



ASIAN CENTRE FOR HUMAN RIGHTS

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NEPAL IN CRISIS

I. Introduction

24th April 2009 was the third anniversary of Nepal's *Loktantra*, the 2006 People's Movement. Nepal has made significant progress since then: a peace process has been initiated; a republic has been established; elections have been held; a constituent assembly has been formed; and progress toward the drafting of a more inclusive constitution has begun.

Despite these gains, Nepal's peace process is in crisis. On 24th April 2009, the Nepal Army issued a public denial of a planned coup¹. This comes at a time of an increasingly vocal fight between the government and the Nepal Army over civilian authority.² On 29th April 2009, United Nations Secretary General Ban Ki Moon warned: "Continuing political challenges such as the controversial decisions taken by the CPN-M-led government and the Nepal Army related to army personnel, and frequent acrimony among senior political leaders, have strained relations, contributing to an atmosphere of mistrust which may hinder all parties from moving forward on integration and rehabilitation modalities"³.

The elections showed that the electorate was divided but the Maoists enjoyed far greater popular support than most had predicted. Neither the Maoists nor mainstream political parties appeared prepared for genuine coalition politics. The Maoists appear unwilling to give up violence. The violence and rhetoric by the Maoists rightly continue to raise credible questions about their commitment to democracy. These have fuelled fears and a cycle of polarisation between the mainstream parties and the Maoists.⁴

II. Root causes of the present crisis: Integration, security sector reform and impunity

The failure of the peace centres around three inter-related issues: integration, security sector reform (SSR) and impunity.

Integration of the Armies is important in itself, but its non resolution blocks any prospect of SSR. No SSR obviously means no police reform and the ability of the state to bring law and order to the countryside. Without the state, and in an environment of impunity, ever more armed political groups and armed criminal gangs are likely to emerge contributing to ever greater instability.

The inability of an unreformed police to curb violence by the Maoists or other armed groups is serious. Impunity means that there is no disincentive against using violence, abusing opponents and intimidating local populations.

With peaceful politics visibly failing to deliver, it is hardly surprising that armed ethnic groups are emerging in areas outside the Terai.⁵ There is little incentive for any armed group or individual to act within the rule of law while the State itself fails to do so.

Impunity is equally a symptom of the lack of civilian control over the Nepal Army and the People's Liberation Army (PLA) of the Maoists. The consequence is that the debate over integration/demobilisation is now restricted to the belligerent parties.⁶ Under these circumstances national political mechanisms are visibly impotent against the

threat of use of arms. They are failing to resolve the central issue of integration and allowing rhetoric to further destabilise the fragile peace.

The dangers to the wider peace process of allowing the two armies to decide their own future should now be obvious: as long as the arms remain in the equation both armies have an effective veto on the whole peace process.

III. Analysis of the role of the key actors

If Nepal is to sustain the progress it needs to identify a neutral arbiter with suitable guarantors to restore confidence. The events of the past few days merit international concern.

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In this paper ACHR considers the political environment in Nepal, options for the international community and India's key role to restore confidence.

Maoist abuses, threats and rhetoric

The killings, violence and other abuses by the Maoists have continued. As with past administrations and the Nepal Army, the repeated commitments from the Maoists and Prime Minister Prachanda appear empty in the face of inaction on key cases. In seeking an assessment of their commitment, their inaction on these cases should be compared with their active pursuit of means to ensure impunity for criminal cases applied to the Maoist leadership.

On 27th October 2008 the Cabinet's decided to withdraw 349 cases of a so-called political nature, including murder and rape, filed at the district level.⁷ The United Nations Special Representative to the Secretary General, Ian Martin stated: *'The CPN (M) and other political parties are quick to protect their supporters from justice, rather than to support the impartial application of the rule of law. Even in cases where the perpetrators are known (...)'*⁸. The Supreme Court has ruled against this decision but the government has not withdrawn the order.⁹

In the political domain the Maoist leadership's public positions swing clumsily between moderation and revolution. On 12th January 2009, the Prime Minister warned that the 'people' would 'capture state power' if the Maoists were forced from power.¹⁰

The violence and rhetoric by the Maoists continue to raise credible questions about their commitment to democracy.¹¹ Unsurprisingly there is a deep sense of unease amongst civil society, the political classes and the media about the Maoists' intentions.

