*To what extent can Zartman and Rubin’s findings on perceived power distribution be applied to explain the constitutional process and outcome of Sierra Leone and Nepal?*

With respect to power balance in Nepal, I have not emphasized tangible resources to the same extent as in the case studies presented by Zartman and Rubin (Zartman and Rubin 2000). However, my evaluation reveals that the mechanism of entrapment has been decisive to establish near symmetry, and thus is highly relevant for the constitutional process of Nepal. Paul W Meerts states:

> “Entrapments in international negotiations is a form of escalation whereby parties involved with an interactive, non-violent decision-making process with others whom they have both common and conflicting interests find themselves unable to escape from the costs and investments they have already made” (Meerts 2005, 103).

The idea of inclusion and consensus based decision- making gave rise to the adoption of the CPA, which in turn committed the parties to include all actors. I consider this factor to represent a “time thief” in the constitutional negotiations. In short, the parties were halted by additional deals made at a time when the common object with highest priority was regime change. Hence, the parties were left contingent on the participation of the other parties for progression, thereby introducing symmetry. Additionally, as already mentioned and described by Freedom House, Nepal is not a true electoral democracy. Thus, given that the CA 1 and 2 are borderline illegitimate, even those holding a majority have insufficient leverage to pull through. This insufficiency was further enhanced by the constant threat of uprisings and civil obedience.

Nepal’s development depends heavily on its donors or “developmental partners” who include the US, E.U. and Scandinavian countries.
Its two Asian neighbors India and China have also had an inevitable influence on Nepal. However, and contrary to the Lomè process, Nepal’s peace process has been a Nepali process. As Paul Jackson, a political economist working predominantly on conflict and post-conflict reconstruction, said when asked if he thought the peace process in Nepal was driven largely by foreigners or if it was, at its heart, driven by Nepalese?

“I recently heard a Western academic in Nepal say that it’s a fiction that Nepal’s peace process is either successful or a Nepali process. I would argue against both those positions. If you talk about Indian interference in particular, there was very little of it in the peace process itself. Having attended many meetings of the Special Committee (for the rehabilitation of Maoist combatants), right from the start of the process, I don’t recall anyone mentioning India, even once. So this was very much a Nepali process.”

The international community was present as mediators, supporters and facilitators, without exercising peer pressure on the actors. In Sierra Leone, on the other hand, several indications point to a direct and forceful intervention by external actors. The negotiations parties did not find their own way to the negotiation table, but were forced there by the international community. It is easy to envision how this external factor may have disrupted the power-balance, legitimated the RUF, and influenced the efficiency of the negotiation process. Thus, it is possible that the negotiation may have been far less efficient if the parties had met under different circumstances.

On that end, it is unclear if the Lomè peace process in fact was an internal affair. Under the influence of regional and international actors it may just as well be regarded a hybrid case where internal actors were overrunned from both sides by external groups, states and IGO’s. With increased globalization and foreign interests in domestic affairs the line between intra-state and inter-state becomes blurred. There seems to be an increasing number of cases where internal conflicts are used as a political arena for international interests. This notion strengthens the applicability of the theoretical backdrop for my thesis. If intrastate conflicts become an interstate affair, the theory applied to inter-state conflicts should be more relevant. A thorough analysis where literature from both inter-state and intra-state are applied may reveal the synergy between these two levels.
Throughout the political history included in the empirical material on Nepal, it seems quite apparent that none of the involved parties have been able or willing to force agreements concerning a range of contagious issues, such as federal configuration and province names and form of government. Neither have they showed the ability to sustain agreements that they have made (ref rapid shift of governments and PM and party splinters). Having presented my observations above, which to my opinion reasonably categorize the parties as near equal, it follows that symmetry, may function as an explanatory variable for the lack of efficiency\textsuperscript{95}.

Based on the arguments presented in the analysis, the negotiation process leading to the Lomè agreement represents a case of asymmetrical power balance. The RUF had clear demands and did not budge; they soon adopted an aggressive approach, to which Kabbah reacted submissively, despite internal disagreements in government. Thus, to my understanding, the asymmetrical power balance contributed significantly to increasing efficiency in the Lomè negotiations.

In sum, in constitutional processes, asymmetry seems to facilitate more efficient negotiations while symmetry or near symmetry do the opposite. Thus Zartman and Rubin`s findings may be applied to constitutional processes. However, that the government is in it`s own property always the stronger party, as suggested by Zartman, is questionable.

Zartman and Rubin`s findings also suggest that the weaker party should emerge with better than expected results. This would imply that Kabbah and his government should get more than expected from the Lomè agreement. If Zartman and Rubin`s observation is valid for the outcome of the Lomè agreement is contingent on the perspective you analyze the results in. In the short term Kabbah did, if anything, worse than expected. Kabbah and his government lost several central positions in the government, control over important areas of the country, justice for the violence preformed by RUF, to

\textsuperscript{95} The term effectiveness refers to frequency of mutual cooperative choice behavior, measures of joint outcome or both.
mention some. In this perspective, Zartman and Rubin's observations do not agree with the observed outcome of the Lomè agreement. However, and as mentioned in the analysis, in the long run Kabbah and the government were able to marginalize RUF in the subsequent elections. As the decision to hold new elections was a part of the agreement, it could be argued that Kabbah did better than expected when RUF was marginalized.

