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NEPAL AND THE PAX INDIANUS

“Enlightened despotism is preferable to chaotic democracy; the masses require protection from themselves.” - Rukmangud Katuwal, Chief of the Army Staff, 2002¹

“The paper crown of premiership, pasted overnight with the joint effort of proactive diplomats and an assertive military had to be put upon [Madhav Kumar] Nepal’s head precisely because he was the unlikeliest candidate to resist a rightist roadmap of the Kathmandu establishment.” - CK Lal, political analyst, 2009²

1. Introduction

In May 2009, the Asian Centre for Human Rights (ACHR) warned of growing threats to sustainable peace in Nepal.³ Since that time, Nepal’s politics have continued to polarize. Nepal still has two armies – the Nepal Army and the Maoist People’s Liberation Army, both with sharply opposing political ambitions. The peace process is stalled. Outside Kathmandu, the country is falling into anarchy: strikes have paralysed the country, armed (including ethnic-based) groups, societal violence and criminality proliferate. For the first time, this chaos outside Kathmandu is beginning to affect the capital itself.

In May 2009, the Maoist (CPN-M)-led coalition government was brought down. A new administration headed by Prime Minister Madhav Kumar Nepal, who was defeated in both seats where he was a candidate in the April 2008 elections, was formed. After a month of political infighting, what the media had promoted as a democratic alliance, has emerged as a weak, divided, unstable government, at best, unrepresentative of the “new” Nepal. It is more redolent of Prime Minister Sher Bahadur Deuba’s 2003 government; democratic in name only. The evidence of Army interference is clear. Despite paying lip service to consensus politics and peace, the government’s actions appear often to be aimed at provoking the Maoists.

The CPN-M hardened its language. While making commitments to peace and democracy, the CPN-M threatens violent insurrection. The Maoists have demonstrated that without them no government can function or survive. They have held numerous protests and increased violence and intimidation. The violence has provided the government with legitimacy to increase security measures. The government’s threat to use “maximum force” and the weak operational capacity of the security forces risk inflaming an already tense situation.⁴

But more recently there have been signs that moderate forces within the Maoists have begun to re-assert themselves. There are signs that violence has diminished since India’s Foreign Secretary Shiv Shankar Menon’s visit on 20-21 June 2009. And on 6 July 2009 the CPN-M announced that it would allow the Constituent Assembly to carry out its work. This ended a two-month deadlock. Further delay would have given those on the right the pretext to push their agenda. There does appear to be a more general awareness amongst the moderate sections of the CPN-M and other parties of the dangers of rightward shift.

The political parties are now all talking about national government. While the immediate crisis appears to have passed, the threat of a rightist adventure remains. The Army continues to talk about Maoist insurrection and a military response to the ‘Maoist problem’. There should be no doubt about the nature of the Army’s planned operations. The Chief of Army Staff (COAS) has defiantly pushed the new government to promote officers who have a well publicised involvement in massacre, torture, summary execution and disappearance of detained Maoists.

In these circumstances it is difficult to see how the present coalition can reconcile with the Maoists. And there is little prospect of resolving the intractable issues of integration, security sector reform, land reform and impunity. These issues have been holding up progress in the peace process and a failure will inevitably lead to further crises.

Threat, counter-threat and violence are framed by growing insecurity driven by criminality and violence from the proliferation of armed groups and mob rule. And as long as military forces hold sway, the opportunities for those who espouse ‘enlightened despotism’ are broad. On 6 July 2009 the media reported that the COAS had provocatively put

Nepal Army regional headquarters on high alert to respond to the Young Communist League (YCL) and the People Liberation Army (PLA) activities.

The fear of military rule is evident in the media:

“Given the failure on the part of the Maoists to establish their democratic credentials, the Government to be formed following the downfall of Prime Minister Nepal could be apolitical [tr. military-headed] in nature. Obviously, this would be an extremist experiment.”²⁵

Some observers feel that the extent of Nepal Army (NA) influence over all key political decisions with the COAS effectively wielding a veto, is tantamount to military rule.