Other political parties

The response of the other political parties to abuses by the Maoists has been to demand that the Youth Communist League (YCL) be dissolved and the abuses cease. Illogically they complain to the Maoists instead of the police and other State authorities. The other political parties have neither underlined that the YCL has been breaking the law nor have they expressed concern over the failure of the police and State to respond. There has been a deafening silence on the issue of impunity to the Maoists.

In addition, militant youth groups affiliated with other political parties have proliferated. The UN Secretary General has warned that these groups increase the risk of local violence, undermine efforts to re-establish the rule of law and further damage the legitimacy of the police.¹²

Both the CPN-UML and the Nepali Congress (NC) must accept a large share of responsibility for the failure to tackle impunity. Impunity did not start during the Royal takeover. It was the NC leader Girija Prasad Koirala who buried the government inquiry into the human rights violations committed during the first (1990) People's Movement – the Mallik Commission.

Mainstream political parties move towards the Army:

Perhaps more significantly, the NC and to a lesser extent the UML, are moving ever closer to the highly politicised Nepal Army leadership¹³. As recently as 24th April 2009, Ram Sharan Mahat (NC) writing for Kantipuronline on the Maoists stated: *'In their impatience to capture all levers*

of power, they are playing a dangerous game to divide and politicise the army'.¹⁴ The normally centrist UML party has also issued statements supportive of the Nepal Army including, from one leader, an unlikely proposal that the Maoists should give their weapons to the Nepal Army.¹⁵

Media objectivity

While the Maoists' actions merit serious concern, Nepalese media reporting of Maoist actions is of concern. The majority of the mainstream media have and continue to insist that all public support for the Maoists has evaporated. This is akin to

their underplaying the Maoist support before the Constituent Assembly election.

There is perhaps some justification for this in Kathmandu where electricity cuts, rubbish collection and unending 'bandhs' have soured public opinion. But the repeated media portrayal of a nation set against Maoist authoritarianism sits uneasily with the recent by-elections that saw the Maoists win three out of six available seats. That *The Himalayan Times* declared this sizable Maoist victory as 'a mixed bag' for the various political parties is indicative of the problem.¹⁶

A consensus discourse on the Army?

In this polarised environment, the Kathmandu elite, sections of the media, politicians and some members of civil society appear willing to cast the Maoists as a one sided threat to Nepal's peace and democracy. Any action against the Maoists appears to be portrayed as part of some defence of democracy.

It is this discourse that appears to have permitted the Chief of the Army Staff (CoAS), General Rookmangad Katawal to repeatedly and publicly insist that the Army is democratic, devoid of politics and under civilian control.

Illogically mainstream political parties complain to the Maoists against the abuses committed by its Youth Communist League cadres instead of the police and other State authorities. There has been a deafening silence on the issue of impunity to the Maoists.

The Army certainly has no shortage of talented officers. Many of these are committed to democracy and civilian control. It is true that there have been legislative and structural changes enacted. But without the cooperation or implementation of the Army, they are of very limited value. There appears to be little credible evidence to support the contention that the Army leadership (the very same leadership that designed the military takeover of 2005 and subject to the undivided patronage of the Palace) is either outside politics or in any sense under democratic control. The Army Chief's public positions should be balanced by reading his clearly anti democratic writings under his *nom de plume* Ajay P Nath.

C K Lal, a prominent Nepalese political analyst, has noted: 'Despite its aggressive denials, the army is composed of even more politically indoctrinated members than the Maoists. (...) Loyalists to the crown continue to dominate the army brass. The force is still largely feudal and considers itself the custodian of religious rites that used to give our monarchy the divine right to rule.'¹⁷

The other security forces:

The police force have a well documented record of the systematic use of torture, excessive force in controlling demonstrations and summary executions covered up by claims of 'encounter killing'. These practices hardly favour winning public confidence.¹⁸ There are unsubstantiated rumours that faked police encounter killings continue in Bara and Parsa.

Turbulent Terai:

In the Terai, lawlessness, armed violence and criminality proliferate.