When presented with several perspectives, one should not only choose the perspective that fits with the theory or hypothesis but also the opposing perspective. The aim of case studies is not to generate robust conclusions, but rather to shed light on nuances that other strategies may overlook. I have tried to illuminate the different aspects of both the constitutional process in Nepal and the Lomè agreement. I find that the relation between symmetry and lack of symmetry in power balance is associated with the efficiency of the negotiation process. On the other hand, I find it more difficult to draw clear parallels between the weaker party and a better than expected outcome. If anything, my thesis shows that a precise assessment of power-balance becomes more difficult when you move from the interstate to the intrastate level.
6.0 Bibliography


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In Conjunction with the International Institute for Applied Systems Analysis.

7.0 APPENDIX

7.1 APPENDIX A.

<table>
<thead>
<tr>
<th>Geographical Zone</th>
<th>Major Ethnic/Cast habitants</th>
<th>Social/religious features of the largest ethnic/cast group</th>
<th>Minor Ethnic/Cast habitants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terrai/lowland</td>
<td>- Madhesi Community</td>
<td>- Hindu cast system with a number of oppressed castes</td>
<td>- Muslims, Jains and Sikhs</td>
</tr>
<tr>
<td>The hills</td>
<td>- Khas (Brahman and Chhetris)</td>
<td>- Nepali speaking elite</td>
<td>- Dalit’s</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Moral, political and economical influence on present-day Nepal</td>
<td></td>
</tr>
<tr>
<td>Mountain region</td>
<td>- The Sherpas</td>
<td>- Live in separate social units</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Tibetan Buddhism</td>
<td></td>
</tr>
<tr>
<td>All three zones</td>
<td>- Janajatis also referred to as the indigenous people</td>
<td>- Sometimes included in the Madhesi.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Eight highly diverse subgroups.</td>
<td></td>
</tr>
</tbody>
</table>

Schematic presentations of some the major and minor groups habituating the different geographical areas of Nepal (Nils A. Butenschøn, Stiansen, and Vollan 2015, 12-14, Fisher 1996, Opptiz 1974, Myklebust 2014, Stevens 1993)

7.2 APPENDIX B.

Synopsis of Nepal’s Political History 1750-

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. The king became a figurehead, as the de facto power was transferred to the prime minister.

1923 - Treaty with Britain affirms Nepal's sovereignty.

1947 - Opposition against Rana family materialized and the Nepali Congress Party (NC) was established. Soon after the first Communist Party of Nepal (CPN) was constituted. However, political parties were still forbidden (Nils A. Butenschøn, Stiansen, and Vollan 2015, 13).

1950 - Anti-Rana forces based in India form alliance with monarch Tribuvahn.

1951 - End of Rana rule. Sovereignty of crown was restored and under the leadership of Bishweshwar Prasad Koirala the anti-Rana rebels in Nepalese Congress Party form government.


1955 - King Tribhuwan dies, King Mahendra ascends throne. Mahendra withdraws previous support for NC’s political initiative.

1957 - King Mahendra promised an election for a constituent assembly. No elections were held. An alliance that used civil disobedience, The United Democratic Front, to increase pressure on the king was formed.

1959 - The increased pressure on Mahendra resulted in an election for parliament and the multi-party constitution was adopted (Nils A. Butenschøn, Stiansen, and Vollan 2015).

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 Rastrya Panchayat held in 1963.

1972 - King Mahendra dies, succeeded by Birendra.

1974 - Two NC activist were hanged for the alleged attempt to murder King Birendra.
1980 - Constitutional referendum follows agitation for reform. Small majority favours 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 (United Left Front). Street protests suppressed by security forces resulting in deaths and mass arrests. King Birendra eventually bows to pressure and agrees to new democratic constitution (Nils A. Butenschøn, Stiansen, and Vollan 2015).

**Political instability - The People`s War**

1994 – The United Communist Party (Maoists) was formed. Koirala's government defeated in no-confidence motion. New elections lead to formation of Communist government.
1995 - Communist government dissolved.
1995 - Start of Maoist revolt that drags on for more than a decade and kills thousands (13000 by rough estimates). The rebels want the monarchy to be abolished.
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.
2001 1 June - King Birendra, Queen Aishwarya and other close relatives killed in shooting spree by drunken Crown Prince Dipendra, who then shoots himself (Nils A. Butenschøn, Stiansen, and Vollan 2015, Do and Iyer 2010).
2001 - Prince Gyanendra crowned King.
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.

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.

2003 January - Rebels, government declare ceasefire.

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 May - Street protests by opposition groups demanding a return to democracy. Royalist Prime Minister Surya Bahadur Thapa quits.