Fearing Maoist takeover in Nepal, India is driven by its increasing alarm over Indian Maoists. India has opted to actively support the ousting of the Maoist government and once again back the Nepal Army. But rather than weakening the Maoists the current policy is likely to merely assist the momentum toward authoritarianism, which given the current balance of forces in Nepal will inevitably lead to widespread violence. The Maoists still enjoy wide public support and their election successes have not yet used up their political credit. Any move against them in these circumstances will appear not only premature but worse, unjust and counter-productive.

Authoritarian government of whatever hue is counterproductive to Indian long-term interests. With good reason India has always maintained strong civilian control over its military. It is unclear why it has fallen into promoting the opposite in Nepal. It need not look far for the consequences. Authoritarian government has provided a fertile ground for terror. This threatens India as the Mumbai terror attack made clear.

Nepal’s Maoist violence must end but this is only likely in the context of Nepal’s Comprehensive Peace Agreement, even if the CPA requires further negotiation and clarification in some of its key elements.

In this review ACHR analyses the current situation in Nepal and makes recommendations for Indian diplomatic action as well as the international community.

2. The ouster of the coalition government and the prevailing political situation

On 3 May 2009, following weeks of tension between the CPN-M and the Army, the CPN-M led coalition Government announced that it had sacked the Chief of the Army Staff (COAS) Rukmangud Katuwal for disobeying orders and denying civilian control. Katuwal clearly and deliberately defied the government in continuing recruitment (in defiance of the Comprehensive Peace Agreement) and extending the services of eight brigadier-generals against the government’s clear instructions not to do so.

The Maoist government appointed General Kul Bahadur Khadka as the new COAS.⁶ As Nepal analyst Rhoderick Chalmers noted at the time:

“The Maoists have good reason to be upset with the military, and its behaviour should worry any democrat. The army has been assiduously briefing against the government. With a none too subtle nod to Indian concerns, a recent presentation to foreign defence attachés warned that “the stated aim of the Maoist Party still appears to be to establish a totalitarian regime, which could prove a firm base for revolutionaries with regional implications.”²⁷

The CPN-M move was greeted with alarm by the other political parties, and with notable exceptions the media and civil society who, alarmed by Maoist rhetoric and their overt refusal to address their cadres’ violence, saw the move against Katuwal as a potential precursor to insurrection.

The decision to sack the COAS was taken without the specific agreement of coalition partners although some UML leaders supported the move as apparently did the MJF.⁸ Two coalition partners - the CPN (UML) and the Sadbhawana Party - immediately pulled out of government, and in the case of the UML this underlined that the party is evenly divided on how to relate to the Maoists.

On request of the other political parties, President Dr Ram Baran Yadav on 3 May 2009 wrote to the COAS instructing him to remain in his position, arguing that the President had the right to countermand government decisions. Legally the President was wrong. Nepal’s President is constitutionally bound to implement government decisions. The Supreme Court will decide on the matter and its future ruling will have significant implications for the shape of Nepalese politics.

On 4 May 2009, Prime Minister Pushpa Kamal Dahal resigned in protest over what he described as “the unconstitutional and undemocratic” action of Dr Yadav and the following day the media published a video dating from January 2008. In it PM Pushpa Kamal Dahal - then in opposition - tells PLA combatants how the Maoists had deceived other parties, including the UN into believing that the number of combatants in the PLA was 35,000 when the actual strength was between 7000-8000. The CPN-M has failed to respond adequately to the video.

i. The new government

“The old discredited conservative guard is back”²⁹

Almost as soon as the government was announced the media began speculating about the timing of its demise. Certainly the appointment of Prime Minister MK Nepal seems an odd way to signal a new, more democratic direction: the PM is not head of his party; he does not lead the parliamentary party; he is at best, ‘a senior UML figure’. But most notably he was rejected by the electorate in the 2008 elections in two separate seats, a fate which would normally mark the end of a political career.

It took over a month for the government to agree a full cabinet whose numbers have been significantly expanded presumably to offer more patronage rather than as a move towards better governance. Political in-fighting within the main political parties over cabinet posts further damaged credibility and split the parties. Sujata Koirala – who was herself rejected by the electorate – was appointed Foreign Minister at the insistence of her father G.P Koirala (head of the Nepali Congress (NC) party) and in defiance of senior NC leadership. The rift in the UML between the right wing K.P Oli faction and the Party leader Jhalanath Khanal, threatens to split the party. The third major party of the coalition the MJF, has actually split, with the right wing of the party led by Bijay Gachhedar (formally NC) joining the government leaving Upendra Yadav outside government and likely to be organising street protests.