The emergence of the Tharu ethnic political parties and their recent strikes are yet another source of instability as the government fails to address political demands.¹⁹

On 11th January 2009, the hacking to death of gender rights activist and journalist Uma Singh in Janakpur, Terai, by unidentified assailants provides a powerful symbol of the deteriorating public security, and rule of law situation in Nepal. Lawlessness and armed gang violence should be seen, among others, in the context of failure to address impunity for human rights violations committed by the police.²⁰

IV. Conclusions and recommendations

In May 2008, ACHR warned:

'The consequence of no civilian control [over the Army] is that the debate over integration/demobilisation is restricted to belligerent parties. Given the dynamics discussed in this review it is unclear

how the Constituent Assembly or the next government will be able to wrest control into the civilian domain.

One obvious casualty of the failure 'integration' of the PLA and the Nepal Army is that it blocks debate or action on wider security sector reform: delaying police reform will widen the security vacuum still further (...).

The inability of an unreformed police to curb the crimes of YCL, combined with the continued existence of the PLA mean that the CPM(M) and its affiliates will continue to abuse political opponents without fear of any meaningful constraint(...)

Role of the International Community

The international community is currently moving between three broad policy directions. Firstly, many continue to observe, allowing Nepal to continue as is. The dynamics in Nepal suggest that polarization, political in-fighting and rhetoric will spiral toward a breakdown in the peace process. The hope of this policy must be that the Nepalese will pull back from a breakdown at the last minute as has happened in the past. The second policy line has been to provide varying degrees of support to the Nepal Army to prevent Maoist takeover. The third seeks to buttress the peace process. But the latter does not appear to be the dominant policy.

If the end goal is peace the first two policies appear flawed. No matter how hard these policies are pursued, they will continue to allow one or other, or indeed both armed groups (the NA and the PLA) an effective veto over the peace process. However much support is given to the Army if the Maoists do not like what they hear, they can respond with the very real threats of violence. So overt support to one side allows extremists on both sides to delay and weaken the peace process.

Role of India

Nepalese media reports on the apparent support for the Army Chief offered by the Indian Ambassador in Kathmandu, H.E. Rakesh Sood raise question marks over Indian policy.²¹ India is right to be concerned about continued Maoist military strength, Maoist violence and the repeated threat of armed revolution. But, for the reasons discussed above if H.E Sood's intention was to assist in calming the currently inflamed political environment, it is unclear that his actions will support that outcome.

India has traditionally supported the military. There is little debate in India as to why. It is unclear that this policy has always had a positive influence. The leadership of the Nepal Army is unchanged from the one that took power in 2005 and continues to display highly destabilising autonomy from civilian control.²²

A failure of the peace process in Nepal will have serious consequences for India. It does not need a large ungovernable safe haven for its own insurgents - the guaranteed outcome of the failure. India must re-examine its policies and advocate independent mechanism for the CPA.

A failure of the peace process will have serious consequences for India. Failure is likely to lead, at worst, to prolonged multiple conflicts or at best growing anarchy and criminality across Nepal. Both are guaranteed to spill over into India. India does not need a large ungovernable safe haven for its own insurgents. On the other hand, the peaceful integration of Nepal's Maoists into democratic mainstream politics would provide an enormous buttress to Indian interests. It may be time to re-examine policy.

Recommendations to the Government of India

Asian Centre for Human Rights recommends to the government of India to:

- underline India's expectations of consensus, co-operation and support for the Comprehensive Peace Agreement (CPA) and an inclusive democratic future for Nepal;
- call for a public and definitive Maoist renunciation of violence, and commitment to the rule of law and establish measurable indicators of progress with regard to individual cases of abuse;
- advocate for early progress on integration as a priority and underline India's expectation of cooperation from all sides to the process;
- advocate for the early establishment of an independent monitoring mechanism of the CPA;
- offer technical assistance, capacity building and expertise given India's wealth of experience in appropriate systems of civil military relations, a long tradition of a military free from political patronage, parliamentary oversight and Ministry of Defence models appropriate to the Nepalese environment; and
- advocate for democratic oversight of the security sector, and call for measurable steps toward the establishment of appropriate mechanisms including appropriate arrangements that provide guarantees against political patronage in the security sector.

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