2005 February - King Gyanendra assumes direct control and dismisses the government. He declares a state of emergency, citing the need to defeat Maoist rebels. The Royal take-over was heavily by several states including India and the US (Do and Iyer 2010, 737).

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

2005 November - Maoist rebels and main opposition parties (Seven Party Alliance) agree on a 12-point agreement intended to restore democracy (Gellner 2007, 81, Nils A. Butenschøn, Stiansen, and Vollan 2015, 22).
2006 April - King Gyanendra agrees to reinstate parliament following weeks of violent strikes and protests against direct royal rule. Maoist rebels call a 25-point 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 November - Government and Maoists sign a peace accord - the Comprehensive Peace Agreement (CPA) - declaring a formal end to a 10-year rebel insurgency.

2007 January - Maoist leaders enter parliament under the terms of a temporary constitution.

7.3 APPENDIX C.
Summary of initial CA schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 2014</td>
<td>Submission of consolidated reports on resolved and disputed issues to the committees on (1) constitution drafting and (2) constitutional-political dialogue and consensus, respectively.</td>
</tr>
<tr>
<td>6 September 2014</td>
<td>Deadline for building consensus on disputed issues by the committee on constitutional-political dialogue and consensus.</td>
</tr>
<tr>
<td>16 September 2014</td>
<td>Deadline for CA to resolve pending disputed issues by simple majority vote.</td>
</tr>
<tr>
<td>17 October 2014</td>
<td>Finalization and presentation of draft constitution to full house.</td>
</tr>
<tr>
<td>16 November 2014</td>
<td>Dissemination of draft constitution and collection of public inputs.</td>
</tr>
<tr>
<td>15 December 2014</td>
<td>Submission of report on public inputs to CA for open debate.</td>
</tr>
<tr>
<td>13 January 2015</td>
<td>Final round of article by article voting.</td>
</tr>
<tr>
<td>22 January 2015</td>
<td>Promulgation of new Constitution.</td>
</tr>
</tbody>
</table>
7.4 APPENDIX D.

Synopsis of Sierra Leone`s political history 1778-1999

The time-line is based on BBC`S short resumé of major events in Sierra Leone`s civil war (NEWS 2015)

1787 - British abolitionists and philanthropists establish a settlement in Freetown for repatriated and rescued slaves.

1807 - Freetown settlement becomes crown colony

1840`s – Creole Community (blend of early settlers and liberated Africans) emerged as an elite.

1896 - Britain sets up a protectorate over the Freetown hinterland.

1954 - Sir Milton Margai, leader of the Sierra Leone People's Party (SLPP founded in 1951), appointed chief minister.

1961 - Sierra Leone becomes independent.


1968 - Siaka Stevens returns to power at the head of a civilian government following another military coup.

1971 - Sierra Leone declared a republic, Stevens becomes executive president.

1978 - New constitution proclaims Sierra Leone a one-party state with the All People's Congress as the sole legal party.

1985 - Major-General Joseph Saidu Momoh becomes president following Stevens's retirement.

1987 - Momoh declares a state of economic emergency.

1991 - Start of civil war. Former army corporal Foday Sankoh and his Revolutionary United Front (RUF) begin a campaign against President Momoh, capturing towns on the border with Liberia.

1991 September - New constitution providing for a multiparty system adopted.

1992 - President Joseph Momoh ousted in military coup led by Captain Valentine Strasser, apparently frustrated by the failure to deal with rebels. Under international pressure, Strasser announces plans for the first multi-party elections since 1967.
1996 January - Strasser ousted in military coup led by his defense minister, Brigadier Julius Maada

1996 - Ahmad Tejan Kabbah elected president in February, signs peace accord with Sankoh's rebels in November.

1997 - Peace deal unravels. The army deposed President Kabbah in May. Major Johnny Paul Koroma put in prison awaiting the outcome of a treason trial, leads the military junta - the Armed Forces Revolutionary Council (AFRC). Koroma suspends the constitution, bans demonstrations and abolishes political parties.

1997 July - The Commonwealth suspends Sierra Leone.

1997 October - The UN Security Council imposes sanctions on Sierra Leone, barring the supply of arms and petroleum products. A British company, Sandline, nonetheless supplies "logistical support", including rifles, to Kabbah allies.


1998 March - Kabbah makes a triumphant return to Freetown amid scenes of public rejoicing.

1999 January - Rebels backing Revolutionary United Front leader Foday Sankoh seize parts of Freetown from ECOMOG. After weeks of bitter fighting they are driven out, leaving behind 5,000 dead and a devastated city.

1999 May - A ceasefire is greeted with cautious optimism in Freetown amid hopes that eight years of civil war may soon be over.

1999 July - Six weeks of talks in the Togolese capital, Lomè, result in a peace agreement, under which the rebels receive posts in government and assurances they will not be prosecuted for war crimes.

1999 November/December - UN troops arrive to police the peace agreement - but one rebel leader, Sam Bokari, says they are not welcome. Meanwhile, Ecomog troops are attacked outside Freetown.