The result appears like a government from the past, represented by precisely the same group of people who were in a large part responsible for the collapse of democratic institutions in early 2000s. As noted Indian journalist, Bharat Bhusan notes: *“Neither the present leadership nor the current agenda of the Nepali Congress and the Communist Party of Nepal (United Marxist Leninist UML), represent the future of a democratic Nepal. They are the forces of status quo.”*¹⁰

The other consequence of this divided government, as another commentator, Prashant Jha notes, is that it makes: *‘national politics more unstable. There are now three key actors (Prachanda, Jhalanath Khanal, and Upendra Yadav) who want to see an end to this government’*¹¹

ii. Ascendant Army

The big winner of recent events has been the Nepal Army. ACHR has expressed concern for some time over the increasing political influence of the Army.¹² The formation of the new government can be seen as central to that process. In the run up to the fall of the CPN-M-led government, the Kathmandu elite, sections of the media, politicians and some members of civil society appeared willing to cast the Maoists as ‘the’ threat to Nepal’s peace and democracy. Any action against the Maoists was increasingly portrayed as somehow part of the defence of democracy. This has permitted the Chief of the Army Staff (COAS), General Rukmangad Katuwal to portray the army as the saviour of democracy and in alliance with other rightist forces manoeuvre in a new government.

As Prashant Jha has observed:

*“If anyone kidded himself that the army is apolitical or the chief is just another neutral soldier; the myth has been shattered. Not only was he the trigger for this crisis, he has invested enormous capital in engineering the alternative coalition, using his leverage with old NC conservatives, the MJF right wing and the Oli faction.”*¹³ Military influence is difficult to deny. Certainly the positions taken by the government sit uneasily with their repeated commitments to consensus and the peace process.

On 27 May 2009 in his first address to Parliament, Prime Minister MK Nepal expressly thanked those who had most directly helped in ousting the Maoists from government: the President, the Nepal Army, and in what most people assume to be a reference to India, he thanked the “international community”. He underlined that the government *“will be mindful of Nepal Army’s sensitivities at all times during the peace process.”*¹⁴ The following day the PM announced that it would not sack the COAS and the day after the Speaker, UML MP Subas Nemwang, rejected the Maoists’ proposed motion to debate the President’s action in Parliament.¹⁵

On 25 May 2009, the government announced that it had decided to cancel the decision of the Maoist coalition government to erect a statue commemorating the Republic in the Royal palace and re-locate it to Ratna Park in central Kathmandu. On 4 June 2009, in clear ignorance of the Comprehensive Peace Agreement (CPA), the Defence Minister Bidya Devi Bhandari announced to the media that “Maoist combatants will not be integrated into the Army. They will be managed and rehabilitated”¹⁶ On 1 June 2009, despite the issue being sub-judice, the Defence Minister approved the proposal from COAS Katuwal seeking the job extension of eight Brigadier Generals who had been sacked by the previous government.

In response to growing Maoists’ and others’ violent protests and strikes, (see below), on 22 June 2009 the Government instructed the security forces to use ‘maximum (sic) force’ to control violent protest.¹⁷ On 26 June 2009, the government announced, again sitting uneasily with commitments to consensus on security sector reform in the CPA, a plan to increase the size of the Armed Police Force and the Police by five thousand.¹⁸ In a further step, on 6 July 2009 the media reported that the CoAS had put the six Nepal Army regional headquarters on high alert, directing them to ‘keep special vigil’ on the YCL and cantoned PLA.¹⁹

The COAS has used his power to promote officers, again to antagonise the CPN-M cadres. On 13 Junly 2009, the government accepted the COAS recommendation to promote Brigadier General BA Kumar Sharma to Major General. During the conflict Sharma made public threats to the National Human Rights Commission. As head of the Army Legal Department he was directly responsible for the institutional cover-up of the summary executions of 19 detainees at Doramba on 17 August 2003, which ended the first peace talks.²⁰ On 1 July 2009, the COAS also recommended the promotion of Major General Toran Bahadur Singh to the post of Lieutenant General to fill the post left vacant after General Kul Bahadur Khadka retired. Singh was directly implicated in the systematic torture, summary execution and disappearances of numerous suspected Maoist detainees under his charge while head of the 10th Division, including Bhairabnath Battalion, and has reportedly been turned down for UN service because of his poor human rights record.

On 8 August 2009, the COAS is obliged to take pre-retirement leave. There is considerable media speculation as to whether he will actually step down. While his retirement would not end the threat of a rightist adventure, he is nonetheless a powerful symbol of reaction and division.

iii. Violent Maoist rhetoric

The government's actions predictably antagonized the CPN-M. The CPN-M leadership have reacted erratically. They have continued to swing between announcements about their commitment to democracy and the peace process to threatening armed insurrection.

On 12 May 2009, Senior Maoist leader Bahadur Rayamajhi warned that they would return to war if the decision to retain COAS was not reversed.²¹ On 4 June 2009, senior leader Dev Gurung warned that if the COAS decision was not reversed, the PLA would leave the cantonments and take up arms.²²

Increasing Maoist violence and intimidation

Maoist violence against the governing political parties has noticeably increased. On 4 May 2009, the Ramechhap Maoist District Committee warned UML and NC activists to leave the area by 9 May 2009. The district leader threatened that those who failed to comply would be subject to "physical action".²³ Similar action was threatened²⁴ by the YCL in Siraha on 6 May 2009²⁵ and Banke and Bardiya on 9 May 2009.²⁶ On 17 May 2009, Maoist cadres pelted stones at the vehicle of UML leaders including general secretary Ishwar Pokhrel at Tipling in Ramechhap.²⁷ On 23 May 2009 Nepali Congress cadre Uma Kant Hamal (55) was killed in Jumla and the NC claimed he was killed by YCL cadres.²⁸ On 1 June 2009 Maoist cadres assaulted and hospitalised Nepali Congress district president Mukti Prasad Nyaupane in Kalikot.²⁹ On 14 June 2009, the CPN-M cadres attacked the UML party office and cadres in Kalikot.³⁰ Although difficult to assess, it does appear as if Maoists violence has waned following Foreign Minister Shiv Shankar Menon's visit.

Insurrection?

While Maoist violence is clearly a concern it was fear of insurrection that appears to have catalysed forces behind the new government. Nearly a month has passed since the government was ousted and the evidence is looking thin. The CPN-M violence and protest appears, for the moment at least to be waning. On 6 July 2009, the CPN-M announced that it will allow the Parliament to proceed. None of this is indicative of an imminent storming of the Winter Palace. But the rumours continue, most particularly from the Army. As the Akilesh Uphadhyay of *The Kathmandu Post* notes:

"Hardliners still persist in stoking fears that the Maoist attempt at state takeover is around the corner, despite the fact that for all the weeks since they have been pushed out of government, there are still no signs of the much drummed-up Maoist uprising in the districts and high-intensity violence across the country."³¹

The idea of a take-over needs to be considered carefully and from a military perspective. Generously the odds do not favour the Maoists. The Nepal Army is 96000 men strong. It is well armed. Though 19,602 Maoists were verified by the UN Mission in Nepal, the Maoist fighters' number are limited but probably higher than the Maoist estimate of 8000 and are poorly armed.

Nevertheless it is clear the CPN-M have not transformed into a mainstream democratic party. Transformation was supposed to be an outcome of the peace process. The peace process has floundered and logically the Maoists remain a large threatening military and paramilitary force.

iv. Increasing violence of other political parties

Increasing violence by the Maoists has led to increasing incidents of violence and intimidation by the 'youth wings' of the other political parties. On 6 June 2009, the Chairman of the CPN (UML) Jhala Nath Khanal instructed party workers to retaliate with violence "to give an eye for an eye."³² On 5 June 2009, a Maoist cadre identified as Ladai Sah (50 years) died in a hospital in Kathmandu following an assault by UML cadres in Rautahat district.³³

Jamadisha - the Maoist newspaper - reported UML activists led by Karnal Tamang on 27 June 2009 attempted to strangle a Maoist cadre in a hotel in Kathmandu.

On 11 June 2009, the Office of the High Commissioner for Human Rights, Nepal (OHCHR-N) expressed concern about growing number of violent acts and threats by activists of political parties and their sister wings in recent months and urged them to refrain from such activities.³⁴ 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.³⁵

v. Nationwide chaos and bandhs

Political chaos is not limited to Kathmandu. Organising strikes and road blocks, by all parties and increasingly by citizens' groups has brought the country to a virtual standstill. *The Himalayan Times* newspaper collated reports of strikes or *bandhs* (as they are known in the vernacular). The CPN-M has increased its use of bandhs since moving into opposition. Organizations affiliated with the CPM-M enforced 22 bandhs and strikes in June 2009 and 17 in May 2009. The party enforced 69 bandhs in the past six months. The NC and UML organized 15 and 17 bandhs respectively in the last six months. Local people have enforced 175 bandhs across the country. Armed groups and Terai-based groups in southern Nepal enforced 145 bandhs while the transporters and traders organized 92 bandhs in the same period.³⁶

vi. Armed group violence

Armed group violence appears to be on the rise over the course of June. For example *Kantipur* reported that people

of hill origin (pahadi) were leaving Bara after armed groups warned them to leave or be killed.

vii. Growing mob violence

During June 2009 there has been a rise in reports of mob violence resulting in an indeterminate number of killings including the following: On 16 May 2009, two people were burnt alive by villagers in Saptari district on suspicion of being involved in abduction of children.³⁷ On 10 May 2009, a 40-year-old woman was burned to death for an alleged kidnapping attempt in Dhanusha district.³⁸ On 21 June villagers in Bara beat two persons to death accusing them of involvement in shooting at a CPN-M cadre.³⁹

Violence appears to be increasingly a means to resolve petty disputes. On 8 June 2009, members of the NC-affiliated Nepal Student Union apparently assaulted the campus chief, Devi Dutta Sha, in Birgunj. They attacked him to force him to resign.⁴⁰

What is particularly significant is that mob violence is now impacting on Kathmandu. On 6 July 2009, a man was beaten up by members of the public on suspicion of kidnapping. On 20 May a woman was stripped, paraded naked and then beaten by a mob accusing her of being a prostitute. The media did not report the events but photographs of the events are a powerful indictment. The police did not intervene. On 7 June 2009, in Chahabil, Kathmandu a mob attacked cars and vandalised property in protest over a road accident.⁴¹

viii. UNMIN

The standing of an already weakened UN has been further undermined by the release of the January 2008 Dahal video (see above). The level of blame that can be realistically apportioned to United Nations Mission in Nepal (UNMIN) is limited. This was never a UN-driven peace process. UNMIN was expressly prevented from having a political mandate by India and Nepal. UNMIN's involvement in verification was technical. It was asked by the Nepalese government to verify Maoist combatants. It was asked to carry out the process on the basis of strict criteria agreed by Nepalese political actors. The terms of the verification were not decided by the UN but rather by Nepalese political actors. Whatever the reality, the UN has been marginalised and is now less able to play a positive role.

3. Prospects for sustainable peace

ACHR identified three key issues in the last review that were key to the peace process: Integration [of the Army and the PLA], security sector reform (SSR) and impunity.⁴²

Their non-resolution has been souring the political environment, creating the space for armed groups and criminality and ultimately impacting on the prospects for peace.

Integration of the armies is essential to remove the threat and use of violence from the peace process. Maoist fighters need to be rehabilitated and integrated - including into the Nepal Army. The failure to resolve integration blocks any prospect of SSR. This includes the concept that the army itself would be brought under democratic control, be made more inclusive and downsized.⁴³

No SSR means no police reform. A reformed police conditions the ability of the state to bring law and order to a destabilising and lawless countryside. The inability of an unreformed police to curb the Maoist YCL, armed groups or individual violence has damaging consequences. An absent state, and in an environment of impunity has provided fertile ground for armed political groups, armed criminal gangs and general lawlessness. Impunity means that there is no disincentive to the use of violence, the abuse of political opponents and the intimidation of local populations.⁴⁴ Sadly, mainstream politicians seem content to merely demand the abolition of the YCL rather than approach the issue from a law and order perspective under which the police clearly needs reforming and then strengthening.

The prospects of resolving all these issues have diminished significantly since the end of the consensus government. The Maoists have demonstrated that without them, this government cannot function. In an apparent recognition of this, former PM GP Koirala has recently announced his intention to include the Maoists in a national government. The Maoists have equally announced their wish/desire to form a national government. But to bring the Maoists into this government mean reconciling the Army, the President and rightists with the Maoists which seems unlikely at this stage.

Not bringing the Maoists into government means the government cannot govern, the security situation deteriorates and 'the longer they [the Maoists] stay in opposition the more they'll be tempted to revert to their tried and tested tactics of rebellion.'⁴⁵

While the immediate crisis has been averted by the Maoists' decision to cooperate with the Parliament, the wider dynamics suggest that there is momentum behind polarization, political in-fighting and rhetoric that is moving Nepal toward confrontation and a breakdown in the peace process and law and order. If the political middle ground is unable to reassert itself in the process, the current constellation of powers and influences favours authoritarian rightist takeover which in the words of the prominent Editor of *Himal South Asia*, Kanak Mani Dixit would: *"rise with support of a large section of Kathmandu Valley power elites, who have always begrudged the UML and the Nepali Congress for having reached out to the Maoists which led to the 12-point agreement. Then there would be the cultural conservatives, members of the royalist brigade, and vainglorious elements within the military, who have today been made powerful beyond their wildest dreams thanks to the Maoist adventurism."*⁴⁶

4. India's Role

India has repeatedly denied interference in Nepal. For example, India's then Minister of State for External Affairs Anand Sharma underlined to the Press Trust of India on 5th July 2009:

"We have never interfered in internal affairs of any neighbour... The comments in this regard are unfortunate".

The consensus of those writing on Nepal suggests that India's position has been rather more assertive: *'The reality is that South Block is up to its neck in the crisis'*.⁴⁷

India's actions have been central to events. As one observer notes:

"When the Maoist leader said he would strive for political consensus before taking the drastic step of dismissing Gen. Katuwal, New Delhi queered the pitch by sending clear signals to parties like the Unified Marxists-Leninists and the Nepali Congress that they should oppose the Maoists. The end result: the Cabinet went ahead and exercised its prerogative to replace the army chief, while the Unified Marxist-Leninists walked out, thereby reducing Prachanda's government to a minority."

Indian Ambassador to Nepal, Mr Rakesh Sood was a visible actor in the downfall of the government⁴⁸ and the moves to 'save' the COAS when the government threatened his sacking. India's representative in Nepal has openly supported the Army on key elements of the peace process. On the issue of integration of the two armies the CPA is unclear and unresolved. Debate has fallen between two extremes: *'that no Maoist combatants should be allowed to join the Nepalese Army (NA), or that all should be allowed to join – and in formed units rather than individually under the existing chain of command and regulations'*.⁴⁹ In these two extreme positions India has publicly taken the position of the Army. Ambassador Sood's remarks are a matter of public record:

*"First of all, peace process implies the complete disarmament of the People's Liberation Army (PLA). Second, it implies the integration of the PLA combatants into the Nepali society in a manner in which they become economically active members and are able to contribute to the political stability and economic development as Nepali nationals in Nepali society. (...) the idea that PLA integration is into the Army and rehabilitation is into the society, he said, are not in the peace agreement"*⁵⁰

Assertions of non-interference also sit uneasily with India's consistent role in the Security Council with regard to Nepal. India has openly restricted UNMIN's mandate from any political role.⁵¹ Limiting the role has prevented it operating optimally.

Inappropriate response

If there are questions over the India's policy analysis, what

then of the response? The current response does not appear well designed. It appears to be counter-productive. The consequences for Nepal of Indian support to the Army are, amongst others:

- It will allow the NA an effective destabilizing veto over the peace process;
- It will *and is* catalysing a Maoist reaction of increased protest and the very real threat of increased violence which could spiral;
- It prevents resolution of the peace process and the momentum of armed groups;
- It adds momentum to the damaging process of polarisation that empowers those who favour extreme "solutions" and conflict at the expense of consensus politics; and
- Spillover in these circumstances is inevitable.

An effective veto for the Army over the peace process should be examined in the context of the re-emergence of the Nepal Army's idea of a military solution to the 'Maoist problem' based on the Sri Lankan military defeat of the LTTE. This does not create/permit a conducive environment for a resolution of the issue.

It is worth pointing out, in this regard, that it seems unlikely that the Nepal Army would be considering a military solution without the backing of India. Such Indian support does not appear to have examined Nepal's recent history. Nepal's first attempt at a military solution backfired badly. The Nepal Army's conduct (the perpetration of widespread and systematic pattern of grave violations of human rights and the State's failure to address impunity for these violations) propelled the Maoists into power. This is not the Sri Lankan Army. In the view of (Retired) Major General Ashok Mehta the Nepal Army's senior leadership is "professionally inept, JCOs infirm and officers at junior command levels bereft of guidance."⁵²

At key moments in the past, notably the 2003 peace process and prior to the February 2005 royal coup, the RNA assured the King that it could wipe out the Maoists in six months if only the gloves were off. These claims clearly were proven unfounded by history but it would appear that the NA increasingly believes its own propaganda. There is no evidence that the NA is better placed today to deal a crushing blow to the still intact PLA.

India has a mixed record on Nepal. Its role in facilitating the twelve point agreement that led to the Comprehensive Peace Agreement and elections is a model that earned India the gratitude of most Nepali people. But the current policy is redolent of India's misguided support to Gyanendra and the Army in 2003; its support to restore King Tribhuvan to the throne in 1951. Karan Singh's desperately ill-informed mission to save the King during the people's movement in April 2006 is another example of where the Embassy has clearly poorly advised Delhi. Similarly, India confidently but wrongly predicted the outcome of the election in 2008.

If India fears Maoist extremism then the only logical response is to take actions that will result in this threat diminishing. The current policy does not appear an appropriate response and is wholly inconsistent with India's own approach at home. As noted journalist, Bharat Bhusan notes: *'There should have been no doubts on which side New Delhi is. For far less than this, Admiral Vishnu Bhagwat was removed as Chief of the Naval Staff in December 1998. New Delhi has kept its own military under what is perhaps the tightest leash anywhere in the democratic world. But reports suggest that India has actually backed General Katwal, and its ambassador, Rakesh Sood, desperately lobbied to prevent the sacking'*.⁵³

India should be supporting the peace process. Integration will take the guns from the radicals in the CPN-M and begin the process of transforming the Maoists into a political party: *which is why a responsible section of the Nepal brass sees some merit in this process; but not so Gen. Katwal or his backers inside and outside the country*.⁵⁴ As part of that process and in line, again, with the CPA this would involve the democratisation of the Army and freeing another country in South Asia from the grasp of the withering influence of militarisation.

5. Recommendations to the Government of India

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

- affirm India's expectations of consensus, co-operation and support for the Comprehensive Peace Agreement

(CPA) and an inclusive democratic future for Nepal that reflects the outcome of the recent elections; this should include further negotiations on the implementation of the CPA agreements on land, army integration and SSR;

- publicly re-iterate that there are no acceptable military solutions to the Nepal conflict;
- 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 army 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

The options are now clear—reopen peace negotiations to complement the agreements already reached in the CPA and then ensure the implementation of clear agreements on military and land issues.

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- 1 Rhoderick Chalmers, "Nepal Politics in Choppy Waters", in Mail Today, 5 June 2009, <http://www.crisisgroup.org/home/index.cfm?id=6088&l=1>
 - 2 CK Lal, 'The Ripe Mango', in Nepali Times, State of the State, <http://www.nepalitimes.com.np/issue/2009/06/17/StateOfTheState/16025>
 - 3 ACHR, "Nepal in Crisis", 1 May 2009, <http://www.achrweb.org/briefingpapers/BPNepal-05-09.pdf>
 - 4 OHCHR, "The April Protests Democratic Rights and the Excessive Use of Force Findings of OHCHR Nepal's Monitoring and Investigations", September 2006, http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006_09_21_OHCHR-Nepal.Report%20on%20The%20April%20Protests.pdf
 - 5 CK Lal, "Future Politics2, in Himal Khabarpatrika fortnightly, 30 May 2009, p 72 & 73.
 - 6 Govt decides to sack CoAS Katawal; Khadka acting chief; Four coalition partners oppose decision, Nepalnews.com, 3 May 2009, <http://www.nepalnews.com/archive/2009/may/may03/news10.php>
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